

**Annex to the report on the seventh session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (A/HRC/49/65)**

**Note by the Secretariat**

*Summary*

The present annex contains a compilation of the general statements from States and other relevant stakeholders<sup>1</sup>. It has been prepared in accordance with paragraph 20 (a) (i) of A/HRC/49/65. Only oral statements received by the Secretariat and presented during the seventh session are part of this compilation and have been reproduced in the original language of submission.

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<sup>1</sup> These statements have also been posted online at <https://www.ohchr.org/EN/HRBodies/HRC/WGTtransCorp/Session7/Pages/Session7.aspx>

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## **I. General statements**

### **A. States**

#### **1. Argentina**

Sr. Presidente,

La Argentina considera que un futuro tratado, con un texto equilibrado y coherente y que pueda ser efectivamente aplicado, podría contribuir a garantizar medios efectivos de prevención, protección y reparación para quienes hubieran sufrido vulneraciones de los derechos humanos relacionadas con actividades empresariales. Asimismo, un futuro tratado, podría asimismo resultar un instrumento útil para la protección de los derechos fundamentales de los y las trabajadoras.

Es necesario sin embargo que el instrumento jurídicamente vinculante no implique una duplicación de las normas e iniciativas pertinentes existentes y sea coherente con ellas, como las resoluciones del Consejo de Derechos Humanos y las organizaciones regionales, los tratados de derechos humanos, los Convenios de OIT que protegen los derechos fundamentales del trabajo, los Objetivos de Desarrollo Sostenible, las Líneas Directrices de la OCDE para Empresas Multinacionales y, especialmente, los Principios Rectores sobre las Empresas y los Derechos Humanos.

Con los Principios Rectores sobre Empresas y Derechos Humanos, los Estados miembros de las Naciones Unidas han afirmado que las empresas tienen una responsabilidad de respetar los derechos humanos, no causando daños, y haciendo frente a impactos negativos, sin importar su tamaño, su sector, etc.

Cabe mencionar que los abusos de derechos humanos perpetrados por empresas impactan de distinta manera en los diferentes grupos sociales y en algunos casos de manera desproporcionada, por lo que los Estados tenemos una obligación de prestar especial atención a los sectores sociales y personas que han sufrido formas de exclusión histórica. En este sentido, la Argentina observa que no se encuentra mención en el texto del borrador a las personas LGBTI, quienes dentro del campo de empresas y derechos humanos, suelen sufrir discriminación y violencia en el trabajo.

Cabe destacar positivamente la incorporación en el preámbulo de la referencia a la Agenda 2030, ya que las empresas tienen un papel clave que desempeñar en el desarrollo sostenible y equitativo para todos y todas, así como también destacar el párrafo donde se incorpora el rol de los defensores de derechos humanos y, finalmente, la mención a la necesidad de la incorporación de la perspectiva de género por parte de las Empresas y los Estados.

Consideramos que las actividades de las empresas, especialmente las de carácter multinacional o transnacional, pueden llegar a estar en el origen de daños ambientales que terminan teniendo un impacto y consecuencias negativas, tanto directas como indirectas, en los derechos humanos.

Por otro lado, notamos que el análisis de los informes presentados por las Naciones Unidas sobre las sesiones del Grupo de Trabajo, así como los documentos oficiales sobre la posición Argentina ante las rondas de negociación, denota que la cuestión laboral no ha sido contemplada en profundidad.

Finalmente, destacamos la modificación propuesta al art. 14.1 in fine, en tanto se elimina en el proyecto revisado la referencia expresa al respeto al principio de no intervención en los asuntos internos de otros Estados, sin conocerse los fundamentos de dicha supresión, la cual se considera no aconsejable.

Muchas gracias.

#### **2. Brazil**

Thank you, Chair-rapporteur,

Brazil is pleased to, once again, take part in the discussions of the Open-Ended Working Group on the elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights. We thank the Office for their efforts in organizing this meeting in person, despite the challenges arising from the covid-19 pandemic.

2. We thank Ambassador Emilio Rafael Izquierdo Miño for his work as the chair of the Working Group, as well as the delegation of Ecuador, for presenting the third revised draft of a legally binding instrument.

3. We welcome the opportunity to engage in direct and substantive intergovernmental negotiations in this session. We believe it can contribute to pave the way for a renewed participation of states in this process.

4. Brazil remains engaged in the discussions on a possible binding instrument on business and human rights. We are committed to addressing the gaps in the international normative framework regarding the protection of victims of human rights violations and abuses in the context of business activities.

5. We reaffirm our understanding that the UN Guiding Principles on Business and Human Rights, adopted by consensus by the Human Rights Council, constitutes the fundamental reference for our substantive discussions.

6. We commend the efforts undertaken by the Chair-Rapporteur to address the various concerns expressed during and after the 6th session of the OEIGWG.

7. While acknowledging the progress made, we believe that there are significant challenges to be addressed in the current draft, in order to achieve a balanced and effective text.

8. We are disappointed that most of our proposed amendments could not yet be accommodated into the text. We also note that new issues have been included in the third revised draft which will need further detailed consideration.

9. As we stated during the last session of the Working Group, we need to find the right balance between the proposed rights and obligations in the draft, if we want an effective and viable instrument that can be adopted by a representative group of countries. We should strive to adopt standards that protect human rights but do not hamper business activities. At the same time, we need to ensure that the new provisions can be effectively implemented on the ground - including avoiding excessive burden upon states, particularly in the case of developing countries.

10. During the next few days, we will seek to address our concerns in a constructive and pragmatic manner. We believe it is important to clarify a number of key issues in order to ensure an adequate balance between rights and obligations. To that effect, we need a more concise and less prescriptive text, that sets out principles and standards, but does not impose detailed procedural rules upon states. As the text stands now, it hampers business activities and overburden states, especially in the case of developing countries.

11. At this stage, we would like to raise 6 main points:

(i) we commend the suggestions that were incorporated in Article 1 in an attempt to increase accuracy in the definitions in the draft, including with regards to the terms "victim" and "human rights abuse". We still think, however, that we need greater clarity and legal certainty, for and effective instrument.

(ii) it is crucial to clarify further that the state parties to the instrument would be accountable only to the binding international human rights standards contained in the treaties that they have agreed or to which they have acceded.

(iii) we are convinced that the instrument should place its focus on the most serious or substantial human rights abuses that may arise from business activities. This important distinction would help to ensure that the instrument is not misused, becoming a tool for lawfare or other deleterious practices.

(iv) as it stands, the draft is overly prescriptive, setting out excessively detailed procedural rules for prevention, mutual assistance and cooperation, among other topics. We share the

view that such issues are relevant to the draft, but we must bear in mind the nature of the instrument.

(v) we remain concerned with the absence of any reference to the principle of subsidiarity/exhaustion of local remedies as a prerequisite for the application of the jurisdictional rules established in the instrument. The proposed text is largely unworkable, leading to excessive costs and legal uncertainty to business activities.

(vi) we advise extreme caution when referring to environmental rights and environmental measures. In our view, the conceptual basis for environmental measures should emanate from the international legal framework that has been developed over the last 30 years to address environmental issues, including climate change.

12. Given that this is the first opportunity for states to engage in direct substantive negotiations with one another, Brazil wishes to reserve its position concerning the full text of the third revised draft. In particular, we reserve our position regarding the binding or voluntary nature of the text. Whilst the issue underpins our discussions, a decision can only be taken after assessing the final balance between rights and obligations.

13. As we see it today, the draft instrument before us remains a working document. Its impacts on the ground and its legal implications to countries' international commitments under trade and investment agreements and disciplines at the multilateral, regional and bilateral levels need still to be assessed.

14. Brazil looks forward to the substantive discussions between states during the current week.

### 3. Chile

#### **Sr. Presidente**

1. Agradecemos a la Alta Comisionada para los Derechos Humanos, Sra. Michelle Bachelet, por las reflexiones compartidas en sus intervenciones de apertura de esta VII sesión del Grupo de Trabajo para la creación de un instrumento vinculante sobre derechos humanos y conducta empresarial responsable.

#### **Sr. Presidente**

2. En concordancia con el compromiso de Chile con los derechos humanos, nuestro país ha promovido de manera activa esta temática que involucra a un actor clave de la sociedad como son las empresas y su relación con las personas y las comunidades.

3. Haciendo suyos los Principios Rectores de Naciones Unidas, la Declaración Tripartita de la OIT y las Líneas Directrices de la OCDE, Chile ha hecho esfuerzos concretos por diseñar políticas públicas para promover sus recomendaciones. Prueba de esto, fue nuestro Plan de Acción Nacional de Derechos Humanos y Empresas que entró en vigencia en 2017, siendo el segundo país en la región en implementar esta iniciativa. Actualmente, se encuentra en preparación un Segundo Plan de Acción Nacional.

4. Este año se ha cumplido una década del marco de referencia para trabajar los derechos humanos dentro del entorno empresarial y Chile reafirma su compromiso con los instrumentos mencionados, recalando que considera esta materia una política de Estado. Por lo mismo, cabe destacar que el Plan de Acción Nacional de Derechos Humanos y Empresas, cuya finalidad es la implementación de los Principios Rectores, se trata de una política pública de reciente implementación. Justamente, su propósito corresponde a instalar un enfoque de derechos humanos en el quehacer empresarial, lo cual se seguirá profundizando en su segunda versión.

#### **Sr. Presidente**

5. Actualmente, nos enfrentamos al desafío de la reconstrucción socio-económica post-COVID-19, y debemos enfocarnos en una recuperación sostenible, inclusiva y con una perspectiva de derechos humanos. En este escenario, el compromiso empresarial debe estar más presente que nunca, por lo tanto, hacemos un llamado a todos los representantes del mundo empresarial.

6. En este especial contexto, Chile participa de esta negociación con un ánimo constructivo. Sin embargo, es importante tener presente la base de los Principios Rectores, esperando que la posible creación de un acuerdo internacional constituya una herramienta para avanzar de manera más armónica, como comunidad internacional, en el desarrollo de una temática relevante para las personas de cara a la recuperación de la pandemia.

7. En concordancia con lo anterior, Chile reitera su posición y hace presente que, a fin de poder lograr consensos, la propuesta a discutir debe ser realista en cuanto a sus estándares y compromisos para los Estados, debe propender a la cooperación internacional por sobre un enfoque sancionador que vuelva impracticable la aplicación del acuerdo, desincentivando su adhesión. Por lo mismo, es de importancia subrayar los desafíos legales que importaría esta propuesta dentro de los ordenamientos jurídicos de cada Estado.

8. Es fundamental que un acuerdo de esta naturaleza atienda, además, a un enfoque inclusivo y colaborativo, por sobre una mirada confrontacional. Para esto, se debe recoger la posición los distintos actores de interés: empresas, sociedad civil y por cierto los Estados, sólo así se avanzará en la conformación de una base transversal y legitimada que permitirá a futuro consolidar aún más el desarrollo global de la protección de los derechos humanos en el ámbito empresarial.

9. Debemos recordar también que el camino a recorrer en la materia es aún largo para la mayoría de los Estados y, por lo mismo, creemos que, con anterioridad al establecimiento de mayores estándares de cumplimiento, es esencial considerar las diferentes realidades jurídicas que confluyen respecto de cada país, por lo que proponemos enfocar, en un primer momento, nuestros esfuerzos en la promoción de una cultura de respeto a los derechos humanos por parte de las empresas, tarea que consideramos se encuentra aún en desarrollo tanto a nivel interno como externo.

Muchas gracias.

#### 4. China, the People's Republic of

### 出席跨国公司与人权问题法律文书政府间工作组 第七次会议发言要点（一般性评论）

主席先生：

中国政府和业界高度重视跨国商业中的人权保障。2021年9月9日，中国发布《国家人权行动计划（2021-2025年）》，明确“促进全球供应链中的负责任商业行为。促进工商业在对外经贸合作、投资中，遵循《联合国工商业与人权指导原则》，实施人权尽责，履行尊重和促进人权的社会责任。建设性参与联合国工商业与人权条约谈判进程。”

中方赞赏主席先生和工作组秘书处克服疫情影响，为推出第三版修订案文所付出的努力，期待与各方稳妥推进案文修订，为工作组提供一个更加成熟的谈判基础。

中方注意到第三版修订案文在原有基础上进行了不少修改和完善。但新版案文仍存在一些原则性和方向性争议，没有消弭各国在第六次会议中的分歧，存在适用范围过广、管辖权过宽、给国家和企业施加的义务过重等突出问题，难以解决各方此前提出的合理关切。

发展和人权都是联合国系统的支柱，二者不能偏废，发展权也是基本人权，发展权的实现有利于人权的充分保障。中方认为，法律文书应更加务实，平衡兼顾发展和人权，在内容上更有针对性和可操作性，符合国际公认的一般法律原则和国际法；同时要做到规则清晰、责任明确，为跨国公司和其他工商业企业的经营创造稳定、可预期的规则环境，避免给企业施加过于沉重的负担。

中方期待着工作组就有关问题展开深入和建设性讨论。

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## 5. Colombia

Gracias Señor Presidente.

La delegación de Colombia lo felicita por presidir esta sesión del grupo de trabajo, y agradece la presentación de esta tercera versión del texto a ser considerado.

A diez años de la adopción de los principios rectores, su reconociendo y practica cobran mayor vigencia en los esfuerzos por impulsar la economía mundial impactada por la pandemia del COVID-19.

Desde la adopción de los Principios Rectores sobre empresas y los derechos humanos en 2011, por parte de las Naciones Unidas, Colombia viene adelantando un trabajo continuo en su promoción y aplicación.

En el año 2020 el gobierno del Presidente Duque adoptó el segundo Plan Nacional de Acción en Derechos Humanos y Empresas, con el objeto de garantizar que:



(i) el Estado Proteja los derechos humanos en el contexto de la actividad empresarial, (ii) se respeten estos por parte de las empresas y, (iii) se cuenten con mecanismos eficaces para reparar las afectaciones a los mismos.

El carácter voluntario de los Principios Rectores ha sido un factor clave para su aceptación y reconcomiendo,

Colombiano continúa estudiando el alcance y el eventual valor agregado de un instrumento vinculante en materia de derechos humanos y empresas, así como las sinergias que pudiera tener dicho instrumento con otras iniciativas e instrumentos internacionales en materia de derechos humanos.

Es importante adelantar un juicioso análisis del impacto de un acuerdo internacional vinculante en materia de derechos humanos y empresas en relación con los flujos comerciales y de inversión internacionales, así como en relación con los Acuerdos Internacionales de Libre Comercio, los Acuerdos de Protección y Promoción de Inversiones, y los Acuerdos de integración económica y comercial

Un instrumento internacional vinculante, como el borrador propuesto a este grupo de trabajo, debe ser muy claro y preciso en cuanto a los aspectos relacionados con la responsabilidad de los Estados y de las empresas y sus alcances.

Continuaremos haciendo seguimiento a los desarrollos del actual periodo de sesiones del grupo de trabajo y estaremos atentos a sus resultados.

Muchas gracias.

## 6. Cuba

Señor Presidente:

Al iniciar esta nueva sesión del Grupo de Trabajo, lo felicitamos por su elección, y le aseguramos nuestra participación constructiva.

Cuba reitera su compromiso con el avance hacia la adopción de un documento vinculante sobre la regulación, en el Derecho Internacional de los Derechos Humanos, de la actividad de las corporaciones transnacionales y de otras empresas con ese carácter.

El alcance del documento que negociamos debe estar en estricta conformidad con lo establecido en la resolución 26/9 del Consejo de Derechos Humanos. Observamos con preocupación que este es un problema aún no resuelto, y que de mantenerse atendería contra la razón de ser y la esencia misma del proceso.

