

## **Intervention by the Colombian Commission of Jurists in Panel V: Obligations of states to guarantee the respect of human rights by TNCs and other business enterprises, including extraterritorial obligations**

### *Extraterritorial obligations: The experience of civil society in the Americas*

Madame Chair,

In light of this morning's discussion regarding the extraterritorial obligations of transnational corporations and other business enterprises, the Colombian Commission of Jurists and our partner organization, the Due Process of Law Foundation, wish to draw this body's attention to the experience of the Americas. Thank you for the opportunity to present this perspective.

States' obligations under international human rights law apply both within the territory of the State and extraterritorially. Much has been said this week about gaps in human rights protection. Extraterritorial obligations are exactly that – a missing link – in the protection of universal human rights. As Mr. Maina Kai, Special Rapporteur on the rights to freedom of peaceful assembly and of association, has noted, "Broadening the concept of responsibility to include more than one State not only strengthens underlying rights, it also increases the chances of victims obtaining redress when violations occur."

The Maastricht Principles, an international expert opinion restating human rights law on extraterritorial obligations, are clear that States must adopt and enforce measures to protect economic, social, and cultural rights with respect to a corporation's conduct abroad, where that corporation, "or its parent or controlling company, has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned."

Unfortunately, in the Americas, states where corporations are domiciled – that is, home states - have failed to comply with their extraterritorial obligations, particularly with respect to extractive industry operations. Civil society organizations in the Americas have thus spearheaded discussions on extraterritorial obligations. This is a vitally urgent issue, as defenders advocating around extractive and development projects in the Americas, including regarding the right to prior consultation and free, prior and informed consent, are subject to a wide range of human rights violations.

Civil society organizations have focused particular attention on the fact that 70 percent of mining activity in Latin America involves Canadian companies. Last year, the Due Process of Law Foundation, published an in-depth report focusing on the impact of Canadian mining in Latin America and the role played by the government of Canada in the human rights violations committed. This report, which I am happy to make available to any participant, identified country-of-origin policies that encourage, rather than prevent, human rights violations. These findings were presented in a hearing before the Inter-American Commission on Human Rights and cited by the special rapporteur on freedom of assembly and association in his June 2015 report to the UN Human Rights Council.

I wish to briefly summarize the group's findings to illustrate the need for this Working Group to ensure that any binding instrument contain strong extraterritorial obligations on states of origin.

We have found the following patterns in home states which are conducive to the violation of human rights by corporations:

- Home state financial and political support, including by Embassies and development agencies, for the transnational corporations domiciled in its territory, without requiring that these corporations comply with international human rights standards;
- Undue influence by the home state in the domestic legislative processes of the host state;
- The shielding of home state companies from accountability through free trade agreements; and
- The persistence of inadequate legal frameworks in home states to prevent and punish human rights violations caused by transnational corporations abroad, despite governmental knowledge of these abuses.

These and other patterns will continue without concrete action by the international community to ensure that states meet their extraterritorial obligations. Corporate Social Responsibility policies have not, and by definition cannot, solve the problem of a lack of implementation of state extraterritorial obligations. Fortunately, this body has as precedent the reports and pronouncements issued by various thematic rapporteurs and UN Committees which have addressed these important state responsibilities. The Working Group should build upon these international standards and make clear to states their extraterritorial obligations in the context of transnational corporations and human rights.

Thank you, Madame Chair.