

Oral Statement of FIAN International to the First Session of the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights - Panel VIII - Geneva, July 8, 2015

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Madam Chairperson-Rapporteur,

The obligation of states to adopt effective remedy mechanisms for communities suffering harm caused by TNCs and other companies shall be included in the treaty, including measures of administrative, quasi-judicial and judicial character. Those mechanisms should ensure restitution, compensation, indemnity, rehabilitation and guarantees of non-repetition for the victims.

The main barrier that FIAN has identified in the case of offenses by TNCs is the lack of remedy mechanisms in the countries where the parent or controlling companies of the directly perpetrating legal entities are located. The treaty should stipulate that States are involved in a case and must take necessary measures to ensure through judicial, administrative, legislative or other appropriate means, that those affected by the conduct of transnational corporations or other business have access to effective judicial remedy in situations when :

- a) the harm or threat of harm originates or occurs in its territory;
- b) the business enterprise 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.

In order to ensure equality of arms for the affected individuals and communities affected by human rights offenses perpetrated by TNCs and other business, state should be obliged in the treaty to adopt mechanisms to ensure qualified legal assistance, covering of costs, support for the collection of evidence among others. Furthermore sanctions should be established for business enterprises using dilatory mechanisms to effect effective justice for the affected communities and individuals.

In order to guarantee the enforceability of judicial decisions, the IGWG should explore mechanisms to ensure that the patrimony of parent or controlling companies can be prosecuted wherever the specific company has its assets, independently of its domicile, following the models adopted in other field of human rights as for example corruption or child traffic regulations.

A treaty body should be created with the mandate to monitor the implementation of the provisions of the Treaty, facilitate the cooperation between states involved, and suggest improvements in the treaty.

Finally, provisions for mutual legal and judicial assistance and cooperation in good faith among countries shall facilitate the collection of evidence, joint investigation, trial and enforcement of judicial decisions in cases of transnational nature.