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CORPORATE RESPONSIBILITY WITHOUT OBLIGATIONS?

Binding Rules for Corporations – Protection for People and the Environment

- Briefing Paper -

TABLE OF CONTENTS

INTRODUCTION[1]

Economic growth in Germany and other industrial nations is based on the increased consumption of largely mineral (e.g. copper, iron, gold, aluminium) and energetic (e.g. crude oil, natural gas, carbon) resources. Globally, this economic model leads to massive social and ecological inequity. While in Germany and in the European Union this model continues to be supported through economic funding and trade liberalization, attempts are being made internationally to find and take alternative routes. The debate surrounding the human rights regulation of corporate activities has had a great significance in this context: On the UN level, the formulation of a binding instrument for transnational corporations and human rights has begun in 2015. The EU is developing a conflict mineral regulation, and an increasing number of countries are introducing criminal liability for corporations. In this leaflet, the FDCL provides an overview of these proposals and develops an argumentative aid using the example of the Latin-American commodities sector, which is so very important for Germany.

What applies to the EU is even more applicable to Germany: Latin America is central to the German energy and raw material supply. Therefore, the German federal government intervenes in the economy, investment and trade with that region. They do this with the explicit goal of guaranteeing the German industry unrestricted access to raw materials and securing the sale of German industrial goods. Therefore, the government – in accordance with the European Commission – is pushing for strong investment protections and the reduction of trade barriers. This can include regulations in the areas of environmental protection and public health services. Even development and aid policies are used to support economic development because they can "contribute to the creation of an investment-friendly climate in partnering countries, through the construction of a stable and efficient commodities sector that the German industry can also benefit from."[2]

Below, the raw materials copper, coal and iron/steel shall exemplify how important these currently are for the German economy:

Copper for wind turbines and cars: With 5.42 million tons and approximately 35% of the global production rate (deposit, smelting and refining), Chile is the largest copper producer worldwide. In second place is Peru with an annual production rate of 1.24 million tons (2011). Germany, as the world's third largest copper processor, must import 100% of its demand, as far as it is not obtained from recycling. Of these imports, 64% are from Latin America, and 25% come from Peru alone.[3] Aurubis AG in Hamburg is Germany's largest copper processing company and the second largest worldwide.[4]

CASE STUDY 1: COPPER BY TINTAYA-ANTAPACCAY IN PERU[(I)]

The Swiss mega-corporation Glencore (foremerly Xstrata) has been mining copper in the Tintaya-Antapaccay project in the south of Peru since 2006. Local farmers soon discovered deformities in sheep, llamas, and alpacas. Independent water and soil analyses have shown a high concentration of heavy metals. The water was deemed unfit for human consumption. High levels of lead and mercury were also found in the blood and urine samples of the local residents close to the mine. Civic protest is not tolerated. People face threats and criminalization. Demonstrations are violently suppressed, leaving people injured and dead. There have been reports of torture and arbitrary detentions. A round table discussion between corporations, civil society and the government has not yielded any results so far. The protests continue.

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[1] This flyer is a short version of the publication "All Rights – No Obligations, Protection for People and Environment – An Orientation Guide in the Corporate Regulation Debate Jungle" (FDCL 2015) [German], in which detailed references can be found.

[2] Federal Ministry for Economic Affairs and Energy (2010): Rohstoffstrategie der Bundesregierung, Sicherung einer nachhaltigen Rohstoffversorgung Deutschlands mit nicht-energetischen mineralischen Rohstoffen, available at: http://www.bmwi.de/DE/ Mediathek/publikationen,did=365186.html (as of: 15.7.2015); Foreign Office (2010): Deutschland, Lateinamerika und Karibik: Konzept der Bundesregierung, available at: http://www.auswaertiges-amt.de/cae/ servlet/contentblob/367294/%20publicationFile/209454/LAK-Konzept_dt.pdf (as of: 5.10.2015).

