

Speaker: Daniel Fyfe

Thank you Mr. Chairperson- Rapporteur,

We support the scope of protected rights proposed under point 2.1 of the elements paper which includes all human rights, labour rights and rights included in environmental law and reiterate the principles of interdependency, indivisibility and interrelationship of human rights. We would like to recommend the inclusion of a provision which affirms that States having not ratified all international human rights instruments will nonetheless remain bound to respect, protect and fulfill all human rights, as enshrined in the UN Charter and Universal Declaration of Human Rights which are today well established sources of customary law binding all States.

FIAN supports the elements paper's focus on human rights abuses "resulting from any business activity that has a transnational character". Since the beginning of the process we have emphasized the need for the prospective instrument to deal with the particular challenges of regulating, monitoring, adjudicating and enforcing judicial decisions against TNCs and OBEs, an area where there is precisely a void under international law, as existing standards, including the UNGPs, deal with "business enterprises" in general and fail to tackle these particular transnational challenges, resulting in the systematic impunity we witness today. Nevertheless, from the perspective of affected individuals and communities, it is irrelevant whether the enjoyment of human rights is impaired by a transnational business activity or a domestic company. For this reason, we propose the inclusion of a clause reaffirming States' existing obligation to protect individuals and communities from the activities of all business enterprises. We also propose the inclusion of a provision which could read "nothing in this instrument may be used in order for States to create a discrimination in the protection of rights between those affected by transnational business activities and those affected by domestic business enterprises."

We welcome the inclusion of "other associations" under the definition of the scope of application which covers for instance public or private pension funds or philanthropic organizations or foundations which are core actors of business activities with a transnational character. Documented cases of land grabs demonstrate the key financial role played by philanthropic foundations or pension funds as the main investors – sometimes in the name of "development" – of land grabbing operations around the world which impair peoples' human rights. Land deals involve a web of transnational corporate and financial entities which should all be held accountable by States for their responsibility in such abuses under this instrument, just like all the other business enterprises along the global supply chains of TNCs and OBEs.