

July 8, 2015

Panel VI - Statement by Richard Girard, Institute for Policy Studies

Madame Chair,

Thank you for giving me the floor. My name is Richard Girard, I'm from the Polaris Institute in Canada, speaking on behalf of the Institute for Policy studies. We are part of the Global Campaign to Dismantle Corporate Power and the Treaty Alliance.

The legally binding international instrument on Transnational Corporations and other Business Enterprises that we are discussing here, must reaffirm the hierarchical superiority of human rights norms over trade and investment treaties that provide rights to Transnational Corporations. Our concern is that in order to fundamentally enhance the responsibilities and obligations of TNCs, the architecture that exists to guarantee the rights of TNCs over all other rights should be dismantled. One of the main instruments of this architecture, something that is included in almost all trade and investment agreements, is the Investor to State Dispute Settlement Mechanism, known as ISDS.

ISDS is a purely one-sided tool that gives rights to investors without any obligations to respect human rights. It discriminates against communities that are negatively affected by these investors. By signing these trade and investment agreements governments are undermining the process to create a binding treaty on TNCs.

These agreements favour the privileges and profits of investors and TNCs over peoples' rights and international human rights law. They protect TNCs from any decision that could negatively affect their investments, and even future profits, and do not take into account states' binding human rights obligations. International investor-to-state arbitration tribunals are consistently un-transparent and biased towards investors. There have been several instances where states who are attempting to protect human rights through public policy have been challenged through ISDS claims and then forced to pay millions in public funds to TNCs in compensation.

There are numerous examples of ISDS claims that undermine state sovereignty, one of which comes from my country, in the Province of Quebec where the provincial government, after much public pressure introduced a moratorium on the destructive process of extracting natural gas known as fracking. As a result of this important public policy designed to protect the rights of nature and communities from the well documented dangers of fracking, the government of Canada has been sued by a U.S. based energy company for \$250 million CAD through the investment chapter in the North American Free Trade Agreement. Canada has faced 36 ISDS claims, through NAFTA's ISDS mechanism, mostly in the area of environmental protection. This is more than any other developed country in the world.

This is just one of the approximately 600 ISDS cases that are ongoing worldwide. Our concern is that if this treaty does not supersede the ISDS provisions, States' ability to protect human rights will continue to be subverted. The problem is not limited to investor-to-state arbitration tribunals but also extends to other international mechanisms, such as the WTO dispute settlement.

The treaty must prohibit states from submitting investor-state disputes to an international arbitration body under any circumstances, as this undermines states' sovereignty, impairs their ability and duty to protect human rights and violates individual and peoples' rights recognized under international human rights law.

Thank you again for the opportunity to speak.