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Report of the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights -

Report of the Chairperson-Rapporteur: Amb. María Fernanda Espinosa Garcés

The Chairperson-Rapporteur has the honour to transmit to the members and observers of the Human Rights Council the report of the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, submitted in accordance with Human Rights Council resolution A/HRC/RES/26/9.

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I. Introduction

1. The Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG) was established by the Human Rights Council (HRC) in its Resolution A/HRC/RES/26/9 on 26 June 2014. According to its mandate, its first two sessions shall be dedicated to conducting constructive deliberations on the content, scope, nature and form of the future international instrument and its first session shall be held for five days in 2015, before the thirtieth session of the HRC; its first meeting shall serve to collect inputs, including written inputs, from States and relevant stakeholders. Moreover, the HRC affirmed the importance of providing the OEIGWG with independent expertise and expert advice, and requested the United Nations High Commissioner for Human Rights to provide the OEIGWG with all the assistance necessary for the effective fulfilment of its mandate, and further requested the OEIGWG to submit a report on progress made to the HRC.
2. According to the annual Programme of Work of the Human Rights Council, it was decided that the Working Group would meet from 06 - 10 July 2015.
3. The session was opened by the Deputy High Commissioner for Human Rights, on behalf of the United Nations Secretary-General on 06 July 2015. The Deputy High Commissioner opened by introducing a video message by the High Commissioner for Human Rights in which he highlighted that since the introduction of the Universal Declaration of Human Rights international human rights law has been evolving with the increasing awareness that non-state actors have a responsibility to ensuring accountability and access to remedies when rights have been abused. Furthermore, he noted that Guiding principles on business and human rights were an important step and welcomed the Intergovernmental process as a next step, without conflict between advocating for both to enhance business context. Finally, he urged all member States to work in a constructive spirit in order to further advance human rights. The Deputy High Commissioner also welcomed all the participants and noted that their inputs would be essential to the future protection of human rights. She also expressed the readiness of the Office of the High Commissioner for Human Rights to assist the OEIGWG in all its endeavours.
4. As keynote speaker the United Nations special rapporteur in the rights of indigenous peoples noted that an international legally binding instrument on TNCs and other business enterprises and human rights could contribute to redressing gaps and imbalances in the international legal order that undermine human rights, and could help victims of corporate human rights abuse access remedy. In this regard she highlighted that since several decades, indigenous peoples have been victims of serious human rights violations by the action or omissions of TNCs and other business enterprises. Furthermore, the Special Rapporteur underscored that the Guiding Principles should continue to be used as an interim framework while continuing the elaboration of the instrument by HRC and its OEIGWG. Ms. Tauli-Corpuz also underlined the lack of remedy procedures for victims of corporate human right abuses. Therefore the creation of a legally binding instrument is of paramount importance.

II Organization of the session

A. Election of the Chairperson-Rapporteur

5. At its first meeting, on 06 July 2015, the Working Group elected Ambassador María Fernanda Espinosa Garcés (Permanent Representative of the Republic of Ecuador) as its Chairperson-Rapporteur by acclamation after her nomination by the representative of Guatemala on behalf of the Group of Latin American and Caribbean Countries (GRULAC).

B. Attendance

6. Representatives of the following States Members of the United Nations attended the Working Group's meetings: Algeria, Argentina, Austria, Bangladesh, Plurinational State of Bolivia, Brazil, Bulgaria, Chile, People's Republic of China, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Egypt, El Salvador, Ethiopia, France, Ghana, Guatemala, Republic of Haiti, Greece, Republic of Honduras, India, Indonesia, Islamic Republic of Iran, Iraq, Italy, Kenya, Republic of Korea, Kuwait, Latvia, State of Libya, Liechtenstein, Luxembourg, Malaysia, Republic of Moldova, Morocco, Myanmar, Nicaragua, Namibia, Netherlands, Pakistan, Republic of Peru, Philippines, Qatar, Russian Federation, Singapore, South Africa, Switzerland, Syrian Arab Republic, Thailand, Trinidad and Tobago, Tunisia, Ukraine, Mexico, Uruguay, Bolivarian Republic of Venezuela, Vietnam.

7. The following non-Member States were represented by observers: Holy See and the State of Palestine.

8. The following intergovernmental Organization was represented at the meetings of the Working Group: the European Union, the Organisation for Economic Co-operation and Development, Council of Europe, UN Women, UNICEF, ILO, UNCTAD, South-Centre.

9. The following non-governmental organizations in consultative status with the Economic and Social Council were represented by¹.

C. Documentation

10. The Working Group had before it the following documents:

(a) A/HRC/RES/26/9 Resolution on the elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights.

(b) A/HRC/WG.16/1/1 Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights First session - Provisional agenda

(c) Other documents, including the concept note, list of panellists and their CVs, list of participants, contributions from States and other relevant stakeholders were made available to the Working Group through the website:

<http://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOntNC.aspx>

¹ See the complete list in the annex.

D. Adoption of the agenda and programme of work

11. In her opening statement, the Chairperson-Rapporteur thanked all the Members of the Group for her nomination as Chairperson-Rapporteur and welcomed their encouraging remarks towards the Working Group. She also noted that, after the adoption of the programme of work, there would be an opportunity for general statements. She noted that there would then be a number of panel discussions and that each panel would discuss a thematic issue, according to the proposed programme of work. She further noted that, after each panel discussion, there would be an opportunity for comments from political and regional groups, Member States, intergovernmental organisations, national human rights institutions and civil society. Participants were invited to share their views on the theme of the panel and ask panellists questions around their specific area of expertise. The Chairperson-Rapporteur informed the participants that the final report would include: summaries of the debate, summaries of the panel discussions, and recommendations by the Working Group. The Chairperson-Rapporteur noted that she had conducted intensive consultations with delegations, regional and political group as well as informal bilateral meetings before the session, and that she looked forward to a fruitful discussion, based on the various views of the participants. The Chairperson-Rapporteur also noted that the programme of work was presented with enough time and further bolstered by contributions by states in a way that does not affect the mandate nor precluding basis for consensus. The Chairperson-Rapporteur underlined the basic principles for conducting the session of the Working Group, namely transparency, inclusiveness, and democracy.

12. The Chairperson-Rapporteur asked if there were any comments on the programme of work. A delegation representing an intergovernmental organization noted that Human Rights Council resolution 26/22 provided a solid and robust work plan and they were fully committed to implement it. The delegate noted that the States he represented remained convinced that a separate resolution to 26/22 in the form of resolution 26/9 was unnecessary and polarised the Human Rights Council in an area where it was necessary to create consensus. Therefore that delegation made two amendment proposals to the programme of work presented by the Chairperson-rapporteur by adding a first panel entitled; "Implementation of the United Nations guiding principles on business and human rights – a renewed commitment by all States" and to add the word 'all' before the word "business enterprises" when they appeared throughout the programme of work, without changing the title as it is in line with Resolution 26/9. This proposal was supported by two delegations.

