

## **ECCJ's view on a binding UN Treaty on Business and Human Rights**

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*This paper explains ECCJ's view on an "international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises" ("UN Treaty") currently being discussed based on the UN's Human Rights Council Resolution 26/9 of 2014.*

*In the wake of the fourth session of the open-ended intergovernmental working group (OEIGWG) that will take place from 15-19 October 2018 in Geneva, ECCJ explains its position on the Zero Draft that was presented by the Permanent Mission of Ecuador to the United Nations on behalf of the Chairmanship of the Working Group in July 2018.*

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### **About ECCJ**

The European Coalition for Corporate Justice (ECCJ) advocates for European laws that guarantee corporate accountability and transparency, and ensure justice for victims of corporate malpractice

## ECCJ's position towards a binding UN Treaty

- In principle, ECCJ is supportive towards the negotiations for a UN Treaty that would establish an “international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises” (“UN Treaty”).
- ECCJ would welcome such an instrument at UN level, provided it delivers on key ECCJ objectives such as providing better access to justice for victims of human rights violations by companies and establishing a duty of care and due diligence obligations for companies.
- A strong and binding UN Treaty cannot replace but has the potential to complement legal reforms at EU and state level towards mandatory Human Rights Due Diligence (mHRDD), corporate liability and access to remedy.
- A strong and binding UN Treaty could complement the UNGPs and forward their purpose by establishing binding obligations for business and human rights.

## ECCJ's position on the “Zero Draft”

In general, ECCJ welcomes the continuation of the process of negotiations towards the UN Treaty and the fact that the debate can now be based on a concrete proposal, namely the “Zero Draft” provided by the Permanent Mission of Ecuador on 4 July 2018.

***ECCJ especially supports the following points as they are in line with its demands for binding legislation on duty of care based human rights due diligence and access to justice:***

- The strong take on binding legislation and the focus on access to justice and remedy for victims of corporate malpractice and human rights violations.
- The comprehensive scope, covering all internationally recognized human rights. In terms of the framing of HRDD in Article 9, “Prevention”, ECCJ welcomes the detailed obligations to the

identification of risks and extensive public reporting, as well as linking HRDD obligations to liability.

- Concerning the access to justice and remedy, ECCJ welcomes the detailed provisions on the different kinds of liabilities that may apply. ECCJ welcomes the Zero Draft's attempts to address the different substantive, procedural and practical obstacles faced by victims of corporate malpractice.
- ECCJ supports the manifold provisions on the cooperation of States Parties including legal assistance, technical and scientific cooperation.

***ECCJ identifies the following points as weaknesses of the Zero Draft:***

- In order to establish effective human rights due diligence, ECCJ suggests including measures to actively “mitigate and remedy” risks in order to provide for a comprehensive understanding and effective practice of HRDD. The Zero Draft lacks precise wording about companies being required to take, on a continuous basis, appropriate measures to identify, prevent, mitigate, and account for how they address adverse human rights and environmental impacts.
- Concerning the access to justice and remedy, ECCJ recommends to make a stronger point on the reversal of the burden of proof in order to better support victims of corporate abuse.
- The draft could further elaborate obligations related to corporate governance and thus connect to the legislative process at EU level towards a reform of directors' duties.
- ECCJ acknowledges that while transnational companies will be the main ones covered by a treaty, domestic companies or harm caused within the companies' domestic jurisdictions should be also covered. ECCJ nevertheless welcomes that the Draft Treaty puts emphasis in addressing the specific governance and accountability gaps that result from companies' transnational structures or operations.

- ECCJ advocates for state-owned companies to be specifically mentioned. States not only set the legislative frame at national level but they also carry the responsibility of entrepreneurs with duties to respect human rights.
- The Zero Draft explicitly leaves room for exemption of SMEs from HRDD. ECCJ considers that such an exemption needs to be justified. SMEs whose business activity bears particular risk of severe adverse impacts on human rights and the environment, for example because they operate in conflict or high-risk sectors and areas should be subject to mHRDD.
- ECCJ regrets the weakness of the enforcement mechanism established in Draft Zero, limited to the creation of a Committee which is assigned with functions akin other traditional UN Treaty bodies. The shortcomings of human rights treaties' monitoring bodies are well known. In the absence of accompanying measures such as a complaints mechanism or another type of international oversight body, this element undermines the Treaty's potential impact.

## Contact

European Coalition for Corporate Justice asbl  
Rue d'Edimbourg 26 1050 Brussels - Belgium  
Phone number : +32 (0)2 893 10 26  
Fax number : +32 (0)2 893-10-35  
[eccj@corporatejustice.org](mailto:eccj@corporatejustice.org)  
[www.corporatejustice.org](http://www.corporatejustice.org)