[3] Misereor/ Brot für die Welt/ Global Policy Forum (ed.) (2012): "From Ore to the Automobile: Mining conditions and supply chains in the commodity sector and the responsibility of the German automobile industry", available at: *Vom Erz zum Auto, Abbaubedingungen und Lieferketten im Rohstoffsektor und die Verantwortung der deutschen Automobilindustrie*, URL: http://www.misereor.de/fileadmin/redaktion/Vom_Erz_zum_Auto.pdf (as of: 17.7.2015).

[4] Statista – das Statistikportal (no year), „Größte Produzenten von raffiniertem Kupfer weltweit nach Produktionsmenge im Jahr 2013 (in 1.000 Tonnen)", available at: http://de.statista.com/statistik/daten/studie/ 240655/umfrage/groesste-produzenten-von-raffiniertem-kupfer-weltweit/ (as of: 18.7.2015).

For years, Aurubis has been drawing a large part of its copper concentrates from this conflict-heavy mine. In this case, responsibility along the supply chain could mean that Aurubis, as a vital client, would tie concrete social and ecological conditions to their purchase decisions. If they didn't, they would have to accept shared responsibility.

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Coal for German power plants: Despite the transition from fossil and nuclear energy to solar and efficient energy, a large and even increasing amount of electricity in Germany is produced through coal (in 2012 approximately 19%). 75% of that coal – approximately 33 million tons per year (2011) – are imported. They come mainly from Colombia, currently the world's fifth-largest coal exporter. From there, Germany's largest coal importers, including RWE, E.ON, EnBW, and Vattenfall, also receive their imports. With the exception of E.ON, the majority of these corporations'

▼ **The world's larges coal mine at Cerrejón, Columbia** Coalmining pollutes rivers and makes the nearby population sick

Foto:Fotograf Tanenhaus (CC BY 2.0)

CASE STUDY 2: COAL BY CERREJÓN IN COLOMBIA:(I)

In Colombia, a civil war has been raging for almost fifty years. Regions that are rich in raw materials are typical conflict zones for leftist guerrilla groups and right-wing paramilitary groups. La Guajira, a department bordering Venezuela, is one such high-risk area. It is very rich in coal and natural gas, but the drug trade, trafficking, and armed groups are widespread. The level of violence is high and there is little security for the general public. The local business and political elite have close ties to the criminal structures. Amidst notorious levels of corruption, governmental organs are largely dysfunctional.

For over 30 years, the corporation Cerrejón, which Glencore, BHP Billiton, and AngloAmerican are a part of, has been mining coal there in close proximity to indigenous communities. Carbon dust covers the fields and pastures and is contaminating the rivers. Yields are declining. People are suffering from respiratory diseases. An Afro-Colombian community was violently displaced 15 years ago and is yet to be adequately resettled. Statutory consultation processes, in accordance with ILO convention 169, degenerate into cheap bargains. Cerrejón tries to buy the approval of indigenous Wayúu communities with cows, barbed wire or cars.

The people demand compensation. They want access to their traditional lands and to clean water sources. They also want their right to self-determination to be respected and appropriate medical treatment. In return, Cerrejón offers corporate social responsibility (CSR): Four foundations are investing in social projects, which are tax-deductible. But none of the projects deal with the aforementioned environmental damage or human rights abuses.

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shares are publicly owned, for example by cities, municipalities or counties.[5] Therefore, democratic influence should, at least indirectly, be possible.

Iron and steel for German car and mechanical engineering industries: According to conservative estimates, the three largest German car manufacturers, BMW, VW, and Daimler, require approximately 3.3 million tons of primary (non-recycled) steel. With an annual production of 44 million tons, Germany is leading the European steel manufacturing market. With 31% of German production, ThyssenKrupp is one of its largest players (2011). The raw iron ore is 100% imported (2010: 43.1 tons), with most of it coming from Brazil, the world's second largest producer.[6]
Are German companies responsible for the human rights abuses and environmental damages caused in these cases? How can their responsibility be determined and demanded? These questions should not be discussed separately from the current trade and investment policies that provide the framework for globally active corporations.