13. Several delegations noted their concern with regards to the suggested substantive changes by the delegate representing an intergovernmental organization and noted that they were ready to adopt the programme of work as it was presented by the Chairperson-rapporteur. A number of delegations also argued that resolution 26/9 was clearly defined and did not need further clarification and does not apply to national companies, they also highlighted that paragraphs 1, 3 and 5 clearly define the scope and nature of the discussions and that it would be inappropriate to amend the programme of work to say 'all' because it is not featured in the mandate. Another delegation stressed that the working group should conduct itself in accordance with resolution 26/9 and that the discussions should not reopen the resolution text. A number of delegations noted that they did not see any contradiction between the United Nations guiding principles on business and human rights and resolution 26/9 and that although they believed the guiding principles could be discussed throughout the working group session they were willing to support the proposal of an extra panel on the Guiding principles in the spirit of consensus building but no the second proposal to include the word "all" before "other business" throughout the programme of work.

14. The Chairperson-rapporteur having heard the suggestions and concerns of various Member States decided that there should be a break in the session so that informal consultations could take place in order to find a consensus and to allow for the adoption of the programme of work.

15. Based on a suggestion made by a Party and some informal consultations, the delegation representing an intergovernmental organization proposed to include a clarification footnote to the programme of work, instead of the inclusion of the word “all”.

16. The Chairperson-rapporteur reopened the meeting and based on the different views heard during the informal consultations and in the spirit of finding consensus, presented a revised version of the programme of work including an additional first panel with the participation of Mr. Michael Addo, chairperson of the Working Group on the issue of human rights and transnational corporations and other business enterprises, and without the inclusion of the second amendment, taking into account the lack of support from the floor to include the word “all” before the word “other business”, or to include a clarification footnote to the programme of work. The Chairperson-rapporteur’s revised programme of work received strong support from several delegations, including the acceptance of the delegation that presented the two amendments. The Chairperson-rapporteur thanked all the Members of the Working Group and declared adopted the revised programme of work. A copy of the new programme of work, which included the new panel, was then shared by the secretariat with all participants.

17. The Chairperson-rapporteur then read through the programme of work and proposed that the first panel on the United Nations Guiding Principles on business and human rights take place immediately and that this be followed up by the next panel leaving then time for general statements.

III. General Statements

18. During the session and throughout the panel discussions, the floor was opened for general statements in which, the Chairperson-Rapporteur reiterated her intention for the Working Group to proceed in a transparent, inclusive, consensual, and objective manner.

19. A number of delegations, including one speaking on behalf of the African Group noted that they were pleased to take part in the Working Group and voiced their positive support for the process, particularly in the context of the progressive development of international human rights law. They also noted that whilst there are many economic benefits from TNCs activities there had been human rights protection gaps that cannot be compensated by mere financial benefits. It was also highlighted by a number of States that there could be large asymmetric power dynamics between TNCs that need to be balanced. They also argued that it was appropriate to find remedies and solutions for victims of human rights violations; which must be the main concern during the treaty process.

20. A number of delegations noted that the United Nations Guiding Principles on business and human rights do not get to the core of the discussion of maximum protection of human rights and access to remedies and that a complementary international standard was needed in order to strengthen national capabilities to ensure human rights protection in the domestic sphere. It was also highlighted by a delegation that TNCs and other business enterprises must conform to the values and principles of the United Nations. Several delegations reaffirmed that the principles of universality, indivisibility, participation, accountability and transparency should be applied. A

delegation also noted that many advances had been made in the area of business and human rights, and that a new instrument would be a logical extension of this work.

21. Some delegations noted that it was their hope that future legally binding instrument would include environmental principles, inherent dignity, freedom, justice, peace, respect for all rights, universal indivisible nature of human rights; use of best technology, polluter pay principles, relevant intellectual property rights, free prior informed consent, subsidiarity, burden of proof and a number of principles to be found in relevant international instruments. They also highlighted that the interdependence and indivisibility of human rights should be recognised, and stressed the importance of the duty of the individual to defend human rights.

22. A number of intergovernmental organisation noted that there was keen interest in the areas of business and human rights, particularly in the outcomes of the working group. One intergovernmental organisation noted that any future instrument should take existing national and international guidelines into account and argued that this should be done through a multi-stakeholder process. One non-governmental organisation highlighted that a normative hierarchy of international law should be central to the new treaty. Another non-governmental organisation noted that current legal frameworks were inadequate to deal with the impacts of TNCs and that trickle down development has been widely discredited, but was still being implanted by TNCs, often in collaboration with States.

23. A number of non-governmental organisations called on States, and political groups to actively participate in good faith and constructively. They also highlighted how the treaty was a unique opportunity to empower local communities to take charge of own development. They argued that communities must be able to take part in debates, have a say in resolutions, and be able to directly participate in working groups, and there should be feedback at each stage of drafting treaty.

24. Several participants and delegations noted that the Guiding Principles were complementary and not in contradiction to a legally binding instrument, and that the treaty could help to protect the most vulnerable. It was also noted that treaty should focus on the indivisibility and universality of human rights and therefore should have an extraterritorial scope. One non-governmental organisation argued that a legally binding treaty should spell out liability for companies.

25. A number of non-governmental organisations and one participant speaking on behalf of several civil society organisations noted that the conduct of all business enterprises should be regulated. It was also noted by the participant that the new treaty should adopt a flexible approach, adopt certain provisions, but should provide for measures to address the particular challenges of TNCs, but without imposing one size fits all approach.

26. One non-governmental organisation noted that land and territory needed to be taken into account as did the right to subsistence for indigenous peoples. They also highlighted the need to consider the right to environment, health, and access to reparations.

27. A number of non-governmental organisations voiced concerns regarding the human rights that the treaty should cover and urged caution against the treaty being limited to gross human rights violations, as they could be limited to crimes under international law, which does not cover most corporate human rights abuses.

28. Some non-governmental organisations pointed out that all rights and particularly the right to food and nutrition needed to be covered by the treaty because evictions, depletion of fish stocks and forests, harm to health, destruction of food, crops, animals, seeds, have been documented. They also noted that violating these rights impacted on

an individual's right to self-determination and ability to access adequate standard of living.

29. Some non-governmental organisations noted that the treaty needed to protect workers' rights and that a legally binding instrument should clearly outline duty to ensure rights of workers to safe and healthy working environment, and hope treaty can strengthen work of ILO.