Señor Presidente:

Resulta necesario adoptar medidas a escala internacional, y crear mecanismos efectivos que garanticen que aquellas empresas transnacionales que sean responsables o cómplices de haber cometido violaciones de los derechos humanos y delitos internacionales, sean investigadas y enjuiciadas por los daños contra las personas, el medio ambiente, y los recursos de los países.

Son muchos los ejemplos que reflejan la problemática actual del accionar de empresas transnacionales y las diversas violaciones de derechos humanos que quedan impunes, en buena medida por carecer de un marco legal internacional al respecto.

Por otra parte, las múltiples crisis sistémicas globales, agravadas por los insostenibles patrones de consumo y producción, por el orden económico impuesto al mundo, y por los efectos de la pandemia de Covid-19, lanzan a miles de millones de personas a la pobreza, a la precariedad económica y social, y acentúa la destrucción de los ecosistemas. Esto es un caldo de cultivo para las violaciones de los derechos humanos, incluyendo el derecho al desarrollo y a un medio ambiente sano.

Señor Presidente:

Las deliberaciones de este Grupo son decisivas para avanzar en mecanismos de protección a las víctimas ante las transnacionales, luchar contra la impunidad y asegurar la reparación efectiva.

Para ello, se requerirá la voluntad y la participación constructiva de todos los estados y de la sociedad civil.

Muchas gracias.

## **7. Ecuador**

Señoras y señores:

Me es muy grato ser parte de este importante evento y deseo empezar por expresar mi sincero agradecimiento a todo el equipo de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos por todos los esfuerzos y el respaldo que brinda al grupo de trabajo en la tarea de elaboración de un instrumento jurídicamente vinculante sobre empresas y derechos humanos. También agradezco y extiendo mi reconocimiento al Representante Permanente del Ecuador ante las Naciones Unidas en Ginebra, Embajador Emilio Izquierdo Miño, por los esfuerzos que realiza en el ejercicio de la grata y compleja tarea de ejercer la Presidencia y Relatoría de este Grupo de Trabajo.

También quiero saludar a los Estados, autoridades, organizaciones de la sociedad civil, organismos internacionales, organizaciones intergubernamentales, funcionarios de las Naciones Unidas y demás participantes que colaboran con este proceso y que han decidido unirse a esta Séptima Sesión del Grupo de Trabajo. Los aportes y comentarios manifestados en las distintas sesiones, son fundamentales para el desarrollo del instrumento vinculante.

La realidad actual derivada de la pandemia global causada por la COVID-19, ha resaltado las desigualdades y la situación de vulnerabilidad en la que viven millones de personas. En el contexto empresarial y en las actividades comerciales se evidencia la creciente demanda por el fortalecimiento del respeto, la promoción, la protección y el cumplimiento de estándares internacionales, que prevengan las violaciones a los derechos humanos y que garanticen a las víctimas el acceso a la justicia y a la reparación. Lamentablemente, las medidas voluntarias siguen siendo insuficientes para proteger a las víctimas de los derechos humanos, lo cual nos exige avanzar con esmero en la construcción de mecanismos de normas vinculantes.

El proyecto de este instrumento es también una gran oportunidad para las empresas, puesto que por medio de él podrán fortalecer la seguridad jurídica tanto a nivel nacional como internacional, haciendo que la competencia se mida en términos de eficiencia, calidad e innovación de sus bienes y servicios; y, al mismo tiempo, acercándolas a prácticas basadas en modelos internacionales en materia de protección ambiental, derechos laborales y derechos humanos.

Sin duda, los aportes, sugerencias y propuestas de los participantes en esta reunión fortalecerán el proceso de elaboración de este instrumento, entendiendo que es preciso continuar animando a más estados a involucrarse y participar en los debates de manera abierta y transparente. Si bien la fase de redacción de este proceso puede resultar compleja, la amplia participación de los estados fortalece la confianza en los mecanismos internacionales y genera mayores beneficios, ya que está concebido desde una visión democrática y plural.

Como en ocasiones anteriores, el Ecuador reitera que, en este proceso, el principio general de complementariedad entre los estándares internacionales vinculantes y no vinculantes en materia de empresas y derechos humanos es fundamental.

Mi país agradece la voluntad y la responsabilidad con las que la Presidencia-Relatoría ha dirigido este proceso de negociación y espera que todos los actores participen activamente, se involucren de manera constructiva en las negociaciones, y contribuyan con su experiencia al desarrollo normativo del derecho internacional de los derechos humanos, y así avanzar en la elaboración de este instrumento.

Muchas gracias.

## **8. India**

Thank You Chair,

At the outset, India would like to thank the High Commissioner for Human Rights for her opening remarks. We also congratulate you for your election as the Chairperson-Rapporteur to steer the proceedings of this session.

Mr. Chair,

2. Business enterprises play a key role and impact the lives of people with their activities. The 2030 Agenda for Sustainable Development as adopted by the United Nation General Assembly (UNGA) also recognises the business sector as a key partner for the United Nations and governments to achieve the sustainable development goals. Considering the global expansion of businesses, the international community has increasingly felt the need to recognise the corporate responsibility of businesses to respect human rights.

Mr. Chair,

3. At international level, deliberations have been now going on for almost five decades on the subject of regulation of the activities of transnational corporations so as to ensure corporate social responsibility and respect for human rights. A significant achievement on this subject was the adoption of the United Nations Guiding Principles on Business and Human Rights by the United Nations Human Rights Council in 2011. As we celebrate the Tenth Anniversary of the UN Guiding Principles on Business and Human Rights (UNGPs), the obligation of protecting and respecting human rights in the business context has assumed greater significance, especially during the COVID-19 pandemic.

Mr. Chair,

4. As the largest democracy in the world, protection of human rights has been an intrinsic part of the Indian tradition. India's rich cultural values are based on the principle of inclusive development for all. India's endorsement of UNGPs reflect our commitment that businesses respect human rights. We have issued National Guidelines on Responsible Business Conduct in 2019, which provides the framework on Business Responsibility Reporting in India that takes into consideration the UNGPs and SDGs as its key drivers.

5. India has taken steps in streamlining of gender perspective in its business policies. The Companies Act of 2013 mandates companies to spend at least 2% of their profits on socially beneficial activities including promotion of gender equality, empowerment of women and providing shelter for the needy. Certain companies are also required to appoint at least one-woman director on the board. As of 2021, the top 1000 listed companies are required to file the Business Responsibility and Sustainability Report (BRSR) and mandatorily file the same from FY 2022 onwards.

6. India has also been working on a National Action Plan on BHR at the domestic level.

7. These initiatives at the national level in India complement already existing machinery comprising of an independent judiciary, national and state commissions to monitor compliance with human rights, legal and policy measures and an independent media.

Mr. Chair,

8. This Open-ended Working Group established pursuant to HRC Res. 26/9 of 2014 has made significant progress since its first session.

9. In this context, we believe that enhanced discussion and further clarity is still required on a number of elements in the current draft text, including on scope, jurisdiction, rights of victims, liability issues amongst others. India reiterates its position that this instrument should focus only on business activities of a transnational nature and not to national enterprises as we already have domestic laws to regulate them. Such an instrument needs to maintain a fine balance with the socio-economic developmental concerns of developing countries and LDCs on one hand while also making transnational corporations more responsible in the protection of human rights. We believe, any international legal instrument needs to be flexible and balanced so as to have the widest possible acceptance that will ensure its effectiveness.

Mr. Chair,

10. We understand that the discussions and negotiations on this subject will be a long-drawn process and are committed to engage in a constructive manner in the discussions over this week.

Thank You.

## 9. Indonesia

Thank you, Mr. Chair Rapporteur,

- We congratulate you for your re-election as Chair Rapporteur for this 7<sup>th</sup> session of the Open Ended Intergovernmental Working Group (on transnational corporations and other business enterprises with respect to human rights). We trust that you will continue to provide leadership to guide the deliberation of this Working Group in an inclusive, comprehensive and efficient manner.
- The need for business to respect and conduct their activities with due regard to human rights is indisputable. As well as the duty of state to regulate and monitor these business activities in compliance with national laws and regulations including human rights standards and provide access to justice and remedy for case of human rights violations including those that may arise in the framework of business activity.
- Indonesia is committed to the promotion and protection of human rights in the framework of business activities. Therefore, we continue to promote the dissemination and inclusion of human rights principles to business practices in the country. Ten years after the endorsement of the UNGP by the Human Rights Council, Indonesia continues to take important steps in its business and human rights policy development. These includes establishment of the National Task Force on Business and Human Rights and the launch of an online human rights' due diligence tool for business entities, or PRISMA.
- With respect to access to remedies, Indonesia also continues to improve access through both judicial and non-judicial mechanisms, under the Ministry of Law and Human Rights.
- More recently, the Government is in the process of developing the National Strategy on Business and Human Rights to improve the implementation of the UNGP at the national level. The drafting of the National Strategy will be an inclusive process that involves all relevant stakeholders, including government agencies, civil society organizations and business associations.

Mr. Chair Rapporteur,

- Indonesia's commitment is also shown in this process based on the understanding that this exercise aimed to elaborate an instrument that will provide a stronger foundation to guide our efforts to achieve sustainable development and socio-economic progress while continue upholding human rights.
- We appreciate the efforts by the team in preparing the third revised draft to serve as a basis for this session's deliberation. We take note some amendments that have been introduced to the text to continue improving coherence and consistency of the draft.
- Nevertheless, the text remains broad, while at the same time overly prescriptive and, at times, problematic, such with the inclusion of customary international law to establish criminal liability as can be found in Article 8 as well as provision on adjudicative jurisdiction and applicable law which need to be cautiously considered. We reaffirm our position that this legally binding instrument should be able to provide certainty for all relevant stakeholders. Therefore, it still requires further clarity.
- We also would like to once again recalls the importance to remain faithful to the mandate of the Working Group as stipulated in Resolution 26/9, which expressly mentioned that the legally binding instrument is to regulate activities of transnational corporations, and in regard to other business enterprises, that it does not apply to local business registered in terms of domestic law. This stipulation is unambiguous and therefore presented clear ambit to the exercise. This is also a position shared by many states; however, this message continues to be overlooked.

- Lastly, the draft need to strike a balance between creating an international regulation to respect and protect rights and ensuring access to justice and remedies, and the challenges of creating a workable and implementable document taking into account the legal and technical constraints posed by the differences in national legal systems.
- Therefore, the exercise shall aim to arrive at a legally sound, applicable and enforceable instrument which thoroughly consider divergences between legal systems and traditions particularly in jurisdiction and legal proceedings. In this context, a legally binding instrument should aim at strengthening measures exists at the domestic level, and strengthening international cooperation to ensure respect for human rights and access to justice and reparation for victims in transnational business activities.
- **(Finally,** our delegation will participate and contribute constructively to this Session of Working Group.)

I thank you.

## 10. Iran

### *Mr. Chair-Rapporteur,*

My delegation congratulates you for assuming the Chair of the Working Group and thank you for presenting third revised legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.

Iran supports the work of Working Group and is of the view that the work of Working Group should be fully in line with mandate of Resolution 26/9;

We studied the third revised version of legally binding instrument and stand ready to engage constructively in elaboration of the draft during the 7<sup>th</sup> session of working Group.

We believe that setting a legal instrument and implementing practical measures are important to ensuring respect for human rights by transnational corporations.

There is no question that transnational enterprises should be expected to respect human dignity and fulfil their role in protection and promotion of the human rights in their business activities. Meantime, transnational enterprises, including social platforms, should be also expected to respect the sovereignty and the principle of non-intervention in the internal affairs of other States;

### *Mr. Chair-Rapporteur*

We recognize that transnational enterprises are key component for achieving to realization of the right to development. The centric essence to the realization of the right to development as articulated in Article 1(3) of the UN Charter is to achieving international co-operation to solve international problems and in promoting and encouraging respect for human rights and fundamental freedoms for all. They should undertake due diligence in their role in this important aspect of their business activities.

In this context, we would like to emphasize that such regulatory approaches not suffice to secure victims of human rights without addressing the negative consequences of over-compliance by transnational enterprises to the UCMs.

Unilateral coercive measures directly and indirectly impeded and continue to violate the fundamental rights of targeted populations as well as impede the realization of all human rights including but not limited to the right to development and violated the norms and principles of International Law.

Unlawful UCMs and subsequent compliance and over compliance by transnational enterprises limit the ability of targeted populations to effectively enjoy their fundamental rights.

We encourage the Working Group to pay due attention to this important aspect of the work of transnational enterprises during the elaboration of the legally binding instrument.

I thank you.

## 11. Japan

Japan is committed to the promotion and protection of human rights. In recognition of the importance of advancing human rights even in the context of business and human rights, we support the UN Guiding Principles on Business and Human Rights (UNGPs) as endorsed by consensus at the UN Human Rights Council. In 2020, Japan launched the UNGPs-based National Action Plan (NAP) on Business and Human Rights. We further intend to continue to promote and protect human rights in business activities through the steady implementation of the NAP. Of course, we consider it crucial that all States and stakeholders take tangible actions based on the UNGPs.

While we appreciate the efforts the Chairman-Rapporteur has made so far, Japan would like to emphasize that it is a fundamental prerequisite that internationally legally binding instruments regarding business and human rights are realistic, effective, and well balanced to ensure that many States can agree on their basic contents. This means that such instruments must reflect the views of the greatest possible number of stakeholders and governments, each of whom are responsible for people faced with greatly varying circumstances. To achieve this when formulating such instruments, it is necessary to have a wider range of relevant States and stakeholders discuss any proposed drafts and to undertake a consensus-building process during the drafting process.

However, the current draft does not meet the above-mentioned prerequisite. Indeed, it contains fundamental flaws in various provisions, such as the ones concerning: consistency with international agreements concluded by each State; the scope of rights to be remedied; and procedures and methods to realize remedy, including the definition of the statute of limitation. We are thus obliged to conclude that the current approach is not ideal to achieve our common goals of promoting and protecting human rights in the context of business activities.

In this context, we recognize that the United States has taken the initiative to address these issues. We hope that various differences in position will converge and that we will be able to work towards an outcome on which as many stakeholders as possible can agree.

Finally, we would like to conclude our statement by reaffirming our commitment to the significant issue of respecting human rights in the course of business activities. We will continue to strive to promote and protect human rights in this field in the spirit of the UNGPs, which reflect a broad consensus of relevant stakeholders.

## 12. Mexico

Señor Presidente,

Agradecemos la convocatoria a la séptima sesión del Grupo de Trabajo Intergubernamental sobre las empresas transnacionales y otras empresas respecto a los derechos humanos.

Asimismo, agradecemos el trabajo que la Presidencia a cargo de Ecuador, ha realizado en la preparación de la tercera versión revisada del borrador de instrumento jurídicamente vinculante, para consideración de los Estados aquí presentes.

México está convencido de la importancia de promover el respeto y protección de los derechos humanos en el contexto de la actividad empresarial. Por ello, ha acompañado las iniciativas que sobre este tema se han impulsado en los diversos foros internacionales, incluyendo el Consejo de Derechos Humanos de Naciones Unidas; la Organización de Estados Americanos; la Organización Internacional del Trabajo; el Pacto Mundial de las Naciones Unidas (Global Compact) y la Organización para la Cooperación y Desarrollo Económicos.

Como lo hemos manifestado con anterioridad, México considera positivos los principios y líneas directrices adoptadas en dichos foros, como herramienta práctica para que, tanto Estados como empresas, pongan en práctica medidas de prevención, protección, mitigación y reparación, de conformidad con los Principios Rectores de Naciones Unidas sobre Empresas y Derechos Humanos y que los Estados adapten su legislación interna para tal fin.

Estamos conscientes de que existen prácticas empresariales nocivas que tienen impactos negativos en la población de nuestros países y que pueden afectar, de manera directa o

indirecta, el pleno goce y disfrute de los derechos humanos. Para ello, se requiere contar con reglas claras para que las compañías nacionales y transnacionales se conduzcan de manera respetuosa de los derechos humanos y hagan frente a las consecuencias negativas sobre éstos.