CASE STUDY 3:
STEEL BY TKCSA IN BRAZIL[(I)]

In the bay of Sepetiba, close to Rio de Janeiro, lies the steel mill Companhia Siderúrgica do Atlântico (TKCSA), 73% of which is owned by the German ThyssenKrupp AG. Forty-percent of their production is exported to Germany. Fishermen complain of a decline in fish through the plant's operation, which destroys mangrove forests and spawning grounds, closes off areas of water for the steel mill's port operations, and badly contaminates the waters. The local residents complain about heavy metal dusts in the air. Studies show that, since the mill started operating in 2010, there has been a rise in respiratory and skin diseases and a 600% increase of iron particles in the air.

Time and again, fishermen and local residents protest against TKCSA. They report threats by the police and paramilitary militia. An investigation initiated by the public prosecutor in 2009 into environmental damages rising to a hazardous health level and the use of armed militia as security personnel, has thus far remained inconclusive. Similarly, there has still been no response to a claim for compensation brought by over 5,000 fishermen. The parent company, ThyssenKrupp, rejects allegations raised annually by critical shareholders at the shareholders meetings and continues to operate the mill despite the fact that it still has no final operating license from environmental authorities.
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CHAPTER 1:
The EU Trade and Investment Regime: Regressive, Unfair and Undemocratic

The EU has concluded countless bilateral and bioregional agreements on economic cooperation with Latin American countries. Currently, negotiations with the Mercosur Alliance (Argentina, Brazil, Paraguay, Uruguay, and Venezuela), Mexico and Ecuador are ongoing. Aside from securing raw materials, free trade is also supposed to lead to economic growth and prosperity. Not just for the EU and its member states but also for its partner-countries.
Yet, numerous civil society organisations, unions, and social movements in Latin America and Europe believe the EU trade regime to be unfair. The bi-regional network Enlazando Alternativas complains that the agreements mainly promote the EU's trade interests, such as market access, as well as the liberalisation of services, investments, and the movement of capital, access to public commissions, and intellectual property privileges. According to Enlazando Alternativas, the rights of the partner-countries in Latin America, on the other hand, have barely improved in comparison to the previous general system of preferences. Therefore, they continue being reduced to their role as raw material suppliers. Export duties are often imposed on raw materials to promote local processing.

[5] Urgewald/ FIAN (ed.) (2013): "Bitter Coal – A Dossier on Germany's coal imports" [executive summary], available at: https://www.urgewald.org/sites/default/files/bittercoal.summary.pdf (as of: 17.7.2015).
[6] Misereor/ Brot für die Welt/ Global Policy Forum (2012), Fn. 3, p. 40.

Therefore, a ban on tariffs hinders local value creation and simultaneously decreases state revenues and public investments. At the same time, the reduction of import duties for EU industrial goods leads to increased competitive pressure from the EU.

With regards to human and labour rights, as well as environmental protection, the EU's new trade agreement is taking steps back from the previous general system of preferences. The old system allows for special preferences if international norms on human and labour rights, as well as environmental protection, are verifiably applied ("APA-plus"). The new trade agreements, on the other hand, only address these topics in non-binding clauses. There are no means of redress for those affected by rights abuses or environmental damage. This contradicts the EU Parliament's recommendations to "negotiate the inclusion of actually enforceable human rights provisions in all future bilateral trade and cooperation agreements."[7]

The European investment protection agreements are also criticized for being undemocratic. They impose unilateral duties on the signatory states to secure the interests of foreign private investors. Thus, new, stronger environmental or security standards can be seen as a violation of investors' interests and, therefore, may allow for claims of compensation to be brought against the host state. Similarly, the Investor-State Dispute Settlement (ISDS), under which investors can sue states internationally but which do not allow the government to do the same in turn, restrict the political autonomy of a state. When an Ecuadorian court required Chevron to pay 18 billion US dollars in compensation for environmental damages caused by their oil production, the company sued the country internationally to prevent the judgment from being enforced. Germany's withdrawal from the nuclear energy program has also become a target for large corporations. In 2012, Vatenfall sued Germany under the ISDS regime for six billion dollars compensation. The selective modifications the EU is aiming for do not fundamentally change anything about the privileges that investors enjoy at the expense of the regulatory autonomy of host states.

