

Comment on Elements for a draft legally binding instrument on transnational corporations and other business enterprises with respect to human rights

1. In the section "1.1 Preamble" it is correctly spoken about the "corporations and other business enterprises", which both may have transnational character

2. In the section "1.2 Principles" after the principle of "☐ recognition of the primacy of human rights obligations over trade and investment agreements" we propose to add a following principle:

☐ **Primary task of economic activity to fulfill economic human rights in a way that respects all human rights**

3. In the section "1.3. Purpose" we propose regarding the point "☐ include obligations to prevent such adverse human rights impacts", to delete the word "such" so hat the point would become as follows:

☐ **include obligations to prevent adverse human rights impacts.**

After that point we propose to add another point as follows:

☐ **ensure that economic activities fulfil economic human rights so that it sustains life and respects all human rights**

4. In the section "1.4 Objectives", after the objective "☐ To ensure that the activities of TNCs and OBEs fully respect human rights", we propose to add a new objective :

☐ **To remove rights to economic activities that violate economic human rights or hinder their realisation**

And after the objective "☐ To reaffirm the primacy of human rights law over trade and investments agreements and establish specific State obligations in this regard.", we propose to add the following new objective :

☐ **To make rights and legality of economic activities to depend on how they fulfil economic human rights, sustain life and respect all human rights**

5. In the section "2. Scope of application" after the sentence "[...] the objective scope of the future legally binding instrument should cover all human rights violations or abuses resulting from the activities of TNCs and OBEs that have a transnational character, regardless of the mode of creation, control, ownership, size or structure", we propose to add another new sentence as follows:

The scope covers the creation of wider legal means and competences to prevent such violations, abuses and practices which impair the realisation of human rights.

6. In the section "2.2 Acts subject to its application", we propose to the following point the amendment that is written in bold her

☐ **Violations or abuses of human rights or adverse impacts on human rights** resulting from any business activity that has a transnational character [...]

7. In the section "3.1 Obligations of States" we prorpore that after the obligation "☐ States shall take all necessary and appropriate measures to design, implement and follow upon national policies on human rights and TNCs and OBEs, taking into account the primacy of human rights over pecuniary or other interests of corporations", the following 2 obligations would be added:

☐ **States are obliged to take necessary steps, to the maximum of their available resources, to facilitate and promote the enjoyment of Covenant rights" and this "also requires directing the efforts of business entities towards the fulfilment of Covenant rights" (1)**

☑ States shall secure that economic resources required for realisation of human rights do not get consumed for other purposes but remain available primarily to realise these human rights. States "must demonstrate that they have taken all steps necessary towards the realization of the right within their maximum available resources" (2)

8. In the section "3.2 Obligations of Transnational Corporations and Other Business Enterprises" we propose that the obligation "☑ TNCs and OBEs shall prevent human rights impacts of their activities and provide redress when it has been so decided through legitimate judicial or non-judicial processes", would be amended as follows:

☑ TNCs and OBEs shall prevent the negative human rights impacts of their activities including that their business activities shall respect human rights - including also the following economic, social and cultural rights - so that business activities shall:

a) not deprive peoples of their "own means of subsistence" which form "an essential condition for the effective guarantee and observance of individual human rights and for [...] strengthening of those rights". (3)

b) not take resources away from being used maximally "for achieving progressively the full realization" of economic, social and cultural rights "by all appropriate means" also in international economic co-operation (4)

c) respect people's equal rights on resources securing their human rights, not to be affected by any discrimination based on business-status of social origin, property, birth or other status (5) or by any limitations which are not compatible with economic, social and cultural rights, promoting the general welfare in a democratic society (6)

d) respect everyone's equal right to the opportunity to gain his living by work which he freely chooses or accepts securing equal remuneration for work of equal value, a decent living for themselves and their families and safe and healthy working conditions with rest and reasonable limitation of working time (7)

e) not restrict "the right of everyone to form trade unions and join the trade union of his choice" and "The right of trade unions to establish national federations or confederations" with "the right to strike" (8)

f) not neglect "the right of everyone to social security, including social insurance." (9)

g) respect equal "right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing" to be realised with secure tenure, "free from hunger" and eviction (10)

h) respect equal right of everyone to the enjoyment of the highest attainable standard of physical and mental health, to continuous improvement of all aspects of environmental and industrial hygiene and to all medical service and medical attention in the event of sickness. (11)

i) respect equal "right of everyone to education" with primary education "available free to all" (12) and right "to take part in cultural life" (13)

☑ TNCs and OBEs shall provide redress on violations of human rights when it has been so decided through legitimate judicial or non-judicial processes

Since so far the violations and abuse by TNCs or other business enterprises have remained without definition and determination, it would need to get more concrete content since otherwise every one speaks about violations and abuse, but all may mean different things.

Therefore it would be good to define the content of such violations based on ICESCR and ICCPR articles and on General Comments on those articles by CESCR and CCPR

9. In the section "9.Mechanisms for promotion, implementation and monitoring" "b) International level", it is crucial to have international "b.1. Judicial mechanisms" established, and particularly an International Court on Transnational Corporations and Human Rights

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Notes and references

1. E/C.12/GC/24, General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, paragraphs 23-24)
2. E/C.12/GC/23, General comment No. 23 (2016) on the right to just and favourable conditions of work (article 7 of the International Covenant on Economic, Social and Cultural Rights, paragraph 77)(E/C.12/GC/19 General Comment no. 19, The right to social security (art. 9) paragraph 62
3. ICESCR articles 1.2 and 25 and UN Human Rights Committee CCPR General comment No. 12: Article 1 (Right to self-determination) Twenty-first session (1984) which notes also that such "economic content of the right of self-determination" must be secured in peoples' use of their lands and "entails corresponding duties for all States and the international community".
4. UN International Covenant on Economic, Social and cultural rights, ICESCR, article 2.1
5. ICESCR, article 2.2
6. ICESCR, article 4
7. ICESCR, articles 6-7
8. ICESCR, article 8
9. ICESCR, article 9
10. ICESCR, article 11
11. ICESCR, article 12
12. ICESCR, article 13
13. ICESCR, article 15