30. A number of non-governmental organisation noted that women's rights needed to be duly addressed by the treaty as women are particularly affected by working longer, receiving less salary and are often subjected to domestic abuse and gender based violence as this often takes place in the private sphere.

31. Some non-governmental organisation highlighted the cases of use of obsolete technologies, bad practices and environmental damage that impacted upon individuals' human rights, on food security, the right to life, and the right to health. They also highlighted how pesticides used by transitional organisations were further eroding both the environment and the quality of life of communities and noted that these practices had both short term and long term effects on the local populations.

32. Some non-governmental organisations highlighted that often trade and investment agreements allow transnational corporations to attack States at the international level and that the treaty needed to guarantee human right principles by re-affirming obligations of State and non-State actors to protect human rights

33. A non-governmental organisation that represents many organizations from across the world noted that the working group was a historic moment and noted that systematic violations continue, therefore it was important to have a binding legal instrument as human rights should be protected by international instruments.

IV. Panel discussion

A. Panel I – Implementation of the UN Guiding Principles on Business and Human Rights: A Renewed Commitment by All States

34. A Chair of the Working Group on the issue of human rights and transnational corporations and other business enterprises noted that its work can contribute to the mandate of the OEIGWG to provide remedies for corporate human rights abuses.

35. The panellist noted that a legally binding instrument may help to advance and strengthen human rights and help reaffirm the call for States to implement national action plans to address businesses and human rights. He also noted that in Resolution 26/22 the HRC had invited the OHCHR to explore legal options for victims of human rights abuses and that this had led to an accountability and remedy project.

36. Finally, the panellist highlighted the need to create interstate cooperation and capacity building as a way to carry the process forward, considering victims as the centre of the process.

37. Several participants considered the importance of taking into account the UN Guiding Principles and its role as reference point for the process of an international legally binding instrument, by emphasizing that there is no contradiction among them as they are mutually complementary. Moreover, some of them reiterated their engagement for its application and their efforts made to design and implement initiatives in this regard.

B. Panel II – Principles for an International Legally Binding Instrument on Transnational Corporations (TNCs) and other Business Enterprises with respect to human rights.

38. One panellist noted that corporate social responsibility and business and human rights were not the same thing and that corporate social responsibility is not legally binding. Another panellist explained that there are ways in which States and intergovernmental organisations could change the rules of the game by having policies that deter and refuse companies with bad human rights records.

39. Moreover, one panellist noted businesses were not opposed to regulation but wanted smart regulation and that although there needed to be a balance between human rights and attracting foreign investment there was a need to shoring up soft law by hard law. Furthermore, the panellist noted that there were a range of common sense principles that could be adopted for the development of a legally binding instrument, such as being progressive not regressive; being fact and evidence based; being realistic and feasible; that the goal of the treaty should include capacity building to contribute to the internal behavioural change; universal in nature; transparent and an inclusive good process, have good governance principles, and must be oriented towards an effective attention of victims.

40. One panellist noted the importance of the development of norms and argued that international law needed to continue to be developed. The panellist highlighted the development of some international legally binding instruments and noted that they were first opposed by the international community but eventually an important support was reached because of specific needs as part of the development of international law principles.

41. One panellist noted that it would be regressive to limit the working group to only looking at gross human rights violations or to treaties that States are a party to because it would limit its legally binding nature. Moreover the panellist noted that international financial institutions such as the International Monetary Fund and the World Bank could also be covered by the scope of the instrument and that it would be consistent with international law. The panellist also noted that all States have obligations to provide remedies for victims and that States should consider the position of vulnerable people. It was also argued that the establishment of a supervisory body could be achieved through contributions from business and eventually be an optional protocol to the instrument.

42. Additionally one expert question noted that all entities that yield power should be subject to the binding instrument, but that this depends on practicalities of working group and that it was not a question of size of the organisation but the impact upon human rights that the activities have. Another panellist agreed that it was the activities that mattered but strongly agreed that focus should be on transnational corporations, but understood that other businesses can violate human rights.

43. One panellist in relying to questions from States noted that investment is crucial for many States and that the right to human and social development were also human rights. Other panellists furthermore noted that investments can have significant positive impact if done appropriately and that human rights needed to be considered part of the development process and not to be seen as in opposition to development.

44. Some delegations emphasized that all human rights should be included in a future instrument, emphasizing on its universality, indivisibility and interdependence.

45. Some panelists stressed on that the process of elaborating an international binding instrument must strengthen the universality of human rights. Moreover, the principle of corporate responsibility and of reparation for victims must be taken into account without a hierarchy. In this regard, an international binding instrument will create a set of basic

and standard principles for all the TNCs. Therefore, all the TNCs will have the same obligations.

46. Furthermore, a number of participants considered that the instrument should include the principle of direct responsibility of TNCs, and the right to development. Another fundamental right that must be included in the instrument is the right to legal defense and remediation mechanisms.

47. Part of the panelists considered that the preparation of an international legally binding instrument on TNCs and other business enterprises with respect to human rights should be a common interest, particularly for victims. Likewise, panelists agreed that the intergovernmental legally binding instrument should not backslide from what was achieved in the UN Guiding Principles.

48. The panelists also argued that the adoption of national actions plans should be encouraged, and one panelist observed that these tools could be a good step towards the legally binding instrument and therefore, the OEIWG should not be patient in the design of such an instrument for the protection of the rights of the victims. Similarly, the panelists observed that human rights are universal, interdependent and indivisible, and that the future legally binding instrument should not counter these principles. One panelist considered that this instrument must include all the obligations of States in respect of corporations' conducts. Another panelist took into account that capacity building, transparency and principles of good governance should be integrated in the instrument.

49. Several States considered that UN Guiding Principles are a starting point and a reference for the work of the OEIWG. Some States commented that long term investments of TNCs can contribute to poverty alleviation and development, and that the instrument should not discourage corporate investment, but encourage companies to fulfill their responsibility to respect human rights. One State noted that the current approach on Corporate Social Responsibility does not have legal weight and that cannot be upheld for the protection of human rights in front of a court, and that even if national action plans are applied, companies can jump from one jurisdiction to another, and he also noted that these plans are not uniform.

50. Some States stressed that an international legally binding instrument should consolidate the current norms in international law and, one State considered that some principles could also be brought from other fields of law, for example reversal of the burden of proof, the one who contaminates pays, precautionary principle, and others. Likewise, one country observed that such instrument must consider also the specificities of each country, including its legal system, corporate structure, social norms, traditions, culture, history and stage of development. One State noted that this is an historic moment embarking in a new pace in global human rights promotion and protection. Similarly, some States recognized the necessity to move from corporate social responsibility to obligations under human rights law.

