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**Joint Oral Statement**

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

Monday, 26 October 2020

Statement on preamble and Articles 1 &2

Delivered by Sandra Epal-Ratjen

*Check against delivery*

Thank you Mister Chairperson-Rapporteur,

This statement is on behalf of FI, WILPF, FIDH and FIAN.

Mister Chairperson-Rapporteur,

Let me take the opportunity of this first intervention of my organisation to welcome you on your renewed appointment as the Chair of this working group and to congratulate you and your team for the second revised draft that we have before us to serve as the basis for this week’s negotiations. Our organisations warmly welcome the significant improvements that we find in this new draft and that we will definitively highlight in our interventions under the relevant parts of the program of work.

We add our voices to those of States who support the process and acknowledge that significant progress has been made in the last 6 years to bring us where we are now with a text that still needs some improvements but is a solid basis for a future LBI.

***Preamble***

1. For the sake of clarity, and legal predictability and certainty, it would be preferable to only have “human rights” and not “human rights and fundamental freedoms,” as currently found in para. 8 of the Preamble. Article 3(3) and all other articles should be updated accordingly.
2. Para. 14 of the Preamble, beginning with “Emphasizing that civil society actors…”, notes the role of Human Rights Defenders (HRDs) in “preventing, mitigating and seeking effective remedy for business-related human rights abuses.” While the role of HRDs is crucial, given the purpose of the LBI, it may be unhelpful to divert the responsibility of prevention from businesses and States. At a minimum, the wording needs to be revised so as not to give the impression that it is HRDs’ role to prevent abuses and violations of human rights.
3. In para. 15 of the Preamble, we recommend adding the phrase “including applicable legal frameworks” after “specific circumstances” so that it reads, “takes into account specific circumstances, including applicable legal frameworks, and vulnerabilities of different right-holders.”

***Article 1. Definitions***

1. In regards to Article 1(1) and the definition of victims, we acknowledge that there have been improvements from the previous draft. However, it is unclear as to what “substantial impairment” of human rights means. We are concerned that this may impose a high bar on what can be covered under the LBI, and that it may limit what is considered ‘injury, emotional suffering’ etc. in a manner that contradicts the purpose of the treaty.
2. The definition should also allow for victims who are identified in the future. This can be dealt with by including a phrase on “transgenerational harm” or by noting that the definition of victim needs to be read in accordance with the article on statute of limitations.
3. In Article 1(3), we recommend that the phrase “for profit” is removed, to ensure that all activities are covered. Indeed, there are various activities that business enterprises may carry out that would not qualify as for profit but in the context of which human rights violations and abuses can still occur.

***Article 2. Statement of purpose***

1. In Article 2(1)(b), we suggest to change the text to “To prevent the occurrence of human rights **violations and abuses**” as violations refer typically to the breaches of States obligations under international human rights law while abuses refer to the infringement of rights by other actors like business enterprises. This change would be in line with Article 2(1)(a), which makes clear that the LBI will address both the State’s obligations in the context of business activities and the responsibilities of business enterprises.
2. In that regard, the LBI should have to have stronger language on State obligations to respect, protect and fulfil human rights. This should include defining victims as individuals that have also suffered from State ‘human rights violations’ (Article 1(1)). It would follow that States would also be responsible for reparations under Article 8(5) (with relevant updates to that paragraph as well).