

# **Compilation of general statements from States and non-State stakeholders made during the eighth session**

## **Note by the Secretariat**

### *Summary*

The present document contains a compilation of general statements from States and non-State stakeholders made during eighth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights.<sup>1</sup> It has been prepared in accordance with paragraph 25 (c) (i) of A/HRC/52/41. Statements have been reproduced in the original language of submission and are included only if they were shared with the Secretariat in written form.

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<sup>1</sup> These statements have also been posted online at <https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/session8/oral-statements>.

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# Compilation of general statements from States and non-State stakeholders made during the eighth session

## A. States and Observer States

### 1. Algeria

شكرا سيدي الرئيس

بادئ ذي بدء، يود وفد بلادي أن يهنئكم على إعادة انتخابكم على رأس أعمال الدورة الثامنة للفريق العامل الحكومي الدولي المفتوح العضوية لوضع صك دولي ملزم قانوناً بشأن الشركات عبر الوطنية وغيرها من المؤسسات التجارية في مسائل حقوق الإنسان.

كما نهني سعادة السيد فولكر تورك، على توليه منصب مفوض الأمم المتحدة السامي لحقوق الإنسان، وتشكره على بيانه

سيدي الرئيس

يظل وفد بلادي ملتزماً بنص وروح قرار مجلس حقوق الإنسان 9/26، الذي كلف هذا الفريق العامل الحكومي الدولي المفتوح العضوية بوضع الصك الدولي الملزم قانوناً بشأن الشركات عبر الوطنية وغيرها من مؤسسات الأعمال في مجال حقوق الإنسان، ويؤكد من جديد موقفه المبدئي بأن نطاق هذا الصك الملزم قانوناً ينبغي أن يسترشد حصراً بالولاية المنصوص عليها في القرار سالف الذكر. كما ينبغي أن يسعى المشروع إلى سد الفجوة الموجودة في القانون الدولي بخصوص انتهاكات حقوق الإنسان فيما يتعلق بتلك التي ترتكبها الشركات عبر الوطنية وسبل انتصاف للضحايا.

ويود وفد بلادي أن يشكركم، سيدي الرئيس، وفريقك المختص، على المشروع المنقح الثالث للصك الدولي والمقترحات النصية التي قدمتها الدول المشاركة والتي تشكل، في رأينا، الأساس الرسمي للمفاوضات خلال هذه الدورة، على النحو أن هذه المسودة الثالثة والمقترحات النصية يعدان خطوة إيجابية للمضي قدماً في هذا المتفق عليه، ونرى في هذا الإطار المسعى، حيث يمكن أن يعالج بشكل فعال العديد من الشواغل التي تنشأ في سياق اللامساواة الملحوظة على نطاق واسع في الحقوق والالتزامات القائمة بين الشركات عبر الوطنية من ناحية والضحايا من ناحية أخرى.

شكرا السيد الرئيس.

### 2. Bolivia

El Estado Plurinacional de Bolivia le extiende su felicitación por su reelección y se complace en estar presente en la Octava Sesión del grupo intergubernamental de composición abierta sobre las empresas transnacionales.

Bolivia mantiene su apoyo al mandato del Grupo de Trabajo para elaborar un instrumento jurídicamente vinculante sobre las empresas transnacionales con respecto a los derechos humanos de acuerdo con lo establecido en la resolución 26/9 del Consejo de Derechos Humanos. Esta es una tarea de gran importancia a fin de cerrar el vacío legal que existe en el derecho internacional para la protección de los derechos humanos en casos en los cuales los perpetradores evaden la legislación nacional utilizando sus estructuras transnacionales.

Las Empresas Transnacionales cuentan con un gran poder económico a nivel global y su influencia en la política y la economía tiene un impacto altísimo y directo en los derechos de la Madre Tierra, los derechos de los pueblos indígenas, los derechos de las y los campesinos y aquellas personas que viven en el área rural, entre otros grupos poblacionales. De cara al cumplimiento de los compromisos asumidos en la Agenda 2030 de Desarrollo Sostenible, es indispensable que las empresas transnacionales cumplan con su responsabilidad de respetar todos los derechos humanos, sobre todo aquellos que se relacionan, por ejemplo, con el acceso a servicios básicos tales como el derecho humano al agua y al saneamiento. Cuando las empresas transnacionales respetan los derechos humanos y las normas nacionales, pueden contribuir de manera positiva a las estrategias de desarrollo de nuestros pueblos.

La inexistencia de un instrumento internacional ha ocasionado que se hayan violado los derechos humanos de miles de personas a nivel mundial y un impacto irreversible en la naturaleza como consecuencia de acciones y/u omisiones de las empresas transnacionales en todo el mundo, así como la falta de acceso a la justicia y reparación efectiva, a causa de las estrategias jurisdiccionales que, solo entidades con una estructura y operaciones multinacionales, pueden utilizar.

Desde nuestra experiencia, producto de las privatizaciones del periodo neoliberal, algunas empresas transnacionales controlaron los servicios públicos en nuestro país y no cumplieron con su obligación de respetar los derechos humanos, y de facilitar un amplio acceso equitativo y asequible de los servicios básicos a la mayoría de la población. Es por esa razón que nuestro gobierno decidió recuperar el control de esos servicios a través de la nacionalización y así, por medio de una mejor distribución de la riqueza garantizar los derechos humanos de los y las bolivianas.

Bolivia es un país que acoge inversiones internacionales, las cuales consideramos de gran importancia para promover los objetivos de desarrollo de nuestro país. Al mismo tiempo, las empresas que operan en nuestro territorio deben respetar la normativa nacional, regional e internacional sobre derechos humanos. En ese sentido, consideramos que no existe contradicción en la promoción de las inversiones y la promoción de reglas claras para el respeto de los derechos humanos; por el contrario, el instrumento vinculante con obligaciones claras para todas las partes podría contribuir a generar mayor predictibilidad legal a nivel internacional, la cual tendría impactos positivos en la proyección de las inversiones y sobre todo en la realización plena de los derechos humanos.

Señor presidente,

Los desafíos y responsabilidad de este Grupo de Trabajo se vuelven cada vez más trascendentales en un contexto de creciente, y en muchos casos descontrolada globalización, de una crisis multidimensional y de mundo aún golpeado por una pandemia, que ha denotado nuevamente que un porcentaje mínimo de la población mundial concentra la mayor parte de la riqueza y poder económico.

En este sentido, esperamos que las discusiones de esta sesión avancen de manera constructiva con la participación de los Estados y de sociedad civil, manteniendo la naturaleza para lo que fue concebido sobre la base de lo estrictamente establecido en la resolución 26/9 del Consejo de Derechos Humanos.

Muchas gracias.

### **3. Brazil**

Brazil is pleased to take part in this 8th session of the Open-Ended Intergovernmental Working Group to discuss a legally binding instrument on business and human rights.

We thank Ambassador Emilio Rafael Izquierdo Miño for his role as the Chair of the Group, including for the informal proposals circulated a few weeks ago. We appreciate his effort to streamline the text and accommodate different views and look forward to direct negotiations with delegations, based on the compilation document of the third revised draft (A/HRC/49/65/ADD.1).

For the next few days, we will have, once again, a valuable opportunity to negotiate provisions to address a key human rights issue: the impacts of the activities of business enterprises. We believe that this should be done in complementarity with the widely-accepted United Nations Guiding Principles.

In our discussions, let us bear in mind that we are negotiating a human rights instrument. This process would be pointless if it was not to strengthen the protection of human rights; if it was not to prevent human rights abuses and to offer legal remedies for victims to find effective and timely justice. Our message to victims should be clear from the start: you are the reason we negotiate this text.

On the other hand, our message to business companies is that respecting human rights is not only a fundamental value everyone has to abide by but also, increasingly, a crucial element of good business. Having strong human rights records helps companies just as it safeguards people whose rights the very business activities depend on: workers, consumers, partners, third parties and affected communities. No company will grow sustainably without taking human rights seriously. And human rights will not be fully protected unless we have companies together in this cause.

Regarding the role of States, let us remember that the primary responsibility to protect human rights and hold businesses accountable lies with us. An international instrument will hardly

be effective if States' institutions are not truly committed to tackling business-related human rights abuses. Instead of being over-prescriptive and taking on the role of States, an international instrument would do better by helping States strengthen their national mechanisms to fulfil the human rights obligations they signed up for.

Therefore, for Brazil, an international legal instrument should apply only to substantial human rights abuses and defer to national jurisdiction wherever possible, provided that victims' rights are protected.

Considering all the stakes involved, we must manage to strike a careful balance between rights and obligations. We have to protect human rights in a way that the norms we devise can be effectively applied by all stakeholders and do not overburden law-abiding companies, especially medium and small ones, which are honestly striving to grow and contribute to their communities by creating jobs and fuelling sustainable development, particularly in developing countries.

To achieve such an instrument, we need precise legal concepts. Legal certainty helps victims, States, and companies set their expectations. Rules of jurisdiction, while broadening access to justice, need to be compatible with the object and purpose of the instrument and avoid future quarrels over competent fora and the applicable law. Excessively detailed prescriptions for due diligence can lead to a rigidity inattentive to diverse national and business contexts. Legal definitions of abuse, victims, and other central concepts must be accurate.

Until we get there, Brazil will reserve its final position on the instrument. We will need time for meaningful internal consultations to assess its overall balance and implications for our legal system and international commitments.

In the meantime, we look forward to participating in the discussions. We hope that more States engage in this exercise and we remain open to the contribution of civil society. We wish everyone a productive week.

#### **4. China, the People's Republic of**

Mr. Chair,

On behalf of the Chinese delegation, I would like to congratulate you on your election as Chair-Rapporteur. I believe that this session will achieve positive outcomes under your strong leadership.

The Chinese government attaches great importance to the negotiation of this Legally Binding Instrument(LBI). We appreciate the efforts by the Chair and the Secretariat in facilitating this process, and welcome the suggested chair proposal for select articles of the LBI. We hope to exchange views frankly with all parties and promote steadily the negotiation of this LBI.

Mr. Chair,

The Chinese government highly values human rights protection in transnational business activities, and has adopted effective measures to prevent human rights abuse in transnational corporations' business activities. At the 20th National Congress of the Communist Party of China held last month, General-Secretary Xi Jinping emphasized that China would promote all-around advancements of human rights and strive to create new opportunities for the world with its own development so as to deliver great benefits to all the people. In September 2021, China released "Human Rights Action Plan of China(2021-2025)", which explicitly promotes responsible business conduct in global supply chains. It also encourages Chinese businesses to comply with the UN Guiding Principles on Business and Human Rights in their foreign trade and investment, and to fulfil their social responsibilities to respect and promote human rights. With the support and guidance of the Chinese government, such large sectors as textile & clothing and mining, have adopted responsible foreign investment guidelines. By the end of October 2022, more than 580 Chinese enterprises have joined the UN Global Compact for responsible business activities, and committed to respect and defend internationally recognized human rights, not to involve in any conduct of negligence or abuse of human rights and to truly protect labour rights and environment in their business activities.

Mr. Chair,

As a developing country, China maintains that the rights to subsistence and development are the primary human rights, and the people's aspiration for a better life is the biggest human right. We welcome the contributions of transnational corporations in promoting economic development and improving people's livelihood. We also noticed some negative human rights and environmental impacts of transnational commercial activities. We support the elaboration of an LBI under the auspices of UN to regulate the activities of transnational corporations.

China believes that, we shall uphold the principle of equality, balance the protection of the right to development and other human rights. We shall firmly safeguard human rights, provide protection and remedy to the victims, and at the same time, fully respect States' judicial sovereignty. The LBI should be drafted in line with internationally recognized legal principles, so as to provide stable and predictable legal guidance for transnational enterprises. In key issues such as the scope of LBI, we should strictly follow the mandate of Human Rights Council resolution 26/9. In addition, to ensure the wide support and universal observance, the LBI should be concluded through consensus, while fully respecting each State's concerns.