51. Most NGOs agreed upon the recognition of the principle of hierarchy of Human Rights above other fields of international law, particularly commercial rules. One NGO considered that an instrument should address relevant principles of human rights, such as the primary responsibility of States, the obligation to protect and guarantee human rights, the domestic and extraterritorial responsibility of businesses, the application of the precautionary principles, the principle of international cooperation, among others.

C. Panel III –Coverage of the Instrument: TNCs and other Business Enterprises: concepts and legal nature in International Law

52. One panellist noted that from a macro-economic view, corporation's size does matter and noted that half of the hundred leading economies were transnational corporations and that a third to quarter of all economies are companies. Some States considered the nature of the operations of transnational enterprises, their size and their corporate structure have an impact on human rights. The panellist noted that there has been a fundamental shift between the balance of power between transnational organisations and States that has been driven by core factors such as the rise of new technologies that facilitate management of companies across borders; the deregulation of many economic activities of transnational corporation trade, privatization, intellectual property rights and the process of financing affecting transnational corporations which has shifted decision-making from directors to particular institutional shareholders. Another element to consider are the extent of control of the company as opposed to mere ownership, especially with regards to the influence on States, civil society, employees and international organizations; and that currently there is an absence of countervailing power that could channel this space of influence.

53. A number of delegations highlighted the need to ensure the focus was kept on transnational organisations because they argued local businesses cannot move from a geographical area as transnational corporations can, and that the treaty should ensure that transnational organisations cannot evade responsibilities because of the extra-territoriality dimensions of transnational organisations. One delegation noted that the main objection of the legally binding instrument should be to fill any legal gaps in international human rights law. Another delegation noted that there had been no significant discussions over the last decade regarding international liability for transnational corporations and that there were already victims of their activities awaiting some form of remedies. The same delegation warned against having a fixed definition because they argued experience showed it is not always possible to come to agreement of a definition, but possible to reach common understanding; for example, the International Labour Organization (ILO) Tripartite Declaration of Principles concerning multinational enterprises and social policy, and the Organisation for Economic Co-operation and Development (OECD) Guidelines, use no specific definitions when defining terms such as investment. They also noted that there was a debate on the possibility for transnational organisations to have a legal standing in international law.

54. One panellist noted that traditional international law scholars have argued that international law is only applicable between States but that there were many examples throughout history where non-State actors could be subject to international law. The panellist also noted that there were various examples such as the British Modern Slavery Act, where the law was applied throughout the supply chain to try to stamp out slavery.

55. One panellist noted that what needed to be central to the development of a legally binding instrument is to clearly define the objective of the instrument. Regarding this point, some delegations and participants pointed that the instrument must focus mainly on gaps to address human rights impacts of transnational operations, and that it should focus on the transnational nature of the operations as there is no clear definition of transnational corporation.

D. Panel IV – Human rights to be covered under the Instrument with respect to activities of TNCs and other business enterprises

56. Several participants, including panellists and delegations, noted that the activities of transnational organisations could impact on a wide array of human rights; furthermore, the difficulty is that there is no definition of grave violations of human rights in

international law. Therefore they argued that it was wrong to limit the treaty to gross human rights violations, as it would signal that other violations are tolerated, as they would be considered less serious. They also noted that current rules are not sufficient and therefore we need an international response, generating interstate cooperation, with extra-territorial competencies. Some States and panellists noted that all human rights are universal, indivisible and interdependent as recognised in the Vienna Declaration and Program of work. The panellist highlighted that human rights violations have a special dimension linked to poverty, to the rights of the child and a gender dimension.

57. Several panellists, delegations and participants noted that all human rights should be included in the binding instrument, since transnational activities have impact on a wide range of stakeholders, including the communities in which they operate. They argued about the need to use adequate methodology for identifying corporate responsibility which can consist on a twofold test that implies two steps: first, when a company violates a right, or when it directly benefits from the abuse of the right, the corporation will be responsible. The second part refers to two questions: what is the nature of the right, and what does that right entail. From this point of view, the emphasis relies on the victim and its rights, not on the agent of the conduct.

58. The panellist also noted that a binding instrument must speak to the reality of poverty and noted that almost all instances of violations happen in impoverished contexts. The panellist argued that poverty, she argued, was a violation of international human rights and that corporations should not exacerbate or benefit from sustaining levels of poverty. Finally the panellist argued that gender roles and norms have a discriminatory impact, and that the binding instrument must be written from a gender perspective, to ensure the instrument is effective. Several panellists and participants reaffirmed that victims all around the world are in need of effective remedies for all rights violations.

59. A number of delegates reaffirmed that the scope for the instrument should have as a starting point the core human rights instruments of the United Nations Organisation; specially the rights of vulnerable groups, such as children, indigenous peoples, people with disabilities, among others. In this sense, delegations, participants and panellist signalled that a limitation on the scope of rights would be contra-productive to the objectives of the instrument.

60. A number of States also noted that the legally binding instrument must make transnational organisations legally liable for human rights and fundamental freedoms, and define the role and responsibilities of non-state actors to uphold human rights in their activities. They noted that transnational organisations had operated for years under soft law, which had enabled transnational organisations to violate human rights. One delegation noted that there was a need to strike a balance between individual and collective rights, which have a bearing on upholding the right to development, and the right to peace.

E. Panel V – Obligations of States to guarantee the Respect of Human Rights by TNCs and other business enterprises, including extraterritorial obligation

61. The panellists and non-governmental organizations agreed that gaps exist regarding state's extraterritorial obligations to respect, protect, and fulfil human rights obligations in regard to transnational corporations and other business enterprises, particularly in regard to jurisdiction. Some panellists further agreed that States should be responsible for indirect facilitation of human rights abuses, or failing to act to curb private actions

that violate human rights obligations. Some panellists also noted that obligations of due diligence gives states extraterritorial obligations for transnational corporations of their State that are operating abroad. Some panellists recommended abolishing “*forum non conveniense*” as one measure to ensure transnational corporations do not avoid human rights obligations. A few panellists and various non-governmental organizations mentioned the need to ensure an adequate forum to address claims by victims and provide access to justice and redress. One panellist and various non-governmental organizations stated the need to reaffirm the supremacy of human rights law over investment regulations.

62. One panellist noted that national legislation and jurisdiction is not enough to address human rights abuses by transnational corporations, and provisions of international law need to deal with the issue, in addition to strengthening domestic law. States should establish a stable and predictable legal framework, through well-defined laws to promote enjoyment of human rights including awareness raising and dissemination in the corporate world. One panellist argued that extraterritoriality should be applied by way of ensuring that violations committed by TNCs are dealt with pursuant to the law of the country where they are based and where they are functioning.

