

# **Open Consultations on the Revised Draft Legally Binding Instrument on Transnational Corporations and Other Business Enterprises with Respect to Human Rights**

## **Oral Intervention Articles 8 to 14**

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Thank you, Mr. Chair,

We welcome the significance of the process of informal consultations, as it represents a critical opportunity to address the gaps in the international framework that have thus far allowed corporations to act with near impunity. The COVID-19 pandemic has further exposed existing institutionalised regimes of racial domination and oppression and the role of corporations in entrenching the discriminatory situation on the ground, by not only the deliberate exclusion of people based on race from vaccination programs, but the systematic neglect and de-development of their healthcare systems by States, leaving them extremely vulnerable to the pandemic.

It is as such vital for the text of the treaty to be strengthened to address the disproportionate impact of business-related human rights abuses and international law violations on populations in conflict-affected areas, including protected persons in situations of belligerent occupation. Regarding applicable law, the text should include a specific provision surrounding conflict areas, emphasizing the applicability of international humanitarian law, international human rights, international criminal law and customary law. This language should be brought to the core of the instrument.

With regard to legal liability, “subject to their legal principles” should be removed in order to ensure the primacy of international law in this treaty. The text should require States to incorporate or otherwise implement within their domestic law appropriate provisions for universal jurisdiction over acts or omissions which amount to grave breaches of international law, or otherwise violations of jus cogens norms which give rise to obligations erga omnes. A reference should be made to liability, particularly with regards to aiding and abetting international crimes perpetrated by State actors, especially in situations of occupation and conflict.

The text of the treaty should further provide for specific provisions encouraging forum necessitatis, especially for cases relating to corporate abuse in conflict-affected settings and situations of occupation where access to remedy and justice are often deliberately hindered and denied.

Finally, by requiring special attention in the cases of business activities in conflict-affected areas, the treaty should identify specific actions on the part of States, such as engaging at the earliest stage possible with business enterprises, denying access to public support and services for a business enterprise that is involved with gross human rights abuses and refuses to cooperate in addressing the situation, and ensuring that their current policies, legislation, regulations and

enforcement measures are effective in addressing the risk of business involvement in gross human rights abuses.

Thank you.