**Oral statement**

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

*Delivered by Sacha Feierabend  
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Fifth session - OEIGWG: Item 4, Plenary Discussion – Article 6. Liability

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Thank you Mr. Chairperson Rapporteur,

I deliver this statement on behalf of FIDH, Franciscans International and SOMO

In order to represent a meaningful response to existing challenges related to corporate accountability, the present article should require states to establish a clear duty of care on business enterprises, particularly those with transnational character, over human rights abuses that take place in their global value chain. In this respect, we suggest the following points to be considered:

* First, article 6 para 2. states that "liability of legal persons shall be without prejudice to the liability of natural persons". However, it falls short of clarifying when one type of liability or the other should be engaged. This point must be clarified.
* Second, The difficulty for victims to prove elements like effective control or foreseeability on the part of the parent company is one of the most recurring barriers in access to justice in cases of business-related human rights abuses. The instrument tries to face these difficulties, by allowing better access to information for victims and the possibility of reversal of the burden of proof.

However, we insist that Article 6 para 6 won't be easy to apply *if the victim is required to prove effective control or supervision of the parent company over the activities of its subsidiary of affiliate*. Conversely, it will be quite convenient for the company at the top of the chain to claim that it does not have control or supervision over these activities.

In order to *effectively* close the remaining loopholes, we suggest to include a rebuttable presumption of effective control when there is dominant influence of a company or other forms of so called ‘negative control’ such as power to veto. Such presumptions already exists in certain legal systems. For ex: European competition law and trust law.

* Third, art. 6 paragraph 6 needs to effectively address the barriers to access to justice that are linked to the use of the ‘corporate veil’ doctrine. One of the ways to do so, as has notably been put forward by General Comment 24 of the UN Committee on ESCR, would be to impose a duty of care on the parent company and thus create a parent-based extraterritorial regulation imposing a liability on the parent company for failure to prevent human rights harms in its value chain.

Thank you.