

Oral statement

Fourth session of the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG)

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Fourth session - OEIGWG: Subject 1, First reading of the Draft legally binding instrument – Article 3, Scope

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In spite of the diverse and, at times, conflicting positions of States on this issue, the question of scope has rarely been addressed from a practical point of view.

To start with a basic observation : individuals and groups on the ground are confronted to a variety of companies, and it isn't their structure or transnational character that determines if they violate human rights.

Nevertheless, we acknowledge the particular challenge to hold transnational corporations accountable given the complexity of their structure, which include subsidiary companies, contractors, subcontractors and business relationships, and the fact that they operate across borders in different jurisdictions and often very in a diversity of legal systems

Hence, we propose that the text embody a **hybrid approach** :

First, the responsibility of all companies to respect human rights, which is well established under international law and recognized by the UNGPs should be set in the operational part of the text rather than in its preamble.

Second, considering transnational corporations are nothing more than a sum of nationally incorporated businesses, the definition of the activities that fall under the scope of the treaty should be flexible, and have the capacity to adapt and evolve following the changing nature and structure of business ; this in order to prevent companies from escaping their obligations through new corporate constructs.

Consequently, it should be clarified that the criteria used for defining "activities of transnational character" are alternative and not cumulative, to avoid creating legal vacuums that would restrict the treaty's scope.

Third, the text needs to make clear that State-owned enterprises are included in the scope since they are heavily involved in investment projects at national and international level, and often linked to human rights abuses.

Finally, considering companies often operate through partnerships, joint ventures and other contractual forms associating several legal persons, it is important for the treaty to

refer to "natural or legal persons" in plural and not in the singular form and to establish a joint liability for these types of associations.

Thank you