Es justamente en este sentido que un instrumento jurídicamente vinculante puede abonar a una mayor y mejor protección de los derechos humanos, incluyendo el acceso a la justicia y a medios de reparación para las víctimas. Sin embargo, para lograr ese objetivo común, resulta importante que el texto logre recoger las preocupaciones y sugerencias expuestas por los diferentes actores involucrados de manera balanceada; que las reglas sean precisas y den certeza jurídica; y que entendamos y discutamos cuando se trate de normas ya previstas en el derecho internacional o en nuestro derecho interno o, en cambio, cuando nos encontremos frente a normas que respondan al desarrollo progresivo del derecho internacional.

Consideramos que el texto aún está sujeto a mejoras y a establecer cuestiones que, dada su naturaleza jurídica, requieren un análisis minucioso que incluya terminología inteligible a nivel internacional. Aún persisten en el texto ambigüedades o imprecisiones en cuestiones sustantivas importantes referentes a la jurisdicción, responsabilidad jurídica, obligaciones y responsabilidades, que esperamos poder solventar en este periodo de sesiones.

Como siempre, Señor Presidente, México adoptará una posición constructiva a lo largo de las consultas.

Muchas gracias.

### 13. Namibia

Thank you Chair,

Namibia joins others in congratulating you on your assumption of the role as chairperson-rapporteur and wish you success with your task.

May we also take this opportunity to express our sincere gratitude for your tireless efforts in ensuring that we continue with the important mandate bestowed upon us by Human Rights Council Resolution 26/9. We particularly thank you for the early release of the third draft, which in our view succinctly incorporates some the views expressed during our discussions at the 6th Session of the intergovernmental Group last October. Ofcourse there is room for improvement, but the third draft represents progress, and it is a strong basis for further discussions on how we can address the challenges surrounding human rights violations or abuses induced by the business activities and our attempts to provide remedies to those who have suffered harm as result of the human rights abuses.

We further welcome the initiative to appoint a Group of Friends of the Chair, we believe this is a positive step towards building consensus in this process.

Mr. Chair,

The Working Group, notwithstanding the work ahead, has indeed made progress since its inception and we must jealousy guard against attempts to undermine or undo this process. We have witnessed over the years the number of States, NGOs and other stakeholders who have thrown their weight behind this process which underscores the importance these intergovernmental negotiations. We therefore welcome the participation of accredited NGOs and CSOs during this session of the Working Group and look forward to constructive and fruitful discussions with all participants. Namibia as per usual practice will constructively engage in the negotiations.

I thank you.

### 14. Pakistan

Thank you, Mr. Chair,

We congratulate you on your election as the Chairperson Rapporteur of this Working Group and appreciate Ecuador for its stewardship.

We also thank the High Commissioner for her opening remarks.

We reiterate support for the Working Group's mandate in line with HRC resolution 26/9. We underscore the need for wider consultations aimed at developing broader consensus on key contours of a legally binding instrument such as scope, applicability, remedy, legal liability and adjudicative jurisdiction.

Business activities play an imperative role in augmenting state's role to build societal resilience, provide livelihoods, promote socio-economic development and achieve progress towards 2030 Development Agenda. COVID induced socio-economic challenges have further reaffirmed this role in stimulating the economic growth and help meeting basic needs of individuals.

We acknowledge the contributions of TNCs including as part of their corporate social responsibility to promote people's welfare. However, finding the right balance between profitability and respecting human rights remains a challenge.

Primary responsibility for ensuring respect for human rights rests with the State. However, civil society organizations, TNCs, SMEs and other influential actors have a critical role in supporting the effective implementation of State's human rights agenda.

Deliberations on ensuring respect for human rights responsibility by TNCs have gained more urgency and relevance recently due to:

One; their geographic spread, transboundary nature of operations, and substantial influence as some of these corporations have more annual turnover than a number of developing countries.

Two; difference of laws where these TNCs are based and operating create legal gaps which are often exploited especially in cases of trade disputes.

Three; driven by profits, TNCs may engage in activities which harm public interest or cause damage to environment and eco-diversity.

While negotiating instrument, differentiating between TNCs, Small, Medium Enterprises (SMEs) and local businesses is essential.

The structure of these organizations besides level of operations, availability of resources and most importantly the capacity to influence is drastically different from TNCs. SMEs and local businesses mostly operate within a designated territory and come under regular legal and administrative scrutiny of concerned state, including for alleged human rights violations.

The impact of COVID-19 on TNCs and SMEs is also disproportionate with more negative consequences for SMEs and local operatives. Although stimulus packages have been provided across the globe but proportionally TNCs have been the largest beneficiaries of these incentives. SMEs especially in developing countries have been affected badly and are unable to cope with current challenges.

Keeping in view these realities, my delegation believes that the focus of the instrument should remain limited to the activities of TNCs only.

We assure the Chair of our constructive engagement and contribution.

I thank you Mr. Chair.

## **15. Panama**

Gracias Señor Presidente,

En nombre de mi delegación, permítame felicitarlo por su elección como Presidente-Relator de este Grupo de Trabajo Intergubernamental de Composición Abierta y agradecemos la presentación del tercer proyecto revisado del instrumento jurídicamente vinculante para regular las actividades de las empresas transnacionales y otras empresas en el derecho internacional de los derechos humanos.

Panamá está firmemente comprometida con la protección de los derechos humanos, el desarrollo normativo del derecho internacional, la promoción del multilateralismo inclusivo, y el respeto a la institucionalidad y las decisiones adoptadas por el Consejo de Derechos Humanos.



Es por ello que mi delegación participará en esta reunión con un espíritu abierto y constructivo para honrar el mandato que se nos ha confiado en virtud de la resolución 26/9 del Consejo de Derechos Humanos.

Señor Presidente,

Nuestros debates de esta semana adquieren gran relevancia al producirse en un momento en el que el mundo se enfrenta a una convergencia de crisis, que van desde la pandemia del COVID-19 hasta la crisis climática, la desigualdad, la discriminación de género y racial generalizada, la reducción del espacio cívico y los costos humanos de los avances tecnológicos, ámbitos en los cuales tanto los Estados como las empresas desempeñan un papel clave.

La Declaración Universal de los Derechos Humanos nos recuerda que tanto los individuos como los órganos de la sociedad deben promover el respeto de los derechos humanos y las libertades fundamentales.

La elaboración del instrumento jurídicamente vinculante constituye el reflejo de la conciencia social del impacto de las actividades empresariales, a lo largo de las cadenas de valor, en las personas y el planeta, así como la profunda asimetría entre los derechos humanos, el trabajo decente, el medio ambiente y los intereses empresariales.

En este año que conmemoramos el primer decenio de aplicación de los Principios Rectores sobre las Empresas y los Derechos Humanos se puso de manifiesto que los enfoques voluntarios no son suficientes por sí solos, y que son muchos los retos que aún quedan por delante para prevenir y subsanar los abusos cometidos en este contexto y garantizar a las víctimas una mayor rendición de cuentas y acceso a recursos adecuados y efectivos.

En este sentido, consideramos que el instrumento jurídicamente vinculante debe complementar y reforzar las normas existentes en esta materia, incluyendo los propios Principios Rectores, con una perspectiva de género, atendiendo las necesidades específicas de determinados grupos como las mujeres, los niños, los pueblos indígenas, entre otros, y a su vez debe contribuir a la transición hacia un modelo de crecimiento económico más incluyente y sostenible.

En cuanto al texto que nos ocupa, observamos complacidos que se han incorporado varias de las propuestas y observaciones formuladas por mi país durante el último período de sesiones de este Grupo de Trabajo Intergubernamental de Composición Abierta, y aprovecharemos esta ocasión para presentar algunos comentarios adicionales.

Señor Presidente,

Le auguramos el mayor de los éxitos en la conducción de nuestros trabajos.

Muchas gracias.

## 16. Philippines

Thank you, Chair.

The Philippines recognizes the work of Ecuador, as Chair of the Open-Ended Intergovernmental Working Group, for shepherding this process which leads us now into discussions on the third revised draft Legally Binding Instrument (LBI).

As one of the 20 countries that voted in favor of HRC resolution 26/9 of June 2014 which established the Working Group and its mandate, the Philippines reaffirms its support for this process.

We thank the Chair for reflecting a number of recommendations and proposals made by the Philippine delegation, particularly on Articles pertaining to legal liability and the definition of victims.

However, we are concerned that the heart of the mandate of HRC resolution 26/9 which expressly limits the scope of the LBI to the activities of TNCs and OBEs, remains unaddressed, diffusing the focus of the LBI instead on all businesses. We reiterate in this regard our position on the need to revert or limit the scope of the LBI strictly to the activities of TNCs and OBEs, consistent with the original mandate.

We also reiterate the need to preserve policy space on the grant of incentives and discretion by states on exemption of certain small and medium-sized enterprises from obligations with the aim of minimizing additional administrative burdens to this sector.

The Philippines underscores the need for our discussions on the LBI to continue to be inclusive and, as such, provide opportunity for different sectors of the civil society including the academe, religious groups, and civil society organizations to be involved in the discussions toward harmonizing and establishing consensus.

We should also ensure that the provisions of the LBI on providing safeguards against all forms of discrimination apply across different vulnerable and marginalized groups.

We wish to assure the Chair of the Philippines' continued constructive engagement in this process.

Thank you, Chair. END.

## 17. Russian Federation

Благодарю Вас, господин Председатель,

В данном выступлении кратко обозначим ряд общих походов, имеющих принципиальный характер, из которых Российская Федерация будет исходить при обсуждении конкретных положений проекта.

Не без сожаления вынуждены констатировать, что проект конвенции концептуально претерпел лишь немногочисленные изменения по сравнению с его прошлогодней редакцией. Российская Федерация хотела бы вновь повторить ранее неоднократно высказывавшуюся позицию относительно необходимости сужения сферы будущего международного договора до защиты прав человека при осуществлении деятельности ТНК.

В этой связи хотели бы вновь упомянуть цель, для которой была учреждена Межгосударственная рабочая группа. Согласно резолюции Совета по правам человека 26/9 в мандат Группы входит «разработка международного юридически связывающего документа для регулирования в международном праве прав человека деятельности транснациональных корпораций и других предприятий». При этом в самой резолюции дополнительно уточнено, что под «другими предприятиями» понимаются «все предприятия, которые в силу своей оперативной деятельности имеют транснациональный характер и не охватывают местные предприятия, зарегистрированные в соответствии с внутренним правом». Следовательно, любые попытки искусственно расширить сферу охвата будущего документа прямо противоречат решению Совета по правам человека 2014 г. и смыслу, который в него закладывали государства-члены.

К таким попыткам можно отнести, в частности распространение действия документа на предпринимательскую деятельность юридических лиц безотносительно наличия в ней иностранного элемента. В проекте также сохранена конструкция для привлечения к ответственности физических лиц.

При этом содержание термина «предпринимательская деятельность» в новой редакции претерпело изменения далеко не в лучшую сторону. Предпринимательская деятельность в значении будущего документа не ограничена ни по целям, ни по видам, ни по субъектному составу. Фактически любая деятельность может быть рассмотрена в качестве предпринимательской.

Возникают сомнения относительно целесообразности оставления в проекте документа определения института «предпринимательская деятельность» в таком «размытом» виде в принципе. Более того, в целом вызывает вопросы чрезмерно широкий охват конвенции, который явно не отвечает первоначальным целям этого документа.

По-прежнему не усматриваем оправданности разработки документа, в большинстве своем построенного на подтверждении обязательств государств, которые они уже взяли на себя в рамках других многосторонних механизмов, в том числе на более

высоком уровне. Рассматриваем это как подход, влекущий ослабление имеющегося режима защиты прав человека.

В этом контексте отдельно стоит отметить, что закрепление т.н. «экологических прав» в документе от редакции к редакции становится все более детальным.

Исходим из того, что обсуждение обозначенного многообразия защиты «экологических прав» при том понимании, что эта категория прав в настоящее время не имеет общепризнанного определения, не может входить в мандат Рабочей группы.

В то же время в тексте документа оставлен отдельный акцент на возможность привлечения к ответственности за нарушение международного гуманитарного права. В этом свете считаем важным и далее настаивать на том, что вопросы международного гуманитарного права должны быть выведены «за пределы» разрабатываемого документа. В целом же исходим из достаточности уже имеющихся механизмов обеспечения соблюдения международного гуманитарного права, за счет повышения эффективности которых должна развиваться данная отрасль международного права. Не поддерживаем создание искусственных «надстроек» к существующему режиму, в том числе за счет рассматриваемого документа.

В то же время отмечаем, что сохранение в проекте далеко идущих обязательств государств относительно их международных договоров в торговой и инвестиционной сфере (как действующих, так и будущих) также не выдерживает критики. В принципе вынесение подобной темы на обсуждение при полном отсутствии в международном инвестиционном праве устоявшегося понимания о том, в каком объеме возможно влияние прав человека на создаваемые инвестиционные режимы видится, как минимум, преждевременным.

Со своей стороны, обратили внимание на то, что в статье 7 вновь появилась конструкция «инверсия бремени доказывания» (содержалась в версии документа 2019 г., однако в редакции 2020 г. отсутствовала). Подтверждаем свою позицию о неприемлемости данной конструкции, прямо противоречащей презумпции невиновности.

Также могли бы повторно подчеркнуть, что требуется разъяснение используемой в пункте 12.1 статьи 12 формулировки «международное право». Необходимо понять, что, по мнению разработчиков, может быть применимо в этой сфере помимо международных договоров.

Документ по-прежнему не в полном объеме отражает заявленный в пятом абзаце преамбулы принцип недискриминационного характера прав человека. В частности, это выражается в закреплении отдельных положений относительно прав человека, основанных на гендерном равенстве.

Предлагаем и далее настаивать на том, что чрезмерное употребление в тексте документа формулировок, содержание которых неоднозначно или излишне размыто, не может быть поддержано. В первую очередь, имеем в виду неясность в определении круга источников, с учетом которых планируется реализовывать отдельные положения документа: «международно согласованные декларации по защите прав человека»; «международно признанные права человека»; «соответствующие / применимые международные стандарты»; «международно согласованные стандарты свободного, первоочередного и информированного согласия»; «международное обычное право»; «международные правовые стандарты прав человека и международные правовые требования», «общее международное право» и т.д.

Подобного рода формулировки не позволяют четко очертить круг прав и обязательств как будущих сторон документа в лице государств, так и предприятий, деятельность которых будет подпадать под сферу его регулирования.

В равной степени это относится к использованию оценочных категорий в тексте проекта, как то «значительное влияние» в дефиниции «предпринимательская деятельность транснационального характера»; определение «эффективного форума, гарантирующего справедливый процесс» и «существенной активности ответчика» при определении юрисдикции судов.

Одновременно повторно подчеркнули бы целесообразность перейти по тексту документа вместо перечисления отдельных принципов международного права к их обозначению в совокупности, ограничившись, к примеру, ссылкой к Декларации о принципах международного права, касающихся дружественных отношений и сотрудничества между государствами в соответствии с Уставом ООН, принятой Генеральной Ассамблеей 24 октября 1970 г.

Господин председатель, это наши общие комментарии к проекту. Позвольте заверить Вас и коллег по Рабочей группе в готовности российской делегации к конструктивному обсуждению упомянутых и иных вопросов, связанных с проектом Конвенции.

## 18. South Africa

Chairperson,

South Africa aligns itself with the statement of the Africa Group. At the onset, I would like to congratulate you, Ambassador Emilio Rafael Izquierdo Mino, on your assumption as Chairperson of the Working Group. South Africa thanks the High Commissioner for her continued commitment to this subject.

