**Oral statement**

**Fifth session of the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG)**

Joint Oral Statement - Article 6

Delivered by Sandra Epal-Ratjen

*Check against delivery*

•

Thank you Mister Chairperson-Rapporteur,

This statement is delivered on behalf of FI, FIDH, FIAN, AI, CELS, CIDSE, TROCAIRE, MISEREOR, CAFOD, CCFD, and SOMO.

Article 6 is a crucial article of the future LBI as strengthening the ability to hold business enterprises liable for violations of human rights is at the core of the mandate of this Working Group.

It should thus be the subject of some further consideration and clarification. We have general as well as specific comments.

As raised during the discussion on article 5, the future LBI will have to explicitly include liability for the failure by business enterprises to comply with the obligation to exercise human rights due diligence, and foresee sanctions accordingly. At the same time, the draft should clarify that a company that conducts HRDD is not automatically shielded from liability for human rights abuses.

The effectiveness of the liability regime [articulated in article 6 6] would be seriously impaired if liability arising from a failure to prevent were limited to “contractual relationships”. We urge States negotiating to consider using the term "business relationships" instead, to articulate liability within complex business and economic groups and networks, including supply chains in cases where there are relationships of legal or de facto control, supervision, decisive influence or other relevant categories that would justify liability.

We are also concerned about the closed character of the list of international crimes included in article 6.7, and the fact that this article, as currently phrased, could be interpreted narrowly, to indicate that other offenses not amounting to international crimes do not require a comprehensive system of liability, such as the violation of certain economic, social, and cultural rights which could also amount to crimes. Furthermore, the specific list of offenses could be interpreted to suggest that no other offenses should be met with criminal liability under domestic law. Therefore, it is important that the treaty clarifies the necessity of imposing criminal liability for a broad range of crimes that are or lead to human rights violations (including economic, social and cultural rights violations) beyond international crimes, and that it require States to continue to develop criminal liability beyond the specific offenses that are listed. The terminology of some of the crimes in the list should be adjusted to bring it in line with the relevant international instruments.

The treaty should more explicitly elaborate the obligation to impose administrative responsibility. For example, States should not grant public contracts, export credit guarantees or other financial benefits to companies that have abused human rights or failed to conduct adequate human rights due diligence, and suspend or cancel licenses or permits and impose fines to effectively deter human rights abuses.

In addition, we think that article 6.1 would benefit from the insertion of the phrase “causing or contributing” as follows: “… adequate system of legal liability for causing or contributing to human rights violations or abuses". Finally, in article 6.3, we think that the term "offences" would be more appropriate than the term "acts" that is currently used.