

*Delivered by Mr Sacha Feierabend*

*Check against delivery*

**Eight session of the OIEGWG – Legally binding instrument on business and human rights**

**Article 9**

Thank you, Mister Chair.

FIDH reaffirms its position that the Third Revised Draft (as commented on by states) remains the basis for negotiation and supports States which have made interventions in this direction.

A robust article on jurisdiction setting clear, common international rules is critical for access to remedy of victims. In this respect, we remind that the chances that victims will engage in so-called “forum shopping” or lead to a multiplication of cases if this LBI is adopted are extremely low, given the limited means and huge challenges in access to justice for victims.

On Article 9 of the Third Revised Draft Treaty we suggest the following:

* 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 the term “*violation”* in the text.
* Art. 9.3 which seeks to avoid dismissal of cases on the basis of the *forum non conveniens* doctrine is extremely important. We support Mexico’s suggestion, however, to use the somewhat more straightforward and simple formulation of the Second Revised Draft:

*State Parties shall ensure that the doctrine of forum non conveniens is not used by their courts to dismiss legitimate judicial proceedings brought by victims.*

* Regarding 9.5, we suggest making the list of grounds non limitative by replacing “as follows” by “such as” and enlarging the grounds in article 9.5.c  by modifying “a substantial activity” by “some activity” in 9.5.c. This would read 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,****~~as follows~~*** ***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*** ***~~a substantial~~*** *activity of the defendant*