Oral statement by Colombian Commission of Jurists about the General Principles and objectives of the future treaty on TNCs and other business enterprises

Thank you Madame,

The Colombian Commission of Jurists, affiliated to the International Commission of Jurists, supports a legally binding instrument with a strong focus on legal accountability of companies and remedies for the victims, in cases of abuses of both a transnational and domestic nature.

The content of the provisions in the new treaty are likely to be influenced by content and language in existing and past instruments in the same or connected fields such as the UN Guiding Principles on Business and Human Rights, adopted by the Human Rights Council in 2012, and 2003 UN Sub-Commission Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights. Although these instruments are not treaties and therefore not directly of a binding character, some of their formulations may reflect settled international law and/or enjoy wide consensus. The content of these provisions cannot automatically be transformed into treaty standards, given that they were elaborated for different purposes than the establishment of a legally binding instrument. However, in respect of certain provisions, the contents may enjoy such wide acceptance precisely because they are not binding.

There has been considerable debate both in the context of the present process and in the past as to whether a global treaty on business and human rights should establish obligations for States only, or duties that would be directly incumbent on companies themselves. The CCJ considers this dichotomy to be misconceived and not the most helpful way in which to frame the debate. On the one hand, any treaty surely should set out standards of conduct for businesses, as well as for States. On the other hand, the task of supervising, regulating and enforcing any such standards necessarily will need to fall on States. Aside from the legal and conceptual difficulties that would arise, there is simply no international governance machinery that would be practically capable of implementing the treaty. Even if proposals to establish international remedial mechanisms for abuses were to be adopted, these would have to complement first instance remedies at the domestic level that proved unavailable, inaccessible or ineffective.

In terms of format, the CCJ favours a stand-alone general treaty, leaving open the possibility that optional protocols addressing particular sector-specific or normative elements may follow. To adequately address the main pressing issues in the field of business and human rights and, at the same time, address the wide diversity of business enterprises' size and contexts of operation the prospective treaty will probably have to be one of general coverage while providing also for clear and meaningfully provisions. This treaty should have at least the following objectives, which should be stated in the main text of the treaty:

. To affirm, as legal principles, the human rights duties of States and business enterprises

- To create an international framework to ensure legal accountability of TNCs and other business enterprises under national law,

- To enhance a system of national remedies for victims of human rights abuse perpetrated directly or indirectly by business enterprises,

- To provide for an international framework to provide international protection and make more effective national level prevention of business abuse and/or negative impacts on human rights

The business duty to respect human rights

The CCJ considers that the Business enterprises' responsibility to respect all human rights is a principle that has been universally accepted and should now be reaffirmed in this treaty as a legal principle. The business responsibility to respect not only forms the basis of the second Pillar of the UNGPs but it is also reaffirmed in the Resolutions unanimously adopted by the Human Rights Council in 2008, 2011 and 2014. It has also been incorporated into the OECD Guidelines for Multinational Enterprises and other international and regional documents.

The State duty to protect under international law

Under international human rights law, as well as the UN Guiding Principles, States are required to take measures to protect persons against human rights abuse by third parties, including business enterprises. This principles has been affirmed in the UNGP (Principle 1), and in several interpretative documents adopted by UN expert bodies, including the Un Committee on Economic, Social and Cultural Rights, and the UN Committee on the Rights of the Child, and regional human rights courts.

In 2011, the UN Committee on Economic, Social and Cultural Rights adopted a *Statement on the obligations of States parties regarding the corporate sector and economic, social and cultural rights*. The Committee reaffirmed the "obligation of States Parties to ensure that all economic, social and cultural rights laid down in the Covenant are fully respected and rights holders adequately protected in the context of corporate activities."

At its January 2013 session the Committee on the Rights of the Child adopted its General Comment 16 (GC 16) *On State obligations regarding the impact of the business sector on children's rights*.[19] This General Comment provides important guidance for States to carry out effective implementation of obligations under the Convention on the Rights of the Child by ensuring that business operations do not adversely impact the rights of the child, creating a supportive environment for business to respect children's rights across business relationships and global operations and ensuring access to a remedy (para. 5).

The obligation of states to protect against business abuse of human rights extends to abuse occurring within the territory of the state or extraterritoriality. This has been reaffirmed by several expert UN Committees and also the International Court of Justice. The Maastricht Principles elaborates on the obligations of States to respect, protect and fulfil rights extraterritorially. Concerning the States' obligation to protect the Maastricht Principles provides that States must take measures "to ensure that non-State actors which they are in a position to regulate" do not nullify or impair the enjoyment of economic, social and cultural rights. According to Principle 25, "States must adopt and enforce measures to protect economic, social and cultural rights through legal and other means", *inter alia* "as regards business enterprises, where the corporation, or its parent or controlling company, has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned".

Thank you Madame Chairperson-Rapporteur