**6th Session of IGWG on TNCs and OBEs with respect to Human Rights**

**Comments on Article 8**

Thank you Mr. Chair,

**Article 8 – Legal Liability**

In Article 8(4), the notion of criminal liability could be further strengthened by the mentioning of specific examples of sanctions or penalties that companies could face should they be prosecuted, such as the withdrawal of licenses, the termination of contracts for company projects, among others. In this regard we recommend the addition of the following language at the end of article 8 (4) that reads: “State Parties shall adopt legal and other measures necessary to ensure that their domestic jurisdiction provides for effective, proportionate, and dissuasive criminal and/or administrative sanctions where legal or natural persons conducting business activities, have caused or contributed to criminal offenses or other regulatory breaches that amount or lead to human rights abuses - **such as withdrawal of licenses, termination of contracts for company projects, or inclusion on a prohibited list of companies for business.”**

 In Article 8(8) we suggest 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 focus is not on the implementation or not of a due diligence procedure, but on the harm caused, according to the principles regarding the duty of care or the principles of extra-contractual civil liability. Therefore we suggest that the paragraph stops after Article 8(7) and delete the rest. “Human rights due diligence shall not automatically absolve a legal or natural person conducting business activities from liability for causing or contributing to human rights abuses or failing to prevent such abuses by a natural or legal person as laid down in Article 8(7). **~~The court or other competent authority will decide the liability of such entities after an examination of compliance with applicable human rights due diligence standards.”~~**

In Article 8(9), it would be crucial to articulate that criminal liability is also triggered by a business activity that violates war crimes, crimes against humanity, and other grave breaches of international human rights and humanitarian law. In this regard we recommend that the para reads as follow: “**~~Subject to their legal principles,~~** State Parties shall ensure that their domestic law provides for the criminal **~~or functionally equivalent~~** liability of legal persons for human rights abuses **or violations** that amount to criminal offenses under international **~~human rights~~** law **~~binding on the State Party,~~** **including but not limited** to customary international law, **~~or their domestic law.~~** **and humanitarian law. When appropriate, States should refer cases where corporations or/and State officials are causing or contributing to war crimes, crimes against humanity, aggression, genocide, and environmental crimes to the International Criminal Court, in accordance with Rome Statute rules.**

We are also with the view that Article 8 should include a provision reaffirming the joint and several responsibility of all companies involved in an abuse or a violation.

It is also worth exploring the inclusion of a new provision in this section to criminalize undue influence on government laws and policies, particularly in instances where a link can be established in connection with a human rights abuse or violation. In this regard we suggest the addition of the following paragraph under article 8: **“State Parties shall ensure that their domestic law provides for the criminal liability of legal or natural persons for acts that directly or indirectly contribute, cause or are linked to human rights abuses or violations.”**

I thank you