



**Open-ended Inter-Governmental Working Group on transnational corporations
and other business enterprises with respect to human rights
Oral Statement**

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

Thank you Madam Chairperson.

FIDH, a member of the Treaty Alliance and signatory to the second Treaty Alliance statement, firmly believes that States must be required to adopt legislation and other measures requiring businesses to adopt policies and procedures that seek to prevent, stop and redress negative human rights impacts wherever they operate or cooperate, and to establish corresponding enforcement mechanisms.

Pursuant to the second pillar of the UN Guiding Principles, companies should exercise human rights due diligence “in order to identify, prevent, mitigate and account for how they address their adverse human rights impacts”. Such due diligence must cover “adverse human rights impacts that 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”.

The treaty – together with ongoing and complementary efforts and initiatives to strengthen normative frameworks at the national and regional level - provides an opportunity to build on the United Nations Guiding Principles on Business and Human Rights and to elaborate on and concretize this second pillar. No one, including businesses, is questioning the fact that companies have the responsibility to respect all human rights wherever they operate. However, when discussing the responsibilities of businesses, we must go beyond the old voluntary versus regulatory debate and focus on proactive strategies for businesses to avoid committing or contributing to adverse human rights impacts. Voluntary codes of conduct, for example, are poorly implemented and too often continue to be used as shields to avoid accountability.

FIDH recommends that States adopt policy and regulatory measures to ensure 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. Legislation should establish 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. Meaningful consultation and ensuring protection of land and environmental defenders

throughout the world – who are increasingly targeted and who continue to be labeled as “enemies of development” – must be ensured. States must make sure that companies respect the work of human rights defenders and whistle-blowers. The right of access to information of public importance and relevant to cases of business-related abuse should be guaranteed. FIDH advocates for community-based Human Rights Impact Assessments (HRIAs), a methodology which gives ownership to affected communities to assess and document the potential human rights impacts that investment projects might generate.

Current discussions in countries such as France and Switzerland regarding the possibility to make due diligence mandatory in domestic legal systems are positive steps in the right direction and FIDH strongly hopes governments will enact such laws, which can later feed into the discussions of this intergovernmental working group.

However, codes of conduct and due diligence efforts must not and cannot serve as a substitute for the provision of an adequate and accessible remedy mechanism, and we also caution that it would not be appropriate to invoke such measures as a legal defense or recognize them as a substitute for a remedy, including financial compensation, when violations occur. States' obligations under international law to provide for a remedy remain.