

The logo for FIDH, consisting of the lowercase letters 'fidh' in white on a dark purple rectangular background.The logo for Franciscans International, featuring a stylized blue and green figure above the text 'Franciscans International' and 'A voice at the United Nations'.

**FIAN**  
INTERNATIONAL

Thank you Mr. Chair – Rapporteur,

FIDH congratulates you for your election. I am delivering this statement on behalf of FIDH, together with Franciscans International and FIAN, all members of the Treaty Alliance. We welcome the efforts made by the Chairmanship to publish the new draft well ahead of this 6<sup>th</sup> session. We are pleased to note that the text takes into account some of the comments made by civil society organisations during the latest negotiation session and in recent months.

We noted many positive developments in the new text that should be kept in the course of the negotiations that will take place this week, for example:

- Explicit inclusion of State-owned enterprises in the definition of ‘business activities’;
- Reference to ‘business relationship’ instead of ‘contractual relationship’
- Integration of a more specific gender perspective;
- Reference to free, prior and informed consent;
- Explicit clarification that human rights due diligence (HRDD) cannot be used as a ‘safe harbour’ to escape liability;
- prohibition of *forum non conveniens*;
- Inclusion of the *forum necessitatis*;

We hope as well that this week will further strengthen some of the gaps that still persist in the text in our view, such as, for example:

- Better addressing the **role of the State** both as a regulator and as an economic actor.
- Improve the **protection of victims, of rights holders and their participation** and access to information
- Further reinforce provisions on **Prevention** by better **aligning the language** used with ‘codified’ by? existing international standards
- Further integrate provisions on **abuses and serious violations in conflict-affected areas**.
- Further improve the provisions of the text addressing **liability and access to justice**

**FIDH will provide specific suggestions for improvements on the abovementioned points in the course of the week. We call upon negotiating States—especially those who have repeatedly called for substantive discussions to take place, those who declare being committed to achieve a more sustainable globalisation, as well as those who are contemplating the adoption of domestic mandatory HRDD measures—to take this opportunity seriously and to prepare and engage with the draft’s content, as well as to make efforts to strengthen the text in view of making the protection of human rights more effective in cases of corporate abuse.**

**Thank you**

WOMEN'S INTERNATIONAL LEAGUE FOR  
**PEACE & FREEDOM**



**FIAN** INTERNATIONAL  
FOR THE RIGHT TO FOOD & NUTRITION



**Franciscans International**  
A voice at the United Nations



**Joint Oral Statement**  
**Sixth session of the Open-ended intergovernmental working group**  
**on transnational corporations and other business enterprises with**  
**respect to human rights (OEIGWG)**

Monday, 26 October 2020  
Statement on preamble and Articles 1 & 2  
Delivered by Sandra Epal-Ratjen

*Check against delivery*

Thank you Mister Chairperson-Rapporteur,

This statement is on behalf of FI, WILPF, FIDH and FIAN.

Mister Chairperson-Rapporteur,

Let me take the opportunity of this first intervention of my organisation to welcome you on your renewed appointment as the Chair of this working group and to congratulate you and your team for the second revised draft that we have before us to serve as the basis for this week's negotiations. Our organisations warmly welcome the significant improvements that we find in this new draft and that we will definitively highlight in our interventions under the relevant parts of the program of work.

We add our voices to those of States who support the process and acknowledge that significant progress has been made in the last 6 years to bring us where we are now with a text that still needs some improvements but is a solid basis for a future LBI.

## *Preamble*

1. For the sake of clarity, and legal predictability and certainty, it would be preferable to only have “human rights” and not “human rights and fundamental freedoms,” as currently found in para. 8 of the Preamble. Article 3(3) and all other articles should be updated accordingly.
2. Para. 14 of the Preamble, beginning with “Emphasizing that civil society actors...”, notes the role of Human Rights Defenders (HRDs) in “preventing, mitigating and seeking effective remedy for business-related human rights abuses.” While the role of HRDs is crucial, given the purpose of the LBI, it may be unhelpful to divert the responsibility of prevention from businesses and States. At a minimum, the wording needs to be revised so as not to give the impression that it is HRDs’ role to prevent abuses and violations of human rights.
3. In para. 15 of the Preamble, we recommend adding the phrase “including applicable legal frameworks” after “specific circumstances” so that it reads, “takes into account specific circumstances, including applicable legal frameworks, and vulnerabilities of different right-holders.”

