

**Open-ended Inter-Governmental Working Group on transnational corporations
and other business enterprises with respect to human rights
Oral Statement**

By **FIDH** (International Federation for Human rights), **ICJ** (International Commission of Jurists)

Panel V: The relation between the UNGPs and the elaboration of an international legally binding instrument on TCNs and other business enterprises

The signing organizations support a legally binding instrument with a strong focus on legal accountability of TNCs and other business enterprises and remedies for the victims in cases of abuses.

The content of the provisions in the new treaty are likely to be influenced by content and language of existing and past instruments in the same or connected fields. Some of these instruments, although not of binding character may contain elements that reflect settled international law and/or enjoy wide support.

It should be made clear that strengthening the international normative framework is not contrary to – but rather interdependent with – the necessity to pursue efforts to strengthen existing national and regional frameworks, including to ensure States comply with their extraterritorial obligations. National and international efforts in this regard should thus be seen as complementary and mutually reinforcing.

Among those existing instruments, we refer particularly to the UN Guiding Principles on Business and Human Rights adopted by consensus of the Human Rights Council in 2011. It is important to recall here that the HRC resolution establishing the UN Working Group on Business and Human Rights explicitly recognised « the role of the Guiding Principles for the implementation of the Framework, on which further progress can be made [...] without foreclosing any other long-term development, including further enhancement of standards. »¹

Implementation of the UNGPs is far from satisfactory, but implementation is not the only issue, there are fundamental gaps in the text itself, in particular in relation to access to remedy. The National Action plans for implementation of the UNGPs adopted so far lack teeth, come short in terms of both process and content, while failing to effectively address the challenges faced by victims of corporate-related abuses. Moreover, NAPs are flawed including in relation to the consensus they are supposed to reflect, as in many cases they were not designed with appropriate consultation of affected communities and CSOs. However, the proposed instrument is an opportunity to fill in the UNGPs' demonstrated accountability and protection gaps. As many states have underlined these days, the proposed instrument could build on some of the provisions contained in the UNGPs that have already reached consensus of stakeholders, while ensuring to fill in accountability and protection gaps.

For example, the UNGPs base the corporate responsibility to respect human rights on the concept of human rights due diligence. Principle n. 13 affirms that business enterprises have a due diligence responsibility in relation to both their own actions and actions of third parties linked to their business operations, product or services. The proposed treaty should confirm that human rights due diligence should be binding and conducted according to, at minimum, the international standards of the UNGPs.

¹A/HRC/RES/17/4, adopted on 6 June 2011

Furthermore, Principle n. 25 affirms that « states must take appropriate steps to ensure, through judicial, administrative, legislative or other appropriate means, that [...] those affected have access to effective remedy ». The treaty should therefore emphasize the State obligation to ensure the provision of adequate, effective, prompt and appropriate remedies.

Other existing instruments to build on include the ILO Tripartite Declaration on Social Policy and Multinational Enterprises and the OECD Guidelines for Multinational enterprises.

There are also a number of global and regional instruments and jurisprudence that have partially addressed some aspects of business and human rights. These include the several UN conventions on human rights, ILO conventions and also the various general comments and jurisprudence by human rights tribunals and monitoring bodies. Among them, the UN Convention against Corruption, the United Nations Convention on the Rights of the Child, the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse. We recall that the Committee on the Rights of the Child's General Comment n. 16 on State obligations regarding the impact of the business sector on children's rights is a very rich resource to take into consideration. Likewise, we should bear in mind General Comments 15 on the right to water and General Comment 19 on the rights to social security by the Committee on Economic, Social and Cultural Rights that reaffirm extraterritorial obligations of States.

All these instruments should be used for the ongoing process towards a treaty and nourish the future negotiations on the draft of this proposed instrument. In order to achieve effective protection and remedy for corporate related human rights abuses, the treaty should build on hard and soft law standards adopted so far and should not in any case represent a regression of the already existing international human rights standards and instruments.

Thank you
