**Introductory remarks of Ana Maria Suárez Franco on Article 8 on the Rights of the Victims – 4th Session of the Intergovernmental Working Group on TNCs and OBEs with regards to Human Rights Geneva, 15th of October 2018**

Thank you Mr. Chair and congratulations for your election.

After affirming that we recommend including in article 2 a reference to gender perspective on Scope and the aim to keep TNCs and OBEs legally accountable for human rights abuses and crimes, I would like to focus in commenting art. 8 on the Rights of the Victims.

Individuals and communities whose human rights are affected by the activities of TNCs, as well as those affected by national companies, face barriers when attempting to access justice due to the lack of resources, the impossibility to claim their rights in the States where the involved enterprises operate, the lack of culturally adapted recourse mechanisms, among others. A particular challenge for victims which we have identified though our casework is the judicial practice which requires victims to prove the link between the damage caused and the conduct of the companies alleged to have caused the harm. This is especially difficult when the responsible companies are not only those directly operating where the affected communities live, but it is other subsidiaries, sub-contractors or other companies undertaking these operations.

A critical challenge for the victims is furthermore to avoid additional harm, which in many cases can be irreparable, whilst they are advocating for their human rights to be protected with their authorities or during the judicial processes.

***How is the issue dealt with in the treaty draft?***

***The positive****:*

Article 8 on the rights of the victims deals with the barriers which individuals and communities face when accessing justice. States have an obligation to reduce such barriers in order for victims to access justice. Furthermore, the draft foresees the creation of an International Fund for victims, which will support victims with legal and financial aid.

Article 8 of the draft treaty also emphasizes on judicial remedies for victims, which is positive. FIAN’s experience working with the OECD contact points, as well as different research on grievance mechanisms - where the company is judge and party – have demonstrated how non-judicial mechanisms intimidate victims, or impede the access to the judicial remedy mechanisms. They are additionally ineffective as they depend on the good will of the involved companies.

***To be improved:***

Article 8 should include following new elements:

* Explicitly mention the right for victims to present legal claims and demand reparation against any of the companies part of the economic group and involved in the value chain in line with article 5. This right would be correlative to States obligations under article 10.6 with regards to the civil liability of corporations. All the companies allegedly involved in committing the human rights abuses would be jointly responsible, in order to protect those who are in a situation of legal vulnerability and to protect the public interest.
* The formulation on the right to information under article 8.4 should be improved in order to explicitly mention the right for victims to be informed about all the different companies (e.g. land titles, contracts and other relevant documents) involved in the transnational business activity which have allegedly threatened or harmed their human rights. In the case that such information is not made available, a rebuttable presumption of control would apply, meaning that the link between the different companies involved in the TNC structure having abused human rights would be presumed unless the company can prove the contrary. This would ensure the principle of the equality of arms for the alleged victims.
* A clause should be included in order to provide victims with the right to demand precautionary measures to stop immediately the harm or to prevent the harm until the case is decided. This provision is essential to ensure that in case of a decision in favor of the plaintiffs, these do not nevertheless find themselves in a state of irreparable harm whereby the favorable legal decisions would be ineffective.
* A clause on the application of the pro-persona principle would be of help to make stronger the aim of this treaty to ensure protection for the victims stronger.