**Oral Intervention**

**Article 7 (Adjudicative Jurisdiction), Item 4**

**Wednesday, 16 October 2019 (3:00 – 6:00)**

Thank you, Mr. Chair.

I deliver this on behalf of Manushya Foundation, ESCR-Net, and FIDH.

We welcome the language added to Article 7 which rightly has been named ‘adjudicative jurisdiction’ since it deals only with the circumstances in which a State has jurisdiction over a dispute and does not refer to ‘prescriptive jurisdiction’. The criteria for domicile have been clarified in line with existing law, including with regards to the concept of “substantive business interest” already used in certain legal systems and case law.

Additional language should however be included in Article 7 to further guarantee access to remedy and effectively address States’ extraterritorial obligations (ETOs), as well as to guarantee the claimant’s unimpeded access to remedy – detailing how the Treaty will address the issue of forum non-conveniens.

Additionally, it is imperative for the future instrument to better clarify that domestic courts of state parties are able to exercise jurisdiction over claims concerning business related human rights abuse even when the defendant enterprise is not domiciled within the jurisdiction of the state, if no other effective forum guaranteeing fair trial is available even if jurisdiction criteria are not strictly met. This would explicitly recognize the application of the forum necessitatis doctrine.

Such clause could read as follows:

*“Where no court of a State party has jurisdiction under this Article, the courts of any other State Party may, on an exceptional basis, hear the case if the right to a fair trial or the right to access to justice so requires, despite the absence of substantial connection:*

*(a) if proceedings cannot reasonably be required to be brought or conducted or would be impossible in a third State with which the dispute is closely connected; or*

*(b) if a judgment given on the claim in a third State would not be entitled to recognition and enforcement in the State party of the court seized under the law of that State and such recognition and enforcement is necessary to ensure that the rights of the claimant are satisfied”*

Several States already have a national provision on forum necessitatis that could serve as inspiration for the future instrument.

This would explicitly ensure that victims of transnational human rights abuses are not deprived of access to a prompt, accessible and effective judicial remedy.

Finally, the treaty should address the issue of corporate veil doctrine, frequently used to avoid liability and other forms of responsibility of “parent companies” and shareholders of transnational enterprises involved in human rights violations.