



**Open-ended Inter-Governmental Working Group on transnational corporations  
and other business enterprises with respect to human rights  
FIDH's Oral Statement  
Zero draft - Article 13**

FIDH considers that the Zero Draft is missing its goal when dealing with the issue of **trade and investment agreements**. The depth of the challenges that the zero draft should tackle is well illustrated by the highly problematic Chevron v. Ecuador arbitral award dated 30 August 2018. The private ad-hoc tribunal that was set up in the framework of the US-Ecuador bilateral investment agreement, simply denied the rights of victims - who were non-parties to the arbitration, namely the 30,000 affected peoples - to seek remediation for one of the worst environmental disasters in history involving oil spillage into 4,400 square kilometers of the Amazon rainforest. Among other things the award requires Ecuador to violate the separation of power and ultimately to infringe affected peoples human rights by blocking any initiative they would take to enforce the \$9.5 billion judgment rendered against Chevron in Lago Agrio, Ecuador, in 2011. The arbitration tribunal also ruled for any other national courts, stating that no part of the Ecuador judgment should be recognized or enforced by any State. This award demonstrates the necessity to prevent Trade and investment agreements from:

- hampering States' capacity to realize international human rights
- while allowing **investors** to carry on activities which harm those rights and the environment and be empowered to escape remedies;

**The zero draft should be amended** in order to contain a **specific article** regarding State parties obligations when negotiating and implementing trade and investment agreements. Such provision should:

- to **conduct independent human rights impact assessments** and **consult** potentially affected peoples and human rights treaty bodies when negotiating trade and investment agreements
- Provide for an **independent complaint mechanism** with the competence to rule on any negative impact trade and investment may have on human rights, including when these impacts result from their dispute settlement mechanisms
- Require the Parties to ensure that trade and investment agreements oblige States, companies and investors to **respect international human rights obligations** and not only domestic laws
- Oblige the parties to ensure trade and investment agreements allow them to **maintain adequate policy space** to meet their human rights obligations
- Oblige the Parties to develop *clean hands* provision requesting investors to respect international human rights standards during all the duration of their investment and obliging them to remedy any negative impact, before to have access to any form of investor-State-Dispute-Settlement
- Oblige the Parties to protect and provide financial support to CSOs seeking to address the negative impacts trade and investment agreements may have on human rights, including from any SLAPP actions;