Chairperson,

South Africa welcomes and notes with appreciation the 3<sup>rd</sup> revised text whereas, some refinements and improvements have been made on earlier drafts of the Treaty, there still remain key areas in need of strengthening to ensure that the language and text of the Treaty is effective enough to address the various areas of corporate abuses and violations experienced globally and especially in the developing south. In this regard my delegation strongly supports the continuation of the existing process and refinement of the 3<sup>rd</sup> revised draft and thanks the Chairperson for charting the way forward with the shared modalities.

South Africa remains committed to the letter and spirit of Resolution 26/9, the critical component of the mandate of Resolution 26/9 is to effectively close the current gaps and the void in International Human Rights and Humanitarian Law relating to unregulated operational activities of TNCs and OBEs which, by design, are transnational in their character. The key objective is to provide, as a law of last resort, effective legal remedies to the victims of grave violations of human rights and fundamental freedoms committed by these entities.

Victims of transnational corporate abuses and violations face specific obstacles in accessing effective remedies. There is thus no reason why the general rules of international law should not apply to all actors – States as well as TNCs and Other Business Enterprises alike.

International law imposes certain duties on international cooperation. This is a fundamental issue to be addressed by the envisaged treaty which will ensure access to remedy. Addressing jurisdiction issues; the challenges of transnational litigation; and mutual legal assistance are all important areas that this process must strengthen. Furthermore, the absence of regulatory and enforcement frameworks in certain countries cannot be viewed as a deterrent to enforcing the provisions of the treaty and holding TNCs accountable.

Chairperson,

The treaty process can no longer be viewed as “anti-business”. Currently and more than ever due to inequalities exacerbated by the pandemic, the world is faced with numerous challenges of poverty, unemployment, food insecurity and climate change. In this regard mobilizing investment and ensuring that it contributes to sustainable development is a priority for all countries. Globally, a new generation of investment policies is emerging, pursuing a development policy agenda with the aim of balancing the rights and obligations of States and investors. If human rights standards for TNCs and Other Business Enterprises become widely accepted, these entities will enjoy greater certainty, predictability and consistency with regards to their operations and profit making.

Thus a global standard will ensure that their responsibilities are clear, unambiguous and a level playing field is established.

Chairperson,

There have been various attempts to regulate the sphere of business and human rights. These have however, been in the form of non-binding soft laws which do not provide a legal framework that is enforceable and uniform; nor do they provide legal certainty and redress to victims. In our view, this shortcoming can only be addressed through legally binding instrument applicable to all which will reinforce non-binding frameworks.

Chairperson,

Many TNCs and Other Business Enterprises have claimed to be conducting themselves responsibly and within the prescribed domestic legislation when doing business in foreign jurisdictions. These entities should therefore not be opposing this treaty, but embracing it since it will be confirming what they have already been enforcing in their day to day operations.

Countries such as France and Germany have introduced a due diligence law, while others such as UK and Australia have come up with new legislations which require their companies to report on the risks of modern slavery in their operations and supply chains and on actions to address those risks. The EU has also initiated its own processes for creating a regional mandatory human rights due diligence framework. My delegation hopes that these developments will bring us closer to finding a common on making user that this envisioned Treaty is realised.

Chairperson,

In conclusion, my delegation looks forward to engaging constructively on the text based negotiations on the 3<sup>rd</sup> revised draft text, with a view to strengthening the instrument to the benefit of the victims.

I thank you.

## 19. State of Palestine

Thank you, Chairperson Rapporteur,

At the outset we would like to congratulate you Ambassador on your election as chairperson-rapporteur of the working group.

Once again, we reiterate our full support to the mandate of the intergovernmental working group and reassure our commitment to the process of elaborating a legally binding instrument in line with resolution 26/9. We call on all states to constructively engage and we welcome the participation and inputs from civil society organizations.

We commend the efforts made in publishing the third draft of the Legally Binding Instrument ahead of this session, however we were disappointed that many recommendations made in the previous session with the aim to strengthen the draft were not incorporated in this draft.

It is of great concern that there is no reference on the right to self-determination and we emphasize that it should be clearly stated in the draft.

We also find it problematic that the draft still doesn't address the threats of corporate abuses and violations in situations of conflict, including situations of occupation and colonization, and we believe it is crucial to strengthen the text in this regard, particularly the inclusion of language related to sanctions, divestment, and criminal liability.

The process of creating a legally binding instrument that will ensure corporate accountability gave victims on the ground hope to which they will have access to justice, reparation and prevent future violations by corporations in their territories. For this, we need strong implementation mechanisms at the international level.

After seven years of this process, it is more urgent now than any other time to have a strong legally binding instrument, to listen to the calls of the affected communities and civil society and put an end to corporate impunity. In particular, we call upon those member states resisting the creation of the legally binding instrument to abide by their legal obligations and to move from rhetoric to action.

I thank you.

## 20. Switzerland

Monsieur le Président,

J'aimerais tout d'abord vous féliciter pour votre élection et votre engagement.

Au début de cette session, j'aimerais également vous informer que la Suisse observera les travaux mais ne participera pas aux négociations. Elle se réserve toutefois la possibilité d'intervenir pour poser des questions de clarification d'ordre juridique et relatives à la cohérence avec les Principes directeurs de l'ONU et les lignes directrices de l'OCDE.

Le gouvernement suisse est actuellement engagé de manière prioritaire dans la mise en œuvre de ses Plans d'action 2020-2023 sur les entreprises et les droits de l'homme et sur la responsabilité des entreprises à l'égard de la société et de l'environnement. En accord avec ces Plans d'actions et les Principes directeurs de l'ONU sur les entreprises et les droits de l'homme, il met en œuvre un mélange équilibré de mesures juridiquement contraignantes et non contraignantes.

Pour ce faire, il maintient un dialogue étroit avec toutes les parties prenantes. Il aborde de manière concrète les enjeux en matière de droits de l'homme auxquelles sont confrontées les entreprises établies dans notre pays lorsqu'elles font des affaires partout où elles sont actives y compris dans des contextes à haut risque. Cela comprend la recherche de solutions communes pour l'exercice de la diligence tel que recommandé par les lignes directrices de l'OCDE et les Principes directeurs de l'ONU afin de prévenir, atténuer et répondre à ces risques dans leurs chaînes d'approvisionnement et relations d'affaires. Le 14 septembre dernier, le premier Forum suisse « Entreprises et droits de l'homme » a permis de promouvoir les bonnes pratiques et renforcer les échanges dans ce domaine.

Suite au vote populaire de novembre 2020 sur l'initiative « entreprises responsables », des dispositions d'exécution relatives au devoir de diligence sont actuellement planifiées et devraient entrer en vigueur en 2022. Elles concernent les devoirs de diligence et de transparence dans les domaines des minerais et métaux provenant de zones de conflit et du travail des enfants. Les nouvelles dispositions du code des obligations prévoient également une obligation pour les grandes entreprises d'établir des rapports sur les risques engendrés par leurs activités, y compris en ce qui concerne les droits de l'homme.

En ce qui concerne le 3<sup>ème</sup> projet révisé d'instrument juridiquement contraignant il est positif de constater qu'il s'applique désormais sans ambiguïté à toutes les activités commerciales, y compris celles à caractère transnational, et qu'il prend en compte les besoins de tous les groupes de personnes vulnérables.

Toutefois, malgré certaines améliorations concernant la clarification de certains termes juridiques et définitions, le troisième projet de texte présente toujours des lacunes non négligeables en termes de technique et de contenu juridiques. Cela concerne, par exemple, des incohérences conceptuelles découlant de l'utilisation fréquente de réserves techniques au droit national. Cela affaiblit le projet de traité dans la mesure où il suscite des attentes qui ne trouvent pas de réponse ou qui sont transférées aux États pour être résolues. En plus, ceci entraîne une insécurité juridique pour les acteurs concernés.

Par ailleurs, le projet parle maintenant d'une nouvelle obligation des entreprises, et pas seulement d'une responsabilité, de respecter les droits de l'homme, ce qui va clairement au-delà des Principes directeurs de l'ONU et n'existe pas encore en droit international. Cette extension est problématique car elle porterait atteinte à la cohérence des Principes directeurs et suscite des attentes qui ne sont pas satisfaites par la suite dans le texte du traité. Elle est également problématique d'un point de vue dogmatique, car la formulation du préambule en tant qu'instrument d'interprétation important pour le texte du traité ne contribue pas à la clarification, mais mélange plutôt les responsabilités des États et des entreprises.

En outre, il y a une nouvelle référence à un droit à un environnement sûr et propre, qui n'est toutefois pas généralement reconnu par le droit international. La résolution du Conseil des droits de l'homme qui vient d'être adoptée ne contient en effet pas de droit de l'homme contraignant en droit international. Le projet de traité fait référence aux droits de l'homme en

fonction de son champ d'application. Les normes environnementales (générales) introduites ici ne pourraient donc être pertinentes que dans la mesure où il existe un lien avec les violations des droits de l'homme.

Monsieur le Président,

Nous vous souhaitons beaucoup de succès dans vos travaux et attendons aussi des États engagés dans la négociation du traité qu'ils réitérent leurs engagements dans la mise en œuvre des Principes directeurs.

Je vous remercie.

## 21. Ukraine

Thank you Chair,

From the outset, our delegation wishes to take this opportunity to reiterate Ukraine's commitment to ensuring protection of human rights in the context of business activity.

Since 2011, when this Council had adopted the resolution 17/4, the UN Guiding Principles on Business and Human Rights have become an undisputed reference point in this sphere.

In 2019, our country had formally committed to implementing the Guiding Principles and since then incorporated the relevant provisions into the National Human Rights Strategy.

Ukraine is also taking important steps on parallel track as a state adherent to the OECD Declaration on International Investment and Multinational Enterprises, notably through implementation of Strategy on Ensuring Responsible Business Conduct Until 2030.

While working on consistent realization of business and human rights agenda inside the country, we stand ready to support any meaningful international effort that aims to further promote this cause on a global scale.

We believe, though, that any such undertaking should be carried out in adherence to the universally accepted letter and consensual spirit of the Guiding Principles, serving the purpose of consolidation of existing normative frameworks and settlement of possible differences and divisions.

Ukraine appreciates the efforts of the Ecuadorian chairmanship to address the sharp divergence of views that have been accompanying the activities of this Intergovernmental Working Group throughout the years.

At the same time, as have been already evidenced in interventions by a considerable number of state delegations today, the debate is far from being settled with significant concerns remaining, including with regards to consistency of the latest draft with the UN Guiding Principles.

For this reason, our delegation counts on leadership of the chairmanship in further seeking a shared understanding by all stakeholders of state obligations and business responsibilities in the context of human rights, including by considering the possibility of consolidating its vision with viable alternative proposals.

It is our strong belief that further advances in the field of business and human rights, whether through elaboration of a binding instrument or other means, can only be considered successful if they enjoy a unanimous cross-regional support in development of the UN Guiding Principles, and our delegation stands ready to support working towards this goal.

Thank you Chair and we wish you every success in your work.

## 22. United Kingdom

Thank you, Chair.

We would like to begin by expressing our gratitude to the Chair for circulation on 17 August of the revised text of the proposed treaty and to OHCHR for organising this session in a hybrid format. This has enabled the essential participation of civil society and business stakeholders in this week's session.

We recall that the UK was the first country in the world to produce a National Action Plan for implementation of the UN Guiding Principles on Business and Human Rights, in 2013. In 2015, our innovative Modern Slavery Act introduced requirements on businesses to report on the steps they take to tackle modern slavery in their operations and global supply chains. And in 2016, after broad consultation with business and civil society, we were the first country in the world to publish an updated National Action Plan.

It is therefore a matter of regret for the UK that a number of the concerns we previously raised remain outstanding and we are not in position to support the draft text.

In the UK's view, though there have been incremental improvements, the draft appears to insufficiently cover the full spectrum of businesses that can impact human rights. This has not engendered the crucial support of States, home to some of the world's largest corporations. So, while the draft has noble aims, the UK remains sceptical that this text can gather the political support that it would need to succeed in our shared goals of enhancing respect for human rights by businesses globally, and ensuring access to effective remedy for all victims.

This year marks the tenth anniversary of the UN Human Rights Council unanimously endorsing the landmark Guiding Principles. As things stand, they remain the most clear, global and legally sound framework for putting respect by businesses for human rights on governments' respective national agendas. We remain unwavering in our commitment to their implementation, nationally and internationally. And we look forward to supporting the OHCHR in their mandate to support their dissemination and implementation over the course of the next decade.

Thank you.

### **23. United States**

The U.S. Government's Continued Opposition to the Process for Negotiating the Legally Binding Instrument to Regulate the Activities of Transnational Corporations and other Business Entities and Willingness to Consider Alternative Approaches to Address Shared Concerns, October 25, 2021

This year, for the first time, the U.S. government is participating in these Working Group meetings. While we continue to have serious substantive concerns with the text as well as the process by which this text has been developed thus far, we want to work with the Group to find a collaborative path forward to advance business and human rights.

We wish to thank members of the business and human rights community for their efforts in bringing attention to the important issues this treaty seeks to address.

As President Biden said in his remarks before the 76th Session of the UN General Assembly last month, I quote, "We will strive to ensure that basic labor rights, environmental safeguards, and intellectual property are protected and that the benefits of globalization are shared broadly throughout all our societies," unquote. Promoting business and human rights is a key component of achieving this aim.

We appreciate the concerns, including those regarding access to remedy, that have motivated support for the treaty process. We also recognize the unacceptable use of violence against human rights defenders working on, among other things, labor, land, environmental and indigenous issues. We are aware of the many reports that this violence is increasing and agree that these issues need to be addressed.

Nevertheless, we continue to believe that the prescriptive approach set out by this draft treaty is not the best way to address these legitimate concerns.

In particular, we remain concerned with the draft Legally Binding Instrument's (LBI) imposition of binding obligations with respect to regulation of business; its extraterritorial application of domestic laws; and its creation of wide-ranging liability for an overly broad, ill-defined range of human rights abuses—all of which may make it difficult, if not impossible, for many states to support or implement the LBI. Furthermore, negotiations around the draft treaty continue to be contentious, resulting in limited participation from key



stakeholders—most notably a sizable percentage of States that are home to the world’s largest transnational corporations.

We appreciate recent efforts by Ecuador to accommodate a broader range of viewpoints. However, dissenting points of view have not historically been adequately taken into account or reflected in the annual reports. For a business and human rights treaty to be successful at improving corporate accountability worldwide, it needs broad acceptance by all stakeholders—a geographically diverse group of States, including States that domicile significant numbers of transnational corporations; civil society; and businesses.

A consensus-based approach has been critical to the progress made under the UNGPs’ “Protect, Respect, and Remedy” framework. As we celebrate the tenth anniversary of the UNGPs, we note the important advances governments, business, and civil society have made in developing and disseminating good practices. Yet, we recognize that there is still much work to be done to foster a world in which businesses and countries see that economic success includes respect for individuals and the planet, with respect for human rights at the center.

Therefore, the United States is open to exploring alternative instruments, binding or nonbinding - such as a legally binding framework agreement - that build upon the UNGPs and are developed in collaboration with, and that ultimately reflect principles that are broadly supported by businesses, civil society, and other relevant stakeholders. We are convinced an alternative approach would be more effective than the treaty on the table, and we urge the Working Group to reflect this week on how its goals could be achieved through an alternative, consensus-based instrument.

We recognize that many of you here have invested significant time, energy, and effort into the current text, and may find it frustrating that we have decided to participate this week to elaborate in the room on our long-stated position. However, I would like to reassure you that we are here to engage with the Working Group in good faith. We are not the only state with concerns about the treaty, and we seek to collaborate to find a consensus-based way forward, because if the text lacks broad acceptance among all groups of stakeholders it is unlikely to achieve its goal, and worse, it risks undermining, rather than furthering, the important work the international community has made on the UNGPs.