63. One panellist noted that there are existing legal mechanisms for human rights in the business realm within the treaty bodies and guiding principles, but that gaps exist and need to be addressed through international cooperation. In particular, victims of human rights abuses should be able to bring cases in the home state of transnational corporations. The panellist ended with two considerations: First, discussions should include whether the instrument will outline remedies available if states do not act on obligations, or whether it will address jurisdiction of solely corporations, or both. Second, the prospective instrument should focus on filling gaps in domestic law, as all business enterprises, including domestic entities, will be covered by using national mechanisms through an international instrument.

64. One panellist noted that the conclusion drawn from the guiding principles have been heavily criticized for failing to account for jurisdictional limitations in order to enable extraterritorial application, and that there are various options for operationalizing extraterritorial obligations in order to close legal gaps. Specifically, the panellist noted that extraterritorial obligations could be operationalized by creating prevention, disclosure, and reporting requirements, removing obstacles to the exercise of jurisdiction, removing the doctrine of forum non conveniense, facilitating cross-border cooperation in investigations, and mutually recognizing national judgments. The panellist went on to say that in operationalizing extraterritorial obligations, the issue of scope does not arise, and that there is not a need to define ‘transnational corporation’ when there is a positive human rights obligation regarding the duty to protect. The panellist specified that corporate activities could undermine, among others, the right to self-determination, right to healthy environment and many other rights. Some States suggested that a global partnership to fight against impunity could address the imbalances and close the gaps in international law; in this sense, the Maastricht Principles on States extraterritorial obligations in the area of economic, social and cultural rights are a useful guide. Further they noted developed countries have the obligation to cooperate with developing countries in this regard, due to the sometimes limited capabilities of developing States to face TNCs human rights violations.

65. One panellist noted that generally, for various reasons, criminal sanctions are inadequately enforced in home states and adequate civil legal representation is not available. Some delegations noted there is a need to address the corporate veil and permit disclosure and access to documentation in order to combat impunity.

Specifically, there are significant deficiencies when a parent company is sued in their home state, and issues of sovereignty tend to arise in the home state. The panellist also noted that many civil codes have clauses that can be read to provide liability, and that a tort-based approach, where a legal duty of care is owed by acts and omissions in regard to a company, could be useful.

66. A number of delegations highlighted there is a need to take into account the sovereignty of states, and address only impunity. Unilateral coercive sanctions imposed by states are a violation of human rights, and jeopardizes human rights. A couple delegations noted the need to balance rights of investors with ensuring human rights. One delegation noted that states could promote human rights by requiring transnational corporations to report on how they are addressing violations, and making sure legal systems include complaint mechanisms for issues arising outside their territory. One delegation also noted the importance of ensuring access to remedies for victims.

67. Some non-governmental organizations noted that free trade agreements and investment agreements needed to account for human rights. Various non-governmental organisations also noted the importance of ensuring protection for human rights and environmental defenders, as well as local communities and pointed that a better access to remedy is a requisite for human rights protection. One non-governmental organization recommended that States pass laws that require due diligence to make implementing human rights mandatory.

F. Panel VI – Enhancing the responsibility of TNCs and other business enterprises to respect human rights, including prevention, mitigation and remediation

68. One panellist noted three particular issues: the language of responsibility, integration of human rights standards, and scope of free prior and informed consent. The panellist noted that language should distinguish between duty, which is obligatory, and responsibility, which is voluntary. As such, the panellist noted that corporate social responsibility is voluntary and based on selective set of projects that are usually charitable in nature. It is distinct from compliance with international human rights law, which does not allow for rights selection. The ‘pick and choose approach’ under corporate social responsibility means that corporations could simultaneously commit violations while taking on CSR projects. Second, the panellist noted that going beyond corporate social responsibility requires integrating human rights standards into the entire corporate structure, both internally and externally. Finally, the panellist noted that free, prior and informed consent practices tend to have flaws in timing, and methodology, and tend to have superficial objectives. The panellist noted that to address these deficiencies, the views and decisions of the community should be taken into account, and an equal relationship should be established to ensure effective bargaining. The panellist emphasized that victims should have a say in regard to what kind of remedies are available to them.

69. One panellist noted that intergovernmental working group should build on the second pillar of the Guiding Principles, but not blindly copy all its content; while both processes are complementary, it is important to recognize the limitations of the Guiding Principles and try to fill the gaps. Otherwise, the Treaty could be an additional instrument that suffers from the limitations of the Guiding Principles. The panellist further noted that responsibility under international human rights law entails legal accountability and legal duty. However, ‘responsibility’ as used under the second pillar

of the UN Guiding Principles does not reflect this understanding. The panellist stated that if used under the Treaty, it is important to clarify the term 'responsibility', providing a definition that differentiates it from how it was used under the Guiding Principles. The panellist also noted that although non-judicial mechanisms are important, they need to be robust legally binding instruments. Further, the panellist noted that though states have primary responsibility, this argument should not hide the fact that the companies have independent responsibilities. The panellist also noted the need for affordable and timely redress, reformation of corporate law, and possibly a relief fund for victims. Companies could contribute to such a fund, at either the national or regional levels, based on a proportion of their annual turnover. Finally, the panellist noted that dismantling corporate power could be a valid goal but dismantling state power is also critical, as states are not always responsive to the needs of the people.

70. One panellist noted the International Labour Organization's approach to due diligence and pointed out that the obligations under ratified conventions and fundamental principles directly fall on states while the role of business is in ensuring real effect for international labour standards. States hold obligations to support business in carrying out meaningful due diligence and ensuring that their operations fully respect human rights. The panellist further noted that while States have primary responsibility to protect human rights, even if states are not fulfilling their responsibility, corporations have autonomous obligations; these are independent and complementary and should not be confused. The panellist also noted that the ILO's instruments could provide guidance in this aspect. Specifically, the panellist motioned the 'Maritime Labor Convention', as an example of a treaty that includes a clear indication of ship-owners' liability. While states ratify the instrument, it refers directly to private ship-owners' obligations. Finally, the panellist noted that while some speakers focused on the role of the home state in ensuring that companies within their jurisdiction comply with due diligence, there are instruments which refer to companies' international liability.

71. One panellist noted that stakeholder surveys among the business sector show that the respect of human rights became an issue of concern for the business community and that business people today believe that human rights are relevant to their work and should be part of a business strategy. The panellist further noted that the guiding principles have already had a major impact on the business sector, have support from the business sector, and should continue to be supported. The panellist also noted that all businesses should be included in working to protect human rights, including small and medium size enterprises. Specifically, the panellist noted that multinational companies compete locally for business and face the challenge of competition with the unorganized and informal part of the economy. The panellist added that it is critically important to enable host states to cast their net more broadly and minimize the informal economy.

