

STATEMENT OF THE DELEGATION OF INDONESIA  
3<sup>rd</sup> Open Ended Working Group on Transnational Corporations and Other Business  
Enterprise with Respect to Human Rights

23-27 October 2017

Agenda Item 2: Scope of Application

Thank you Mr. Chairperson

My delegation would like to recall that Human Rights Council Resolution 26/9 adopted a mandate to ‘elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises’. While the resolution does not define the transnational corporations and other business enterprises, in a footnote it indicates that other business enterprises do not apply to local businesses registered in terms of relevant domestic law.

Extending the scope of the instrument to all business enterprises, in our view, would not only go beyond the mandate given by the Resolution 26/9 but would mean to open a long negotiating process with uncertain outcomes. If the objective of the instrument is to address the gap in the international legal system, negotiations must focus on elaboration of elements regulating TNCs. Aiming at a broad scope including domestic business would allow us to deviate from the basic purpose of the instrument.

Mr. Chairperson,

The conduct of domestic businesses, including State Owned Enterprises and Small Medium Enterprises, is regulated by national laws and enforcement mechanisms. It is also in the case of Indonesia with its specific characteristics where more than 57 millions people or 99% of our business sectors are dealing with SMEs and state-owned enterprises, in which many of them have transnational characters as part of supply chains. These SOEs and SMEs are regulated by national laws. Therefore, Indonesia continues its efforts to further strengthen their regulations and to continue raising awareness in order to implement the UNGP on business and human rights. In this regard, negotiation on a legally binding instrument should also consider specific characteristics of many developing countries with similar condition like Indonesia.

Mr. Chairperson,

With regard to scope of application as reflected on the elements for the draft legally binding instrument, we are of the view that unlike domestic companies, because of complex corporate structure and international dimension of their operations, TNCs may avoid their responsibilities for human rights violations. The proposed instrument, in our view, would rather ensure equality of treatment. While domestic businesses are regulated by national laws, the TNCs could be regulated under the proposed instrument.

Mr. Chairperson,

Indonesia believes that the central issue to be addressed is what the primary objective of this instrument. Our aim here is to resolve the issues by the international operations of TNCs and their ability to commit violations in some countries where there are no access to effective

remedy. Therefore, let me emphasize that the negotiations should focus on filling the current gaps in international law, namely regulating the TNCs.

I thank you