We will not engage in line-by-line negotiations this week, as we continue to oppose the current text as a whole and do not believe that piecemeal improvements to particular provisions hold a reasonable prospect of remedying our concerns, especially our broader concerns about the LBI’s prescriptive approach. However, we will provide general comments throughout the week to explain our concerns with the draft as a whole and about particular provisions, and encourage the exploration of alternatives to accomplish what the different sections of the LBI seek to accomplish, with the overall goal of enhancing corporate accountability and access to remedy for human rights abuses, in line with the UNGPs. We encourage the Working Group to take a step back and consider whether it is time to explore alternatives that could achieve multi-stakeholder consensus. Thank you.

#### **24. Venezuela**

Gracias, Presidente.

Venezuela reitera su apoyo al mandato Grupo de Trabajo.

Mi país respaldó la Resolución 26/9 del Consejo de Derechos Humanos, que dio inicio a las labores de este Grupo de Trabajo.

Aspiramos a que la discusión en esta 7ª sesión del Grupo de Trabajo, siga dando continuidad al avance hacia la cooperación de las naciones en esta importante materia.

Hemos sostenido en diversas instancias la necesidad de establecer mecanismos y normas internacionales jurídicamente vinculantes materia de empresas transnacionales y derechos humanos.

Esta importante labor no implica duplicidad con ningún otro mecanismo del Consejo, ni que la elaboración de un instrumento internacional jurídicamente vinculante se oponga a los Principios Rectores desarrollados en la materia.

Un instrumento internacional como el que se aspira alcanzar, será beneficioso tanto para las víctimas como para aquellas empresas transnacionales que atienden sus compromisos y obligaciones en derechos humanos, frente a aquellas que no las cumplen y que actúan con total impunidad, ante la falta de recursos efectivos en favor de las víctimas.

Señor Presidente,

Debemos avanzar en la efectiva protección y reparación de las violaciones de derechos humanos vinculadas a las actividades de las empresas transnacionales y otras empresas.

Participaremos de manera constructiva en esta 7ª sesión del Grupo de Trabajo, en la cual esperamos que los debates se desarrollen en el marco de un diálogo franco y fructífero.

Muchas gracias.

## **B. Regional organizations**

### **1. European Union**

Mr Chair-Rapporteur,

The EU and its Member States would like to thank you and the secretariat of the High Commissioner's Office for organising this session.

This year marks the 10th anniversary of the UN Guiding Principles on Business and Human Rights, a milestone in the global efforts to promote respect of human rights in the context of business activities. Thanks to pioneers like Professor John Ruggie, the Guiding Principles have established a framework for orienting the actions of governments, civil society and business enterprises to prevent business-related human rights abuses and to remedy them when they occur.

Despite notable efforts over the last decade, there are still too many business-related human rights abuses and further progress in our discussions is necessary. The European Union and its Member States are firmly committed to taking stronger action to promote and implement business and human rights standards within and outside Europe. Let me give a few examples.

We are conscious that mandatory standards matter, in order to enhance protection and to ensure a level playing field for businesses. The European Commission is finalizing a legislative initiative on Sustainable Corporate Governance that would establish one of the first cross-sectoral legislations in the world with mandatory human rights and environmental due diligence across companies' supply chains.

We also need to support companies in their efforts to carry out due diligence. Earlier this year the European Commission and the European External Action Service published guidance on existing international due diligence standards to assist EU companies in addressing forced labour risks and impacts in their own operations and in their supply chains.

Yet advancing business and human rights also requires working on other areas, such as promoting decent work in supply chains, including sustainable development provisions in trade agreements and ensuring access to remedy for victims. Actions in these areas are interlinked and require coherence. This is why, together with our Member States, we have started working to develop a comprehensive framework to ensure that our actions to implement the UN Guiding Principles are well coordinated, mutually reinforcing and coherent.

Looking ahead, we support the efforts of the UN Working Group on Business and Human Rights to develop a roadmap for the next decade of business and human rights. The renewed roadmap will serve as reference for our actions to promote international standards that build on the consensual approach of the UN Guiding Principles.

Mr Chair-Rapporteur,

Our belief in a consensual approach for promoting international standards also applies to the current process. The EU believes in the capacity of an international legally binding instrument to enhance global protection against business-related human rights abuses.

However, as we have stated throughout the process, an international instrument can lead to global standards only if it builds on the existing consensual framework and is supported by a critical mass of UN members across regions.

We thank you for the efforts undertaken that led you to presenting a third revised draft for a legally binding instrument. However, we must continue in-depth discussions to work towards a satisfactory draft that can reach wide and cross-regional support and that is truly implementable. Also based on the interventions by several States and by us during and beyond these negotiations, there are many issues that will require much more hard work. Any potential LBI needs to be effectively implementable in order to achieve the instrument's objectives, in particular to effectively enhance the protection of victims of business-related human rights violations and create a more global level playing field.

We are concerned, as other States have indicated as well, about the level of detail and prescriptiveness of the draft instrument, in a number of policy areas such as civil and criminal liability, applicable law and jurisdiction, or judicial cooperation and more in general, about consistency with obligations laid down by existing international instruments, as well as with the UN Guiding Principles.

It is clear that substantial changes to the text are required to meet the concerns of UN members and to achieve wide cross-regional support. It is also about rethinking the approach on what should be the 'core' provisions of this instrument. It is up to us collectively to honour John Ruggie's legacy and make 'shift happen'.

We encourage you, Mr Chair-Rapporteur to use your leadership in this process to engage with UN members and stakeholders - including civil society organisations, trade unions and the business community - to work towards consensus so we can offer victims the protection they need.

Dear Chair-Rapporteur,

The EU stands ready to continue to work with you in this process. The EU will work with you and with partners and stakeholders to explore ideas for a consensus-based legally binding instrument aligned with the UN guiding principles and that will allow for the necessary progress to be made.

We look forward to the discussion during this session.

I thank you Mr. Chairperson-Rapporteur.

## **C. Specialized Agencies and other International Organizations**

### **1. International Chamber of Commerce**

UN Revised (version 3) Draft Legally Binding Instrument to Regulate the Activities of Transnational Corporations and Other Business Enterprises

As the institutional representative of more than 45 million companies worldwide, the International Chamber of Commerce ("ICC") recognises the critical importance of ensuring that businesses have the knowledge, skills, tools, and incentives to respect human rights. In 2019, ICC issued a landmark Centenary Declaration setting our commitment to enable business worldwide to secure peace, prosperity, and opportunity for all. Ensuring that the billions of people whose lives are impacted by corporate activities are treated with respect for their dignity and fundamental wellbeing is, to be sure, a core tenet of this vision. In fact, many businesses are leading – or, one could say, are ahead of the curve – when it comes to prevention of, and protection against, human rights violations.

In this context, we would like to share our institutional perspective on a number of key developments and challenges in the business and human rights landscape – as well as some specific observations with regard to latest version of the draft treaty to be discussed by the IGWG this week, and to the process itself.

#### **The primacy of the UN Guiding Principles**

We continue to believe that the United Nations Guiding Principles on Business and Human Rights (“UNGPs”) represent a transformational roadmap to a future where humans and corporations thrive and prosper together. A decade on from their adoption, however, we share the frustration of many stakeholders that their implementation remains incomplete – and fear that the global collaborative approach enshrined in the UNGPs may be at risk of erosion without concerted action from all parties.

In this connection, it remains of significant concern that only a limited number of governments have published - and let alone implemented - national action plans under the UNGPs. We urge all governments who have not done so to commence the development of robust action plans without delay. Our global network stands ready to contribute constructively to the elaboration of any new action plans – with the singular goal of ensuring that national frameworks enable meaningful action from the private sector at all levels.

With specific reference to business, the work of embedding the UNGPs into corporate practices is picking up impressive speed – with risk assessments, enhanced supply chain due-diligence, and human rights training all now routinely implemented in many enterprises. It is imperative that we work together to accelerate these positive trends. The challenge ahead is two-fold: (i) to ensure that these new practices translate into improved human rights performance; and (ii) to enable all businesses – regardless of size, sector or location – to embed respect for human rights throughout their operations.

ICC continues to actively support its members to scale implementation of the UNGPs – and we will intensify these efforts to achieve the maximum on the ground impact. We also encourage the UN and its member states to enhance the efficacy of follow-up mechanisms under the UNGPs to allow for enhanced sharing of best practices and to catalyse collaborative approaches to enduring challenges.

In this context, ICC is pleased to have participated in the important initiative of the United Nations Working Group on Business and Human Rights – “business and human rights: towards a decade of global implementation” (UNGP 10+) – through a range of business consultations. We welcome the Working Group’s roadmap for the future implementation of the UNGPs, and commit to contributing to the roll out of the roadmap. Indeed, engagement with business will be crucial to the roadmap’s success.

Since the last session, ICC has established a Working Group on Business and Human Rights, with the objective of enabling increased engagement by companies from our global network to interact with policy makers and to share examples of best practice.

### **Principles for future legal developments**

While much remains to be done in operationalizing the UNGPs, ICC still remains concerned at the current approach in this forum on a treaty-based approach.

That said, we do not in any way discount the potential for further legal developments in this space – and, indeed, such developments are foreseen in the UNGPs.

In this context, we would like to take the opportunity to stress the imperative for any future national, regional – and indeed international - frameworks to: (i) be internationally consistent; and (ii) align fully and completely with the standards embodied in the UNGPs. Absent of meeting these criteria, it is our concern that future legal developments may inadvertently disrupt the efforts of companies already working to implement the UNGPs – as well as eroding incentives for actors who have yet to step up to their responsibilities to take action.

We encourage all governments considering possible independent legislative initiatives to have full regard to these two principles as a cornerstone of any future efforts aimed at meeting business and human rights challenges, and to engage in multi-stakeholder consultations as policies are being developed.

### **The draft treaty**

With regard to the specific provisions of the draft treaty, ICC recognises that efforts have been made to revise the draft text for a third time – including by attempting to clarify issues that many governments and business groups have raised in past IGWG sessions. We again thank the facilitators of the IGWG for their efforts in this regard, but we believe – as do many

delegations, as reflected in the statements we have heard this morning, and as do our fellow business organisations - that there are clearly still many areas of the draft text where there is significant divergence of views.

In this context, ICC would repeat its call made at the last session for delegations to consider whether now is perhaps the moment to consider whether the revised draft is actually moving in the right direction, and – indeed - whether there is a need for reflection and consultations intersessionally to review alternative approaches – including in relation to structure and areas of focus. ICC stands ready to contribute constructively to such a process of reflection, drawing on the experience of the many companies in our network who are leading in the field of human rights respect and protection.

### **Conclusion**

It is incumbent on us all to support the development of robust, effective, and coherent policy settings in the field of human rights and business, and to do so in ways that have real and positive impact on those most at risk of human rights abuses. We stand ready to work with all stakeholders to this end.

## **2. South Centre**

Thank you Mr Chair.

The South Centre, as the intergovernmental organization of developing countries, has keenly followed the evolution of the process towards the adoption of a Legally Binding Instrument on transnational corporations and other business enterprises since its inception and over the various sessions of this Working Group.

We welcome the strengthening of the text of the draft LBI with contributions of State delegations and civil society organisations, particularly from the Global South. The third revised draft of the LBI being discussed this week reflects many of the comments and textual suggestions made in the previous sessions of the Working Group and streamlines the provisions for their effective implementation. The process now moves into a very important phase with State-led direct substantive intergovernmental negotiations and raises hopes for the adoption of the LBI in the near future.

The multidimensional impacts of the COVID-19 pandemic have made it urgent to address the issues covered in the draft LBI. COVID 19 has greatly exacerbated the vulnerabilities of peoples and communities, while many transnational corporations and large business enterprises have registered unprecedented profitability in the same period. Transnational corporations have grown in their importance, size and geographical scope in the digital economy. They have become much more sophisticated in their dealings with national regulations, and in avoiding liabilities, in particular when violations and abuses of human rights occur due to their business activities.

Globally, there has been greater uptake of binding legislations for regulating the activities and human rights impacts of business enterprises, through mandatory human rights due diligence, legislation addressing modern slavery in supply chains, statutory corporate social responsibility requirements and adoption of measures to curb corporate influence and promote more inclusive, participatory and sustainable development efforts.

The LBI can support these efforts by leveraging international cooperation to create a competitive playing field globally for businesses and investors by preventing a race to the bottom and upholding human rights throughout their business operations and supply chains. The LBI is also critical to fill existing regulatory gaps in international law for ensuring corporate accountability and enabling effective access to justice and remedies for victims of business-related human rights violations. Finally, the LBI can also strengthen existing voluntary initiatives and help align corporate interests with the development aspirations of the local communities and territories where they operate towards achieving common prosperity and the full realization of human rights.

The South Centre stands ready to fully support the Chairperson-Rapporteur, the Friends of the Chair, and developing countries in these important efforts.

## D. National Human Rights Institutions

### 1. Association francophone des commissions nationales des droits de l'Homme (AFCNDH)

L'Association francophone des Commissions nationales des droits de l'Homme (AFCNDH) qui regroupe 36 INDH, adresse ses compliments à la Présidence du Groupe de travail intergouvernemental pour la publication le 17 août 2021, du troisième projet d'Instrument contraignant sur les entreprises et les droits de l'Homme.

L'AFCNDH note que cette nouvelle version ne s'éloigne pas fondamentalement de la précédente version en termes de contenu et se félicite notamment du renforcement de la **dimension genre et des questions environnementales**, ainsi que du maintien du **rôle des INDH** dans les dispositions relatives à la coopération internationale dans cette nouvelle version du projet du traité.

L'AFCNDH réitère les pistes d'amélioration qu'elle a formulées lors des sessions précédentes du projet notamment **la reconnaissance des INDH dans le cadre de ce projet comme des voies de recours de prévention des violations potentielles et de protection des droits de l'Homme dans le contexte des activités des entreprises.**

L'AFCNDH est très préoccupée par les atteintes aux droits de l'Homme résultant de l'activité directe ou indirecte des entreprises, et interpelle les Etats et toutes les parties prenantes à se mobiliser afin de recentrer les débats autour de :

- la prévention des *violations* des droits de l'Homme par les entreprises y compris les entreprises publiques ;
- la lutte contre l'impunité dont jouissent souvent certaines entreprises ;
- la priorité à accorder aux voies de recours et aux processus de réparation et de protection des victimes.

L'AFCNDH considère comme importante l'adoption de ce projet de traité en termes pour mieux prévenir les violations des droits de l'Homme et réitère le vœu formulé lors des sessions précédentes, relativement à la traduction en langue **française et dans les 6 autres langues officielles** du projet de traité, afin de l'ouvrir à la participation d'un plus grand nombre d'acteurs.

### 2. Commission nationale consultative des droits de l'Homme (CNCDH)

Monsieur le Président-rapporteur,

La Commission nationale consultative des droits de l'Homme (CNCDH), vous présente ses compliments pour la publication du troisième projet révisé d'instrument juridiquement contraignant sur les sociétés transnationales et autres entreprises et les droits de l'Homme.