72. Most delegations underlined that a future instrument should clearly set out direct obligations of corporations to respect human rights. One delegation pointed out that while States have the primary responsibility to protect human rights, by means of legislative and judicial measures, the responsibility of corporations to respect human rights entails a direct obligation to prevent, mitigate and redress the human rights abuses occasioned by their operations. Another state noted that under national legislation, while all individuals have duty to respect human rights, many enterprises have managed to bypass this duty. One delegation noted that the legal status of transnational corporations and other business enterprises can have different definitions, so there is a need to clarify definitions, particularly regarding obligations. Another delegation noted that transparency and public access to knowledge are necessary to ensure proper oversight of actions. A state pointed that the instrument should lay the grounds for liability and

accountability of enterprises in human rights and humanitarian law. One state noted that risks of enterprises being complicit in human rights abuses committed by other actors increase in conflict-affected areas. This state raised concern about businesses that support or profit from internationally unlawful conduct by States; in particular in contexts of occupation. In this regard, it is of vital importance for the legally binding instrument to include language aimed at preventing and addressing the heightened risk of business involvement in abuses in conflict situations, which includes situations of foreign occupation. Due consideration should be given to principles relating to respect for international humanitarian law and the right to self-determination, including permanent sovereignty over natural resources, particularly in conflict zones. One state highlighted the importance of prior and informed consent. Finally, one delegation noted that there should be a provision for situations where compensations paid are inadequate, and that the instrument should include both foreign and local enterprises.

73. Various non-governmental organizations highlighted the importance of adopting legislation to prevent human rights impacts, and establish mechanisms for human rights due diligence including prevention, mitigation and redress. Such due diligence must cover adverse human rights impacts which the business enterprise may cause or contribute to through its own activities, or which may be directly linked to its operations, products or services by its business relationships. Various non-governmental organizations also recommended that States adopt policy and regulatory measures to ensure that companies are required to conduct human rights due diligence when operating at home or abroad, including through their business relationships and throughout their supply chains. Parent companies should have a duty to ensure their subsidiaries' compliance. Particular attention should be paid to high-risk zones, including in conflict prone areas or occupied territories, sectors and products in order to prevent companies from contributing to human rights violations. Various non-governmental organizations further noted that states should be required to establish legislation that defines appropriate criminal and civil liability to sanction companies that have caused or contributed to human rights abuses. Due diligence processes must involve meaningful consultation of those likely to be impacted by corporate activities, including respect for the right to free, prior, and informed consent of indigenous peoples. One non-governmental organization noted that the instrument should first apply to transnational corporations and should cover all human rights. Another emphasized the importance of reaffirming the hierarchical superiority of human rights norms over trade and investment treaties that provide rights to transnational companies. Finally, most non-governmental organizations noted that the instrument could fill in gaps of the Guiding Principles.

74. One delegation noted that entities with legal personalities should be included in the instrument, and asked whether the instrument could include mechanisms to ensure the enforcement of human rights. A panellist responded that human rights law can impose obligations on actors that are not international legal persons. In response to another delegation, a panellist noted that jurisdictions of host and home states could be considered to ensure that transnational corporations are held accountable. A couple delegations noted the particular need to protect against human rights violations in conflict zones. In response, a panellist noted that provisions to deal with violations in conflict zones should be included, and added that gross human rights violations should be added too.

G. Panel VII – Legal liability of TNCs and other business enterprises: What standard for corporate legal liability and for which conducts?

75. One panellist noted that a number of principles should be kept in mind when establishing standards of legal liability, including a focus on victims, a differentiation between various types of responsibilities, including criminal, civil and administrative; and that the instrument could leave flexibility to States on how standards would apply in national systems. For that purpose, a legal standard must be achieved so that parties can assess liability beforehand, strengthen their certainty, avoid frivolous litigation and facilitate mutual assistance and cooperation among States. Therefore, an instrument should be fair to companies and victims and should acknowledge the differences of legal traditions. The panellist also noted that parent companies of transitional corporations that violate human rights should be held accountable and that corporate culture needed to change. Moreover, the panellist highlighted that corporations needed to undertake appropriate due diligence efforts.

76. Another panellist noted that the Working Group did not need to build a perfect legal structure, as the aim is to develop a legally binding instrument that is victim-centred and therefore a problem-solving and pragmatic approach is of utmost importance. The panellist also noted that the due diligence approach was essential as it was important in terms of solving extra-territoriality issues and disputes. The panellist furthermore noted that the international community need moral obligations through legal mechanisms, because negative investment and trade may contribute to poverty, misery, and injustice around the world.

77. Another panellist noted that harmful conduct could happen in a national territory or outside it and that it was not necessary to define whether the company was transnational or not. The panellist argued that sanctions could be criminal, civil, or administrative and that these issues should be tackled under public, not private law. The panellist also highlighted how the treaty should incorporate the following elements: the obligation of States to incorporate in criminal legislation illegal acts, which should be those already defined under international law; the need to include in national legislation sanctions for human rights abuses that aren't defined as criminal acts; standards of complicity or conspiracy; and explicit recognition of legal responsibility of a company as a legal person, which doesn't exclude individual legal responsibility of directors and managers for decisions making in a corporation.

78. The final panellist gave an overview of transnational corporations that had violated human rights but had used State-Investor Dispute Settlement mechanisms to support claims that State action to protect human rights was a violation of investor rights. It was noted that in many cases transnational corporations had effectively brought complaints against host States using investment treaties or investment chapters of trade agreements, which resulted in Governments having to pay large compensation packages to transnational corporations. As an example of where States were often at a disadvantage as compared to transnational corporations was legal fees, which are typically covered for companies if they win the case but not covered for States if they win, and that often foreign investors don't have to pay legal fees at all. The panellist also highlighted the gap between victims and companies, arguing it was hard for victims to effectively sue transnational corporations.

79. One delegation noted that a list of harmful conducts and violations recognized in international law could be included in the treaty and should be linked to the domestic law of States. The delegation furthermore noted that the Working Group had to look at how an effective instrument could correspond to instruments protecting the rights of investors and addressing legal loopholes exploited by corporations to escape liability from their harmful conduct and how it can be ensured that the victim gets remedy. One delegation asked whether the legally binding instrument fully covers corporate social

responsibility and human rights and what could be put into place to limit impunity, including by withdrawing their contracts.

80. Another delegation asked whether the treaty would cover bilateral investment treaties, whilst another delegation enquired about measures to protect the host country, taking into account the imbalance due to the kind of protections that investors are offered under those treaties, often allowing them to avoid sanctions. Several delegations from States, noted that the instrument should cover the responsibility of the enterprise including acts of subsidiaries, suppliers, licenses and others levels of the corporate structure, including a clarification of the attribution of the respective responsibility.