## *Article 1. Definitions*

4. In regards to Article 1(1) and the definition of victims, we acknowledge that there have been improvements from the previous draft. However, it is unclear as to what “substantial impairment” of human rights means. We are concerned that this may impose a high bar on what can be covered under the LBI, and that it may limit what is considered ‘injury, emotional suffering’ etc. in a manner that contradicts the purpose of the treaty.
5. The definition should also allow for victims who are identified in the future. This can be dealt with by including a phrase on “transgenerational harm” or by noting that the definition of victim needs to be read in accordance with the article on statute of limitations.
6. In Article 1(3), we recommend that the phrase “for profit” is removed, to ensure that all activities are covered. Indeed, there are various activities that business enterprises may carry out that would not qualify as for profit but in the context of which human rights violations and abuses can still occur.

## *Article 2. Statement of purpose*

7. In Article 2(1)(b), we suggest to change the text to “To prevent the occurrence of human rights **violations and abuses**” as violations refer typically to the breaches of States obligations under international human rights law while abuses refer to the infringement of rights by other actors like business enterprises. This change would be in line with Article 2(1)(a), which makes clear that the LBI will address both the State’s obligations in the context of business activities and the responsibilities of business enterprises.

8. In that regard, the LBI should have to have stronger language on State obligations to respect, protect and fulfil human rights. This should include defining victims as individuals that have also suffered from State 'human rights violations' (Article 1(1)). It would follow that States would also be responsible for reparations under Article 8(5) (with relevant updates to that paragraph as well).

## Oral statement

### **Sixth session of the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG)**

*Delivered by Alexa Leblanc  
Check against delivery*

Sixth session - OEIGWG: Plenary discussions in accordance with the programme of work –  
Articles 5, 6, 7  
Tuesday 27 October 2020

#### **Thank you M. Chairperson,**

I am delivering this statement on behalf of FIDH, Altsean Burma, LHR, Al Haq, ESCR-net and Franciscans International, CIHRS, SOMO.

We recommend for article 5.1 to cover not only victims, but also “complainants, witnesses, representatives and families, (or) persons participating in any complaints”

In article 5.3, negotiators could add an explicit mention to the necessity for “**State Parties to ensure access to information and effective participation of victims and their legal representatives**” The reference to domestic law should be deleted.

We also recommend adding paragraphs at the end of article 5, on (4) the State’s duty to remedy its own failures, (5) the need to reflect the broad range of reparations that might be needed as a result of an environmental disaster and (7) for reparations processes established after such disasters be designed and implemented with the full participation of those affected.

In article 6, we propose:

1. to align the steps of human rights due diligence with those found in existing international standards such as the UNGPs and OECD Guidelines. This means adding the obligations to (d.) Track the effectiveness of their response (e.) Account for how they address their human rights impacts by communicating this externally (f.) Addressing impacts when they occur, including by adopting immediate and effective measures to cease ongoing violations or abuses and prevent further ones
2. It is also paramount to clarify that companies should “**prevent and mitigate risks**” **on the one hand and “prevent abuses” on the other.** The suggested language is consistent with General Comment 24 of the ESCR Committee, par. 16
3. to specifically address compliance with due diligence obligations for companies that provide goods and services to States or receive subsidies from States;

4. To better include **protection of human rights defenders** as a key element for an effective prevention. We would like here to remember Fikile Ntshangase, , killed in South Africa last Friday because of her activism in opposing the extension of a coalmine
5. It must be integrated in art. 6.3.g that appropriate action in these contexts may include refraining from or ceasing certain operations or business relationships in circumstances in which due diligence cannot guarantee respect for human rights and the rules of international humanitarian law.

Finally, in art. 7:

- we recommend the use of the phrase “**prompt** and effective remedy”
- and to eliminate the ambiguous criteria of “consistency with the rule of law requirements” which risk only to limit the use of the burden of proof.

Thank you

**Oral Statement**  
**Sixth session of the Open-ended intergovernmental working group on transnational corporations and other  
business enterprises with respect to human rights (OEIGWG)**

Wednesday, 27 October 2020  
Statement on Article 9-10  
Delivered by Alexa Leblanc  
Check against delivery

Thank you Mr. Chair Rapporteur,

I deliver this statement on behalf of FIDH, SOMO, ESCR-net, Franciscans International, LHR.

