

Oral Statement of FIAN International, CCFD – Terre Solidaire, The Colombian Commission of Jurists, La Plataforma Contra la Impunidad and Society for International Development for the second session of the Open-ended intergovernmental working group (OIEGWG) on transnational corporations and other business enterprises with respect to human rights – General Remarks (Geneva, 24 – 28 October 2016)

Mme chair, states representatives, colleagues:

We want to call your attention on two specific general topics:

First, the Nature & Process of the future instrument:

We consider that the OIEGWG should remain a State-led intergovernmental process for both legal and political reasons. The Vienna Convention on the Law of Treaties defines an international treaty as an international agreement concluded and ratified by States. States are the one who negotiate and become parties to human rights treaties. Business companies, as non-State actors, cannot ratify, be parties to nor duty bearers under the future international human rights treaty under negotiation. The submitting organizations request the OIEGWG to safeguard its integrity from any undue influence from actors from or related to the private sector and to exclude such actors from participating in these negotiations.

In addition, there are important political reasons to avoid considering corporate actors as “stakeholders” of the future legally binding instrument: their primary interest is the pursuance of private profit and falls outside that of promoting and protecting human rights, as opposed to affected individuals and communities, social movements, grass roots communities and non-governmental organisations who represent rights-holders and strive to protect human rights. The considerable power asymmetry which exists between both of these groups further justifies the need for the OEIGWG to refrain from considering the corporate sector as an “equal stakeholder” in this process.

We thus stress the importance for the OEIGWG to establish clear and transparent rules in providing spaces for consultation with the corporate sector, only if it is to further the aim of the process which is to close current gaps in the protection of human rights related to abuses committed by TNCs and other business enterprises.

Second, the principles that should inform and be enshrined in the International legally binding instrument:

The submitting organizations have included in its written statement a list of principles, including general principles of international law that should govern the future international legally binding instrument, which include inter alia the primacy of human rights, the universality, indivisibility, interdependency and interrelation of human rights.

We also call for the integration of a new principle to protect governance spaces and human rights bodies from undue influence from commercial and other vested interests and more generally from corporate capture. Such a principle is needed to preserve democracy and people’s sovereignty. A relevant precedent is the WHO Framework Convention on Tobacco Control.

Thank you