81. A non-governmental organisation asked whether the treaty should be extended to financial institutions. Other organisation noted the need to establish a new list of standards to fill the gap that allows TNCs to avoid their responsibilities and result in millions of victims of corporate human rights violations. Another intervention from NGOs recognized the need to clarify criminal liability of legal entities and that instrument should include mechanisms for coordination between different jurisdictions. Finally, an observation of a group of NGOs called for clarifying and affirming the liability of companies including PMCs for violations they have undertaken, even when they are hired by States or by the UN, which should not be a shield for their liability nor a barrier for access to remedy.

82. In response to questions one panellist noted that the treaty could declare in its preamble that human rights enjoy normative hierarchy and that such an instrument could include a section saying States were required to include human rights labour, environmental rights in bilateral investment treaties. One panellist noted that there needed to be convergence with any outcomes of OHCHR's Accountability and Remedy Project. Another panellist referred to the problem that not all States have ratified all instruments and not all human rights were recognized in all jurisdictions. Therefore it was argued that it would be better for treaty to avoid establishing a uniform standard of corporate responsibility because of the divergence across jurisdictions.

H. Panel VIII – Building National and international mechanisms for access to remedy, including international judicial cooperation, with respect to human rights violations by TNCs and other business enterprises. - The OHCHR accountability and remedy project –

83. The panel discussion focused on the need for greater access to effective remedy, judicial and non-judicial, for victims of business-related human rights abuses. Panellists identified some of the main barriers to effective remedy and demonstrated how legal, procedural and practical barriers are often inter-related, and that present systems for access to remedy under domestic law are patchy and inconsistent. It was advocated that there is a need for an international legally-binding instrument to complement existing national, regional and international efforts, and that such an instrument should ensure the full scope of remedies and generate clear mechanisms for redress.

84. One panellist provided details of the OHCHR accountability and remedy project, which aims to enhance accountability and access to remedy in cases of business involvement in serious human rights abuses. The initiative aims to provide conceptual, normative and practical clarification of key issues arising from the present system of domestic law remedies for business involvement in gross human rights abuses. A key objective will be to use the information collected and evaluated to inform “good practice guidance.” OHCHR will also be seeking to identify where technical assistance or capacity building activities may be beneficial.

85. Another panellist focused on the barriers to civil litigation. It was argued that the key legal hurdle in home state cases is jurisdiction, in particular the doctrine of “*forum non conveniens*” and asserting the liability of the parent company. Another additional case of hurdle which could present a serious impediment to an effective access to remedy, as well as security and human rights cases where a multinational enterprise is complicit in abuses by the state (police or military). Regarding procedural hurdles, the panellist recognized the two most important are access to documents and/or discovery and the availability of class action procedures. It was submitted that the overriding practical hurdle is unquestionably the availability of funding for legal representation.

86. One panellist focused on the role and potential of National Human Rights Institutions (NHRIs), individually, collectively, and in coordination with other judicial and non-judicial grievance mechanisms to contribute to remedy of business-related human rights abuses. It was noted that NHRIs are exploring new modalities and protocols for cross-border cooperation to secure remedy for abuses resulting from transnational business activities.

87. Another panellist alluded to the gap between theory and practice – it was pointed out that while corporate liability exists and soft-law standards have converged around the business duty to respect human rights, for various reasons actual legal remedies remain elusive. Some of those reasons (e.g. awareness and understanding among judges and state agencies; legal clarity, barriers, and differences; cooperation and technical assistance; legal forum; extraterritorial jurisdiction) could be usefully addressed in a treaty; others (e.g. corruption; legal aid) are probably best left to complementary efforts. It was posited that valuable as they are, it’s unlikely that soft law standards alone will make progress at sufficient scale to move markets. It was argued that more uniform standards are needed according to the global Rule of Law. It was noted that national systems for remedy are necessary but not sufficient, leading the speaker to the inescapable conclusion that a treaty is required. Likewise, it was stated that an effective remedy is not necessarily limited to monetary remedy, since sometimes victims want specific injunctive relief and apology. It was proposed that any treaty should take a comprehensive jurisdictional approach and adopt an evidence- and reality-based approach. Finally, a reference was made to need for a prospective instrument to foster cooperation in regard to international legal aid, in the form of establishing a fund that could be used for the benefit of victims to ensure they have an adequate legal representation.

88. Further discussion and questions focused on the need to cover gaps in terms of territorial jurisdiction. Some delegates described the present system of domestic law remedies as patchy, unpredictable and ineffective. Several delegates suggested that a convergence of approach might be helpful and called for collaboration, capacity building and mutual assistance. It was highlighted that variations between national jurisdictions may serve to exacerbate inequalities. Several delegates underlined the need for a future Treaty in this area to be accompanied by a robust monitoring and enforcement mechanism (and if such a mechanism is established, it must provide adequate legal representation for victims). Numerous delegates submitted that victims must be at the centre of the discussions and indicated that any Treaty in this area should include provisions to ensure affected communities can access justice in both the home and host states.

89. A group of non-governmental organisations highlighted the legal and logistical barriers facing victims, seeking remedy, including jurisdictional limitations, the corporate veil, impediments to disclosure of documents, restrictions of prescription,

legal costs, limitation of class actions, among other factors. Other called for effective bodies of enforcement, such as a committee for compliance oversight, a public centre for control of TNCs. Finally, another group of NGO called for a world court or tribunal that could receive claims and give judgments and address enforcement, which could operate in complementary to national and regional instruments.

V. Recommendations of the Chairperson-Rapporteur and Conclusion of the Working Group

A. Recommendations of the Chairperson-Rapporteur

90. Following the discussions held during the Working Group and acknowledging the different views and suggestions on the way forward, the Chairperson-Rapporteur recommends:

(a) That a second session of the open-ended intergovernmental working group be held in 2016 according to the mandate of the Human Rights Council in resolution A/HRC/RES/26/9 from 26 June 2014;

(b) That informal consultations with governments, regional groups, intergovernmental organizations and UN mechanisms, civil society, as well as other relevant stakeholders, be held by the Chairperson-Rapporteur before the second session of the open-ended intergovernmental working group;

(c) That the Chairperson-Rapporteur be entrusted with the preparation of a new programme of work based on the discussions held during the first session of the open-ended intergovernmental working group and on the basis of the informal consultations to be held, and to present this text before the second session of the open-ended intergovernmental working group for consideration and further discussion there at.

B. Conclusions

91. At the final meeting of its first session, on 10 July 2015, Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights adopted the following conclusion, in accordance with its mandate established by Human Rights Council resolution 26/9:

(a) The Working Group welcomed the participation of the Deputy High Commissioner and the United Nations Special Rapporteur on the rights of indigenous peoples, Ms. Victoria Tauli-corpuz, as well as a number of independent experts who took part in panel discussions and; and takes note of the inputs received from Governments, regional and political groups, intergovernmental organisations, civil society, non-governmental organizations and all other relevant stakeholders.

