



FIAN INTERNATIONAL
FOR THE RIGHT TO FOOD & NUTRITION



Franciscans International
A voice at the United Nations

DRAFT - Joint oral statement – Open informal consultation of the Open-ended intergovernmental working group with the mandate to elaborate an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights

29 Mai 2020 – 10:00am to 12:00pm

Delivered by Maddalena Neglia

Thank you, Mr. Chairperson-Rapporteur

Mr. Chairperson,

FIAN International, FIDH and Franciscans International, all members of the Treaty Alliance and of ESCR-Net welcome the opportunity to participate in this informal consultation. The respective positions and concrete proposals of our organizations can be found in our statements and submissions for the 5th session and in response to the call for additional textual suggestions. We shall not repeat these, rather we want here to highlight some key proposals that our three organizations share.

Before going into specific points and suggestions, we cannot but notice that the consultation is taking place under very peculiar circumstances with the COVID-19 pandemic and responses to it dramatically exacerbating human rights violations across the world.

First, on the process, our organizations have joined many others, notably those based outside of Geneva to raise concerns of the impact of holding virtual meetings without interpretation that de facto exclude the civil society participation from entire regions in UN negotiations and debates. Whilst we recognise that this depends on the overall functioning of UNOG, we are concerned that these exceptional circumstances could set damageable precedents and find resonance with some interventions made at the 5th session towards the restriction of civil society participation in the process.

Second, on the *raison d'être* of the negotiations of a future Legally Binding Instrument: the COVID-19 pandemic has showed that international norms for enhanced business accountability, especially for TNCs, for human rights abuses are more than ever fundamental to change the model that has brought us to where we are now. We have witnessed these months both the negative role that deregulated globalisation has played on the causes of the crisis and the role that certain companies had in worsening the consequences of the crisis as many of them for example cancelled overnight



the orders from their suppliers thus leaving the more vulnerable workers without an income nor social security.

In particular, with regard to the part of the draft LBI in focus today, namely articles 1 to 5:

General recommendation

As we and many others already mentioned during the 5th session, we recommend the elimination of all references to “contractual relationships” throughout the draft text, and using the phrase “business relationships” instead. In line with this recommendation, we also recommend removing the definition of “contractual relationship” in Article 1.4, as this would no longer be needed, and from the definition of “transnational character” in Article 3.2b.

Recommendations regarding Article 4. Rights of Victims

We recommend the following four changes:

1. Modifying the title of Article 4 to **“Right to Remedy”** or **“Access to Justice”** and placing this entire article after Articles 5 on Prevention and 6 on Liability. The change of place was also suggested by Brazil.
2. Moving Articles 4.9 and 4. 15 on **Human Rights Defenders** to Article 5 on Prevention.
3. Modifying Article 4.16 on **Burden of Proof** to ensure that, in the interest of justice and of procedural fairness, the burden of proof falls on the party best placed to access or obtain the relevant information. This will mean in many cases that will be at stake under the future LBI to reverse the burden of proof to ensure that victims’ access to justice is real.
4. Including under article 4.5 on access to justice after “non-discriminatory” the phrase “gender responsive” to emphasize the specific gender-specific barriers women face when accessing justice.

Recommendations regarding Article 5. Prevention

We think that a number of modifications should be done on this article. We will only mention four here:

1. Article 5 on prevention should include a provision on the particular obligations of States when they engage themselves in business activities through State-owned companies or when they shape and implement public policies involving business activities, such as those relating to trade, investment, development or procurement.



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2. For the chapeau of article 5.2, we suggest that a provision be added to proportionate the due diligence undertaken by TNCs and OBEs to the size, risk of severe human rights impacts and the nature and context of the operations.

3. There should be changes in Article 5.3 b and e and we suggest adding a new para c, as follows:
 - b. [...] Consultations with indigenous peoples will be undertaken in accordance with international human rights standards, including the right to free, prior and informed consent.
 - c. [New] Carrying out tailored impact assessments to identify and address the differentiated risks faced, and impacts experienced by, women in consultation with potentially impacted women, women's organisations and gender experts.
 - e. Respecting the standards of international humanitarian law and adopting and implementing enhanced human rights due diligence measures to prevent human rights violations or abuses in conflict-affected areas, including situations of occupation.

4. Article 5.5 which deals with the issue of "corporate capture" can be further detailed and strengthened to include the obligation for States to also protect "legal processes and government bodies" from commercial and other vested interests.

Thank you