



Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights

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Statement by FIAN International (ECOSOC status)

Read by: Stephan Backes (FIAN International)

Article 9 – Adjudicative Jurisdiction

Thank you Mr. Chair!

We welcome the inclusion of domicile of the affected individual and communities under article 9.1 in the definition of jurisdiction. This is particularly important, for instance for migrant workers, who face barriers related to resources, mobility and language in access to justice and would now have the option to file a complaint where they are domiciled or are a national of. In order to ensure consistency in language used in article 9.1.c, we support Palestine’s proposal to include the word “natural persons” under article 9.2.

Furthermore, we oppose China’s proposal to delete “including the doctrine of *forum non convenience*” in Article 9.3.

We also see positively the elaboration of article 9.5 as it attempts to establish the principle of *forum necessitatis*, which provides affected individuals and communities with a forum when no other forum is available nor guarantees them a fair judicial process. The revised Art 9.5 uses ‘judicial process’ instead of ‘trial’ which is a broader term incorporating other aspects of a remedial process and not just the trial. The new grounds laid down in Art 9.5 defining ‘connection to the State Party’ also offer more clarity.

Concerning the concerns expressed by the USA on extraterritorial obligations and jurisdiction in the present third draft that, according to the USA, might not find much support amongst stakeholders: we want to remind that at domestic level, the US Alien Tort Claims Act provides for efficient extraterritorial obligations.

As the Secretariat of the ETO Consortium – gathering some 170 academic and CSO members worldwide advocating for the implementation of extraterritorial obligations (ETOs) of States –, FIAN has documented the increasing number of human rights standards recognizing ETOs and its justiciability, as for example the General Comment 24 of the CESCR, and the General Comment 16 of CRC. Furthermore, several special procedures have developed on ETOs, including with regard to the activities of corporations. In total, there are some 200 UN pronouncements on ETOs by diverse UN Treaty Bodies and special procedures – indicating the strong anchorage of ETOs in the universal human rights system and international human rights law.

We recommend the inclusion of an additional paragraph in article 9, which provides for universal jurisdiction in cases of human rights abuses and violations, which amount to international crimes, as defined under article 8.9, given that such crimes are of concern to the international community as a whole. This new article would read:

“9.6. All courts shall have jurisdiction over claims against legal or natural persons not domiciled in the territory of the forum State for human rights abuses and violations which constitute the most serious crimes of concern to the international community as a whole.”

I thank you Mr. Chair.