



FIDH Submission to the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with respect to Human Rights – 30 September 2016

FIDH appreciates the opportunity to make this second submission to the Open-ended Intergovernmental Working Group (IGWG) tasked with the elaboration of a legally binding instrument on transnational corporations and other business enterprises (TCN-OBE) with respect to human rights (the Treaty)¹.

FIDH has continuously advocated for further clarification and codification of existing obligations to ensure effective protection and redress for those negatively affected by the activities of businesses. As a member of the Treaty Alliance, FIDH and over 600 civil society organizations and social movements are calling on the IGWG to elaborate an instrument that will respond to the needs and priorities of those affected².

FIDH and its member organizations document cases of corporate-related human rights abuses on all continents. Ranging from operations in conflict situations to supply chain issues, violations include extra-judicial killings, detentions, criminalization of human rights defenders and repression of social protests, deprivation of means of subsistence, child labour and environmental pollution. Human rights defenders denouncing corporate abuses are under increasing pressure and victims of harassment and assassinations are rising³. Rights-holders continue to suffer an array of human rights violations, with the situation worsening in some cases, despite increased attention on these issues at the international level over the last decade. Access to justice in particular remains very difficult for the majority of victims.

As the second IGWG session is about to begin, FIDH recalls its [contribution to the first session of the Intergovernmental Working Group of July 2015](#) and would like to respectfully underline the following specific points:

- FIDH calls on the IGWG to ensure the Treaty process remains guided by the principles of inclusion, participation, transparency and legitimacy and that the Treaty responds to real needs of people in society by facilitating the meaningful engagement of women, indigenous people, persons with disabilities, children, and other sections of society disproportionately or differently affected by the operations of TNC-OBE. In this respect, in 2015 ESCR-Net & FIDH launched the Treaty Initiative project⁴, through which [concrete legal proposals](#) were developed, based on online and physical consultations with legal experts and representatives over 150 representatives of civil society organisations and affected groups in Asia, Africa and Latin America. These proposals, which reflect civil society's needs and priorities, aim at feeding the IGWG's discussions on several “building blocks” of the future international instrument;
- FIDH calls on all States to actively engage and participate in good faith in the IGWG. All stakeholders should officially be consulted and invited to share their perspectives through an inclusive and constructive dialogue free of undue influence;

¹ Human Rights Council, Elaboration of an Internationally binding instrument on transnational corporations and other business enterprises with respect to human rights A/HRC/RSE/26/9 (14 June 2014).

² The Treaty Alliance is an alliance of committed organisations and networks around the world organising advocacy activities in support of developing a binding instrument to address corporate human rights abuses. For more information see <http://www.treatymovement.com>

³ See e.g. “We are not afraid” Land rights defenders: attacked for confronting unbridled development”, FIDH, December 2014, available at: <https://wearenotafraid.org/en>

⁴ ESCR-Net & FIDH Treaty Initiative Project, <https://www.escr-net.org/cawg/treatyinitiative>

- FIDH urges for the elaboration of a treaty consistent with the principle of indivisibility of human rights and that encompasses and builds on all existing human rights obligations arising from international and regional treaties, statutes and agreements, as well as any other relevant instruments, including the UN Declaration on the Rights of Indigenous Peoples;
- FIDH firmly believes that a legally binding instrument must address the human rights violations arising from the activities of all business enterprises. The Treaty should address all business enterprises that can potentially cause or contribute to human rights abuses;
- The Treaty must require States to adopt policy and regulatory measures to effectively prevent corporate abuses (to human rights and the environment). This includes requiring business enterprises to adopt policies and procedures that seek to prevent, stop and redress negative human rights impacts, wherever those companies operate or collaborate;
- The Treaty should, as a priority, fill the existing gaps in access to remedy for victims of corporate related abuses. Provisions must be included to ensure affected people can – at a minimum – access effective remedies in their own States as well as in the home State of the business enterprise concerned. Provisions should also allow for all other States that may have jurisdiction over the concerned enterprise to ensure access to remedy and to cooperate in preventing, punishing and ensuring enforcement, including for instance through mutual and legal assistance;
- The Treaty should reaffirm that States have the obligation to respect, protect and fulfil the rights of all individuals, including human rights defenders in accordance, at a minimum, with the UN Declaration on Human Rights Defenders. This includes the adoption of legislative provisions that prohibit the interference by TNC-OBE, including through their use of public or private security forces, with the activities of any person who seeks to exercise their human right to peacefully protest against and denounce abuses linked to TNC-OBE activity, including by fully respecting their human rights to freedom of expression, association, and assembly, and freedom from being subject to cruel, inhuman or degrading treatment;
- The Treaty should include access to a complementary international mechanism to oversee compliance with the binding instrument when State remedies are unavailable or inadequate, with the authority to issue binding and enforceable decisions;
- The Treaty should build on hard and soft law standards adopted so far and should not in any case represent a regression from already existing international human rights standards and instruments.