Ultimately, the trade and investment regime of Germany and the EU is retrograde with regards to human and labour rights, as well as environmental protection. It is unfair because it lopsidedly favours one side's interests and those of its domestic investors and corporations, and endangers the political autonomy of the partner states, by prioritizing trade and investor security over public interests. Therefore, giving states effective tools to regulate corporations, as well as monitor and enforce their compliance, is increasingly important and urgent.

CHAPTER 2:
What Could a Binding UN-Instrument for the Regulation of Transnational Corporations Look Like?

In June 2014, the UN Human Rights Council created an intergovernmental working group under Resolution No. 26/09, which is tasked with developing a binding agreement for international corporations and human rights. The German federal government, alongside other EU states, Japan and the US, voted against this Resolution and did not send a delegation to the first working session. The EU delegation initially had reservations with which it tried to impede the negotiations. This boycott-approach is hardly expedient and contradicts the call by the European Parliament on March 2015 to actively participate in the debate on a binding international instrument on business and human rights. On the basic question of whether a binding instrument is desirable, the German government should respect the majority decision of the Human Rights Council. Not least because this decision is not contrary but rather complementary to the UN Guiding Principles on Business and Human Rights.

With its current approach, the EU and Germany could miss important opportunities to co-shape the developments at various stages. Important, contentious issues have been pre-empted by civil society: the Treaty Alliance, an association of over 400 organisations and the global campaign "Dismantle Corporate Power and Stop Impunity!", a global coalition of over 200 social movements, have formulated specific demands.[8]

The UN and governments are to limit the excessive influence by private lobby organisations on the economy. For companies, a binding civil, criminal, and administrative liability for environmental and human rights offenses is to be imposed. This shall also cover extraterritorial activities by the corporations, as well as liability for parent companies regarding acts by their subsidiaries.

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[7] European Parliament (2013): Motion on Advancing Development through Trade, 16.4.13, available at: http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A7-2013-0054&language=EN.

[8] http://treatymovement.com/; http://www.stopcorporateimpunity.org/.

The global campaign also demands that license holders, subcontractors, and suppliers, as well as investors, shareholders, banks and pension funds be held liable. Aside from the usual types of criminal behaviour, such as perpetrating, aiding and abetting, negligence, and failure to act, concealment shall also be made punishable. If, for example, a company conceals that it is obtaining goods from a questionable source from a human rights perspective, and is thereby deceiving consumers and encouraging them to buy the goods, this makes it complicit in the continuation of this situation. Several of the campaign's new proposals stimulate the discussion further. For example, one could make precautionary, product-safety, and fair-trade principles binding or prohibit the production or sale of genetically modified seeds, as well as patents on living organisms. Another new demand is making human rights take precedent over international trade and investment law and prohibiting international arbitration mechanisms. International institutions should ensure the implementation of the convention through an independent centre for research and analysis, and a monitoring mechanism. Finally, the possibility of an international court for transnational corporations and human rights should be considered.

In case 1 regarding copper, the Peruvian courts would not have jurisdiction over Aurubis AG or its parent company Glencore. A claim for compensation against the local subsidiary would likely not be enforceable because local subsidiaries usually do not have enough capital on the ground. Additionally, it would involve the risk of a counter claim before an international arbitration tribunal – similar to that in the case of Chevron v. Ecuador – as long as these are still permitted. A claim in Germany against Aurubis or in Switzerland against Glencore would entail many difficulties, starting with the search for suitable legal representation, financing the translation of evidence and other relevant documents, travel costs, and not least covering the financial litigation risk in case the claim is unsuccessful. These barriers currently prevent many victims from bringing a transnational lawsuit. Here, an international mechanism could help. Aurubis could be held liable for the crime of concealment because it assures its clients that the social and ecological origin of its products is sound.

