

FIDH
with LHR, APRODEH
3rd Session of the IGWG, 23-27 October 2017
Side Event – Concept Note

Tuesday 24 October - 13.30-15.00
Room XXII, Palais des Nations UN

Title: Depth of the treaty on business and human rights: overcoming some challenges in defining the corporate entities covered by the treaty

Context

One of the most controversial point of the debates around the future binding instrument has been whether it should be limited to transnational corporations and other business enterprises involved in transnational operations, or whether it should also cover local/national companies. Defining the adequate approach for a future treaty requires looking at the reality of corporate human rights violations from the ground in order to objectively evaluate the extent to which existing mechanisms and frameworks can address such violations and identify the existing gaps the treaty should aim to cover.

It is clear from existing research, extensive consultation with civil society led by FIDH and ESCR-Net through the Treaty Initiative project, and on-field experience through community based Human Rights Impact Assessments (HRIA), that human rights violations are associated with *all* types of companies. While the potential impact of and difficulty in obtaining redress against transnational corporations is particularly significant, it is necessary to highlight the very diverse structures through which transnational corporations operate, as well as to recall the important challenges that appear in the fight for redress where national or state-owned companies operations result in human rights violations.

Therefore, it can be argued that the restriction of the Treaty to transnational corporations could paradoxically perpetuate the possibility for these companies to avoid regulation by adapting their legal structure and business relationships, in order to bypass the given definitional contours.

On the light of this context and considering the wording included in the draft elements presented by Ecuador, this panel aims to provide some insights and perspectives on how the current elements can be understood, and how could negotiations contribute to deepening the scope.

Objectives

In light of the idea that the scope of the treaty should be determined with reference to the needs of the rights holders, this event will aim at illustrating the way in which different types of companies may violate human rights, in order to analyze and reflect on the need to include *all* corporations in the scope of the binding instrument.

This empirical perspective will be complemented by a legal analysis which departing from the elements presented by Ecuador, will analyse the “depth” of the elements, and look into the different ways to deepen the scope of a future binding instrument.

Structure

- The **first panelist** will present cases of human rights violations committed by state-owned enterprises of transnational character and underline the difficulties to access effective remedy through domestic redress mechanisms.

- The **second panelist** will illustrate cases where national enterprises have committed abuses, and highlight the difficulties faced by victims, and the possible shift from national to transnational corporations

- The **third and fourth panelists will** be two legal experts who will bring a these experience into the perspective of the draft elements presented by Ecuador, analyze the depth of the proposed scope and explore ways to ensure that the depth of the treaty fills existing gaps and does not creates vacuums through which business could escape their human rights obligations.