

Oral Statement of the International Commission of Jurists in the Clustered Interactive Dialogue with the Working Group on human rights and transnational corporations and other business enterprises, and the Special Rapporteur on freedom of expression

15 June 2016

The International Commission of Jurists thanks the Working Group on human rights and transnational corporations and other business enterprises for its report on State-owned enterprises (A/HRC/32/45). There are many human rights challenges related to the operation of such enterprises and the Working Group makes a good contribution to the debate by addressing them. The ICJ welcomes the Working Group suggestions regarding ways to enhance access to effective remedies against abuses of these enterprises and the recommendation that the scope for claiming State immunity for these enterprises should be kept to the bare minimum (para. 85).

The ICJ would also like to refer to the report by the UN High Commissioner for Human Rights, prepared with the involvement of the Working Group, on Improving accountability and access to remedy for victims of business-related human rights abuses (A/HRC/32/19). The report contains guidance with useful recommendations relating to the work of state agencies in investigation and enforcement, international cooperation in cross-border cases, financial obstacles to private litigation and private law remedies. The ICJ appreciates the value of those recommendations for state action, including in further discussions about legally binding instruments, and for civil society work.

The ICJ would however reiterate its serious concerns regarding some elements in this guidance that may have the unintended effect of providing companies who have caused human rights abuses with a shield against legal liability. Policy objectives 3 and 14, in particular, contain arcane language that states might invoke to try to justify legislation to give companies an automatic positive defense against prosecution, conviction or civil liability as long as the company has human rights due diligence processes and models in place. The ICJ also regrets that the report does not include a stronger statement on extraterritorial jurisdiction.

The ICJ invites the Working Group to comment on these concerns.

Thank you Mr President.

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