

**Submission in response to the Call for inputs for the Open-ended
intergovernmental working group on transnational corporations and other
business enterprises with respect to human rights: Update and invitation for
written inputs**

JOINT NHRI STATEMENT

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The National Human Rights Institutions that form part of the GANHRI Working Group on Business and Human Rights (GANHRI WG) congratulate the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights for undertaking this public call to present written inputs by stakeholders (as regards substantive improvements to Articles 1-14 of the third revised draft legally binding instrument and the Suggested Chair Proposals).

Nine years after the UN Human Rights Council in Geneva adopted a resolution drafted by Ecuador and South Africa to create an open-ended intergovernmental working group (IGWG), and considering the third draft and comments developed during the eighth session we consider this call for submissions to be of utmost importance.

As state-mandated, independent, effective, and pluralist bodies with a broad human rights mandate, National Human Rights Institutions (NHRIs) are among the pillars of protection of and respect for human rights. NHRIs play vital roles in complementing, supporting, or drawing attention to States' actions or policies affecting human rights, as well as monitoring the activities and operations of businesses.

The NHRIs that form part of the GANHRI WG commend the Chair of the IGWG for his continuous work towards a Legally Binding Instrument (LBI) that closes protection gaps for rights holders by addressing the prevalence of human rights violations by businesses and challenges to access to remedy.

The GANHRI WG welcomes the Chair's initiative for a Group of Friends of the Chair to facilitate regional coordination and negotiations from now on. We call on States to acknowledge and seize the opportunity the newly established Group of Friends of the Chair provides for the successful advancement of the LBI negotiations. We therefore call on all States to support the work of the Friends of the Chair and actively engage in inter-sessional

regional meetings and negotiations. In order to strengthen the modus operandi and intergovernmental cooperation at the negotiations, States could further offer technical and financial support to the Friends of the Chair Group.

General comments

It is known that the purpose of the instrument is to establish, in a pragmatic and balanced way, clear and general binding rules on human rights in relation to business activities, as a way to protect victims or potential victims of corporate abuses and offer them better opportunities for access to justice and redress. At the same time, this proposal aims to fill a gap in international human rights law, as there are no binding rules in this area.

Having reviewed the third draft of the Legally Binding Instrument, the National Human Rights Institutions (NHRIs) associated with GANHRI, through their Working Group, urge governments to analyse the original objective of the instrument, ratifying the position of having an adequate instrument that recognises, promotes and protects the rights of individuals in relation to business activities, especially transnational corporations at the global level.

This includes, especially the analysis of the responsibility of companies to establish due diligence plans that allow for an adequate preliminary analysis of their activities to establish the possible impacts on human rights and establish plans to prevent such violations or abuses; as well as to assume direct responsibility in case of violations or abuses of human rights caused by their activities both before the national authorities of their jurisdiction and of the jurisdiction where such impacts are caused, as well as before international courts in case these actions are presumed as an international crime of serious human rights affectation.

In this context, NHRIs consider it important that the Legally Binding Instrument sustain the appropriate parameters to establish adequate mechanisms for the prevention of human rights violations, infringements and abuses, both as a responsibility of states through appropriate and mandatory public policies within their territories, as well as on the part of companies through the due diligence mechanisms mentioned above.

Another issue of concern is the establishment of adequate mechanisms so that, once the existence of a human rights violation, infringement or abuse has been established, adequate remediation is implemented for victims recognised directly or indirectly in accordance with national and international laws on the rights affected.

Finally, we consider that NHRIs can play a leading role in the aforementioned processes and that it is therefore necessary that the Legally Binding Instrument includes appropriate provisions so that NHRIs can participate in advising and accompanying states and companies in the design of their prevention and due diligence plans; as well as the possibility of becoming a mechanism for reaching agreements for the adequate remediation of human rights violations and warnings, their follow-up and demand for implementation.

We hope that the negotiations at the next meeting of the United Nations Open-ended Intergovernmental Working Group on Business and Human Rights will reach agreements to guarantee the full enjoyment of human rights through the achievement of a commonly agreed text for a legally binding instrument.