**Oral statement by FIAN International, Franciscans International, FIDH, ESCR-Net, Society for International Development, during the 6th session of the OEIGWG on TNCs and other business enterprises with respect to human rights:**

**Article 8 (Legal Liability)**

Ana María Suarez Franco

Thank you Mr. Chairperson-President,

In order to further clarify the principles of parent company liability, and joint and several liability, for human rights abuses that occur throughout their business relationships, including through their **value chains**, we propose to amend article 8.7.

The inclusion of **joint and several liability** is key to ensure that all companies involved in the abuse in terms of article 8.7 are liable for the harm caused by others through their value chains, as well to guarantee integral remedies for the affected communities or individuals.

We also propose to delete the last sentence “… *but failed to put adequate measures to prevent abuse*” for this might be misused by companies to avoid their liability.

Given the difficulty for victims to prove the links of control, supervision and of business relationship between different legal entities, in particular in cases where business enterprises fail to comply with their obligations to disclose information, courts should be able to make a rebuttable presumption of control by the controlling or parent company. They should also have competence to reverse the burden of proof, in accordance with article 7.6.

Article 8.8 is the corollary to article 6.6 regarding the link between the human rights due diligence obligations and the determination of liability. These two articles are very important in order to avoid due diligence requirements becoming procedural ‘check-list’ exercise and a tool for transnational corporations and other business enterprises to escape liability. We therefore recommend the deletion of the second phrase in this paragraph, which may result in contradicting the purpose of the paragraph and suggest that liability depends on the compliance with human rights due diligence standards. The aim of this deletion is to ensure that the adjudicator does not focus on the implementation or not of a due diligence procedure, **but on the harm caused**, according to the principles as the duty of care or the principles of extracontractual civil liability.

Liability standards should be different and stricter for business activities, which are inherently dangerous and where risk is foreseeable. In such cases, transnational corporations and other business enterprises should be held liable even when they have not acted negligently. Strict liability is appropriate in cases where business enterprises are engaged in hazardous or inherently dangerous industries. We therefore propose to include a clause on strict liability, which is a form of liability that already exists in different domestic legal systems.

Finally, to answer the question of some states on which would be applicable standards for reparations, we recall the Rome Statute, Art.75 and Its Rules of Procedure, rule 97; The Guiding Principles on the Right to a Remedy and reparations Chapter IX and the Inter-American Convention on Human Rights, Art. 63, inter alia.

We will share text proposals in written form.

I thank you.