I thank you, Mr. Chair.

## **5. Cuba**

Señor Presidente:

Al iniciar esta nueva sesión del Grupo de Trabajo, lo felicitamos por su reelección.

Señor Presidente,

Cuba reitera su compromiso con el avance hacia la adopción de un documento vinculante sobre la regulación, en el Derecho Internacional de los Derechos Humanos, de la actividad de las corporaciones transnacionales y de otras empresas con ese carácter.

Señor Presidente:

Resulta necesario adoptar medidas a escala internacional, y crear mecanismos efectivos que garanticen que aquellas empresas transnacionales que sean responsables o cómplices de haber cometido violaciones de los derechos humanos y delitos internacionales, sean investigadas y enjuiciadas por los daños contra las personas, el medio ambiente, y los recursos de los países.

Son muchos los ejemplos que reflejan la problemática actual del accionar de empresas transnacionales y las diversas violaciones de derechos humanos que quedan impunes, en buena medida por carecer de un marco legal internacional al respecto.

Por otra parte, las múltiples crisis sistémicas globales, agravadas por los insostenibles patrones de consumo y producción, por el orden económico impuesto al mundo, por los efectos continuados de la pandemia de Covid-19 y otras crisis interconectadas, lanzan a miles de millones de personas a la pobreza, a la precariedad económica y social, y acentúa la destrucción de los ecosistemas. Esto es un caldo de cultivo para las violaciones de los derechos humanos, incluyendo el derecho al desarrollo y a un medio ambiente sano.

Señor Presidente:

Las deliberaciones de este Grupo requieren la voluntad de todos los Estados. Apoyamos también el trabajo dedicado y comprometido de la sociedad civil, cuyas demandas y preocupaciones en esta esfera deben ser tenidas en cuenta.

Finalmente señor presidente,

Mi delegación reserva su posición sobre el proyecto, las propuestas de otras delegaciones y las sugerencias de compromiso del Presidente, hasta que el alcance del documento sea un asunto resuelto, particularmente en el artículo 3 y a lo largo del texto. No estamos aquí para renegociar el mandato otorgado al grupo, sino para cumplirlo.

El alcance del documento que negociamos debe estar en estricta conformidad con lo establecido en la resolución 26/9 del Consejo de Derechos Humanos, lo cual es fundamental para mantener la razón de ser y la esencia misma del proceso.

Muchas gracias.

## **6. Ecuador**

Señor Presidente,

A nombre del Ecuador quiero reconocer a todo el equipo de la Oficina del Alto Comisionado de las Naciones Unidas para los Derechos Humanos por todos los esfuerzos y el respaldo que brinda al grupo de trabajo en la tarea de elaboración de un instrumento jurídicamente vinculante sobre empresas y derechos humanos.

También quiero saludar a los Estados, autoridades, organizaciones de la sociedad civil, organismos internacionales, organizaciones intergubernamentales, funcionarios de las Naciones Unidas y demás participantes que colaboran con este proceso y que han decidido unirse a esta Octava Sesión del Grupo de Trabajo.

En los próximos días de diálogo y debate los distintos actores continuarán realizando sus valiosos aportes a la tercera versión revisada de instrumento jurídicamente vinculante para regular, en el marco del Derecho internacional de los derechos humanos, las actividades empresariales. En este objetivo, es importante impulsar un diálogo abierto, transparente e inclusivo, con la participación de todos los interlocutores, para la consecución del mandato que se nos ha conferido en virtud de la resolución 26/9 del Consejo de Derechos Humanos.

La Declaración Universal de los Derechos Humanos nos recuerda que tanto los individuos como los órganos de la sociedad deben promover el respeto de los derechos humanos y las libertades fundamentales. Por ello, consideramos que este instrumento jurídicamente vinculante debe complementar y reforzar las normas existentes en esta materia, incluyendo los Principios Rectores de las Naciones Unidas sobre Empresas y Derechos Humanos.

Le auguramos el mayor de los éxitos en la conducción de los trabajos durante este período de sesiones.

Muchas gracias.

## **7. France**

Monsieur le Président,

1/ Nous devons collectivement nous rappeler de ce qui a justifié l'élaboration de ce traité, à savoir le drame du Rana Plaza.

Aussi, la France réitère son soutien à la mise en place de règles communes pour favoriser le respect des droits de l'Homme par les entreprises, tout au long de leurs chaînes de valeur. Alors que certains Etats, comme la France, se sont dotés très tôt de règles en la matière, c'est également un enjeu de concurrence équitable.

2/ La France a en effet adopté dès 2017 une loi pionnière relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre. Au niveau européen, elle prend part à l'élaboration du projet de directive sur le devoir de vigilance de la Commission. Elle soutient également la mise en œuvre des principes directeurs des Nations Unies relatifs aux entreprises et droits de l'Homme, ainsi que les principes directeurs de l'OCDE à l'intention des multinationales.

3/ Cet engagement, qui justifie sa participation au groupe des amis de la présidence, est également assorti de demandes légitimes.

Premièrement, nous devons avancer plus vite : l'opinion publique internationale, les victimes des violations de droits de l'Homme l'attendent.

Deuxièmement, le projet d'instrument qui est devant nous doit être plus réaliste, équilibré, suffisamment clair et précis au plan juridique. C'est la condition de son effectivité future.

4/ La France encourage tous les Etats à participer de façon constructive et transparente aux négociations.

Merci./.

## 8. Germany

- Germany fully aligns itself with the statement of the European Union.
- We would like to thank Ecuador and the community on BHR for their efforts to bring the process forward.
- Germany has followed closely the Treaty negotiations since their beginning in 2014. We have taken note of the 3rd Revised Draft presented by the Chair-rapporteur in July 2021. We have also followed the 7th negotiation round last year. We recognize the compilation of amendment proposals might pose a challenge for the 8th session.
- Overall, notable progress has been achieved regarding the establishment of binding standards for Business and Human Rights in the last few years. Germany has adopted its Supply Chain Due Diligence Act in July 2021. It will come into force on 1st of January next year. The EU Commission has presented a draft for a Corporate Sustainable Due Diligence Directive currently debated in the Council of the European Union. Due to the remarkable size of the European market, this Directive could potentially influence business policies way beyond the borders of the European Union.
- Against this background, we believe this is the right moment to reflect on the appropriate shape a future Legally Binding Instrument could take. Indeed, the German Supply Chain Act and the legislation as proposed by the EU Commission have in common that they set binding standards for business conduct, with Due Diligence provisions and provisions on access to remedy based on the UN Guiding Principles on Business and Human Rights.
- According to these instruments, companies need to exercise due diligence to identify, prevent, mitigate and remedy adverse impacts on human rights.
- We believe that this kind of approach can be a source of inspiration for the Treaty process which could combine due diligence standards and rules on access to remedy.
- At the same time, the project of a Legally Binding Instrument on Business and Human Rights will only have a chance to succeed if it is as little intrusive into national legal systems as possible. It might therefore be appropriate to explore enhanced flexibility by considering State choices (or State reservations) in relation to appropriate aspects of the Treaty. In the same vein, a tier system with opt-in options may be considered. I would also like to mention the possibility to explore new ideas including a framework agreement structure.
- Moreover, it is also worthwhile to explore more flexible operational approaches for the negotiation process itself. In other negotiation contexts it has proven helpful to establish a smaller drafting group proposing compromises to issues under discussion in the plenary. Such a “language harmonization group” could consist of government representatives from all UN-regions as well as experts from relevant intergovernmental and civil society organisation. Their timely proposed compromise language might help advance the negotiation process in the plenary and overcome deadlocks.
- We have taken note of the proposals submitted by the Chair and are looking forward to the further discussions.

## 9. India

Thank You Chair,

At the outset, India would like to thank the High Commissioner for Human Rights for his opening remarks. We also congratulate you for your election as the Chairperson-Rapporteur to steer the proceedings of this session.

Mr. Chair,

2. We believe that business enterprises play a key role and impact the lives of people with their activities. Considering the global expansion of businesses, the international community has increasingly felt the need to recognise the corporate responsibility of businesses to respect human rights and to address adverse impacts that may result from its operations and business relationships.



Mr. Chair,

3. At international level, deliberations have been now going on for almost five decades on the subject of regulation of the activities of transnational corporations so as to ensure corporate social responsibility and respect for human rights. A significant achievement on this subject was the adoption of the United Nations Guiding Principles on Business and Human Rights by the United Nations Human Rights Council in 2011.

Mr. Chair,

4. India has been developing its business responsibility framework to provide an enabling environment for improved participation of businesses in securing basic rights of the citizens. India has revised and aligned the National Voluntary Guidelines on Social, Economic and Environmental Responsibilities of Business with the UN Guiding Principles on Business and Human Rights and Sustainable Development Goals (SDGs) in 2019. This also led to the development of the National Guidelines on Responsible Business Conduct.

5. Simultaneously, Business Responsibility Reports (BRR) were made mandatory in 2019 enjoining the businesses to report their actions towards adoption of responsible business practices. In 2021, pursuant to the recommendations of the BRR Committee, the Securities and Exchange Board of India (SEBI) prescribed the Business Responsibility and Sustainability Reporting requirement for top 1000 listed entities (by market capitalisation) on voluntary basis for the FY 2021-22, and on mandatory basis from FY 2022-23 onwards.

6. The legislative mandate of Corporate Social Responsibility, established in 2013, has enhanced the contribution of businesses towards securing human rights. During 2018-19, INR 119.61 billion was spent on CSR activities by companies listed on the National Stock Exchange. Approximately 65% of that was spent towards poverty alleviation, nutrition, health care, rural development, education and skilling.

7. We have taken steps in streamlining of gender perspective in its business policies. The Companies Act of 2013 mandates companies to spend at least 2% of their profits on socially beneficial activities including promotion of gender equality, empowerment of women and providing shelter for the needy. Certain companies are also required to appoint at least one-woman director on the board.

8. India has also been working on a National Action Plan on BHR which will articulate our priorities and actions to support the implementation of the UN Guiding Principles on Business and Human Rights (UNGPs).

9. These initiatives at the national level complement the already existing machinery comprising of an independent judiciary, national and state commissions to monitor compliance with human rights, legal and policy measures and an independent media.

Mr. Chair,

10. This Open-ended Inter-Governmental Working Group established pursuant to HRC Res. 26/9 of 2014 has made significant progress since its first session.

11. In this context, we believe that enhanced discussion and further clarity is still required on a number of elements in the third revised text with concrete textual suggestions and of the Chair's proposals. India reiterates its position that this instrument should focus only on business activities of a transnational nature and not to national enterprises as we already have domestic laws to regulate them. Such an instrument needs to maintain a fine balance with the socio-economic developmental concerns of developing countries and LDCs on one hand while also making transnational corporations more responsible in the protection of human rights. We believe, any international legal instrument needs to be flexible and balanced so as to have the widest possible acceptance that will ensure its effectiveness.

Mr. Chair,

12. In conclusion, we are committed to engage in a constructive manner in the discussions over this week.

Thank You.

## **10. Indonesia**

Mr. Chairperson,

My Delegation wishes to congratulate you for once again being elected as the Chairperson for this 8<sup>th</sup> Session of the Open-Ended Working Group. This shows the trust and confidence towards your able and strong stewardship in guiding the deliberation of the Working Group.

Mr. Chairperson,

Indonesia continues to take important measures to promote respect of human rights in business activities by actors in Indonesia. We acknowledge the obligation to adequately regulate and monitor business activities to comply with relevant laws, regulations and standards including the UN Guiding Principles on Business and Human Rights. A number of measures has been taken to further disseminate the UNGP as well as other effort to encourage human rights due diligence by companies.

