

6th Session Negotiation WG Binding treaty 30th of october 2020

My name is Yuyun Harmono, speaking on behalf of WALHI, member of Friends of the Earth International,- Indonesia Focal Point, the Global Campaign and the Treaty Alliance. WALHI works with communities who have been defending their rights, resisting forced displacement and human rights violations by transnational corporations.

While we, the people have to keep physical distance and stay at home because of covid 19, the transnational corporations are still doing their business as usual. The covid 19 Pandemic did not stop transnational corporations from dredging sand in the communities fishing zone or destroying indigenous community forest for palm oil in my country. Those policies and projects happened without consent and meaningful participation of communities impacted, civil society and public.

Inevitably, corporate lobbies will try to derail implementation of LBI through national legislative processes that will impose new obligations and rules on corporations.

Thus, if we want the Treaty to have life beyond the paper it is written on, it must be protected from corporate capture, during its elaboration, and its implementation. Therefore we propose a new paragraph 16.6 that will detail my colleagues from CAI and TNI.

I will talk now about Article 18.

We suggest that any dispute between two or more State Parties shall be resolved either by negotiation or in transparent judicial mechanisms such as the International Court of Justice, or similar regional bodies, and not through an arbitration mechanism. The current drafting of the article open the doors to the possibility that arbitration tribunals be competent to deal with disputes. The arbitration model can be problematic, raising issues relating to arbitrator impartiality and independence, secrecy of proceedings and lack of predictability and consistency.

Therefore, we suggest the following changes:

1) We suggest to amend article 18.1 by eliminating “**or by any other means of dispute settlement acceptable to the parties to the dispute.**”

2) We also would like to propose to delete paragraph 18.2.b : **Arbitration in accordance with the procedure and organization mutually agreed by both State Parties.** and replace it by “**b) Submission of the dispute to another international or regional judicial mechanism**”.

3) And finally, we also suggest to delete paragraph 18.3 :~~–If the State Parties to the dispute have accepted both means of dispute settlement referred to in paragraph 2 of this article, the dispute may be submitted only to the International Court of Justice, unless the State Parties agree otherwise.~~

We will send you the proposal also by email.

Thank you very much for your attention.

Article 18. Settlement of Disputes

1. If a dispute arises between two or more State Parties about the interpretation or application of this (Legally Binding Instrument), they shall seek a solution by negotiation ~~or by any other means of dispute settlement acceptable to the parties to the dispute.~~

2. When signing, ratifying, accepting, approving or acceding to this (Legally Binding Instrument), or at any time thereafter, a State Party may declare in writing to the Depositary that, for a dispute not resolved in accordance with paragraph 1 of this article, it accepts the following means of dispute settlement as compulsory in relation to any State Party accepting the same obligation:

(a) Submission of the dispute to the International Court of Justice;

~~(b) Arbitration in accordance with the procedure and organization mutually agreed by both State Parties.~~

(b) Submission of the dispute to other international or regional judicial mechanism.

~~3. If the State Parties to the dispute have accepted both means of dispute settlement referred to in paragraph 2 of this article, the dispute may be submitted only to the International Court of Justice, unless the State Parties agree otherwise.~~

Thank you for the time.