

Oral Statement

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

Wednesday, 27 October 2020

Statement on Article 9-10

Delivered by Alexa Leblanc

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Thank you Mr. Chair Rapporteur,

I deliver this statement on behalf of FIDH, SOMO, ESCR-net, Franciscans International, LHR.

We are pleased to see that the Second revised draft took note of many of our comments particularly concerning art. 9 and 10 and that those provisions have significantly been improved since the last text.

This is an important step forward particularly considering that provisions related to jurisdiction and applicable law are key in ensuring access to effective justice and remedy for victims of corporate abuses, as our experience has repeatedly shown.

In particular we appreciate that the text introduces at 9.3 the obligation for courts of the State of domicile of the business to exercise jurisdiction no matter where the victims are from, thus giving up on the doctrine of forum non conveniens in such cases;

Moreover, we welcome the inclusion of art. 9.4 and art. 9.5 referring to the possibility for State parties' courts to reunite claims that are closely connected and to exercise jurisdiction over claims concerning companies that are not domiciled in the territory of the State if no other effective forum is available and if there is a close connection to the State concerned (forum necessitatis);

In order to further reinforce these provisions and make sure that they offer an effective access to justice to victims of corporate abuses as well as complying with principles of legal certainty, we suggest the following:

- to include in the adjudicative jurisdiction criteria in Article 9.1 a specific criterion allowing jurisdiction of courts located where business enterprises have '**substantial business interests**', in order to avoid that companies escape compensation because they do not have significant assets in the country where they are domiciled. Furthermore, to consider the reintroduction of the victim's domicile in art. 9.1 as it could considerably facilitate the access to justice for victims.
- To insert '**lis pendens**' provisions in Article 9 clarifying how courts should deal with cases that are brought simultaneously in different jurisdictions. Such provisions should aim at prioritising the claims where the court can give a judgement capable of being recognised and, where applicable, enforced in that State Party.
- To insert a specific article on **adjudicative criminal jurisdiction** to clarify the jurisdiction criteria in criminal cases. Existing instruments such as the Convention against Torture and the Convention for the Protection of all Persons from Enforced Disappearance could be used as models for this article.
- To clarify, in art. 10.1, which are the 'serious crimes' concerned. We suggest here to change the sentence to state, "[...] limitations shall not apply to the prosecution and punishment of **all serious crimes of concern to the international community as a whole, including gross human rights violations.**"

Thank you