Therefore, Indonesia attaches great importance to the deliberation of the legally binding instrument in line with Resolution 26/9 based on the consideration that this process will address the gaps governing cross border business activities that is outside of national laws of countries. In this regard, Article 3 on Scope should be formulated in a precise manner to govern over business activities of transnational corporations and other business enterprises that have a transnational character in their operational activities, and should not apply to local businesses registered in terms of relevant domestic law.

We look forward for an instrument that will provide a stronger foundation to guide our efforts to achieve sustainable development and socio-economic progress that upholds human rights.

We appreciate the Chair for preparing proposals for a number of articles to the draft LBI. We particularly appreciate the use of more formal language typically use in treaties and instruments on human rights. Considering the character of a legal instrument we are of the view that this process should endeavours to avoid resolution types of languages that requires precise use of terms. We also note, as mentioned by the letter accompanying the proposal, that the proposals are meant to streamline the text and making the instrument easier to understand. However, they need more clarity as to how it corresponds to the current third revised draft. We particularly concern over the use of the term.

We would like to hear your explanation on how these proposals will be utilized in the negotiations.

Our delegation looks forward to the discussion and we will participate and contribute constructively to this Session of Working Group.

I thank you.

## **11. Iran**

Mr. Chair-Rapporteur,

My delegation congratulates you for your re-election as the Chair of the Working Group transnational corporations and other business enterprises with respect to the human rights and appreciates all your efforts in particular for presenting the third revised draft of legally binding instrument in the field of activities of transnational corporations and other business enterprises.

The Islamic Republic of Iran supports the work of Working Group and stands ready to engage constructively in elaboration of the draft during the 8<sup>th</sup> session of working Group.

We are of the view that the work of Working Group should be fully in line with mandate of Resolution 26/9 and the scope of the legally binding instrument should be in accordance with the said resolution and be limited to transnational corporations;

The Islamic Republic of Iran believes that setting a legally binding instrument is critical to ensuring respect for human rights by transnational corporations. There is no question that transnational corporations should respect human rights in their business activities as well as, they, in particular, social platforms, should also respect the sovereignty and the principle of non-intervention in the internal affairs of other States;

Mr. Chair-Rapporteur

We recognize that transnational enterprises are key component for achieving to realization of the right to development. The centric essence to the realization of the right to development as articulated in Article 1(3) of the UN Charter is to achieving international co-operation to solve international problems and in promoting and encouraging respect for human rights and fundamental freedoms for all. They should undertake due diligence in this important aspect of their business activities.

In this context, we would like to emphasize that such regulatory approaches not suffice to secure victims of human rights without addressing the negative consequences of over-compliance by transnational enterprises to the UCMs.

Unilateral coercive measures directly and indirectly impeded and continue to violate the fundamental rights of targeted populations as well as impede the realization of all human rights including but not limited to the right to development and violated the norms and principles of International Law.

Special Rapporteur on the negative impact of the unilateral coercive measures on the enjoyment of human rights, Ms. Alena Douhan, concludes in her report to 51<sup>st</sup> Session of the Council on her visit to Iran in May 2022, among others, that the use of unilateral coercive measures and over-compliance has an overall adverse effect on the broad spectrum of human rights, civil, political, economic, social and cultural, including the right to life and the right to development.

She calls on all financial institutions and other businesses to act in accordance with the UN Guiding Principles on Business and Human Rights to avoid over-compliance and violations of the rights of nationals and residents of Iran, In particular, she recalls the need for the establishment of human rights due diligence processes to prevent adverse human rights impacts that are directly linked to their operations, products or services and invites the UN system to engage with her in developing a conceptual framework for mechanisms of compensation, remedy and redress for victims of human rights violations due to UCMs and introduce due diligence principles in international cooperation, banking and business activity.

In this context, we are of the view that for addressing this important aspect of transnational cooperation having a legally binding instrument is critical more than ever!

I thank you Mr. Chair-Rapporteur,

## **12. Japan**

Japan is committed to the promotion and protection of human rights. In recognition of the importance of advancing human rights even in the context of business and human rights, we support the UN Guiding Principles on Business and Human Rights (UNGPs) as endorsed by consensus at the UN Human Rights Council. In 2020, Japan launched the UNGPs-based National Action Plan (NAP) on Business and Human Rights. We further intend to continue to promote and protect human rights in business activities through the steady implementation of the NAP. In September, the Government of Japan released the “Guidelines on Respecting Human Rights in Responsible Supply Chains” , which is cross-industry guidelines to be followed by business enterprises, with an aim to support business efforts to respect human rights. The Guidelines have been established based on the UNGPs, and other international standards, As such, we consider it crucial that all States and stakeholders take tangible actions based on the UNGPs.

While we appreciate the efforts the Chairman-Rapporteur has made so far, Japan would like to emphasize that it is a fundamental prerequisite that internationally legally binding instruments regarding business and human rights are realistic, effective, and well balanced to ensure that many States can agree on their basic contents. This means that such instruments must reflect the views of the greatest possible number of stakeholders and governments, each of whom are responsible for people faced with greatly varying circumstances. To achieve this when formulating such instruments, it is necessary to have a wider range of relevant States and stakeholders discuss any proposed drafts and to undertake a consensus-building process, which would build upon the UNGPs, during the drafting process.

However, the current draft does not meet the above-mentioned prerequisite. Indeed, it contains fundamental flaws in various provisions, such as the ones concerning: consistency with international agreements concluded by each State; the scope of rights to be remedied; and procedures and methods to realize remedy, including the definition of the statute of limitation. We are concerned that the current draft is not ideal to achieve our common goals of promoting and protecting human rights in the context of business activities.

In this context, we recognize that the United States has taken the initiative to address these issues. We hope that various differences in position will converge and that we will be able to work towards an outcome on which as many stakeholders as possible can agree.

Finally, we would like to conclude our statement by reaffirming our commitment to the significant issue of respecting human rights in the course of business activities. We will continue to strive to promote and protect human rights in this field in the spirit of the UNGPs, which reflect a broad consensus of relevant stakeholders.

### **13. Namibia**

Thank you, Mr. Chair,

Namibia aligns herself to the statement made on behalf of the African Group. We join others in congratulating you on your re-election as chairperson-rapporteur and wish you every success with your task.

We commend this WG for the continued commitment to this important process and the rich participation which culminated into the third revised draft. Namibia thanks the Chair-Rapporteur for sharing the third revised draft with the textual suggestions made during our discussions at the 7th Session of this intergovernmental Group last October.

The textual suggestions represent progress in this process and while there is room for improvement, the third revised draft is a strong basis for further discussions. Therefore, Namibia believes that the third revised draft should form the basis of our discussions during this session on how we can address the challenges surrounding human rights abuses resulting from business activities and our attempts to provide appropriate and adequate remedies to those who have suffered harm as result of the human rights abuses.

Mr. Chair,

As per our statement last year Namibia welcomes the initiative to appoint a Group of Friends of the Chair. We note that Group of Friends could not be constituted due to an absence of a representative from the African Region. Namibia will work within the African Group to ensure that a representative is nominated and confirmed as soon as possible.

Mr. Chair,

While we appreciate your efforts to build consensus towards acceptance by the majority of States once the text is adopted, Namibia emphasizes that the work of this Working Group must ensure that we do not lose sight of the end goal which is to ensure adequate and effective protection as well as provide remedies for the millions of people around the world who continue to suffer as a result of corporate abuse. This Working Group would fail in the execution of its mandate if this goal were not achieved. We should also remain cognizant of the fact that the debate surrounding the elaboration of a binding instrument is already yielding positive results, with the recent adoption amongst others of legislation on modern slavery, due diligence, and child and forced labour in some developed countries. The persuasive value and political impact of an instrument of this nature must, therefore, not be discarded.

Mr. Chair,

As the work of the Working Group continues, we must remain cognizant of attempts to undermine or undo this process. We have witnessed over the years the number of States, NGOs and other stakeholders who have thrown their weight behind this process which underscores the importance of these intergovernmental negotiations. We therefore welcome the participation of accredited NGOs and CSOs during this session of the Working Group and look forward to constructive and fruitful discussions with all participants. Namibia as per usual practice will constructively engage in the negotiations.

I thank you.

#### **14. Pakistan**

Thank you, Mr. Chair,

We congratulate you on your re-election as the Chair-Rapporteur of this Working Group and commend your efforts aimed at fostering consensus around the mandate of the working Group and key elements of the draft Legally Binding Instrument.

We also appreciate remarks by the High Commissioner for Human Rights.

Pakistan reaffirms its support for the Working Group's mandate in line with the HRC resolution 26/9, calling for elaboration of an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.

We emphasize the need for broader consultations with key stakeholders aimed at developing clear consensus and harmony on key contours of a legally binding instrument such as scope, applicability, remedy, legal liability and adjudicative jurisdiction.

We would reiterate, that during our negotiations it is imperative to differentiate between TNCs, SMEs and local businesses.

All organizations differ significantly in their structure, level of operations, pool of resources and, most importantly, in their influence. While SMEs and local businesses are limited to operating within a certain territory and are usually governed by the legal and administrative mechanisms of that respective state – this legal uniformity includes any alleged violation of human rights as well.

In the ever-increasingly globalized world, business activities are instrumental in augmenting the state's role in building societal resilience and movement, facilitating livelihoods and standards of living, promoting socio-economic development and achieving headway in our 2030 Development Agenda. The multifaceted socio-economic challenges brought forth by a global financial crisis, climate catastrophes and Covid pandemic have further reasserted this role in stimulating economies, fulfilling people's essential needs and uplifting their living standards.

We acknowledge the numerous contributions of TNCs towards economic and commercial progress, including corporate social responsibility to stimulate welfare of people, however, it must be noted that the challenge of finding the right balance between profitability and respecting human rights persists.

Even though, the primary responsibility for implementing human rights agenda lays with the State, however, this can become a reality only when supported by appropriate and timely steps by civil society organizations, TNCs, SMEs and other influential actors.

Considerations and debates on safeguarding respect for human rights responsibility by TNCs have recently gained more urgency and significance due to:

Firstly; owing to their geographic expanse, transboundary operations, and considerable influence - as several of these companies have a greater turnover than annual incomes of some developing and least developing states;

Secondly; varying stipulations of laws, in theory and in practice, often result in legal lacunas that are exploited by certain TNCs;

Thirdly; the profit motive may push TNCs to engage in actions which damage the greater public interest or are contributing to environmental degradation and sustainability.

The global financial slowdown coupled with the onslaught of Covid-19 and the ensuing problems in conducting business has impacted the ability of SMEs to survive and counter the enormous financial challenges, much more than TNCs. The situation is grave in developing countries where SMEs have been affected severely and are unable to recover due to systemic and structural issues.

Keeping in view these realities, my delegation reiterates that the focus of the instrument should remain limited to the activities of TNCs only in line with the mandate given by the Human Rights Council.

We assure the Chair of our constructive engagement and contribution.

I thank you Mr. Chair.

## **15. Peru**

Señor Presidente-Relator,

El Perú lo felicita por su elección como Presidente-Relator y agradecemos sus comentarios y reflexiones iniciales, así como aquellos presentados por el Alto Comisionado

Valoramos el encomiable esfuerzo que viene realizando Ecuador desde la adopción de la resolución 26/9 del Consejo de Derechos Humanos, en 2014. Confiamos en que Usted llevará adelante la presente sesión con transparencia, idoneidad e imparcialidad. Estamos seguros que bajo las nuevas modalidades propuestas para enfocar y aterrizar las labores del Grupo de Trabajo, sabrá recoger, procesar y conciliar las opiniones y propuestas de las delegaciones en aras de encontrar los consensos necesarios.

El Perú reafirma su adhesión a los Principios Rectores, que contribuyen a orientar las acciones del Estado y de las organizaciones empresariales para proteger, respetar y reparar cualquier vulneración de los derechos fundamentales de los ciudadanos ocurrida en el marco de una actividad empresarial.

