

Oral statement

Fifth session of the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG)

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Signatories: FIDH, Franciscans International, FIAN, ESCR-Net.

Thank you, Mr Chair-Rapporteur. I make this statement on behalf of FIDH, Franciscans International, FIAN, ESCR-Net..

On the Preamble, we would strongly encourage to delete the list of rights highlighted in the 7th paragraph dealing with the right to an effective remedy. Victims of violations of all human rights should be able to access effective remedy and reparation. Highlighting only three of them bears the risk of creating a hierarchy of rights, giving the impression that access to justice and remedies would be particularly important for these rights compared to others.

Article 1 on Definitions in the draft treaty is crucial in order to define the scope of application of the future instrument and to ensure its effective implementation. However, there are still several gaps in the text that must be addressed to reach this objective. We propose the following concrete amendments to the text:

Regarding art. 1.2., we suggest to add an explicit reference to social and cultural rights, but also to separate from the definition of human rights *violation* and human rights *abuse*, to distinguish on the one hand the primary responsibility of States with regards to human rights and on the other that of business enterprises.

We propose the following wording:

Art. 1(2) "Human rights abuse" shall mean any harm committed by business enterprises through acts of commission or omission, against any person or group of persons, individually or collectively, that produces an impairment of their human rights, including environmental damage. This must include but is not limited to the impairment of civil, political, economic, social and cultural rights.

Art. 1(2) bis "Human Rights violation" shall refer to State's international responsibility for failing to fulfill their primary obligation to respect, protect, fulfill and promote human rights and fundamental freedoms,

including protection against human rights abuses by business enterprises and encompassing civil, political, economic, social and cultural rights.

The differentiation between these concepts should be applied to the successive articles of the Revised Draft, notably in articles 6 to 9.

Furthermore, we believe that throughout the text of the revised Draft Legally Binding Instrument, environmental harm should also be incorporated in an autonomous manner to human rights; otherwise, complainants will always have to prove the nexus between environmental damage and a human rights abuse or violation. A definition of environmental violation or damage could read:

"any loss, damage or disruption of the environment, understood as natural resources, both abiotic and biotic, such as air, soil, water, fauna and flora, climate, atmospheric marine or terrestrial life, landscape, as well as the alteration of the interactions among these factors. In addition, environmental harm/violation includes effects on cultural heritage or socio-economic conditions resulting from alterations to the above mentioned factors".

Regarding article 1.4., we note that the definition of contractual relationship is very large and clearly aims at taking in account all the different relationships that compose complex global supply chains. However, the use of the expression 'contractual relationship' contains an unnecessary limitation that may lead to restrictive interpretations. Equity relationships, for example, that are usually the type of link between parent companies and their subsidiaries, are not contractual, and risk being excluded during the application of the instrument.

Throughout the text, drafters should substitute the expression "*contractual relationship*" with "*business relationship*", a wording already used by the UNGPs, the OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration which is widely accepted and understood.

To clarify this point, we also suggest to add the following at the end of Art 1.4.: "*Business relationships include business partners, entities in its value and supply chain, and any other non-State or State entity linked to its business operations, products or services even if the relationship is not contractual.*"

We thank you, Mr. Chair.