

## Written statement from Friedrich-Ebert-Stiftung Geneva (ECOSOC status)

### Access to justice, extraterritorial obligations and the role of human rights defenders

Existing international accountability mechanisms, such as the International Criminal Court, do not address corporate harms adequately and domestic processes have proven incapable of dealing with transnational corporate complicity. Moreover, while the UN Guiding Principles provide a comprehensive picture of state and business responsibility they have not pushed governments to act sufficiently on providing remedies. A legally binding instrument on business and human rights could help fill the current gaps and failings of the international legal framework, particularly regarding access to justice while providing more specific standards, and help define companies' responsibilities and establish liabilities, such as providing for mandatory due diligence.

In developing a legally binding instrument, access to both justice and remedies as well as the role of human rights defenders constitute crucial issues that cannot be neglected. Human rights defenders must play a key role in the process and their participation and protection must be ensured. As such victims of violations and human rights defenders must have effective access to justice including financial means. The discrepancy between corporations and their available means and the limited means of victims or human rights defenders in particular needs to be emphasized in this respect. In order to facilitate access to justice, the burden of proof should be reserved and jurisdictional matters clearly dealt with. This is especially relevant when the company in question is based in another country, thus requiring clarification of responsibilities of the home and host state. In addition, any future instrument must deal with all human rights violations and cannot focus on transnational companies alone.

Extraterritorial obligations of states are of key importance in this debate. Under the current legal frameworks, territorial and jurisdictional boundaries can prevent the regulation of companies – taking the 2011 Maastricht Principles, a legally binding instrument could be influential in that regard. The current interpretation and application of the Maastricht Principles is not enough in a business and human rights context; the Guiding Principles meanwhile have taken a more restricted approach than the UN human rights bodies to issues of extraterritorial obligations. Independent of the different forms of jurisdiction at stake, a State has clear duties under international law which it needs to uphold.

The focus of a legally binding instrument needs to stretch beyond transnational companies and gross human rights violations. It is thus vital that the open-ended intergovernmental working group succeeds in appointing a neutral chairperson, consults experts, and develops a focus beyond transnational corporations while simultaneously supporting the continued implementation of the Guiding Principles. Civil society and human rights defenders play a key role in this regard. Moreover, while a certain level of abstraction will be required of the language to make it applicable to varied situations, an instrument nonetheless needs to clearly address access to justice and extraterritorial obligations.