En sentido, mi país aprobó en junio del año pasado su Plan Nacional de Acción sobre Empresas y Derechos Humanos 2021-2025. Nuestro compromiso con su implementación parte de la premisa de que la sociedad en su conjunto y el Estado tienen que impulsar un desarrollo económico que impacte de manera tangible en la mejora de la calidad de vida de todos los peruanos y el respeto de sus derechos fundamentales. También debe significar una mejor protección de la salud ambiental, la armonización entre el trabajo y la vida familiar, el respeto a la consulta previa a los pueblos indígenas, el abordaje preventivo y oportuno de la conflictividad social y el fortalecimiento de una cultura de integridad, y una cultura de derechos humanos.

Señor Presidente,

Nuestras autoridades aún se encuentran realizando el detenido análisis que la particularidad del fenómeno que nos convoca exige y que abarca temas tan complejos como la jurisdicción, la ley aplicable y responsabilidad legal. Sin embargo, seguiremos de manera muy atenta el desarrollo de las negociaciones durante esta sesión del Grupo de Trabajo Intergubernamental, dada la fundamental importancia que tiene la materia en cuestión para la promoción y protección de los derechos humanos y el fomento de una conducta empresarial responsable, necesaria para crear sociedades más democráticas, justas y pacíficas.

Muchas gracias.

## **16. Portugal**

Mr. Chair-Rapporteur,

Portugal aligns with the EU statement.

Let me start by thanking you and your colleagues at the Permanent Mission of Ecuador for the commitment to this important subject over the last years. As members of the Group of Friends of the Chair, Portugal supports your efforts.

I also would like to thank the Office of the High Commissioner for organizing this session.

Mr. Chair-Rapporteur,

More than ever, the link between business activities and human rights seems an inescapable area, requiring the attention of States and resolute action.

Indeed, in a globalized world, the role and responsibilities of corporations cannot be neglected by decision-makers. Especially at a time when our economies are undergoing deep and structural transformations towards greener and more digital societies and when new ways of work are an increasing trend.

If anything, COVID-19 showed us how intertwined our economies and our societies have become and how complex supply chains are. Now, at a moment of global inflation, energy shortages and food insecurity, it is also clear how interdependent our economic systems came to be.

At the same time, the perception of the rise of transnational corporations and of the ways their operations affect every day life around the world demands attention.

Furthermore, we live in times of conflict. According to the UN Working Group on Business and Human Rights, the number of civil wars has tripled over the last decade. Even for corporations with the most robust policies, conflict always create human rights challenges.

Finally, digitalization, though by and large a positive development, has also brought additional challenges, namely regarding misinformation, hate speech or abuse.

Mr. Chair-Rapporteur,

While companies, large and small, are essential and irreplaceable contributors to the economic and social wellbeing of societies and thus to the realization of human rights, their activities can also have a negative impact on their enjoyment. We can understand that when we think, for example, in the impact of certain business activities on the environment, the use of child labour or undignified work.

It is the duty of States to prevent such business-related human rights abuses. It is also a responsibility of companies to do so.

When prevention is not effective, accountability must be ensured. Our priority must be to guarantee access to justice and ensure effective remedy while fostering international cooperation in this domain.

In Portugal, we are already working with companies to ensure respect for human rights. We are currently finalizing our first National Action Plan in this area but even if we already developed several initiatives. On women's rights, for example, we launched, jointly with companies, a "Pact Against Violence" and an "Alliance for Gender Equality in Digital Technologies".

As a testimony of the importance we attach to this issue, we have a dedicated working group of the National Human Rights Committee on Business and Human Rights.

We are also negotiating, at the level of the Council of the EU, the Corporate Sustainability Due Diligence Directive and, at the level of the OECD, we are following very closely all developments related to corporate governance and responsible business conduct.

Mr. Chair-Rapporteur,

More than 10 years have passed since the UN Guiding Principles on business and human rights were published. We fully support them. Indeed, they played a very important role in setting standards and raising global awareness. They should remain the basis of our efforts and of future steps to be taken. They can also inspire us to achieve consensus.

However, we recognize there are gaps in the global normative framework for human rights protection regarding business-related challenges. These gaps require a smart mix of policies which include 'soft' aspects such as the UNGPs but also 'harder' commitments, for which the form of a legally binding instrument could be the most adequate.

Therefore, Portugal supports the process that brings us here today. We see merits on having a balanced, mature, encompassing legally sound treaty on business and human rights. An instrument which allows us to promote corporate responsibility with provisions that can be enforced in domestic courts. But also, an instrument that builds on cooperation between States, in a constructive and global approach, and that does not neglect the current acquis: the UN Guiding Principles, but also the relevant ILO International Conventions.

This instrument should be the result of a participatory and inclusive process integrating voices from civil society, trade unions and business organizations and adopting an incremental approach under the general rule that ‘nothing is agreed until everything is agreed’. In this regard, we thank Equador once again for its efforts in promoting the participation of all States and all other relevant stakeholders.

Mr. Chair-Rapporteur,

The standards we agree here need to be drafted in such a way that they can be implemented in practice. Additionally, due diligence obligations need to be proportionate to companies' size: in Portugal, for example, 96% of companies are considered ‘micro’, that is, they have fewer than 10 employees.

We believe that this process is going in the right direction. In particular, we welcome the Chair’s efforts and strategy to focus on and to suggest amendments to some key provisions.

We also wish to support those provisions that follow the UNGPs. The requirement of companies to formulate a human rights policy and to establish a complaint mechanism are laudable. And so is the integration of a gender perspective. We also need to ensure that a global level playing field is created.

As my colleague from the EU said, we are still working out amongst ourselves the issue of competence. In any case, Portugal stands ready to listen attentively to the discussions of this session and to provide a few comments. Rest assured of our commitment to make this process advance towards a consensual and strong outcome.

You can count on Portugal to continue its constructive engagement in the framework of the Group of Friends of the Chair.

## **17. Russian Federation**

Общие вопросы

Применительно к представленному проекту Российская Федерация подтверждает позицию, высказанную на предыдущих заседаниях и которые можно найти на интернет-странице Рабочей группы.

Проект в его представленной редакции не учитывает принципиальные озабоченности Российской Федерации и не может рассматриваться в качестве основы для переговоров. При этом ряд статей нуждаются в концептуальной переработке.

Российская Федерация считает необходимым продолжать настаивать на сужении сферы применения Конвенции до защиты прав человека при осуществлении деятельности ТНК. Охват будущей конвенции должен соответствовать резолюции Совета по правам человека 26/9, согласно которой в мандат группы входит «разработка международного юридически связывающего документа для регулирования в международном праве прав человека деятельности транснациональных корпораций и других предприятий».

Благодарю Вас, господин Председатель

## **18. State of Palestine**

Thank you Mr. Chair,

Once again, the State of Palestine reaffirms its strong support to the UN process towards a legally binding instrument on TNCs and other business enterprises and human rights. Our position in the 8<sup>th</sup> session we emphasize that the negotiations for a legally binding instrument must be based on the 3<sup>rd</sup> revised draft. Last year’s session states and civil society organizations actively participated and demanded stronger provisions to end corporate impunity and hold them accountable for serious violations and abuses. Now more than ever it is crucial to adopt the legally binding instrument in an effort to stop corporate action and to create affective mechanisms to remedy and compensate affected communities including communities in contexts of conflict and occupation.

Mr. Chair,



When resolution 26/9 was adopted in 2014 the core group, who had the support of more than 500 civil society organizations and affected communities, said that the human rights council owes the victims of transnational corporations and other business enterprises, the victims who for decades have been denied their rights, victims who have been living in injustice due to violations and abuses committed by transnational corporations. The core group promised that it doesn't matter how much time this will take they will make every effort to ensure corporate accountability. When this process started it gave hope to the victims and affected communities that this system is going to stand by them, is going to ensure that justice is served. However, the proposals presented on October 6 threaten to undermine the progress achieved through the years and reflected in the 3<sup>rd</sup> revised legally binding instrument, the proposals in front of show total disrespect and disregard to the effort made by states, civil society and affected communities. The language therein undermines all the work that has been made in the past 8 years, it is an offense to those who are suffering and would be normalizing and enabling corporations to continue to violate international law and it further emboldens colonial legacies. The language therein Mr. chair is the reason why we needed to have a legally binding instrument, therefore we would like to have more clarifications on this proposal and on what basis this was drafted. Moreover, we stress that the lack of transparency and lack of space for engagement and deliberations during the last inter-sessional period, should not become a norm for years to come.

Mr. Chair,

We have been participating actively in this process with the aim to stop corporate abuse and violations, in this regard we totally reject counter agendas in negotiations that prioritize political and economical interests over the rights of people. For those reasons, we were clear during the last session that we reject alternative approaches that would weaken the core elements of the treaty. We do not accept the right of corporations to participate in the treaty process as they have a conflict of interest when it comes to regulating and remediating their own human rights impacts.

We stress that the third revised draft shall remain the only basis for negotiations and it has been widely accepted as a viable basis for the negotiations that reflects the lessons learned from victims' experiences and challenges they face to access remedy and justice.

Mr. Chair,

We live in a world where the international system is continuously under attack and it feels that we are stuck in hamster wheel, trying to convince ourselves that the existing tools can still work, it is time to break free from the trappings of the hamster wheel that continuously try to bring us back to square one after we gain momentum to move forward.

I thank you.

## **19. Switzerland**

Monsieur le Président,

J'aimerais tout d'abord vous féliciter pour votre engagement afin de préparer au mieux la huitième session du Groupe de travail intergouvernemental avec de nouvelles propositions de texte pour le projet de traité.

Comme lors des sessions précédentes, la Suisse observera les travaux mais ne participera pas activement aux négociations. Elle se réserve néanmoins la possibilité de poser des questions de clarification relatives à la cohérence avec les Principes directeurs de l'ONU et les lignes directrices de l'OCDE.

La promotion au niveau multilatéral du respect des droits de l'homme dans le cadre des activités économiques est d'une grande importance pour la Suisse. C'est pour cette raison que la Suisse a rejoint le groupe des auteurs principaux de la résolution « entreprises et droits de l'homme » au Conseil des droits de l'homme. Ainsi, elle va proposer, avec les autres membres du groupe, une nouvelle résolution lors de la 53<sup>e</sup> session du Conseil en 2023.

Au niveau national, le gouvernement suisse est actuellement engagé de manière prioritaire dans l'évaluation de la mise en œuvre de son Plan d'action 2020-2023 sur les entreprises et les droits de l'homme. Celle-ci a comme objectif de montrer dans quelle mesure le Plan

d'action a contribué à la promotion et à la prévention des violations des droits de l'homme dans le cadre des activités économiques. En même temps, il a mandaté une analyse indépendante de la mise en œuvre des Principes directeurs de l'ONU et des lignes directrices de l'OCDE par les entreprises afin de mieux comprendre les défis liés à la mise en œuvre des instruments de diligence raisonnable.

Ces deux évaluations fourniront une base solide pour décider du futur processus de mise en œuvre des Principes directeurs de l'ONU et des lignes directrices de l'OCDE par la Suisse, y compris en ce qui concerne le mélange équilibré de mesures juridiquement contraignantes et non contraignantes.

Suite au vote populaire de novembre 2020 sur l'initiative « entreprises responsables », des nouvelles dispositions légales relatives au devoir de diligence sont entrées en vigueur en Suisse en 2022. Elles concernent les devoirs de diligence et de transparence dans les domaines des minerais et métaux provenant de zones de conflit et du travail des enfants. Les nouvelles dispositions prévoient également une obligation pour les grandes entreprises d'établir des rapports sur les risques engendrés par leurs activités, y compris en ce qui concerne les droits de l'homme et l'environnement.

