



Panel V: Content / Obligations of States to guarantee the Respect of Human Rights by TNCs and other business enterprises, including extraterritorial obligations

Oral statement

Thank you Madame Chairperson. I am honored to address this panel as a Vice-President of FIDH and bringing my experience as a lawyer at the Center for Constitutional Rights in New York.

Under international human rights law, States have a duty to protect human rights by regulating the behaviour of non-state actors. States are expected to take all reasonable measures in order to prevent private actors from adopting conduct that may lead to human rights violations.

FIDH strongly believes that the treaty must oblige States to adopt regulatory measures regarding corporate abuses of human rights. This includes requiring business enterprises to adopt policies and procedures that seek to prevent, stop *and redress* negative human rights impacts whenever they operate or cooperate, whether domestically or transnationally, and to establish enforcement mechanisms, to the extent such mechanisms do not currently exist or are insufficient.

At a minimum, States' duty to protect must be interpreted as applying to both home and host States. This position should not be perceived as either controversial or, indeed, as a departure from existing obligations. Such position is consistent with the authoritative interpretation of UN treaty-bodies which have repeatedly reaffirmed States' obligations to regulate the activities of companies, including when they operated abroad. States' extraterritorial obligations are increasingly codified in diverse fields including in human rights, humanitarian, labour and environmental law.

In reality what we are experiencing, despite the adoption of the UN Guiding Principles on Business and Human Rights, are serious obstacles to close the accountability gaps resulting from the lack of legal clarity – whether perceived, argued or real - regarding States' duty to protect human rights, and in particular regarding States' extraterritorial human rights obligations.

Two years ago with the decision of the US Supreme Court in the *Kiobel* case under the Alien Tort Statute, we saw a significant court decision questioning the application of States' extraterritorial obligations and a key States' ability to redress egregious human rights violations even when committed by its own corporations that occur beyond its borders.

Numerous cases have been dismissed in the wake of the *Kiobel* decision, including a case against the US corporation Chiquita despite the fact that the company has admitted to, and was prosecuted for, making payments to paramilitaries in Colombia. This year, the Supreme Court declined to review that dismissal, resulting in impunity in this case – and further closing the door to a remedy for many whose human rights have been adversely impacted by U.S. multinationals. This is yet another illustration of the unequal playing field resulting from a patchwork of judicial decisions interpreting particular, and sometimes varying, national laws. Such situations could and should be avoided with clear legal frameworks clarifying States' –and thereby, in effect, businesses – extraterritorial obligations.

Companies too often continue to hide behind States and argue that they have few, if any, obligations regarding protecting human rights where they do business. In today's global economic context, it would be illusory to address accountability gaps without looking at home States' responsibilities. For FIDH, it is fundamental that any binding instrument clarifies and codifies existing obligations States have as part of their duty to protect in order to strengthen national and regional frameworks and to ensure enforcement.

But of course corporations do have responsibilities vis-à-vis human rights, wherever they operate. Cases we work on in all regions of the world speak to the urgent need to clarify – in law – States' expectations vis-à-vis businesses, including to clarify the nature or scope of conduct by a business entity that will give rise to legal liability, and the provision of an adequate and accessible forum to pursue appropriate remedy. Companies should also be subjected to appropriate sanctions for failing to respect human rights, including for failure to adopt or comply with internal policies and procedures.

Through this international instrument, the obligation on States to translate these standards into national legislation shall be explicitly set forth.

Thank you.