Institution nationale des droits de l'Homme (INDH) en France, la CNCDH suit les négociations de près et adopte régulièrement, seule et conjointement avec d'autres INDH dans le cadre des réseaux francophone, européen et global des INDH, des avis et déclarations sur le sujet

[\(CNCDH, Déclaration sur l'adoption d'un instrument international contraignant sur les entreprises et les droits de l'Homme, adoptée le 5 octobre 2018 ; CNCDH, Avis sur le projet d'instrument international juridiquement contraignant sur les sociétés transnationales et autres entreprises et les droits de l'Homme, adopté le 15 octobre 2019 ; CNCDH, Avis de suivi sur le projet d'instrument juridiquement contraignant sur les sociétés transnationales et autres entreprises et les droits de l'Homme, adopté le 15 octobre 2020. Voir également les déclarations de l'Association francophone des commissions nationales des droits de l'Homme \(AFCNDH\), du réseau européen \(ENNHRI\) et du réseau mondial des institutions nationales des droits de l'Homme \(GANHRI\) adoptées lors de la quatrième, de la cinquième et de la sixième session de négociations, disponibles sur \[le site du groupe de travail intergouvernemental\]\(#\)\).](#)

Elle constate que le projet d'instrument juridiquement contraignant a beaucoup évolué depuis 2018 et a pris en compte certaines revendications clés exprimées par les INDH et par d'autres parties prenantes. Un long chemin a ainsi été parcouru et a permis de surmonter certaines résistances, conduisant à un projet qui semble aujourd'hui se stabiliser et qui constitue une bonne base de discussion.

La CNCDH considère que seule une implication substantielle et constructive dans le processus de négociation de l'ensemble des parties prenantes permettra de consolider les améliorations qui ont été apportées au projet d'instrument juridiquement contraignant et de combler les faiblesses qui subsistent.

Les enjeux sont de taille : il s'agit de répondre aux attentes légitimes des victimes de violations des droits de l'Homme dans le contexte des activités d'entreprises, en renforçant la protection et le respect des droits de l'Homme ainsi que l'accès aux voies de recours, qui rencontre encore de bien trop nombreux obstacles. Un instrument juridiquement contraignant adopté au niveau international permettrait également, face à la multiplication de législations nationales, telle que la loi française sur le devoir de vigilance, et à l'heure où au niveau régional européen l'adoption d'une directive sur le sujet est à l'ordre du jour, de renforcer la sécurité juridique et la concurrence loyale en harmonisant les obligations dans ce domaine (*level playing field*).

La CNCDH appelle à l'effort collectif nécessaire pour atteindre l'adoption d'un instrument international juridiquement contraignant remplissant ces objectifs.

Je vous remercie Monsieur le Président-rapporteur.

### 3. European Network of National Human Rights Institutions (ENNHRI)

Mr. Chairperson-Rapporteur,

The national human rights institutions (NHRIs) which constitute the European network of NHRIs (ENNHRI) believe that a treaty on business and human rights will make a significant contribution to addressing the current governance and protection gaps and to strengthening the prevention of business-related human rights violations while also improving access to remedy for victims of such violations, wherever they are.

ENNHRI welcomes the recognition, in the third revised draft, of the contribution as well as the complementary role of the UN Guiding Principles on Business and Human Rights. The treaty should indeed build upon the established international consensus. This means that the contents of the treaty must not lag behind those of the UNGP. At the same time, it should go beyond the UNGP where necessary to fill gaps. This is particularly the case regarding pillar three of the UNGP on access to remedy, as pointed out by the UN Working Group on Business and Human Rights in its tacking stock report of the first decade (see also ENNHRI's contribution).

Despite remaining shortcomings, the third revised draft is a good basis for further intergovernmental negotiations. By focusing on the prevention of human rights violations and access to effective remedies for those affected, it is well suited to close human rights protection gaps, especially in transnational supply chains.

In light of the multiplication of domestic legislation on human rights due diligence as well as the promise of a mandatory human rights European Union legislation, the process to negotiate a legally binding instrument provides a unique opportunity to ensure harmony among obligations in that field and to create a global level playing field able to harness globalization.

To that end, ENNHRI believes that it is time for a substantial involvement of the EU and its Member States. A more substantive involvement of the European Union would involve decisive countries of origin of large transnational companies, enhance the tractive power of the process and help bring the negotiations to the next step.

This involvement should be coherent with EU existing regulation, policy positions and future actions, as recalled by ENNHRI's previous statement, and can be led in parallel, both with a high level of ambition.

ENNHRI thus recommends again that:

- The EU and its Member States agree on a joint approach and participate in the drafting of a treaty on Business and Human Rights, in accordance with the division of competences between the EU and its Member States;
- The EU and its Member States agree, as soon as possible, on a formal negotiating mandate for the European Commission to help shape the negotiation process;
- The EU and its Member States put their extensive political and diplomatic competencies to use and actively participate in the drafting process during the next sessions of the Open-ended intergovernmental working group, as well as in the intersessional work, by volunteering to be part of the group of “Friends of the Chair”.

Thank you Mr. Chairperson-Rapporteur.

## **E. Non-governmental organizations with ECOSOC consultative status**

### **1. ABIA-Brazilian AIDS Interdisciplinary Association**

Thank you, Mr. Chair,

I speak on behalf of the Brazilian AIDS Interdisciplinary Association. We are also part of the Global Campaign to Dismantle Corporate Power.

In access to medicines field, it is widely recognized that transnational pharmaceutical corporations, using patent monopolies, violate the right to health. The COVID-19 vaccine apartheid tragedy is not different from other health emergencies.

The FDA issued the first emergency use approval for a COVID-19 vaccine on December 11th. Until then, 1,65 million people had died from COVID. Currently, almost five million people have lost their lives. That means that nearly 3,3 million people died after the vaccine was made available. The only reason for that is the certainty of impunity. Transnational pharmaceutical corporations use intellectual property rights to block global access and make huge profits.

Mr. Chair, we are here in the spirit of making improvements to the 3rd Revised Draft. During this 7th session, we have two big challenges: one is to make changes in the draft so that this binding instrument truly works in favor of peoples and affected communities; the second, to fill the gaps separating the affected populations by TNCs activities to proper access to justice.

The treaty must include the primacy of Human Rights as a fundamental principle. Thus, interests included in trade and investment agreements must be subordinated and be subjected to mandatory respect for Human Rights.

Adopting a Biding Treaty is urgent to bring justice to people who had access to health technologies denied, and their lives were taken away by corporate greed. Mr. Chairperson Rapporteur, we would like to call states to engage in substance discussion, recalling the mandate given by the 26/9 resolution.

Thank you.

### **2. Center for Constitutional Rights**

Thank you.

I'm Sharon Lavigne, 2021 winner of the Goldman Environmental Prize, President of RISE St James and partner of the Center for Constitutional Rights.

Our historic Black community here in Louisiana - in the south of the USA - is in the fight of our lives to stop petrochemical companies, like Formosa Plastics from Taiwan. These companies build huge petrochemical plants in this part of Louisiana, which by no coincidence is home to many majority Black communities like mine.

We call this area ‘Death Alley’ because of all the cancer and illness that these companies cause by releasing massive amounts of pollution into our air, land and water. We have some of the worst rates of cancer in all of North America.



It is important for communities like ours for this Working Group to be successful. We need strong international law to make sure companies are accountable for the human rights abuses they are causing.

We support the call being made by many civil society organizations this week for the United States Government to support the activities of this Working Group.

We hope our Government will make sure the Working Group produces a strong treaty that protects us here in Louisiana, and all the communities like ours around the world.

Now is not the time to take any steps backwards, or try any more voluntary approaches – we need a strong treaty, and we need it now.

Thank you very much.

### **3. The Center for Human Rights**

#### **Chair Rapporteur**

The Center for Human Rights (CHR) commends the release of the 3<sup>rd</sup> Revised Draft of the Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and other Business Enterprises (The Treaty).

We acknowledge the refinements and improvements that have been made on earlier drafts as reflected in the current draft and make note of the progress that we have made so far and the great opportunity States have towards fulfilling the mandate of the IGWG to elaborate this international legally binding instrument.

States must continue the meaningful and constructive engagements to defend this progress and ensure that the entire process is not captured by corporations through their powerful allies. The current draft Treaty—though not yet perfect, provides for key elements around prevention, protection of human rights defenders, ensuring stringent gender responsive measure in implementation, international solidarity and extraterritorial obligations, access to remedies, rights of victims and for the first time, the use of the term ‘obligations’ of businesses rather than ‘responsibilities’ to prevent and mitigate human rights abuses. These provisions go along away to cure some of the failings of the voluntary nature of the UNGPs.

As such we remain heavily concerned about propositions for a so-called framework convention which is far off from addressing global corporate accountability challenges that informed Resolution 26/9 of the Human Rights Council.

We reiterate that, whereas the process towards a legally binding instrument is a negotiated affair, it should work towards strengthening international human rights standards in the context of business activities rather than tweaking language and style of the UNGPs.

We therefore call upon all states to defend the progress made in elaborating a legally binding instrument and continue the process, reminded of the positive provisions in the draft and working towards addressing key areas highlighted by CSO actors, including clarification of regulating of corporate actors and not merely activities, stronger protection for human rights defenders, primacy of human rights over trade and investment agreements, and mHRDD should never be a shield for liability among others. Over the negotiating period, the Centre for Human Rights and partners shall continue to make detailed statements on these during the Article by Article discussions.

In conclusion, while this instrument is not yet perfect, we call on States to continue meaningfully engaging and defending the process towards a binding treaty and to accommodate and consider previous and novel comments made by Civil Society actors.

We thank you.

### **4. ESCR-Net**

Mi nombre es Juana Toledo de Conjeso de Pueblos Wuxhtaj de Guatemala. Esta declaración es en nombre de la Red-DESC.

Estamos en la semana de la negociación del tratado vinculante sobre derechos humanos y empresas, y las personas que luchamos y habitamos este planeta, queremos que se apruebe

lo más pronto este tratado, para ir frenando las distintas violaciones a los derechos humanos, como a los derechos de la madre tierra, porque tiene vida y debemos protegerla.

No podemos seguir esperando años tras año, gastando tiempo, energía en algo que es de urgencia mundial, porque ha habido mucho impacto desproporcionado los abusos relacionados con empresas, mujeres y niñas, niños en general, los pueblos indígenas, las personas con discapacidad, las personas de ascendencia africana, las personas mayores, migrantes y los refugiados entre otros, por lo mismo es necesario que exista una regulación entre derechos humanos y las empresas.

¡Las medidas voluntarias para detener la impunidad empresarial no están funcionando! No son suficientes. Como los estados o gobiernos se vuelven cómplices de las empresas, la justicia no actúa a favor de las poblaciones indígenas afectadas necesitamos leyes internacionales que nos amparen.

Escuche nuestras demandas para terminar con la captura corporativa - garantizar la democracia, y reducir la contaminación ambiental y el cambio climático.

Muchas gracias.

## 5. Franciscans International

Thank you Mister Chairperson Rapporteur.

This statement is on behalf of Franciscans International, in partnership with Churches and Mining, a network committed to defending communities affected by mining in countries in Latin America.

First of all, we want to congratulate you, Mister chairperson for the presentation of the third draft LBI. We consider that there has been progress made in this third draft- including in relation to the inclusion of environmental justice and accountability elements. Yet, we are convinced that the draft can still be improved in order to better respond to the still widely prevailing challenges to access to justice and to the right of victims to effective remedies including reparations.

Indeed, I have unfortunately witnessed repeated mining disasters, where communities are left devastated and with little recourse. In still too many cases, rather than protect communities, State authorities often prioritize the wants of mining companies and fail to hold them accountable when their operations impact the environment or human rights. This prioritization of profits over rights was again highlighted when mining was deemed an essential activity in many countries at the height of the COVID –19 pandemic.

More broadly, these recent months have brought to the forefront other issues regarding business obligations. One of them is the regression of environmental protection laws and standards, especially with regard to licensing processes in the extractive sector, as observed in several countries. This happens in the midst of a pandemic that has shown the dangerous interlinkages between environmental degradation and risk to human health and other rights. And in a time when the most recent IPCC report on climate change- driven by human and business- activity is sending the international community a vibrant warning to act urgently. The regulation of business activities that directly or indirectly contribute to climate change in that context is a question of survival for all of us.

Accordingly, we urge all States to actively participate and engage constructively in the process, and underscore the urgent need for a binding instrument to regulate transnational corporations and other business enterprises under international human rights law. The time for action has come- distractions, including pretexts related to national or regional initiatives, and calls to look at other options do not serve the individuals and communities that need justice now.

## 6. International Federation of Human Rights (FIDH)

Thank you Mr. Chair – Rapporteur, and congratulations on your election

I deliver this statement on behalf of the International Federation for Human Rights (FIDH). As we open the week of negotiations, we would like to share 3 general observations:

**1st observation.** A decade after the adoption of the UNGPs, a lot of efforts have been made to better protect human rights in the context of economic activities, yet little has changed for those affected by corporate abuse. Access to justice for victims remains largely an illusion and, all too often, impunity stubbornly prevails. (It has become widely accepted that the Gaps, especially pillar 3 aren't able to fix the challenges that allow this situation to sustain.)

To answer this challenge means to seek to clarify the ambiguities and regulatory gaps left by the Guiding Principles and the state of international law. The LBI constitutes the strongest and most tangible avenue available to do so, specifically *because* it presents a reasonable level of detail and attempts to tackle the concrete legal and practical barriers that victims face. We urge states to protect and strengthen these crucial elements in the current draft treaty text.

**2nd observation.** We have come a long way since the adoption of resolution 26/9. Six sessions of negotiations; the engagement of over a hundred states, experts and civil society organisations from around the world. In parallel, the consensus has shifted, and more and more states and regional institutions are adopting mandatory norms on business and human rights. The natural outcome of all this work is to guarantee an international level playing field through the treaty, not supporting weak, vague alternatives, which are less ambitious than existing or proposed national and regional legislation.

**3rd observation.** (For the first time since the beginning of the process, you have the opportunity to accelerate the pace of discussions and enter into concrete negotiations.) The draft has improved over the years and taken into account many of the issues raised by different actors and is now stabilizing. It is a sound basis for negotiation, but should be further clarified and strengthened this week and in the coming months. We urge States to take this opportunity seriously and to engage with the draft's content, as well as to make efforts to strengthen the text. FIDH will provide specific textual suggestions to do so.

## 7. International Organisation of Employers (IOE)

Thank you for giving me the floor. I speak on behalf of the International Organisation of Employers, which members represent more than 50 million companies.

This June we celebrated the tenth anniversary of the UN Guiding Principles on Business and Human Rights. The UN Working Group on Business and Human Rights together with the Office of the Higher Commissioner for Human Rights is developing a roadmap for the better uptake of the UN Guiding Principles, which will be soft-launched this week. We fully agree with this. We need more determined efforts by all actors and business has an important role to play in this. The Intergovernmental Working Group should fully take the findings of the fact finding as well as the proposals of the roadmap into account.

Last year, not only business, but also many, many governments have raised grave concerns about the second revised draft treaty, emphasizing that it will not promote the business and human rights agenda. It was much to our surprise to recognize that the third revised draft treaty did introduce only very modest and minor changes to the second revised draft treaty and failed to address the main issues which have been raised. By and large, we are confronted with the same approach and the same content as last year. This is a missed opportunity. How can we expect to make any substantial progress in this meeting of the Intergovernmental Working Group, when key concerns of governments and stakeholders have not been addressed?

The IOE took note of the joint statement by UN human rights experts. In this joint statement, the experts demand that the legally binding instrument and particularly the provisions with regards to due diligence must be in line with the UN Guiding Principles. And exactly this is not the case in the third revised draft treaty, nor has it been the case in any of the previous drafts. As it has been stressed again and again in the past, this treaty diverges in important aspect from the UN Guiding Principles, particularly in the area of due diligence. It is absolutely disappointing that after seven years of work in the Intergovernmental Working Group we still need to discuss the need to be in line with the UNGPs.

The experts also stress the need for the legally binding instrument to apply to all business enterprises. Yet, in last year's session no agreement on the scope of the instrument was in sight. We are still discussing whether this should apply to all companies or only private sector

or only multinational companies. Agreement on the scope is the basis for any negotiations. How can we negotiate a treaty and decide at the end to whom it applies?