A noter également que la Suisse effectue actuellement une analyse juridique sur les écarts entre les projets de réglementation de l'Union Européenne sur la responsabilité sociale des entreprises et le devoir de diligence et le droit suisse.

Monsieur le Président, nous vous souhaitons beaucoup de succès dans la conduite des travaux.

Je vous remercie.

## **20. United States of America**

Thank you, Chair. To begin, we wish to thank the Government of Ecuador and the members of the business and human rights community for your tireless work to bring attention to the issues that this treaty seeks to address.

This year marks the second year that the United States is participating in these Working Group meetings. While our concerns with the draft text and process around its development remain, we affirm that we share the convictions of this Group that more must be done to build upon the UN Guiding Principles on Business and Human Rights (UNGPs), including in relation to critical areas such as climate change and increased support and protections for human rights defenders.

The UNGPs created a common understanding of the duties of governments and responsibilities of businesses through the three-pillar framework. They have led to over 50 States having developed or being in the process of developing National Action Plans, including our own, which we are currently updating, and many have adopted laws to strengthen accountability, including on due diligence and supply chain transparency. Meanwhile, businesses are increasingly integrating human rights considerations into their policies and practices. Governments and businesses have also made progress in strengthening access to remedy, which is a key concern of the treaty process, for example, by developing operational-level grievance mechanisms and remediation processes.

Despite these achievements, serious issues remain. Just last month, international NGO Global Witness in its annual report recorded that in 2021 alone, 200 land and environmental defenders were killed; of these, a significant proportion were engaging on issues related to business activity. There is a need for a stronger international structure to protect individuals like these who do such important work and to hold those who harm them to account. We understand the motivation behind members of this Group to create a legally binding instrument that will address challenges such as these but continue to believe that a less prescriptive approach that obtains the buy-in of relevant governments and other key stakeholders is the better option. We want to work with the Group to identify a collaborative path forward to advance business and human rights.

We appreciate the Chair circulating new proposals to find constructive paths forward. As we are still studying them, we may not be in a position to engage on all aspects of the proposals

in great depth. That said, we appreciate that they consider, more than prior drafts, the diversity of legal systems and appear to provide increased flexibility for implementation. This is a promising step in the right direction of developing a workable text. However, we note with concern that they remain prescriptive and retain elements such as overly broad jurisdictional provisions, unclear liability provisions, and potential criminalization of an ill-defined range of human rights abuses that will make it difficult for many States to sign on to or implement the treaty.

The United States has not been alone in our concerns regarding the draft treaty. Many stakeholders, including a considerable percentage of States that are home to the world's largest transnational corporations, have pursued only limited participation in these negotiations. Yet, we appreciate Ecuador's recent efforts to incorporate a broader range of viewpoints in the treaty process.

As underscored in a Joint Statement led by the United States and signed by 49 states in June 2021, "One key factor behind the wide acceptance of the UNGPs has been the multistakeholder dialogue that led to their development and that has characterized their implementation. The success of efforts to build upon them in the next decade will depend upon maintaining this approach." We are concerned that an important opportunity to advance business and human rights will be lost if the instrument produced by this Group does not follow such an approach.

For an instrument to gain the broad acceptance needed to be truly impactful, it must incorporate the viewpoints of a diverse group of States, including States that domicile significant numbers of transnational corporations, civil society, and businesses. For this reason, we continue to believe that a less prescriptive approach, more akin to a framework agreement, that builds upon the UNGPs and is developed in collaboration with, and ultimately reflect principles broadly supported by diverse stakeholders provides the best way forward. More prescriptive elements could be addressed through optional protocols to such an instrument.

We wish to reassure all parties present that we are here this week to engage constructively and to negotiate in good faith, with the shared aim of increasing corporate accountability and access to remedy for human rights abuses. We look forward to negotiations this week and engaging across stakeholder groups to discuss a way forward on this effort, as an inclusive, multi-stakeholder approach is imperative to further advancing the UNGPs. Thank you.

## **B. Regional organizations**

### **1. European Union**

Mr Chair-Rapporteur,

The EU and its Member States would like to thank you and the Secretariat of the High Commissioner's Office for organising this session.

Business and human rights is currently one of the fastest developing areas in the human rights field. Preventing business-related human rights abuses and ensuring effective remedy and access to justice for victims of such abuses is not only a duty of States but also a responsibility of companies. The EU is strongly committed to this agenda and has been taking important steps to enhance our collective action.

In this context, the EU believes in the potential of an international legally binding instrument to enhance global protection against business-related human rights abuses. However, as the EU has stated in previous sessions, an international instrument can lead to global standards only if it builds on consensual frameworks, is legally sound and realistically implementable, and is supported by a critical mass of UN members across regions. Let me expand on each of these aspects in a bit more of detail.

First, since they were unanimously endorsed in 2011, the UN Guiding Principles have provided the consensual basis for initiatives on business and human rights. Accordingly, one of the priorities of the EU's human rights policy has been to strengthen engagement in promoting global efforts to implement the Guiding Principles, including by supporting the

development and implementation of National Action Plans in its Member States as well as partner countries, advancing relevant due diligence standards, and enhancing the coordination and coherence of EU action. Fifteen Member States of the European Union have developed National Action Plans on Business and Human Rights while others are in the process of developing them. Furthermore, some EU Member States have already passed national legislation regarding due diligence. In addition, the EU supports regional projects outside Europe such as the Responsible supply chains project in Asia and the Responsible business conduct project in Latin America and the Caribbean, working with governments and businesses to develop concrete policies and plans based on the UNGPs. Moreover, the standards created by EU law in areas such as due diligence for mineral sourcing, non-financial reporting and batteries also build on international standards.

2022 was marked by two very important developments within the EU. Firstly, in February the European Commission presented a legislative proposal introducing horizontal mandatory due diligence requirements for companies regarding human rights, including labour rights, and environmental standards. The initiative proposes rules to ensure that businesses address the actual or potential adverse impacts of their operations on human rights. Secondly, last month the European Commission published its proposal to ban forced labour products from the EU market. The proposal covers all products extracted, harvested, produced or manufactured with forced labour, namely those made in the EU for domestic consumption and exports, as well as imported goods, without targeting specific companies or industries. Both initiatives build on internationally agreed definitions and standards and underline the importance of close cooperation with partners.

Furthermore, the EU is preparing a comprehensive EU Framework on the implementation of the UN Guiding Principles, which will identify actions to enhance the coordination and coherence of EU actions in the area of business and human rights. This EU Framework will also contribute to identify possible measures to support the future implementation of the legislative instruments.

Secondly, as mentioned earlier, the EU believes that any binding instrument must be legally sound and implementable in practice, so that it can effectively enhance the protection of victims of business-related human rights abuses, and create a global level playing field for companies. In previous sessions, we welcomed the efforts by the Chair to propose a draft legally binding instrument, and today we welcome the Chair's attempt to advance the discussion through some suggested amendments on key provisions. These proposals include important changes regarding prevention and international cooperation, among others, which require a comprehensive approach. We are looking forward to further comments and explanations on the rationale behind each article proposal. The current draft includes positive aspects, for instance on the promotion of human rights due diligence processes that require companies to integrate a gender perspective in all stages and that are proportionate to the company's size and context of activity.

The EU supports the consensual UN Guiding Principles. This could include the requirement for business enterprises to develop a human rights policy, establish a mechanism preventing human rights abuses, foresee mitigating measures in case adverse impacts are identified and establish a complaint mechanism.

Nevertheless, the EU remains concerned, both about the process as well as the capacity of the proposed draft. In particular whether this instrument could lead to globally accepted standards that could be practically implementable by States. Furthermore, the EU is concerned about the level of detail and prescriptiveness of the draft instrument in a number of policy areas such as civil and criminal liability, applicable law and jurisdiction, or judicial cooperation, whilst at the same time using vague and open definitions for other key elements in the draft. More generally, for the EU it is crucial that the obligations potentially created by the instrument would apply to all businesses in a non-discriminatory manner, irrespective of whether they are privately owned or State-owned.

Third and finally, Mr Chair, the EU would like to thank you for your efforts to gather broad cross-regional support to the process. We appreciate in this regard the proposal of the Chair to advance the work on the draft instrument by means of consultations carried out by a Group of Friends of the Chair during the inter-sessional period. We understand from your

communications before the session that it has not been possible to convene such consultations. In this respect, we encourage the Chair to continue your engagement with UN members and stakeholders - including civil society organisations, trade unions and the business community – in order to build the necessary consensus towards an instrument that can effectively lead to globally accepted standards. The EU stands ready to continue working with you in this regard.

The EU encourages all States to engage positively during this session. While the EU does not have a negotiating mandate, the EU will provide elements to the discussion, notably based on the EU legislative proposals.

We look forward to the discussion during this session and stand ready to contribute constructively.

I thank you Mr. Chairperson-Rapporteur.

## **C. Specialized Agencies and other International Organizations**

### **1. International Chamber of Commerce**

As the institutional representative of more than 45 million companies in over 130 countries, ICC recognises the critical importance of ensuring that businesses have the knowledge, skills, tools, and incentives to respect human rights.

With regard to the specific provisions of the draft, ICC recognises that points raised by delegations at the 7th session have been included in the new version of the 3rd revised text. Nevertheless, we believe that there are clearly still many areas where there is significant divergence of views.

We also note, and appreciate, the efforts of the Chair in sharing his own suggestions.

At the last session, ICC called for delegations to consider whether the revised draft was actually moving in the right direction, given the divergence of views expressed, and suggested consultations intersessionally to review alternative approaches.

ICC considered that the Friends of the Chair proposal that was accepted at the last session was a positive development. We hope that the initiative will soon be operational.

ICC stands ready to contribute constructively to this process, if requested, drawing on the experience of the many companies in our network who are leading in the field of human rights respect and protection.

It is incumbent on us all to support the development of robust, effective, and coherent policy and legislative settings in the field of human rights and business, and to do so in ways that have real and positive impact on those most at risk of human rights abuses. We stand ready to work with all stakeholders to this end.

### **2. South Centre**

Mr. Chairperson,

We would like to first congratulate you for your re-election as Chairperson-rapporteur of the Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises (OEIGWG).

The OEIGWG has held eight sessions since 2014. The outcomes of these discussions have allowed, in particular, the identification of the negative impacts of activities of transnational corporations and other business enterprises on human rights around the world.

Human rights violations in the context of business operations, either directly by transnational corporations or through their supply chains, have disproportionately affected developing countries, as has been consistently highlighted in this OEIGWG.

The OEIGWG has clearly identified the need for enhanced corporate accountability and to provide access to effective remedies for victims of human rights violations and abuses by

transnational corporations and other businesses, which need to go beyond voluntary approaches towards binding rules.

The prevention of human rights violations and abuses by private actors, in particular transnational corporations, is a key component of discussions linked to the liability of business enterprises. The work of the OEIGWG requires States to adopt effective legal commitments to ensure that business enterprises respect internationally recognized human rights, including through establishing effective national procedures for the prevention of human rights violations.

Mr. Chair,

The negotiations over the past eight years by the OEIGWG and, in particular, the third revised draft of the legally binding instrument, constitute the basis for the road ahead, as it draws upon years of upon evidence shared by individuals and communities that have suffered from violations of their human rights due to business activities, and upon expert deliberations and negotiations on possible legal solutions. We highlight the important role that civil society organizations have played and continue to play in this process.

A constructive participation from all members of the OEIGWG is necessary to achieve the mandate of HRC Resolution 26/9, that is, to establish a comprehensive and effective legally binding framework that can prevent the violation and abuses of human rights and provide effective remedies and access to justice individually or collectively for victims in those jurisdictions where the businesses are established.

Finally, we would like to reiterate the South Centre's strong support for ensuring a timely and positive outcome of this important process.

