Oral Intervention on Article 8 of Third Revised Draft of a Legally Binding Instrument

On Behalf of ESCR-Net and Al-Haq, Law in the Service of Man

Mr. Chairperson,

Distinguished delegates and colleagues,

Article 8 must retain mention of “comprehensive and adequate systems of liability” as well as the broad jurisdictional approach of the Third Draft (“conducting business activities within their territory, jurisdiction or otherwise under their control”).

Criminal, civil and administrative legal liability for abuses and violations related to business activities must be clearly articulated.   There should be a clear legal standard classifying how business activities will be prosecuted by State Parties through this legally binding instrument and in accordance to different scopes of liability. This Article must further be enshrined in rights - rather than needs. Any reference to victims “needs” instead of “rights” is very concerning because it frames this concept as a weaker mechanism through which victims of corporate abuse and violations can access the justice system. **Further, the gravity of violations and abuses may differ but endeavors for legal liability and subsequent avenues must be at the disclosure of those affected or impacted by human rights abuses or violations.**

Liability of legal and natural persons under Article 8 must not be limited to crimes accessory to the commission by the main perpetrator such as conspiracy as well as aiding and abetting - it must also refer to situations where legal or natural persons may be directly involved in violations and abuses of human rights - whether separately or jointly with other actors. Categories of accessory liability such as conspiracy are not standards adopted in international law (i.e. the Statute of the ICC)

In Article 8.4, the notion of criminal liability could be further strengthened by the mentioning of specific examples of sanctions or penalties that companies could face should they be prosecuted such as withdrawal of licenses or termination of contracts for company projects and so on.

It would be crucial to ensure that criminal liability under Article 8 is triggered also by a business activity that violates war crimes, crimes against humanity, and other grave breaches of international human rights and humanitarian law. This would ensure that the gravity of the abuse, the public interest and justice is reflected in the kind of legal liability attributed to the perpetrator and the sanctions applied.

Article 8 should also include a provision reaffirming the joint and several responsibilities between all companies involved in an abuse or a violation, be it along the global value chain or in the time of armed conflict. In particular - in Article 8.10, we agree with the proposal by Palestine to include the following provision: *“All companies involved in human rights abuse or violation, whether a subsidiary, a parent company, or any other business along the value chain, shall be jointly and several responsibility for human rights abuses in which they are involved.”*

Thank you