CHAPTER 3:
What Does a Good EU Conflict-Mineral-Regulation Need?

Following the US model of the Dodd-Frank-Act, the EU and its member states should create a regulation that will prevent the trade of so-called conflict minerals that have a negative impact on the armed conflicts in their regions of origin. In May 2015, the European Parliament rejected the EU Commission's proposal for a voluntary regulation. In a trialogue with the Council and the Parliament, they are now looking for a new solution. On the individual discussion points:

In addition to the EU Parliament, numerous voices in civil society have also criticized the voluntary basis of the proposal. The strongest and most frequent argument against voluntary regulations is that they are ineffective. According to a study by the European Commission, only 4% of the 330 companies consulted voluntarily publish a report on the fulfilment of their due diligence obligations in the supply chain for conflict minerals. Meanwhile, there are many non-binding instruments for corporations, especially in the commodities sector. One of the most prominent ones is the Extractive Industries Transparency Initiative (EITI). None of these initiatives provides an all-encompassing system to effectively control conflict commodities. But they could possibly contribute to the successful implementation of a future regulatory framework. On the other hand, relying on the also non-binding doctrine of so-called Corporate Social Responsibility (CSR) is inadvisable. Whether its microcredits, water pumps, building schools, or human rights and democracy education, CSR is ill-suited as an instrument for the fulfilment of human rights obligations because it does not address the impact of business operations on human rights nor the question of reparations. A fundamental element of CSR is the voluntary principle. Therefore, the claims for human rights protections and remedies cannot be implemented through CSR.

With a view to the definition of conflict and high risk zones it is recommendable to follow the definition of the "OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High Risk Areas" because this is further developed than the Commission's proposal and also includes regions in which (a) violence or (b) violations of

national and international law are not systematic but widespread. To counter the industry's legal uncertainty argument, it could be practicable to create a periodically updatable EU-wide list of such regions.
A new regulation should also not just be limited to the so-called conflict minerals tantalum (coltan), tungsten, tin, and gold ("3TG") because the connection between resource extraction and conflict or high-risk situations applies to all raw materials. Finally, the limitation to European smelters is being criticized because these only produce 5% of the globally produced "3TG" minerals, which means that 95% could still reach the European market after external smelting or refining without certification.[9] Therefore, businesses associated with these smelters should also be covered by the regulation.

In case 2 regarding Colombian coal, the German coal importers did not voluntarily disclose their supply sources, so they could only be urged to do so through a binding law. They would, however, only be covered by the proposed EU regulation if it were to be expanded to include other raw materials. La Guajira is, at least according to OECD criteria, categorized as a high-risk region.

CHAPTER 4:
Does Europe Need More Criminal Law for Corporations?

A unionist is publicly slandered by his company, receives death threats and is finally murdered. A company is not sufficiently securing its cyanide basins. Rain flushes the toxins into the surrounding rivers. Animals die, people have no more drinking water. A company pays police forces to call protesting residents "to order", knowing that the police regularly uses excessive violence, rape women and torture men. A corporation builds a damn, the local residents are displaced without reparations and their houses and fields are flooded. Behind all these cases, which sometimes also involve German firms, are not the excessive acts of individual employees. Rather they are specifically planned and driven by the companies, as corporate actors, which are more than just the sum of their members.
In Europe and worldwide, more and more countries have introduced criminal liability for corporations in the past 20 years.[10] More than a dozen framework decisions and guidelines by the European Parliament and the EU Council, as well as the Council of Europe,[11] require effective corporate sanctions from their member states. One of the few countries that still has trouble with that is Germany. But here too, discussions are intensifying. In November 2013, the North Rhine-Westphalian Ministry of Justice submitted a draft law introducing criminal liability for corporations and other associations.
Cases like those previously stated cannot be addressed sufficiently through civil or administrative laws. Here, criminal sanctions against the corporations are necessary. In civil law, the plaintiff and defendant are seemingly equal, no matter the fact that a strong power imbalance between large companies and individual victims can gravely affect the chances of success. The administrative court, which, in Germany, has jurisdiction over such cases through the Administrative Offenses Act, leaves it up to the administrative authority whether or not to investigate. In contrast, in criminal law the so-called legality principle requires the prosecutor to investigate and, thereby, guarantees reliable legal protection. Additionally, it is currently only possible to impose a maximum penalty of 10 million euros in Germany, even when intent is proven. In case study 3 (coal from Brazil), with ThyssenKrupp's annual revenue of approximately 38 billion euros (2013)[12] this

