



**Second Revised Draft of Binding Treaty:
An Important Step Toward Protecting Human Rights from Corporate Abuses**

Joint statement

10 August 2020 / Updated on 14 August 2020 – On Friday 7 August 2020, the Chairmanship of the UN Open-ended intergovernmental working group (IGWG) in charge of developing a Legally Binding Instrument (LBI) to regulate the activities of transnational corporations and other business enterprises published the [Second Revised Draft](#) of the LBI. **FIDH and Franciscans International** are pleased that the revised draft of LBI takes into account some of the comments made by FIDH, FI and other civil society organisations during the latest negotiation session.

The elaboration of this instrument, mandated in 2014 by Resolution 26/9 of the UN Human Rights Council, aims to complement and go beyond the UN Guiding Principles on Business on Human Rights (UNGPs) of 2011 with the objective to eliminate major gaps remaining in the protection of human rights against corporate abuses.

Five sessions of negotiations of the LBI already took place in Geneva and witnessed the participation and engagement of many civil society organisations from all over the world [including FIDH](#), FIDH members and [Franciscans International](#) and its network. During the fifth session, many States, including some that were reluctant to participate in this process three years ago, expressed their agreement on the continuation of the negotiations. This new draft marks one step further towards the adoption of a UN Legally Binding Instrument on business and human rights and represents a good basis for substantive negotiations to be held next October 2020 in Geneva.

FIDH and FI welcome the efforts made by the Chairmanship of the IGWG to publish the new draft of the LBI ahead of the October 2020 6th session in Geneva. We are pleased to note that it takes into account some of the comments made by civil society organisations during the latest negotiation session and in recent months.

We would like to share below some first reactions to this text without, of course, prejudice of further detailed analysis that we will be able to issue in the upcoming weeks. We hope that this exercise will be helpful to our members and partners and will stimulate the work of civil society in preparation of the October session. In particular, as preliminary considerations, we underline the following positive aspects of the new text:

- Explicit inclusion of State-owned enterprises in the definition of ‘business activities’;
- Reference to ‘business relationship’ instead of ‘contractual relationship’ to define the scope of application of the LBI provisions;
- Inclusion of persons who suffer harm in assisting victims or in preventing victimisation, in the paragraph entailing the definition of victims;
- Integration of a more specific gender perspective in art. 6;
- Reference to free, prior and informed consent for indigenous people in art. 6.3;
- Clarification in art. 7.7 on the need for State parties to ensure liability in cases where business contribute to harm, and improvement of the definition of control that will give rise to liability for the ‘lead company’;
- Explicit clarification in art. 7.8 that complying with human rights due diligence (HRDD) provision cannot be used as a ‘safe harbour’ to escape liability when a company has caused or contributed to human rights abuses;
- Obligation for courts of the State of domicile of the business to exercise jurisdiction no matter where the victims are from, and thus giving up on the doctrine of *forum non conveniens* in such cases;



- 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 sufficiently close connection to the State concerned (*forum necessitatis*);
- Explicit obligation for new trade and investment agreements to be compatible with the LBI.

In spite of these many and substantive improvements, and in order for the treaty to truly be a significant step forward in protecting human rights from corporate abuses, the current text still has shortcomings that must be addressed.

In this respect, as result of this first reading and without prejudice of more comprehensive and thorough analysis, our organisations particularly recommend:

- Expressing more clearly in art. 6 that businesses shall be held liable for a failure to comply with their HRDD obligations;
- Better clarifying art. 6. paragraph g and explicitly mentioning that enhanced due diligence should also contemplate the possibility of disengagement if the respect of human rights cannot be guaranteed in conflict-affected areas;
- Strengthening the provision of art. 7.6 on the reversal of the burden of proof to the benefit of victims, which is an essential element in granting access to effective remedy in cases of human rights abuses linked to business activities;
- Further clarification through separate provisions concerning civil and criminal liability;

In sum, at first glance, this draft constitutes a valuable step forward and a great opportunity to have a meaningful and constructive debate in October 2020, especially given the current global context dominated by consequences of Covid-19, where ambitious international actions to create a more sustainable economic model are expected and crucial.

We call upon negotiating States—especially those who have repeatedly called for substantial discussions to take place, those who declare being committed to achieve a more sustainable globalisation, as well as those who are contemplating the adoption of domestic mandatory HRDD measures—to prepare and engage with the draft's content, as well as to make efforts to strengthen the text to make the protection of human rights more effective in cases of corporate abuse.