**Intervention of the Institute for NGO Research**

# Sixth Session of the Open-ended Intergovernmental Working Group on Transnational Corporations and other Business Enterprises with Respect to Human Rights

**Zero Draft Treaty Article 8**

**Delivered by Anne Herzberg**

Thank you.

We continue to be concerned regarding the viability of this process, as it is largely duplicative of what already exists in both domestic and international law.  It attempts to shift the legal obligation to protect human rights from States to businesses. The vagueness and overbroad scope of this instrument, frankly, makes it unworkable as an enforceable framework. In addition, it is likely to harm investment and economic development in the countries that are most in need.

We were not surprised to hear in their comments yesterday and today that the Palestinian Authority and the NGOs FIDH, Al Haq, and SOMO are attempting to use this process to backdoor anti-Israel BDS and lawfare into the treaty draft. Contrary to their claims, their proposals exist in no accepted instrument and stand in opposition to both the UNGPs and the OECD guidelines. The Working Group should reject this blatant politicization and the exploitation of universal frameworks as a means to advance destructive and narrow political agendas.

We also continue to have on-going concerns about the language used in Article 8. Terms like “victim,” “human rights abuse,” and “context of business activities” are defined in such a vague and overbroad manner, that they could literally create a legal right of action for almost any conceivable action or omission, without providing the specificity and notice that is fundamental to due process.

We do not understand the inclusion of Article 8.5.  Does this provision mean that in addition to liability that may be found in an administrative or judicial process, the state or business is also obligated to pay reparations? This provision should be deleted.

The two sentences of Section 8.8 contradict each other and the purposes of Article 6.

Section 8.9 is similarly muddled, particularly the language “liability of legal persons … that amount to criminal offenses under international human rights law binding on the State party.” The obligation under IHRL is on States and not on natural or legal persons.

Given the significant on-going issues with the draft and the unlikelihood they can be remedied, the Working Group would better effect their mandate by promoting rule of law and good governance in countries where business and human rights problems are most acute and that lack functional legal systems or other protection mechanisms.

Thank you.