We are pleased to see that the Second revised draft took note of many of our comments particularly concerning art. 9 and 10 and that those provisions have significantly been improved since the last text.

This is an important step forward particularly considering that provisions related to jurisdiction and applicable law are key in ensuring access to effective justice and remedy for victims of corporate abuses, as our experience has repeatedly shown.

In particular we appreciate that the text introduces at 9.3 the obligation for courts of the State of domicile of the business to exercise jurisdiction no matter where the victims are from, thus giving up on the doctrine of forum non conveniens in such cases;

Moreover, we welcome the inclusion of art. 9.4 and art. 9.5 referring to the possibility for State parties' courts to reunite claims that are closely connected and to exercise jurisdiction over claims concerning companies that are not domiciled in the territory of the State if no other effective forum is available and if there is a close connection to the State concerned (forum necessitatis);

In order to further reinforce these provisions and make sure that they offer an effective access to justice to victims of corporate abuses as well as complying with principles of legal certainty, we suggest the following:

- to include in the adjudicative jurisdiction criteria in Article 9.1 a specific criterion allowing jurisdiction of courts located where business enterprises have '**substantial business interests**', in order to avoid that companies escape compensation because they do not have significant assets in the country where they are domiciled. Furthermore, to consider the reintroduction of the victim's domicile in art. 9.1 as it could considerably facilitate the access to justice for victims.
- To insert '**lis pendens**' provisions in Article 9 clarifying how courts should deal with cases that are brought simultaneously in different jurisdictions. Such provisions should aim at prioritising the claims where the court can give a judgement capable of being recognised and, where applicable, enforced in that State Party.
- To insert a specific article on **adjudicative criminal jurisdiction** to clarify the jurisdiction criteria in criminal cases. Existing instruments such as the Convention against Torture and the Convention for the Protection of all Persons from Enforced Disappearance could be used as models for this article.
- To clarify, in art. 10.1, which are the 'serious crimes' concerned. We suggest here to change the sentence to state, "[...] limitations shall not apply to the prosecution and punishment of **all serious crimes of concern to the international community as a whole, including gross human rights violations.**"

Thank you

## Oral Statement

### **Sixth session of the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG)**

Friday 30 October 2020

Final

Delivered by Ulises Quero Garcia

*Check against delivery*

Mr Chairperson-Rapporteur

This is a joint statement on behalf of FIDH, FI, FIAN, ESCR-net, Altsean Burma, LHR, ECCJ, WILPF,

At the closing of this sixth session of the IGWG on a Legally Binding Instrument on Transnational companies and Other Business Entreprises and human rights, our organizations would like to congratulate you, Mr. Chair, your team and also the Secretariat for organizing this session and moving forward with the negotiations even in a difficult context of a global pandemic and the UN liquidity crisis. We also appreciate the delegations who actively engaged and made efforts to foster a qualitative discussion and to improve the text. We restate our support and engagement in the process towards an LBI that will improve the protection of human rights in the context of business activities.

We reaffirm our views that the second revised draft provides a sounder basis for further negotiations and contains many positive aspects that need to be kept in the next steps of the process.

This session has shown that, while there is still work to do to clarify and improve parts of the text, concrete proposals and solutions have been presented by some delegations, which would support progress towards an effective and widely acceptable LBI.

We are remain concerned, however, at the slow pace with which negotiations are taking place and at the reluctance of some delegations to genuinely engage in the discussions by using diverse excuses. The global inequalities and abuses linked to



business activities, further exacerbated by the COVID-19 pandemic, show that it is crucial to keep progressing without unnecessary delay to fulfill the mandate of this IGWG.

To that end, we call on the Chair and all delegations to carry on with negotiations on an intersessional basis until the next formal IGWG session in October 2021. These negotiations could be focused on specific articles or issues with a view to enable better understanding and seek point of agreement among States, allowing pre-agreements to be negotiated in the plenum in next session, with the essential contribution and participation of civil society and experts.

We equally strongly support the request of compilation of an annotated draft showing the changes requested to the text by delegations and civil society organisations as we think this will help facilitate the negotiations and their transparency moving forward.

We welcome advances in the negotiations based on the concrete proposals made this year that could help to have a bracketed text by delegations and civil society organisations as we think this will help facilitate the negotiations and their transparency moving forward. But in that regard we support the creation of a matrix.

Thank you