(b) The Working Group welcomed the recommendations of the Chairperson-Rapporteur and look forward for the informal consultations and the new programme of work for the second session of the open-ended intergovernmental working group.

VII. Adoption of the report

92. At its ninth meeting, on 10 July 2015, the Working Group adopted the draft report on its first session and decided to entrust the Chairperson-Rapporteur with its finalisation and its submission to the HRC for consideration at its thirty-first session.

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Annexes

Annex I Agenda

1. Opening of the session.
2. Election of the Chairperson-Rapporteur.
3. Adoption of the agenda and programme of work.
4. Plenary discussions in accordance with the programme of work.
5. Adoption of the report on the session.

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Annex II

List of speakers for panel discussions

Keynote speaker

Ms. Victoria Tauli Corpuz

Panel I (15:00)

Implementation of the UN Guiding Principles on Business and Human Rights: A Renewed Commitment by All States: A Renewed Commitment by All States

Mr. Michael Addo, Chair, UN Working Group on Business and Human Rights

Panel II, (cont. 15h00-18h00)

Principles for an International Legally Binding Instrument on Transnational Corporations (TNCs) and other Business Enterprises with respect to human rights

Chip Pitts (Lecturer in Law, Stanford University Law School)

Bonita Meyersfeld (Director of the Centre for Applied Legal Studies and an associate professor of law at the School of Law, University of Witwatersrand, Johannesburg)

Professor Robert McCorquodale, Professor of International Law and Human Rights, University of Nottingham

Tuesday, 07 July 2015

Item 4 Panel III, (09h00-13h00) Scope: Coverage of the Instrument: TNCs and other Business Enterprises: concepts and legal nature in International Law

Stephanie Blankenburg (Head of Debt, Development and Finance, United Nations Conference on Trade and Development (UNCTAD))

Michael Congiu (Shareholder, Littler Mendelson PLC)

Chip Pitts (Professor of Law, Stanford University Law School)

Carlos M. Correa (Special Advisor on Trade and Intellectual Property of the South Centre).

Item 4 Panel IV, (15h00-18h00) Scope: Human rights to be covered under the Instrument with respect to activities of TNCs and other business enterprises

Panel Discussion

Hatem Kotrane (Member of the UN Committee on the Rights of the Child)

Bonita Meyersfeld (Director of the Centre for Applied Legal Studies and associate professor of law at the School of Law, University of Witwatersrand, Johannesburg)

Isabel Ortiz (Director of the Social Protection Department, International Labour Organization)

Surya Deva (Associate Professor at the School of Law of City University of Hong Kong)

Wednesday, 08 July 2015

Item 4 Panel IV, (09h00-13h00) Content: Obligations of States to guarantee the Respect of Human Rights by TNCs and other business enterprises, including extraterritorial obligation

Hatem Kotrane (Member of the UN Committee on the Rights of the Child)

Kinda Mohamedieh (Associate Researcher, Trade for Development Programme, South Centre)

Marcos Orellana (American University Washington College of Law)

Richard Meeran (Partner, Leigh Day & Co.)

Item 4 Panel VI, (15h00-18h00) Content: Enhancing the responsibility of TNCs and other business enterprises to respect human rights, including prevention, mitigation and remediation

Surya Deva (Associate Professor at the School of Law of City University of Hong Kong)

Tom Mackall (Group Vice President, Global Labor Relations, Sodex)

Bonita Meyersfeld (Director of the Centre for Applied Legal Studies and an associate professor of law at the School of Law, University of Witwatersrand, Johannesburg)

Mrs. Karen Curtis (Chief of ILO Freedom of Association Branch)

Thursday, 09 July 2015

Item 4

Panel VII, (09h00-13h00)

Content: Legal liability of TNCs and other business enterprises: What standard for corporate legal liability and for which conducts?

Surya Deva (Associate Professor at the School of Law of City University of Hong Kong)

Roberto Suarez, Deputy Secretary-General of the IOE

Sanya Reid Smith (Legal advisor and senior researcher at Third World Network)

Carlos Lopez (Head of the programme on Business and Human Rights, International Commission of Jurists)

Item 4

Panel VIII, (15h00-18h00)

Content: Building National and international mechanisms for access to remedy, including international judicial cooperation, with respect to human rights violations by TNCs and other business enterprises.

- The OHCHR accountability and remedy project -

Chip Pitts (Lecturer in Law, Stanford University Law School)

Lene Wendland (Adviser, Business & Human Rights, Research and Right to Development Division, OHCHR)

Nabila Tbeur (International Coordinating Committee of NHRIs, ICC, Representative in Geneva)

Richard Meeran (Partner, Leigh Day & Co.)

Annex III

The following National Human Rights Institutions attended the Working Group: International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC).

The following non-governmental organizations in consultative status with the Economic and Social Council were represented: American Association of Jurists, American Bar Association, Americans for Democracy and Human Rights in Bahrain (ADHRB), Amnesty International, Arab Commission for Human Rights (ACHR), Asian Forum for Human Rights and Development, BADIL Resource centre for Palestinian Residency and Refugee Rights, Caritas International, Centre for International Environmental Law (CIEL), Centre for Human Rights, Centre Europe-Tiers Monde (CETIM), Centro de Estudios Legales y Sociales (CELS), Colombian Commission of Jurists, Conectas Direitos Humanos, Coordinadora Andina de Organizaciones Indígenas (CAOI), Coopération Internationale pour le Développement et la Solidarité (CIDSE), Earthjustice, ECLT Foundation, ESCR-NET, FoodFirst Information and Action Network (FIAN), Franciscans International, Friends of the Earth International, Friends World Committee for Consultation, Gifa Geneva Infant Feeding Association, Global Education Opportunity Program (GEO), Global Labor Relations, Global Policy Forum, Institute for Policy Studies, International Baby Food Action Network, International Commission of Jurists, the International Federation for Human Rights (FIDH), International Federation of Social Workers, International Human Rights Association of American Minorities (IHRAAM), International Movement ATD Fourth World, International NGO Forum on Indonesian Development, International Service for Human Rights (ISHR), International Organisation of Employers (IOE), ISMUN, Lutheran World Federation, NGO Forum for Health, Peace Brigades International, Quaker United Nations Office, Society for International Development, the Centre for Research on Multinational Corporations (SOMO), Swiss Catholic Lenten Fund, Trade for Development Programme, Union of Arab Jurists, Virat International, Women's International League for Peace and Freedom (WILPF), and World Council of Churches.