[9] ACTIAM et al. (2015): "Global Investors Urge European Parliament to Adopt Stronger EU Conflict Minerals Legislation", available at: http://www.eurosif.org/wp-content/uploads/2015/05/Investor-EU-CM-statement-May-13-2015.pdf (as of: 20.7.2015).
[10] Anglo-Saxon common law has long established criminal liability for legal persons and entities. In Continental Europe it has been introduced in recent years: Netherlands (1950/1976), Iceland (1972), Portugal (1984), Sweden (1986), Norway (1991), France (1994), Finland (1995), Belgium (1999), Slovenia (1999), Estonia (2001), Italy (2001), Malta (2002), Switzerland (2003), Lithuania (2003), Croatia (2003), Hungary (2004), Macedonia (2004), Latvia (2005), Austria (2006), Romania (2006), Luxemburg (2010), Spain (2010), Slovakia (2010), Liechtenstein (2011) and the Czech Republic (2012).
[11] North Rhine-Westphalia state government (2013): Draft law introducing criminal liablity of corporations and other associations, available at: http://www.justiz.nrw.de/JM/justizpolitik/jumiko/beschluesse/2013/herbstkonferenz13/zw3/TOP_II_5_Gesetzentwurf.pdf (as of: 21.7.2015).

would mean about 0.03%. Such sanctions are inadequate to change the behaviour of a company. The current German draft law, on the other hand, envisions the exclusion from public commissions, or subsidies, or even the dissolution of legal personhood, in addition to a penalty. Criminal law for corporations must also – in light of the increasingly global economy – cover the perpetration of crimes abroad. This does not automatically mean liability for the parent company for "extrinsic" guilt by the subsidiary. Rather, the parent company's driving individual responsibility is incorporated because compliance and risk management of local subsidiaries on the ground are often regulated by the parent companies.

In case 3 regarding steel from Brazil, the new law would allow for investigations into the co-responsibility of the German parent company for the contamination of rivers, the causing of chronic skin and respiratory diseases, and death threats, if participation by the TKCSA is proven and supervision and intervention by the parent company are lacking. Several directors were repeatedly informed of the problems and remained inactive.

Thus, a new law would have to incorporate the collective character of the corporation's actions if the individual acts of employees constitute a crime under the totality of the circumstances. As a sanction, ThyssenKrupp could face losing the possibility of public funding and commissions for the development of submarines announced by the government.

▼ **Destruction of mangroves by TKCSA** The peer of the steel work during the construction phase 2008

[12] Statista – Das Statistik-Portal (no year): Ranking the largest corporations in Europe by their revenues in 2013 (in billions of US dollars), available at: http://de.statista.com/statistik/daten/studie/190739/ umfrage/groesste-boersennotierte-unternehmen-europas/ (as of: 21.7.2015).

Overview:

For the following overview, one should keep in mind that the contrasted instruments have different goals and are, therefore, only comparable to a limited extent. Furthermore, all instruments only exist as drafts and are still being discussed with regards to content. Therefore, the proposals of civil society were partly included here.