## **D. National Human Rights Institutions**

### **1. Association francophone des commissions nationales des droits de l'Homme (AFCNDH)**

Monsieur le Président-Rapporteur,

L'Association francophone des Commissions nationales des Droits de l'Homme (AFCNDH), réseau composé de trente-six Institutions nationales de droits de l'Homme (INDH) de l'espace francophone, vous adresse ses compliments pour votre ré-élection à la Présidence du groupe de travail intergouvernemental à composition non limitée sur les sociétés transnationales, les autres entreprises et les Droits de l'Homme.

L'AFCNDH se réjouit de l'ouverture de cette huitième session. Elle réaffirme toute l'importance qu'elle attache à l'adoption d'un traité international qui vise à lutter efficacement contre l'impunité des entreprises, à améliorer la prévention des violations des Droits de l'Homme commises dans le contexte des activités des entreprises, ainsi qu'à faciliter l'accès aux voies de recours pour sanctionner et réparer de telles violations.

Très préoccupée par les atteintes aux Droits de l'Homme résultant de l'activité directe ou indirecte des entreprises, l'AFCNDH réitère sa recommandation de centrer les débats autour de:

la prévention des violations des Droits de l'Homme et la priorité à accorder à l'obligation de vigilance de la part des entreprises, y compris des entreprises publiques ;

la lutte contre l'impunité dont jouissent souvent certaines entreprises ;

la nécessité de prévoir des dispositions relatives au droit à un recours effectif, ainsi qu'à la protection et à la réparation des victimes.

L'AFCNDH insiste sur le rôle des institutions nationales des Droits de l'Homme comme mécanisme de promotion et de protection des Droits de l'Homme dans le contexte des activités des entreprises et recommande que celui-ci soit expressément reconnu dans le Projet de traité. Elle s'engage par ailleurs, à travers ses membres, à inciter les États, de même que toutes les parties prenantes, à jouer un rôle constructif pendant les prochains cycles de négociation.

Enfin, l'AFCNDH insiste à nouveau sur la nécessité d'appliquer le principe de l'égalité des langues officielles et de travail en assurant la traduction du projet d'instrument international juridiquement contraignant en langue française et dans toutes les autres langues officielles des Nations Unies. L'AFCNDH soutient que la mise à disposition du projet de traité dans toutes les langues officielles des Nations Unies en temps utile est une condition indispensable de l'universalité du document qui sera mis en discussion.

## **2. Commission des droits de l'homme du Cameroun**

Monsieur le Président-Rapporteur,

La Commission des Droits de l'homme du Cameroun (CDHC) vous adresse ses compliments et se réjouit de sa participation à cette Session du groupe de travail intergouvernemental à composition non limitée sur les sociétés transnationales, les autres entreprises et les Droits de l'homme qui se tient sous votre présidence.

Reconnaissant que les clauses des contrats d'États et des traités bilatéraux d'investissements (TBI) ligotent bien souvent le pouvoir normatif de l'État, l'empêchant parfois de légiférer dans l'intérêt général pour les matières touchant aux Droits de l'homme et aux entreprises,

La CDHC se félicite néanmoins que de nombreux modèles de TBI intègrent l'exigence du respect des Droits de l'homme et, plus largement, le droit de l'Etat de légiférer dans l'intérêt général depuis deux décennies. La CDHC est aussi consciente que le Droit national, le Droit régional et le Droit international des Droits de l'homme disposent de textes et d'instruments pertinents pour la protection des Droits de l'homme en entreprise. La CDHC demeure néanmoins convaincue que pour mieux prévenir et sanctionner les violations des Droits de l'homme découlant des activités des entreprises, l'adoption d'un traité international s'impose, car cet instrument unique permettra de *codifier* et de *développer*, en un seul instrument, l'ensemble des normes visant à lutter efficacement contre l'impunité des entreprises.

La CDHC rappelle la Résolution 38/13 adoptée par le Conseil des Droits de l'homme sur *la responsabilité des entreprises et l'accès à des voies de recours* dans laquelle le rôle des Institutions nationales des Droits de l'homme comme mécanisme de facilitation de l'accès aux voies de recours effectifs est mis en exergue ; *elle recommande en conséquence* que ce rôle apparaisse clairement dans le Traité en projet.

*La CDHC recommande* que les débats autour du Projet de traité convergent vers la protection et la réparation effectives des victimes des violations des Droits de l'homme par les entreprises.

*Elle recommande aussi :*

aux États prenant part à cette session, de veiller à l'internalisation des dispositions pertinentes du *Traité en projet* visant la protection des Droits des victimes des activités des entreprises dans les codes des investissements, ainsi que dans les contrats d'État et dans les TBI ;

aux entreprises, de prendre en compte l'exigence cruciale du respect des engagements souscrits dans les « conventions d'investissement », encore appelées « contrats d'État » conclus avec les États hôtes des investissements en faveur des Droits de l'homme et des populations locales ;

au Groupe de travail intergouvernemental à composition non limitée, de prendre en compte dans le projet de traité, l'exigence du respect scrupuleux des engagements correspondant à « *la clause de la nation la plus favorable aux Droits de l'homme* » insérée dans les conventions bilatérales d'investissement conclues : soit par l'État hôte de l'investissement, soit par l'État de nationalité de l'investisseur avec d'autres États.

## **3. Commission nationale consultative des droits de l'Homme (CNCDH)**

Monsieur le Président-rapporteur,

La Commission nationale consultative des droits de l'Homme (CNCDH) se réjouit de l'ouverture de la huitième session du groupe de travail intergouvernemental à composition

non limitée sur les sociétés transnationales et autres entreprises et les droits de l'Homme. Elle espère que les échanges seront constructifs et la session productive, afin de faire avancer les négociations sur le fond du projet d'instrument juridiquement contraignant.

Institution nationale des droits de l'Homme (INDH) en France, la CNCDH insiste depuis de nombreuses années sur la nécessité d'adopter un instrument juridiquement contraignant à l'échelle mondiale, afin d'agir pour des chaînes de valeur responsables en matière de droits de l'Homme et d'environnement ; de renforcer la sécurité juridique et la concurrence loyale en harmonisant les obligations dans ce domaine (*level playing field*) ; et de combler les lacunes du droit positif. Cet instrument devrait être ambitieux et imposer des obligations claires et substantielles à même de prévenir les violations des droits de l'Homme commises dans le contexte des activités d'entreprises, privées ou publiques. Il devrait en outre permettre de renforcer la mise en œuvre du troisième pilier des Principes directeurs des Nations Unies relatifs aux entreprises et aux droits de l'Homme en prévoyant des dispositions susceptibles d'empêcher les dénis de justice et de favoriser l'accès aux voies de recours et à la réparation des personnes affectées par ces activités.

La CNCDH appelle la France, l'Union européenne ainsi que l'ensemble des États membres à s'engager activement dans le processus de négociation de façon à trouver un terrain d'entente pour faire front commun face aux enjeux soulevés par le projet d'instrument en termes de respect des droits de l'Homme et de protection de l'environnement dans les chaînes de valeur mondiales. Ce front commun devrait être forgé dans le cadre d'un processus inclusif, avec l'ensemble des parties prenantes (dont la société civile, les victimes, les syndicats, les entreprises). La CNCDH rappelle le rôle des institutions nationales des droits de l'Homme dans la promotion et la protection des droits de l'Homme dans le contexte des activités d'entreprises et entend continuer à suivre les négociations en étant force de proposition, y compris avec les autres INDH dans le cadre des réseaux francophone, européen et global des INDH.

Je vous remercie Monsieur le Président-rapporteur.

## **E. Non-governmental organizations with ECOSOC consultative status**

### **1. Action Aid**

Thank you Chair.

Dear Ladies and Gentlemen,

I am speaking on behalf of Actionaid European Youth delegation together with other NGOs participating in the 8th session. We welcome the third revised draft of the LBI and are convinced it is a solid basis for further negotiations also around the pressing issue of child labour.

According to the International Labour Organisation, around 260 million children are in employment around the world. It is estimated that 170 million are engaged in child labour.

CHILD LABOUR is defined as work for which a child is either too young, or work which, because of its nature or conditions, is altogether considered unacceptable for children and is prohibited.

Children below the age of 15 working at cocoa farms e.g. for Nestle.

Children working in the fields to collect cotton for brands like Zara or HM.

The famous 'HELP ME' tags on garments of companies such as Shein.

The 2013 Rana Plaza Accident, where at least 1,132 people were killed and more than 2500 were injured. Amongst them: children.

The examples are numerous, and the list is long.

Despite the existing instruments with regards to this issue, as the representatives of the youth, it is in our view, that the Legally Binding Instrument to Regulate, in International Human



Rights Law, The Activities of Transnational Corporations and other Business Enterprises, should emphasize or at least refer to the issue of Child Labour in a more definitive way.

Child Labour is only mentioned in one article of this Legally Binding Instrument, as an issue on which member states should pay attention to when implementing the present instrument. The way it is mentioned gives out the impression that *special attention shall be undertaken when the cases of Child Labour* are severe. Namely, and I'm quoting, "the worst forms of child labour, including forced and hazardous child labour." Child Labour is a crime, and therefore it should be given special attention regardless the level of severity.

Thus, we are asking this Working Group to take action and include the issue of Child Labour further in this binding instrument. We are asking the United Nations to grant safety to the children across the world when deprived of their basic human rights. We are asking for their protection.

## 2. AIDS

Pandemia, emergencia climática, guerras, catástrofes naturales, urgencias humanitarias. Vivimos tiempos de crisis permanentes donde lo excepcional se hace norma. La urgencia es un desafío, pero también un peligro. Porque la emergencia rebaja los controles y justifica lo extraordinario. Son estos tiempos propicios para la doctrina del shock. Hay una nueva arquitectura y una nueva gobernanza global en disputa. Tendencias de fondo que llevaban años fraguándose se aceleran y consolidan en pocos meses.

Como la naturaleza, la política también aborrece el vacío. El desorden global es una invitación a la ley del más fuerte. Y fuertes son las multinacionales, sus abusos y su impunidad. Los sistemas voluntarios de autocontrol y rendición de cuentas no han funcionado. Asumámoslo. Necesitamos mecanismos vinculantes. Pero no nos hagamos trampas: de nada sirve un tratado que vincula solo a buenas intenciones.

Respetar los Derechos Humanos no puede ser un complemento ni una opción. Sino una obligación. Y su incumplimiento debe acarrear costes reales. Si no, nada de esto servirá para nada. La Unión Europea se llena la boca hablando de valores y principios que, sin embargo, sus políticas concretas no respetan en la práctica.

Vivimos una guerra entre el capital y la vida. Si elegimos vida, tenemos que poner los derechos en el centro. No necesitamos bonitas palabras. Necesitamos hechos y herramientas vinculantes. Porque nuestras vidas y el planeta valen más que sus beneficios.

## 3. Franciscans International

This statement is on behalf of Franciscans International. We are part of and support the Treaty Alliance, ESCR-Net, and Feminists for a Binding Treaty.

At the outset, we reiterate our sustained commitment to constructive engagement in this process. For Franciscans, as for our other partners and allies, better regulation through binding rules in international human rights law is not an option, it is a must - especially in the face of the triple planetary crisis, and to which a number of TNCs and other business enterprises contribute.

We consider that in the absence of an updated draft, as expected following the recommendations of the Chairperson-Rapporteur in the report of last year's session, the 3<sup>rd</sup> draft of the legally binding instrument and the textual proposals by States made at the 7<sup>th</sup> session continue to be the basis for negotiations during this session. We continue to note that this third draft contains important elements that should be maintained and at times strengthened. Specifically, and following the recognition of the right to a healthy environment by both the Human Rights Council and General Assembly, we support the explicit inclusion of the right in the 3<sup>rd</sup> draft, as well as language related to environmental and climate change assessments. The inclusion of this language is fundamental, as evidenced by our partners on the ground around the world who have shared with us their concerns about the environmental impacts of companies, and their associated effects on the entire range of civil, cultural, economic, political and social rights. In Mozambique, for example, we met with people displaced by large greenhouse gas emission projects affecting the conflict prone northern province of Cabo Delgado.