The IOE together with Business at OECD and BusinessEurope have submitted a thorough position paper on the third draft treaty. This document emphasizes the common views of the business community on some of the critical issues that continue to pose serious obstacles to the business community's endorsement of the Treaty process. The Treaty in its current form remains an unnecessary and inappropriate response to the ongoing challenges on protection and respect of human rights and access to remedy. We continue to be convinced that States could achieve more by continuing to work within the framework of the UNGPS, jointly with business and other stakeholders.

In last year's session of the Intergovernmental Working Group, many governments and stakeholders demanded to fully reverse direction. In fact, important governments in the room last year emphasized that this text is not fit to be negotiated. What we need now is a proper debate on what kind of instrument we need

- to strongly promote human rights in the field of business activities;
- to ensure that workers and communities have appropriate access to remedy;
- to determinedly deep the implementation of the UN Guiding Principles on business and human rights; and
- to achieve sustainable change on the ground for people, planet and communities.

Important discussions on these questions are taking place outside the Intergovernmental Working Group, as for instance whether a framework convention would be the better approach. If we don't bring these discussions inside the Intergovernmental Working Group, these treaty negotiations will increasingly lose relevance.

A full reboot has the chance to bring relevant countries into the room which have been outside so far and to turn the discussions into real global and inclusive discourse.

Thank you.

## 8. Organization for Defending Victims of Violence (ODVV)

### **Unilateral Coercive Measures (UCMs) or Illegal Sanctions Should be addressed in the Legally Binding Instrument**

ODVV strongly believes that the legally binding instrument should contain articles that ban any resort to UCMs by States and abuse of transnational corporations by States through UCMs. The instrument should also provide the victims of illegal unilateral sanctions who have suffered harms and lack of access to essential items including food and medicine, with adequate remedy and redress and guaranteed their right to life and health.

Considering the fact that all inhuman effect of illegal sanctions is caused by the over compliances of businesses and banks with sanctions, ODVV calls on the Working Group to include articles in the legally binding instrument to address the avoidance of businesses from trade with sanctioned countries that lead to extensive violation of all human rights including the right to life and the right to health.

ODVV has been working on the adverse effect of unilateral coercive measures (UCMs), or illegal economic sanctions, for the past years, raising serious concerns on the deadly and killing effect of such measures on target populations especially at the time of global crisis such as the Covid-19 pandemic, in the Human Rights Council.

The on-the-ground experiences of NGOs who are based in sanctioned countries proves the ineffectiveness of humanitarian exemptions, lack of access to medicine, vaccine, medical equipment, medical care, affordable nutrition and direct breach of all social economic cultural rights of the target populations by sanctions, therefore, ODVV has been echoing human rights concerns which are also repeatedly expressed in the UN by the Secretary General<sup>2</sup>, High

<sup>2</sup> <https://www.un.org/press/en/2020/sgsm20024.doc.htm>

Commissionaire<sup>3</sup>, Special Rapporteurs<sup>4</sup> as well as the UN reports<sup>5</sup> and resolutions<sup>6</sup>, on the illegality of the UCMs.

## 9. Sikh Human Rights Group

The Sikh Human Rights Group wholeheartedly welcomes and supports the formulation and enactment of a binding legal instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.

However, we are concerned with the persistent issues of accountability and remedies. The details to which we will provide as these weeklong discussions progress.

Nevertheless, we were encouraged by the discussions held during the United Nations Human Rights Councils 48<sup>th</sup> Regular Session. In other words, we were encouraged by the fact that the **Working Group on the issue of human rights and transnational corporations and other business enterprises** had received but more importantly taken substantive action on over 150 reports of transnational corporations and other business enterprises committing gross human rights violations across the globe.

Therefore, I would like to take this opportunity to express the desire of a myriad of relevant civil society organisations and large and small businesses, with whom we have personally consulted, that the Committee to be established under this Legally Binding Instrument will follow suit.

We further suggest that the committee consider taking two expert representatives from NGOs to strengthen transparency, impartiality and ensure civil society participation in the oversight process.

Thank you very much. That concludes my opening remarks...

## 10. United States Council for International Business (USCIB)

- Thank you, Chairman Rapporteur.
- This year marks the 10<sup>th</sup> anniversary of the unanimous adoption by the UN Human Rights Council of the UN Guiding Principles on Business and Human Rights – or the UNGPs. We join with the many delegations in the room in pausing to recognize the late Professor John Ruggie for this global achievement.
- The UNGPs remain the globally recognized framework on business and human rights, and its protect, respect and remedy framework has successfully aligned stakeholders around an important common language and shared understanding upon which many advancements have been made in its first decade.
- A core reason for the success of the UNGPs and its broad support is that it was thoughtfully developed over a 6-year and authentically inclusive and consensus-driven process.
- The Open-ended Intergovernmental Working Group on Transnational Corporations to develop a binding treaty has NOT enjoyed consensus support.
- Already today – and as has been the case in every one of the 6 preceding sessions of this working group – many States and stakeholders have expressed disagreement with the most basic aspects of the text – such as definitions, scope, jurisdiction and applicable law. These fundamental questions remain unanswered - rendering this proposed instrument for all practical purposes unenforceable and widely unsupported.
- We refer you to the paper submitted by the International Organization of Employers, Business at OECD and BusinessEurope, which provides a substantive and thorough analysis

<sup>3</sup> <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25744&LangID=E>

<sup>4</sup> e.g., <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=26155&LangID=E>

<sup>5</sup> A/HRC/48/59; A/HRC/48/59/Add.2; A/HRC/45/7; A/HRC/42/46; A/HRC/36/44; A/HRC/33/48

<sup>6</sup> A/HRC/RES/24/14; A/HRC/RES/30/2; A/HRC/RES/34/13; A/RES/71/193; A/HRC/RES/46/5

of the many continuing problems with the text as observed by business. We share the concerns highlighted in this paper.

- Chair, because of the many concerns voiced by States and delegations here today, we join together with them to again call for a pause, a step back from this flawed text and process, and a fundamental rethink of this of this entire exercise.
- As has been stated by governments in the room today, to advance progress on this critical topic, a wide, consensus-based and cross-regionally supported approach is paramount.
- We have that with the UN Guiding Principles on Business & Human Rights.
- The work to implement the UN Guiding Principles on Human Rights is advancing with broad and truly cross-regional global support. We are pleased that a UNGPs 10+ roadmap is soon to be released by the UN Working Group on Business & Human Rights and the Office of the High Commissioner for Human Rights.
- We look forward to contributing meaningfully to the work of implementing the UNGPs even further into its 2<sup>nd</sup> decade, and we urge delegations in this meeting and the stakeholders beyond to join in this critical effort.

Thank you.

**11. Joint Statement on behalf of Friends of the Earth International, members of the Global Campaign to Dismantle Corporate Power**

Mr. Chair-Rapporteur,

I am Ubrei-Joe Mariere from Environmental Rights Action – Friends of the Earth Nigeria, speaking on behalf of Friends of the Earth International, members of the Global Campaign to Dismantle Corporate Power.

Today we are living profound systemic crises that threaten our life and the planet. The climate crisis, the biodiversity crisis, the COVID crisis, are results of a socio-economic model that favours transnational corporations' pursuit of profits over human rights and the protection of the environment. My country, Nigeria, is one of the many examples of places where powerful transnational corporations have violated peoples' rights, caused irreversible damages to the environment, and have remained in impunity. Our national or even regional judicial systems are just not able to hold these big companies accountable for their violations, which is why many organisations in Africa and across the globe have been strongly supporting the process towards a UN binding treaty on transnational corporations and human rights.

This year, despite great mobilisation in the continent, many of us are not able to participate in-person in the session, or even virtually. Travel restrictions due to COVID-19, unequal access to vaccines between the people in the global South and the global North, increased financial barriers due to the economic impacts of the pandemic, digital connectivity problems and time zone issues have been severely limiting the participation of representatives from the Global South, including States, in these important negotiations. The barriers to adequate participation of representatives from some of the countries most severely affected by the impunity of transnational corporations undermine the objective of ensuring an inclusive and fair process of negotiations. We call for a stronger commitment from the Chair to ensure people from the South are able to follow, intervene and influence the direction of the negotiations.

We are also deeply concerned about the continuing hollowing out of key content in the drafts presented by the Chair. Although we note some positive changes in the third revised draft, most of these changes are cosmetic, rhetorical and ineffectual. These superficial changes fail to solve the structural problems and loopholes repeatedly highlighted by social movements and affected communities.

The new text unacceptably continues a logic centered on States' obligations, and fails to clearly establish direct legal obligations for transnational corporations. We are also concerned about the scope of the current draft, because business activities as such cannot be held liable,

only natural or juridical persons. We demand that the scope remains as originally mandated by Resolution 26/9, on TNCs and OBEs with a transnational character.

Despite the difficulties around participation and inclusiveness, we will work with our allies to make sure that the 7th session of negotiations is able to steer this process away from a text that is currently accommodating to the requests and interests of the corporate sector and their political allies.

Thank you.

**12. Joint statement on behalf of the Centre for Human Rights, Centre for Applied Legal Studies, Lawyers for Human Rights, the African Coalition for Corporate Accountability, the Centre for Human Rights, the South African Institute for Advanced Constitutional, Public, Human Rights and International Law (SAIFAC), and the Uganda Consortium on Corporate Accountability**

Mr Chairperson, I make the following submissions in relation to the third draft of the Legally Binding Instrument (LBI) on behalf of the Centre for Applied Legal Studies, Lawyers for Human Rights, the African Coalition for Corporate Accountability, the Centre for Human Rights, the South African Institute for Advanced Constitutional, Public, Human Rights and International Law (SAIFAC), and the Uganda Consortium on Corporate Accountability.

We commend the release of the third draft of the LBI and we strongly support the continuation of the existing process and refinement of the existing draft. A binding instrument is indispensable to ensuring accountability and remedies to victims of corporate abuses of fundamental rights. Furthermore, we support an instrument that reflects perspectives of all including the Global South and effectively addresses different experiences across the globe, and makes corporate compliance with human rights norms mandatory, not voluntary. The envisioned Treaty will level the playing field and avoid fragmented approaches to corporate responsibility that allow for abuse.

Although some improvements have been noted, there still remain key areas of languages and text in need of strengthening to ensure that the Treaty achieves its objectives: namely, to effectively address the common global challenges around the prevention of corporate abuses and violations, to address rising cases of corporate capture, and, importantly, to remove obstacles blocking access to remedies for victims of rights violations.

While there are some areas of the draft that require further enhancement and improvement, it is nevertheless important that the existing process continue until the finalization and adoption of the treaty. We reject the need for starting any new process or the need to fundamentally alter the text. We accordingly submit that if a different course is taken, it would have the inevitable effect of eliminating or weakening the progress that has been made so far. In our view, the current text should not be controversial to any state who agreed to the UNGPs – it simply builds upon them in two areas: in relation to prevention, it renders human rights due diligence mandatory and, in relation to access to remedy, it tries to remove legal obstacles victims face. The Treaty would be part of the ‘smart mix’ of measures the late John Ruggie recognized were necessary to ensure corporate accountability.

Throughout the 7<sup>th</sup> session, African Civil Society and partners will submit a re-iteration of some of its comments on the second draft as well as novel comments both appraising the current draft and suggesting some areas of its improvement. We will make recommendations relating to various clauses of the third draft of the LBI, including but not limited to the preamble, definition, statement of purpose, scope, rights of victims, prevention and access to remedy.

I thank you.

**13. Joint statement on behalf of the International Trade Union Confederation, Building and Wood Workers' International, Education International, Industrial Global Union, International Transport Workers' Federation; International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers' Associations, Public Services International; and UNI Global Union**

Thank you, Chairperson. I speak on behalf of the over 200 million members of the following global trade union organisations:

- ITUC
- BWI
- EI
- IndustriAll Global Union
- ITF
- IUF
- PSI; and
- UNI Global Union

With the COVID-19 pandemic once again exposing the fragility of global supply chains and business models built on non-standard forms of employment and informality, the Legally Binding Instrument represents a *unique* opportunity to end the impunity for corporate human rights abuses.

The 2020 ITUC Global Poll found that 66% of citizens wanted their governments to adopt new rules for multinational corporations to end human rights abuse through their supply chains. A YouGov poll conducted just *last week* revealed that 80% of citizens in the European Union supported laws to hold companies accountable for harms to people and planet.

Chairperson,

The people have spoken. It's now time for ALL governments to listen to their citizens and engage meaningfully in this process. Now is *not* the time to look at alternatives. Now is the time to focus on the 3<sup>rd</sup> revised draft and deliver a strong a Treaty without delay.

Chairperson,

Overall, the third revised draft has introduced further conceptual clarity and a text that is politically viable for all concerned. We welcome, among other things:

- The better overall gender integration;
- acknowledgement of the importance of health and safety;
- recognition of the right to a safe, clean, healthy, and sustainable environment;
- the reference to *obligations* of business enterprises to respect human rights;
- the requirement that human rights due diligence should be informed by meaningful engagement with trade unions; and
- the inclusion of the domicile of the victim as a basis for jurisdiction.

Chairperson,

We said last year that the second revised draft was 'negotiation ready'. The minor, but significant changes reflected in this third revised draft puts us in an *even* better position for meaningful negotiations.

Over the course of the week, we will present our proposals for textual amendments, which aim to, among other things:

- Better articulate the scope of labour rights;
- Ensure that the Treaty has a strong social justice dimension;



- Provide clarity on the internationally recognized human rights applicable to States by virtue of *ratification* and those to which they are *otherwise* bound; and
- perhaps most importantly, ensuring that the provisions on liability for corporate human rights abuse better reflect the types of liability applicable to the different supply chain business models relied on by corporations.

Chairperson,

We will expand on these and other points in the coming hours and days. Our full position paper is also now available on the ITUC website.

In closing, on behalf of the global trade union movement, I wish you good luck and every success for this 7<sup>th</sup> session.

Thank you.

**14. Joint statement on behalf of DKA Austria, ChildRights Connect, ECPAT International, Clínica de Direitos Humanos UFMG and Clínica de Direitos Humanos PPGD/PUCPR**

Dear Chair

On behalf of DKA Austria, Child Rights Connect, ECPAT International, Clínica de Direitos Humanos UFMG and Clínica de Direitos Humanos PPGD/PUCPR.

We welcome the amendments to the draft legally binding instrument that bring us a step closer towards a child rights approach. We would like to extend our appreciation to the States that have contributed to changes in the text that promote the rights of children in the context of business activities.

As reported by the United Nations, human rights have been heavily impacted by the pandemic. We are also facing a climate crisis, a food crisis, a massive loss of biodiversity, among other crises, which are further aggravated by the activities of certain businesses. It has been recognised that these crises, together with the adverse impact of business activities, often have a disproportionate effect on children and their rights. We call on UN Member States to work towards a strong and solid legally binding treaty on business and human rights that addresses the often-disproportionate effect of business activities on children's rights.

We believe that some provisions in the draft legally binding instrument could still be improved to this end, including:

- to ensure that the activities and operations of business enterprises do not adversely impact on children's rights;
- to make sure that businesses respect children's rights throughout their global operations, and take action to prevent or mitigate impacts to children's rights that are linked to their operations, products or services by their business relationships;
- to guarantee access to effective remedy for children whose rights have been infringed by business enterprises, including State-owned enterprises, through child-friendly justice.

We will be making specific proposals during the session on how to best achieve the goals mentioned above and thank you in advance for taking our amendments into consideration.