Is the instrument...	**a binding UN-Instrument, as proposed by the Treaty Alliance and "Dismantle Corporate Impunity"**	**EU Conflict Mineral Regulation, as currently proposed by the European Commission**	**EU-Conflict Mineral Regulation, according to the proposals of the EU-Parliament and Civil Society**	**A new German Criminal Law for Associations, according to the North Rhine-Westphalian model**
... binding on a corporation?	YES	NO	YES	YES
... applicable to German corporations?	YES	YES, ONLY SMELTERS AND REFINIERIES	YES	YES
... applicable extraterritorially?	YES	INDIRECTLY	INDIRECTLY	YES
... suitable for liability along the entire supply chain?	YES	NO	YES	NO
... suitable to allow person's affected to actively participate in the proceedings?	YES	NO	NO	ONLY FOR OFFENSES THAT ALLOW INCIDENTAL CLAIMS
... applicable by national courts?	OPEN	YES	YES	YES
... replaceable by an already existing voluntary instrument?	NO	NO	NO	NO

Conclusions and Recommendations:

The German industry's hunger for raw materials keeps growing. The expansive economic model, currently prevalent in Germany and Europe, is neither sustainable nor fair. Shell, BP, KiK and Nestlé are just the tip of the iceberg. Corporate violations of human rights, labour standards and environmental protections are not isolated cases.
Nevertheless, this model continues to be promoted by politicians and economists. The interests of European corporations and investors in countries of the Global South are lopsidedly placed above the public interests in those countries, such as environmental protection and human rights. Through laws and contracts, they are shaped into enforceable rights, while corporate responsibilities are only to exist on a voluntary basis. This privileged position is secured by the aggressive lobbying of business associations on a national and international level.
But a civic counter movement is gaining momentum globally. It urges binding regulations instead of voluntary instruments. Because many of those voluntary instruments already exist but do not offer all-encompassing and enforceable controls against the negative impacts of corporate activities on human rights and the environment. It was already clear when the UN Guiding Principles were adopted that voluntary and binding regulations for corporations are not contrary but rather complementary to each other. State responsibilities and corporate responsibilities must also interact: It is the state's responsibility to guarantee rights, for example through regulation. It is the corporation's responsibility to abide by the laws.
Concrete proposals for regulation are already on the table. They also address current questions like supply chain responsibility, extraterritorial responsibilities, or the priority of human and labour rights, as well as environmental protection standards, over trade and investment laws. Today, it is important that the EU and its member states help shape the discussion and decision-making process with a constructive position.
Underestimating the civic movement now, not only means acting undemocratically but running the risk of failing to promptly recognise the dangers to autonomous development, and social peace and justice. These could later lead to complex and intractable societal conflicts.

In this sense, the following recommendations to the EU and its members can be formulated:

1. The EU and its members should, in the context of the intergovernmental UN working group, constructively participate in the development of an international instrument for transnational corporations and human rights. They should not just look to preserving the industry's interests but also observe their global responsibility and – **together with parliaments and civil society** – find common solutions for the all-encompassing, effective and sustainable protection of human and labour rights, as well as environmental protection.
The EU, its members and Parliaments should, therefore, consider the suggestions made by civil society, especially those coming from the raw material's countries of origin, and should work towards their implementation on a national level:
a. In the interest of legal certainty for corporations and those affected, liability standards should be improved; especially regarding responsibilities along the supply chain for outsourced activities, as well as investments, financing, and the whole area of foreign trade promotion.
b. Practical and legal obstacles for foreign, indigent plaintiffs and plaintiff groups should be dismantled.
c. The priority of international human rights and labour standards, as well as environmental standards, over trade and investment-protection laws should be formalized.
d. On an international level, the examination of the necessity and viability of an international judicial body over transnational corporations for human rights and environmental questions should be supported through concrete means and measures.

2. The EU Commission, the EU Parliament and the member Governments should, in the context of the EU-trialogue, constructively work on improving the conflict mineral regulations. They should agree that these include binding rules, are not limited with regards to the types of raw materials they apply to, and are also applicable to corporations that use raw or processed conflict materials in their products or production processes.
3. The EU and its Member States should empathetically practice the comprehensive introduction and effective application of a criminal law for corporations. Thereby, judicial and practical obstacles for foreign plaintiffs and plaintiff groups should be dismantled and the public prosecutor should be legally and practically supported in his investigation into transnational circumstances. Sanctions for corporations should be perceptible for the companies.

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