We further note the strengthening of some language related to access to justice and accountability, including in regard to jurisdiction and statutes of limitations. Even with certain advancements in the third draft, we underscore that both the text itself and the process towards a legally binding instrument must be strengthened further, also considering that it is taking place under the auspices of the UN body in charge of protecting and promoting human rights!

In that regard, we regret that the methodology as delineated in the recommendations of the chair and as taken note of with appreciation in the conclusions of last year's session was not followed. This includes:

A timely formation of the friends of the Chair which would lead consultations with States but also with civil society;

an updated draft presented on the working group's website by July; and

consultations with civil society, amongst others, including via written inputs.

We hope that in moving forward a more inclusive, timely, and transparent approach is taken by the Chairmanship, and the newly formed 'Friends of the Chair'; especially as the urgent need for a binding instrument only grows and becomes even more stark. Accordingly, we urge more States to engage constructively this year and, in the years, to come.

#### **4. International Trade Union Confederation**

Thank you, Chairperson. I speak on behalf of over 300 million unionised workers around the world belonging to the following global trade union organisations:

- ITUC
- BWI
- EI
- IndustriAll
- ITF
- IUF
- PSI; and
- UNI

Chairperson,

The convergence of crises: climate, cost of living, the pandemic and conflict have once again shown serious deficiencies in corporate respect for human rights. Too many lead firms in global supply chains have denied workers their human rights at work, exposing the failed model of voluntary corporate social responsibility.

Pressure has been increasing for regulatory action to hold companies accountable for human rights abuses at national and regional levels with new legislation either coming into force or being proposed.

Earlier this year the Labour Ministers of the G7 agreed to engaging constructively in discussions at both the UN and the ILO for a consensus-based legally binding instrument on corporate supply chain accountability - and this summer the ILO adopted building blocks for future normative and non-normative action on decent work in global supply chains.

Responsible businesses are also seeking legal certainty and a level playing field in this space.

Within this context, Chair, global unions salute your continued leadership in paving the way for an effective LBI. Last year, we welcomed your efforts to set up a 'Friends of the Chair' group to facilitate textual work on the 3<sup>rd</sup> revised draft during the inter-sessional period. Despite you reaching out to constituents as early as February 2022, we regret that the Group was unable to convene due to a lack of full regional participation. Chairperson, we reiterate the importance of the Friends of the Chair group and trust that this process will begin in earnest. We also believe that the group would benefit from advcivil society advisers. Global

trade unions are ready to support the “Friends of the Chair” group with perspectives from the world of work.

Chairperson, while we appreciate your efforts to push the agenda forward with some textual proposals on Articles 6-12 together with a new set of definitions, we believe that the third revised draft already offers conceptual clarity and represents a text that is politically viable for States and non-State actors alike. It is a good basis for negotiation. In this regard, we support the statement of the Treaty Alliance and other civil society actors delivered this morning.

We have considered your proposals, which appear to streamline the provisions by making them less prescriptive. While this is aimed at achieving the broadest possible support for the draft, we believe that there is a risk of losing much-needed detail to truly achieve accountability for corporate human rights harms.

Chair,

Global unions will continue to engage with the third revised draft and present proposals for textual amendments and encourage all States to do the same.

In closing, on behalf of the global trade union movement, I wish you good luck and every success for this 8<sup>th</sup> session.

Thank you.

## 5. International Organisation of Employers

Thank you Chair,

The International Organisation of Employers, which represents more than 150 Employer Organisations and 50 million companies worldwide, welcomes the opportunity to express its comments for the eighth session.

Let me start with two comments **on the process**:

While acknowledging that this is an inter-governmental process, we again insist that **business representatives should have been at the table in the actual drafting**.

After seven years, there continues to have no increasing State’s support or participation as well as no agreement on major provisions of the draft treaty. This **distances the draft treaty even** more from the process-based approach of the UNGPs, making it less implementable and preventing any possible consensus-building.

IOE welcomed the Chair’s proposals. Unfortunately, the following key areas continue to **raise serious concerns** for the business community:

**The definitions in Article 1** continue to consider “business relationships” as “any relationship”, including through “electronic means” as well as resorting to **vague language** such as “business activities” or “human rights due diligence”. These definitions create legal uncertainty and extend the **scope of diligence obligations and liability** to companies’ relationships without a direct link.

**For the scope in article 3, we regret the absence of any Chair’s new proposal.** The current draft would apply only to transnational companies and explicitly exempt domestic companies. This would exclude 95 per cent of the world’s workers who are employed by purely domestic entities where most human rights deficits arise.

**In article 6 on prevention**, the proposals continue to remain silent on the fact that prevention is a shared responsibility where States have an obligation to support businesses in their responsibility to respect.

**In article 7 on access to remedy**, the language does not yet provide enough legal clarity, in particular on issues of “reversal of the burden of proof” or liability.

The proposals for **Article 8 on legal liability** could introduce liability for a company based on a violation occurring **anywhere in its entire supply chain** without requiring a causal connection between the business and alleged harm. Also, it would also extend **liability to natural persons**, overriding settled local law principles on “piercing the corporate veil”.

**On jurisdiction (article 9)**, the proposals continue to promote extremely broad extraterritorial jurisdiction, encouraging plaintiffs to forum shop, again creating great legal uncertainty as to where a business may be hauled into court.

IOE remains committed to advancing human rights and responsible business conduct, including in this treaty process. Yet, important changes are necessary to reach a balanced outcome for all.

Thank you.

## 6. Misereor

Madame/Monsieur le Président,

Madame/Monsieur le Rapporteur,

Mesdames et Messieurs les Participants,

Je me fais la voix des Evêques de l’Afrique de l’Ouest réunis au sein des CERAO (Conférences Episcopales Réunies de l’Afrique de l’Ouest). Leur voix est aussi le murmure de tous les Evêques de l’Afrique réunis au sein du Symposium des Conférences Episcopales d’Afrique et de Madagascar (SCEAM) et la voix des Pasteurs qui accomplissent l’oeuvre de l’Eglise en faveur du développement intégral de l’homme.

La voix qui retentit du haut de cette tribune est le crépitement d’un territoire qui se réchauffe et nous alerte que si rien n’est fait dans peu d’années, la région du Sahel deviendra inhabitable et les catastrophes naturelles vont se multiplier et la désertification va s’étendre.

La voix qui rétentit du haut de cette tribune est le gémissement d’un peuple historiquement célèbre, culturellement nanti et moralement résilient mais qui ne comprend pas cette ruée sur ses richesses benies d’un système politique de complicité et à un manque de régulation contraignante, soucieuse de protéger les droits de nos communautés dont la survie réside dans leurs terres.

Au cours de leur dernière Assemblée Plénière, les Evêques de l’Afrique de l’Ouest ont manifesté leur intérêt à la réglementation des sociétés transnationales par le biais d’un instrument juridiquement contraignant. De tous leurs vœux, ils en appellent à en faire une priorité urgente.

Nous vivons des crises profondes, superposées et interconnectées qui menacent et notre vie et notre planète. En plus du changement climatique, nos peuples subissent des accaparements massifs de terres, la perte et la pollution de terres forestières et d’autres écosystèmes et de la biodiversité essentielle à leur survie.

Faut-il le crier à des oreilles qui se ferment pour ne pas entendre ? Faut-il davantage de preuves pour des yeux qui se ferment pour ne pas voir ? Les crises auxquelles nous sommes confrontés en Afrique et en Afrique de l’Ouest en particulier sont le résultat de l’hégémonie du profit sur les droits de l’homme et la dignité humaine.

Il est impératif d’aller au-delà des principes volontaires pour permettre à nos systèmes judiciaires nationaux ou régionaux de contrôler et d’incriminer les atteintes aux droits humains qu’elles causent. Au fil des ans, les États et la société civile ont contribué à renforcer le texte du Traité. Nous invitons les Etats ici-présents à négocier sur la base du troisième projet révisé du Traité.

Cependant, ce texte doit être considérablement amélioré afin d’aboutir à un cadre juridique efficace.

Pour cela, un mécanisme judiciaire internationale pouvant recevoir des communications individuelles de victimes est essentiel.

Le processus doit être protégé de toute influence des entreprises et de leur captation, tout en plaçant les droits des personnes et des communautés affectées au centre du processus de négociation.

Comme nous l’enseigne la sagesse africaine : On vient et on existe en ce monde pour être des hommes et femmes, dans la reconnaissance et l’accueil mutuel, le vivre ensemble dans le

respect de la différence et la complémentarité pour ne pas faire de notre société une jungle où les plus puissants imposent aux autres et à la majorité. C'est pourquoi les victimes des crimes d'entreprise doivent être entendues, et leurs expériences doivent façonner le futur Traité, notamment en établissant le droit des communautés locales et autochtones de dire non aux projets indésirables ou nuisibles sur leurs territoires.

Monsieur le Rapporteur,

Nous exprimons une Eglise solidaire et, engagée pour la libération des peuples opprimés aux côtés des hommes de bonne volonté.

Dans l'espoir que le futur Traité soit façonné par le contexte urgent de notre région ouest africaine et reflète les obstacles auxquels nous avons été confrontés nous attendons de la Présidence qu'elle mène ce processus de manière transparente et inclusive.

Nous attendons avec impatience une semaine de négociations fructueuses, avec à la fin, des améliorations substantielles du texte actuel.

Je vous remercie.

## **7. PENGON – Friends of the Earth Palestine**

Mister President,

My name is Rasha Dayyeh, speaking on behalf of PENGON – Friends of the Earth Palestine, member of the Global Campaign, which is an international network of more than 200 members, representing affected communities and social movements around the world.

As a Palestinian I'm here to bring the perspective of people under occupation, who are still suffering from unlawful colonial occupation, water apartheid practiced by the Israeli water company Mekorot which exploits our water resources.

The process of the Binding Treaty is for us, people and communities affected by TNCs, organizations and social movements fighting for social and environmental justice, an inspiring and promising initiative. Our people are suffering on a daily basis as a result of corporate activities aiming at maximizing profits and socializing misery.

It is precisely the reason why we need a strong and effective Treaty, to address the gaps in international law, hold TNCs accountable for the violations committed and ensure effective access to justice for those affected.

We need a Binding Treaty re-establishing the primacy of human rights over investment and trade agreements. We need a Binding Treaty including clear and direct obligations for TNCs to respect human rights, recalling that a clear distinction must be made between the human rights obligations of States and those of TNCs. While States have general obligations to respect, ensure respect for and fulfill human rights within their jurisdiction, TNCs have the obligation to respect human rights and environment in their activities. The parent company of a given TNC must respect the above-mentioned rights itself, as well as ensuring that its subsidiaries and the companies in its global value chain do so too. We need an international Binding Treaty that places the rights and voices of the affected communities at the core, starting with its negotiation process. And last but not least, the elaboration of the Binding Treaty must be accompanied by the creation of an effective international enforcement mechanism, for example in the form of an International Tribunal as proposed by the Global Campaign. In this regard, we would like to inform you that the Global Campaign just published a "Document of elements for an International Tribunal on TNCs and human rights" that we hope will be taken into consideration in the framework of the process and in particular for the discussions on the implementation of the future Treaty.

Having said that, we would like to express our grave disappointment with the unacceptable step backwards by the Chair with respect to the work methodology and the contents of this session, as it is proposed to use as a basis of negotiation the Chair's informal proposals, disregarding the methodology agreed at the 7<sup>th</sup> session and the work on content carried out over the years by social movements, affected communities and civil society organizations, as well as many States participating in the negotiations.

