

Oral statement

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

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Thank you Mr. Chair-Rapporteur,

In order to fulfill its objective to improve access to effective remedy for victims of corporate violations, it is imperative for the future instrument to better clarify that domestic courts of state parties are able to exercise jurisdiction over claims concerning business-related human rights abuses, even when the defendant enterprise is not domiciled within the jurisdiction of the state, in cases where no other effective forum guaranteeing fair trial is available, and if there is a connection to the state concerned.

This would explicitly recognize the application of the *forum necessitatis* doctrine as a consequence of the duty of all states to ensure that victims of transnational human rights abuses are not deprived of access to justice. This principle already exists in many European Member States, for example.

Article 7 needs to effectively address the barriers in access to justice that are linked to the use of the 'corporate veil' doctrine. For this reason it needs to be read in tandem with provisions on liability. In this respect, please allow us to underline that it is paramount for the future instrument to impose a duty of care on the parent company and thus create a parent-based extraterritorial regulation resulting in a liability on the parent company for failure to prevent human rights harm in its value chain. This will facilitate the determination of the relevant adjudicative jurisdiction for victims.

Regarding article 8, the future instrument should clarify when the different criteria to choose applicable law may apply. We recommend the drafters endorse the *favor laesi* principle, according to which the most favorable law for the victims is applied and where it belongs to the victims to choose applicable law in order to keep the case in the judicial system they are more familiar with. This principle is already affirmed by the law or by case-law in several jurisdictions around the world as the experts this morning and some of the States delegations have already stated.

Thank you.