**15. Joint statement on behalf of CIDSE, CCFD-Terre Solidaire, Misreor, KOO, DKA, Fastenopfer, Focsiv, Broederlijk Delen, Entraide & Fraternité, CAFOD, Trocaire, Commission Justice & Paix Belgium, Alboan**

Corporate violations of human rights and the toll that corporate activities exert on the planet, our common home, are an unbearable burden on our human family. As we slowly move away from a global health crisis, communities around the world still live through the loss of global forest-lands, the pollution of rivers and water sources, the destruction of their land by large mining projects and other impacts of business activities. It is clear we need to move beyond voluntary principles for corporations to ensure justice for right-holders.

CIDSE, CIDSE, CCFD-Terre Solidaire, Misreor, KOO, DKA, Fastenopfer, Focsiv, Broederlijk Delen, Entraide & Fraternité, CAFOD, Trocaire, Commission Justice & Paix Belgium, Alboan welcome this 3<sup>rd</sup> revised draft and this seventh round of negotiations as another piece in the global puzzle of answers to the multiple crises we face.

We congratulate the Chairmanship for its will to move the process forward by encouraging States to engage substantially on the text, and we invite State Parties to take this opportunity.

In particular, the European Union and its Member States should heed the call of civil society and faith-based organizations, movements and citizens to engage fully in the negotiations. The forthcoming EU Directive on Corporate Due Diligence and Accountability will not be enough to respond to the planetary challenges we face and cannot be an excuse to dismiss the negotiations.

We also call on States who have not joined the negotiations in previous years to do so with goodwill and respect for the process, abandoning efforts to undermine it.

Among the recommendations put forward in the written contribution of CIDSE and its members, we would like to highlight the following:

- Replace the term ‘victim’ with the more inclusive and affirmative ‘right-holder’.
- Reinforce further provisions on right-holders’ access to justice, in particular by clarifying provisions on the choice of applicable jurisdiction, reversal of burden of proof, and the removal of monetary and non-monetary obstacles.
- State unambiguously that a business enterprise’s formal compliance with due diligence standards shall not absolve it from liability.
- Include the possibility for right-holders, be they indigenous communities or other affected right-holders, to explicitly deny consent to business activities in their territories. If given, such denial should be operationalized and result in ceasing of the activities or preventing them from taking place in the first place.
- Include measures for protecting human rights and environmental defenders, particularly women and indigenous people, and the specific threats they face.

Ensure and operationalize the primacy of human rights over trade and investment agreements, especially in the context of arbitration mechanisms such as ISDS.

**16. Joint statement on behalf of Sudwind and the other members of the Treaty Alliance Austria, a coalition of over 15 Austrian NGOs and trade unions, together with a European Youth Delegation**

Sudwind and the other members of the Treaty Alliance Austria, a coalition of over 15 Austrian NGOs and trade unions, together with a European Youth Delegation highly welcome the “Third revised Draft” and the process of consultations and negotiations that led to it. With regard to the amendments, we are pleased that the draft has gained in clarity and therefore we believe the draft provides a good basis for constructive discussion in this important seventh session.

We are asking both the EU and its Member States to take up leadership to develop common positions and engage constructively in this seventh session. Especially against the background that Austria is a member of the UN Human Rights Council, Austria should take up its responsibility and constructively engage in this and upcoming sessions of the intergovernmental Working Group. We are calling on the EU to implement its announcement, as formulated in the Council Conclusions on EU Priorities in UN Human Rights Fora in 2021, which were approved by the Council at its 3785th meeting held on 22 February 2021 „the EU will provide appropriate support to the work of the UN Working Group on Business and Human Rights, in its efforts to develop a renewed roadmap for the next decade of business and human rights. The EU will also participate actively in the UN discussions on a legally binding instrument on business and human rights with the aim to promote an instrument that can effectively enhance the protection of victims of business-related human rights violations and abuses and create a more global level playing field.”

The outbreak of the corona pandemic severely disrupted global supply chains and had a significant impact on the global labor market. In the wake of the crisis, millions of people who were previously employed in production were dismissed. Corporations cancelled orders and refused to pay for products already manufactured, making it impossible for employers of supplier companies to pay their workers. Child labour, forced labour and the persecution of trade unionists and human rights defender still occur systematically in global supply chains in 2021. The latest Global Witness report shows that 227 people were murdered in the previous year because they were engaged in environmental activism. So it was again the most dangerous year on record for people defending their rights, their lands and protecting the environment. This clearly underlines the urgent need for a Binding Treaty. Last year the Treaty Alliance Austria launched the campaign "Human rights need laws. So that supply chains do not hurt". In this campaign we call for support for the UN Binding Treaty and binding rules for corporations also at EU and national level in Austria.

There are many positive developments in the "Third Revised Draft" that should serve as a good basis for constructive EU engagement.

- Especially the inclusion of relevant ILO conventions instead of singling out only ILO Convention 190 is an important improvement in § 3 of the preamble
- We also welcome the inclusion of ILO Declaration on Fundamental Principles and Rights at Work in § 14
- and especially welcome the inclusion of the right to a safe, clean and healthy environment as well of climate change in key provisions of the 3rd draft, which puts the draft in line with the latest resolution of the right to a safe, clean, healthy and sustainable environment adopted by the Human Rights Council in October 2021.

However, we also would like to draw attention to our recommendations for improvements from civil society and trade unions engaged in the Austrian Treaty Alliance

- Article 1.1 should consider the circumstance, that persons have suffered harm, because of supporting victims. Therefore it should use a broader definition of victim, such a formulation already existed in Article 1.1 of the "Second Revised Draft".
- Definition from 2nd Draft: "and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization."
- Article 5.2 should explicitly mention the protection of human rights defenders and should clearly define prevention measures.
- Article 6 and 8 should explicitly mention that corporations are liable if they fail to comply with their environmental due diligence obligations.
- Article 7.5: the burden of proof should be clearly defined as an obligation, therefore the word "allowing" should be deleted.
- Article 8 should also include administrative sanctions if corporations fail to comply with their due diligence obligations (also if there is no harm).
- Article 14.5 should clearly define that trade agreements and investment agreements should contain human rights exception clauses. Specific measures are also needed to ensure that human rights are not undermined by trade and investment agreements.

We call on all states and especially the EU to formulate constructive proposals for further elaboration at the seventh session. We believe that a focus on substantive issues is necessary to move the negotiations on the text for the treaty forward. This debate is necessary to face the challenges of globalization and to stop human rights abuses by corporations, until the

"mandate to elaborate an international legally binding instrument" established by UN Human Rights Council Resolution 26/9 is fulfilled and such an instrument is in force.

**17. Joint statement on behalf of Corporate Accountability, Centre Europe Tiers Monde, Indigenous Peoples International Centre for Policy Research and Education - Tebtebba Foundation**

Mr. President,

I am speaking on behalf of Corporate Accountability, Centre Europe Tiers Monde, Indigenous Peoples Rights International, who are members of the Global Campaign. We commend the States that continue to support the process of this treaty negotiation.

After hearing this first general discussion, we feel it is necessary to point out and recall the spirit and the letter of the original mandate of this process, established by Resolution 26/9, which aims at making transnational corporations (TNCs) and their global production chain respect human rights. In this regard, a clear distinction must be made between the human rights obligations of States and TNCs. States have general obligations to protect, respect, ensure respect for and fulfill human rights in the territories under their jurisdiction. They also have obligations not to violate the human rights of other people even outside their jurisdiction and to ensure that international institutions and entities respect human rights. As for TNCs, they have the obligation to respect human rights, labor and environmental standards in the conduct of their activities.

In this context, it would be wrong for the future treaty to target all types of enterprises, to target public, local or small companies whose activities are already covered by national jurisdictions. In fact, as we have emphasized on many occasions, TNCs have considerable economic and political power, but this power is not accompanied by accountability. This is not the case for small local businesses. For this reason, it is essential to focus on establishing the direct responsibilities of TNCs and to clarify their human rights obligations, distinct from those of States and not on the same level as small local businesses.

Another important element to be included in the future treaty is an effective enforcement mechanism at the international level to ensure legal liability of TNCs for human rights violations. The global campaign advocates for the establishment of an international tribunal to try violations committed by TNCs with dissuasive sanctions to prevent the recurrence of violations.

These are key elements that must be taken into consideration by the Working Group.

The peoples, citizens, affected communities and social movements place great hope in the success of the process initiated in this Working Group to bring TNCs under the law. States also have an interest in the adoption of such a treaty that will allow them to recover their lost sovereignty.

It is in this spirit that the Global Campaign has been engaged in the process of negotiating a binding treaty on TNCs in this Working Group.

We note with great regret that the current draft treaty falls far short of the Working Group's mandate. It is essential that this situation be rectified and the process put back on track.

Mr. Chair,

Thank you for your attention

Geneva, 25 October 2021

**18. Joint statement on behalf of Treaty Alliance Germany, Brot für die Welt, Global Policy Forum, MISEREOR and Südwind**

Thank you very much Mr. Chairman!

I am speaking on behalf of the **Treaty Alliance Germany**, Brot für die Welt, Global Policy Forum, MISEREOR and Südwind.

We **congratulate** the Chair for the clarifications in the Third Draft of the LBI, such as:

- The clarification that all core human rights treaties and ILO conventions are covered in the **scope** of the LBI;

- The explicit reference to the **right to a safe, clean, healthy and sustainable environment**;
- The modified provisions on prevention and legal liability not only covering the activities, but also **business relationships** of companies;
- The explicit reference to **civil sanctions** in the provisions on liability.

While the draft text already serves as appropriate basis for substantive negotiations, we **recommend** the following improvements:

- In line with the UNGP, due diligence requirements should include an obligation for companies to provide effective **grievance mechanisms** and **reparations** for damages even before civil proceedings have established a company's guilt;
- In line with the German Supply Chain Act, non-compliance with due diligence obligations should lead to **administrative sanctions** even in cases, when the company *does not* contribute to damages;
- Administrative sanctions should also be imposed when companies do not comply with **environmental due diligence** obligations;
- And, concrete measures should be added, how states should ensure compatibility of trade and **investment agreements** with the LBI.

As German CSO, we express our disappointment that, the **EU** keeps on **refusing negotiations**, has not provided any **legal analysis**, has not contributed **any recommendations** and not even sought for a negotiation **mandate** by EU member States.

After **France, Germany** has also passed an Act on due diligence obligations this year, and the **EU** itself is preparing a Corporate Due Diligence and Accountability regulation. If the EU is really interested in an **international level playing field**, it should seize the opportunity. **Start negotiating now!**

Thank you very much!

## 19. Joint statement on behalf of Feminists for a Binding Treaty

I speak on behalf of the "Feminists for a Binding Treaty" coalition, which gathers around 30 NGOs and has been working collectively to advocate for a gender-responsive treaty since 2016.

We continue to express our strong support to this process and welcome the progress built over the last six years thanks to the many contributions from States, experts and NGOs. In this regard, we welcome that the Secretariat prepared the matrices of comments from States and other stakeholders, as well as that the track-changed version of the draft text has been made available; these initiatives have increased transparency and facilitated analysis.

The 3rd draft text is an important basis for negotiations and goes in the right direction in terms of filling some of the major gaps in ensuring prevention of business human rights abuses, access to justice and reparation for victims. We stress, however, that some key provisions still need further clarification and strengthening. We will provide comments on specific provisions as relevant this week.

Some States have raised that legal issues addressed in the draft instrument are complex and may raise issues of conflict with national law. In this regard, we recall that the aim of an international human rights instrument on business and human rights is precisely to raise national standards to bring them in line with international human rights law and to address the systemic gaps in accountability that victims face when seeking access to justice for corporate abuse. The draft instrument before us can add tremendous value in terms of international human rights protection, particularly its provisions on liability, jurisdictional aspects in cross-border cases and on access to remedy.

Thus, any suggestion that negotiating a treaty is premature, or that the process for its drafting is taking the wrong approach, would be a slap in the face to the thousands of activists and victims who have advocated for an international legally binding instrument not for years, but

for decades. This is especially so when these arguments are put forward by States that have never engaged constructively to discuss substance in the past six years.

We hence strongly hope to see constructive and substantive participation in negotiations from States from all regions. In this regard, we welcome the proposal of the Chairmanship for a cross-regional group of friends of the Chair that would facilitate the next steps of negotiations.

Thank you.

**20. Joint statement on behalf of International Association of Democratic Lawyers and Institute for Policy Studies**

Gracias Sr. Presidente. Realizó esta intervención en nombre de international association of democratic lawyers y Institute for Policy Studies y como miembro de la Campaña Global

La Resolución 26/9, cuya aprobación permite que estemos aquí reunidas, estableció un mandato claro. Este Grupo de Trabajo se creó con el objetivo de elaborar un instrumento jurídicamente vinculante para **regular** (repito, regular) las actividades de las empresas transnacionales y otras empresas en el **derecho internacional** de los derechos humanos. Como dijo la Alta Comisionada para Derechos Humanos de la ONU: "el mundo se está moviendo rumbo a obligaciones vinculantes".

Tras siete años de negociación, hoy se presenta aquí una propuesta que implica una clara contravención de este mandato, proponiendo ahora dirigir la negociación hacia la consecución de un **acuerdo marco**, un texto con obligaciones no detalladas basado en amplios consensos interestatales. Consideramos que un instrumento así no es apto para regular la relación entre empresas y derechos humanos en el derecho internacional sino que vuelve a derivar la cuestión al ámbito de los Estados. Se trata de un debate que consideramos superado en la segunda sesión de negociación pero que ahora pretende reabrirse.

Permítanme recordarles cuál es el problema de fondo que nos reúne aquí. El fondo de la cuestión radica en que, aun siendo evidentes las violaciones de derechos humanos cometidas por las ETN a través de sus cadenas, los Estados son habitualmente incapaces de sancionar a las culpables o reparar a las víctimas, por muchas razones, entre ellas por la falta de herramientas jurídicas apropiadas para perseguir crímenes cometidos en terceros países, por la asimetría existente entre los derechos reconocidos a las empresas por las normas de comercio e inversión frente a la ausencia de responsabilidades de las corporaciones o por la imposibilidad de que los estados más pequeños o pobres puedan enfrentarse a entidades cuyo capital les duplica el PIB.

Necesitamos un instrumento vinculante que detalle las obligaciones de los estados, que incluya obligaciones para las empresas y que integre los mecanismos para la supervisión y el control del cumplimiento de estas obligaciones.

Y esto es precisamente lo que no es posible hacer mediante un **acuerdo marco** que solo contenga obligaciones interestatales de desarrollo de lineamientos poco específicos. Esto, repetimos, provoca que la protección frente a violaciones de derechos humanos cometidas por las empresas transnacionales a lo largo de sus cadenas de suministro radique únicamente en la acción del Estado, y NO asegura que todas las titulares de los derechos reconocidos pueden reclamar su derecho por igual, ni a nivel nacional ni a nivel internacional. Más aún, un **acuerdo marco** de ese tipo persigue el establecimiento gradual de un régimen jurídico, un mecanismo para ir creando, sin demasiadas obligaciones específicas y con muchos compromisos de hacer, en el futuro. Por supuesto, sin órgano de control.

También creemos que el proceso de seguimiento de las negociaciones, con la propuesta del grupo de amigos de la Presidencia, debe ser transparente y representativo de la diversidad de los países implicados en las negociaciones, especialmente aquellos del Sur Global, más afectados por las actividades de las ETN a través de sus cadenas. Esperamos que el presidente fomente y asegure la participación de esos países y solicitamos que la elección tenga en cuenta la opinión de la sociedad civil, realizando una consulta a estos efectos

¿Realmente llevamos siete años trabajando, prometiendo a las afectadas y a la sociedad civil mundial que la comunidad internacional iba a ser capaz de asegurar el acceso a la justicia y

el fin de la impunidad para proponer un tratado vacío? Este proceso ha escuchado a los afectados y víctimas y cuenta con el apoyo y consenso de muchos de ellos, que son las partes interesadas que realmente interesan y cuyos derechos humanos este tratado debe proteger.

Gracias!

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