Therefore, we reject the informal text proposals presented by the Chair, as they imply a definitive diversion from the mandate of the Working Group established in Resolution 26/9, asking that the sole basis of the negotiation during this 8<sup>th</sup> session remain, as previously agreed, the third revised draft with the proposals from the States during the 7<sup>th</sup> session last year.

Finally, we would like to call on all States to reject this unfortunate and ill-advised manoeuvre, for the sake of transparency and of the democratic nature of this historical process. These are minimum conditions for a proper environment of work towards yet another important session to negotiate a strong and effective Binding Treaty within the framework of Resolution 26/9, reflecting the needs and demands from those affected by TNCs.

## **8. United States Council for International Business**

The business community is committed to do our utmost to respect human rights, in line with our obligations under the UN Guiding Principles. In order for this commitment to have impact on the ground, the expectations and requirements placed upon companies must be clear and achievable. We welcome the Chair's proposals, but we continue to have grave concerns over the potential viability and utility of the draft text before us. A treaty that does not command widespread support and that contains provisions incapable of being implemented will not further its own objectives.

Only a very limited number of countries are actively engaging in the drafting process. After seven years we see no increased support for the process.

Moreover, there continues to be no agreement on the scope of the draft treaty. Whereas some States welcome the draft's application to all business enterprises, many continue to argue to exclude domestic companies. This not only puts the text at odds with the UNGPs; it fails to cover human rights abuses taking place in vast areas of economic activity, including in the informal sector.

The text also contains provisions that are simply incapable of being implemented or that go against accepted principles of international law. For example:

It states that Businesses will be held liable for activities under “**any** relationship,” presumably including even electronic transactions—raising vast practical and legal complexities.

It imposes liability for failing to “prevent” human rights harms, without requiring a causal connection between the business and alleged harm, upending the UNGP's guidance on process-based due diligence.

It allows States with no jurisdiction over businesses/persons to hold them liable for civil and criminal offences to which they are not causally connected.

It allows jurisdiction for claims in countries where the business may have no ties, and allows the plaintiff to choose which law will govern, leading to great uncertainty and raising legal competence issues.

In sum, while we appreciate The Chair's proposals, they fall well short.

USCIB will continue to constructively engage in the discussions, but fundamental changes are necessary to make the text the basis for finding a consensus.

Thank you.

## **9. Südwind**

Dear Chair, Dear Ladies, Gentlemen and others,

I am speaking on behalf of the association Südwind that participates in the 8th session with a European youth delegation. We welcome the third revised draft of the LBI and are convinced it is a solid basis for further negotiations about the urgent issue of global supply chains.

To an average consumer buying a t-shirt, a toothbrush or chopsticks the strings attached to such purchases are rarely visible. In order to avoid negative effects from our consumer

behaviour, everyone would have to carefully watch *where* items are being manufactured, under *what conditions* their goods are produced and what *consequences* each purchase has on the lives of workers and our environment.

But this information is currently unavailable to most people. Supply chains are obscure things, gathering information about them can be a full time job and thus to fully fathom the true significance of our consuming habits is *impossible*.

This fact however does not change our responsibility owed to the workers suffering under truly horrible conditions in sweatshops and to our environment hurt by chemical byproducts destroying rivers and our oceans. Our earth can no longer endure what industries put it through, and it is only a united effort that can save it.

To say it in the words of the 12th SDG „sustainable consumption and production patterns“: unsustainable patterns of consumption and production are a root cause of the triple planet crisis, meaning climate change, biodiversity loss and pollution.

And that is how this challenge relates to human rights due diligence:

Only a compulsory human rights due diligence can shed light onto the reality of production processes of big multinational companies. As a young citizen of the European Union I truly believe that change can happen, and with this incredibly meaningful opportunity to speak in front of you today I would like to really appeal to each and every single one of you.

This issue is one that is decided by you today (these days) but will have effects on many upcoming generations and their consumption. All aspects of our daily life are affected by our choices and their consequences – and right now we are living without an awareness about the consequences of our own actions. But this lifestyle is not sustainable and my generation and I will have to pay the price. And people in global supply chains are paying the price right now.

This room here, though has the power to change the current (unsustainable) state we are in, and to influence how corporations and multinational corporations will produce our goods in the future.

To summarise: in order for individuals to place their trust into the hands of truly sustainable and non-human rights abusing companies a compulsory human rights due diligence and the investigation of their supply chains imposed by governments worldwide are desperately needed. Therefore we call on all states for constructive engagement in this session towards a Legally Binding Treaty.

**10. Joint Statement FIAN International on behalf of the Treaty Alliance, The Global Campaign to Reclaim Peoples' Sovereignty, Dismantle Corporate Power and End Impunity; The ESCR-Net; the Feminists for the Binding Treaty and the Young Friends of the Treaty (YouFT)**

The Treaty Alliance, The Global Campaign to Reclaim Peoples' Sovereignty, Dismantle Corporate Power and End Impunity; The ESCR-Net; the Feminists for the Binding Treaty and the Young Friends of the Treaty (YouFT) thank States present and remember them the urgency to advance in the process towards the adoption of the Legally Binding Instrument.

We express our discomfort with the presentation of two documents for negotiation during the session. While the third revised draft with comments of States is the product of a long process in which both, states and civil society have been giving their contributions, before the beginning of this session there was no clarity on the role the proposals of the chair will play. Furthermore, the big deviation that the document presents from the third revised draft impedes advancing the negotiations and on the contrary can slow down the progress.

In the report of the 7<sup>th</sup> session, the chair rapporteur committed to update the draft LBI taking into consideration the compilation of the concrete textual proposals submitted by States during the seventh session and the outcomes of the consultations as reported by the friends of the chair. The proposals of the chair were not included in the methodology agreed in the conclusions and recommendations of the 7<sup>th</sup> session.

Therefore we urge States to focus this negotiation based on the third revised draft commented by states during the 7<sup>th</sup> session.

Furthermore, we call all States to protect the democratic character of this process and to ensure transparency and adequate information about the steps and methodologies adopted.

We also ask you to remember the relevant role that civil society has played in this process, contributing with substantiated information based on the experience of affected communities and their advocates as well as in the knowledge of our diverse group of legal experts, who represent legal plurality. This knowledge shall help to ensure an effective treaty process.

Finally, we call all States to ensure that our full participation is guaranteed and respected and that the process is protected from corporate capture, which can undermine the effectiveness of a future legally binding instrument.

People and the planet should be the focus of any instrument negotiated in the Human Rights Council and prevail over corporative interests.

#### **11. Joint statement on behalf of Feminists for a Binding Treaty**

I speak on behalf of the “Feminists for a Binding Treaty,” a coalition of more than 30 NGOs that has been working collectively to advocate for a gender-responsive treaty since 2016. We aim to ensure that diverse women and non-binary people’s voices, rights, experiences and visions are meaningfully included and prioritised throughout the negotiation process.

We continue to express our strong support for this process and applaud the progress built over the last six years thanks to the many contributions from States, experts and NGOs.

The third revised draft is an important basis for negotiations and goes in the right direction in terms of filling some of the major gaps in ensuring prevention of business human rights abuses and violations, access to justice and reparation for victims.

We recall that the aim of an international human rights instrument on business and human rights is to raise national standards to bring them in line with international human rights law and to address the systemic gaps in accountability that victims face when seeking access to justice for corporate abuse. The draft instrument before us can add tremendous value in terms of international human rights protection, particularly its provisions on liability, jurisdictional aspects in cross-border cases and on access to remedy.

We particularly welcome that the third revised draft:

refers to the need to integrate a gender perspective in all State and business enterprise measures;

calls for gender-responsive rights of victims;

requires the integration of a gender perspective in human rights due diligence measures;

requires gender-responsive reparations for victims; and

calls for States to give special attention to those facing heightened risks of human rights abuses within the context of business activities, including in conflict-affected areas.

We urge all States to support these provisions and ensure that they be kept in the text, and to work constructively and collectively to build on these positive elements further.

Thank you.

#### **12. Joint statement on behalf of CIDSE, ALBOAN, Broederlijk Delen, DKA, CAFOD, CCFD – Terre Solidaire, Trocaire, Fastenaktion, Entraide & Fraternité, SIEMBRA**

Dear Mr Chair Rapporteur,

On behalf of CIDSE, ALBOAN, Broederlijk Delen, DKA, CAFOD, CCFD – Terre Solidaire, Trocaire, Fastenaktion, Entraide & Fraternité, SIEMBRA, we congratulate you on your election. We appreciate your efforts in moving this process forward and urge States, especially those in the Friends of the Chair group, to support you in your mandate.

Mr Chair,



**Corporate abuse has become an accepted consequence of economic activity together with the violence this entails on our human family and common home.** In the last year alone, 200 human rights and environmental defenders were killed while protecting their land, rivers, forests and the lives of their loved ones. This year, in January, the Spanish company REPSOL caused an oil spill over more than forty kilometers along the coast of Lima, Peru, contaminating marine life and ecosystems and the rights of thousands of fisher-folks to a safe, clean and sustainable environment.

**These negotiations are more urgent than ever. States have a moral and legal obligation to tackle corporate impunity, and put the protection of human life and of creation back at the centre of decisions-making.**

In accordance with the report adopted at the end of the last session, any compromise text should be a result of the work of the Friends of the Chair, in consultation with civil society. We do not believe the Informal proposal contains the answers those seeking justice are looking for. The removal of crucial provisions on access to justice and applicable law is a strike to those who have been demanding transnational accountability.

**We urge States to participate in the negotiations based on the third revised draft, the amendments put forward by States, and civil society's contributions to last year's work.**

To ensure justice, it is crucial to reinforce provisions on applicable law and choice of jurisdiction in a manner ensuring that victims can access the highest standards of protection, and the best route to justice and reparation.

The role of human rights defenders, women, peasants, children and indigenous peoples, must be recognised in the text, and their freedom and integrity must be protected.

The right to Free Prior and Informed Consent of indigenous communities must be recognised, and communities must always be guaranteed an avenue to deny their consent in order to protect themselves and their territory.

Finally, we are disappointed that the European Union has yet again failed to obtain a mandate to negotiate. In the absence of that mandate, we urge the EU to step up engagement this year. We hope that they engage in these negotiations to defend those core principles and values which they are also currently legislating for through a regional instrument. We hope we will see the EU again next year with a strong mandate to negotiate at the ninth session.

We wish all those participating a fruitful session.

**13. On behalf of DKA Austria, Child Rights Connect, ECPAT International, Clínica de Direitos Humanos UFMG and Clínica de Direitos Humanos PPGD/PUCPR.**

We would like to convey our support to you chair and appreciate your efforts in moving the process forward over the past years in developing a binding instrument at international level that would provide a long overdue legal basis for businesses and their responsibilities to respect human rights.

We wish the friends of the chairs success in joining forces and ask you to use this great opportunity to promote a child rights-based approach to the treaty.

We acknowledge the Permanent Missions that have been providing constructive input in bringing the rights of children in a business context forward and urge all Permanent Missions and the European Union Delegation present today to become champions for children.

Time is pressing and it is very urgent to provide a solid legal basis at UN level to identify how children are at risk due to business activities for instance “latest ILO figures show that 160 million children – this means almost one in ten of all children worldwide – are still in child labour”<sup>2</sup>, children are also drawn into poverty due to environmental impacts often linked to business activities. We also call for a treaty that would effectively prevent the violation and abuses of children's rights through solid children's rights impact assessment and sadly, when damages do occur to make sure that a proper system of access to justice and remedy that also fits to children's situation (for instance child friendly procedural law) is in

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<sup>2</sup> [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_845056/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_845056/lang--en/index.htm)

place. The organisations mentioned before will be making wording proposals in line with the convention of the right of the child throughout the week. We thank you all for taking them into consideration!

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