

## Oral statement

### Seventh 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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*Seventh session - OEIGWG: Plenary discussions in accordance with the programme of work –  
Article 9.*

*Thursday 28 October 2021*

**Thank you, Mister Chair. I make this contribution on behalf of FIDH and Franciscans International, two organisations with ECOSOC status**

The changes incorporated on article 9 are welcomed as they clarify the grounds for jurisdiction and definition of domicile. Yet some changes are still necessary to ensure that accountability gaps are properly closed.

Article 9.1.(a) positively adds the place where the human rights abuse “produced effects” which can be equated with the place where the harm/damage occurred, an obvious ground for the jurisdiction that had so far been missed.

Article 9.1 (b) makes a reference to “contributing” which can be potentially limiting, in that it would leave out instances of direct causation. “Causing” should be added, to use the same language as Article 9.1(c) which correctly uses “causing or contributing”. We also support Palestine and Egypt’s suggestion to add ‘violation’.

In Article 9.5. the elimination in the new draft of the phrase “sufficiently close connection” and use, instead, of a close list of grounds for proceeding with a forum necessitatis claim, can have both advantages and disadvantages. On the one hand, the express enumeration of grounds makes sure that claimants found in any of those situations will not have to argue and litigate that their situation amounts to a “connection” that is “sufficiently close”. On the other hand, the close list of grounds risks excluding other grounds that could, in a given jurisdiction or case, be interpreted as amounting to a “connection”.

We suggest to maintain the reference to a “connection to the State Party concerned”, but to replace “as follows” by “such as [adding a non-limitative list of three grounds].” The LBI would thus retain a general basis that can capture new or unanticipated situations, while making sure that the three listed grounds are always interpreted as amounting to a sufficient connection. Moreover, the reference to a “substantial” activity under 9.5.c is too restrictive, especially given that having an “activity on a regular basis” already constitutes a regular ground for jurisdiction under art 9.2.b. We thus suggest to change “a substantial activity” with “some activity”.

As such, we propose that article 9.5 could be drafted as follows

*Courts shall have jurisdiction over claims against legal or natural persons not domiciled in the territory of the forum State if no other effective forum guaranteeing a fair trial judicial process is available and there is a connection to the State Party concerned, such as:*

- a. the presence of the claimant on the territory of the forum;*
- b. the presence of assets of the defendant; or*
- c. some activity of the defendant*