

Panel VII - Content: standards for legal accountability TNCs and what conduct?
Thursday 10-13:00

Thank you Madam Chair,

I am speaking on behalf of SOMO, Friends of the Earth Europe, Global Policy Forum, CIDSE, Brot für die Welt, IBFAN and IBFAN-GIFA and, who made a joint submission to this intergovernmental working group. Our organizations are also members of the Treaty Alliance,

Comment [MvH1]: Endorsement may change

Yesterday we elaborated that the treaty should create a duty for States to transform the voluntary corporate responsibility to respect human rights into a mandatory corporate obligation to respect human rights. In this statement we elaborate on important aspects of liability the treaty should cover if this obligation is not met and human rights are violated by business.

First, we consider it crucial that the Treaty should elaborate on the modalities in which TNCs and other business enterprises can participate in the commission of human rights abuses. The responsibility scenarios developed in the UNGPs and OECD Guidelines make explicit that businesses can cause, contribute and be directly linked to violations. This is an established basis that the treaty can further build on. More specifically, corporate complicity, parent company liability and supply chain liability are important modalities of liability that should be covered by the treaty.

To ensure businesses cannot 'outsource' their negative impacts, the notion of complicity is key as it identifies the liability of companies where another entity, such as a business partner, the host government or a non-state actor commits human rights abuses. Where a company knows or should have known of human rights violations committed by another entity it is connected to, the company should be considered complicit in the violation.

For the record: please note that in our view, corporate legal liability should not exclude the legal individual liability of company directors or managers.

Second, there is an urgent need that legal liability provisions ease the burden of proof for victims of human rights violations by businesses. For those affected by corporate injustice, the complex organisational processes within a company and its business relationships are extremely difficult to determine and prove. Therefore, state regulation should shift the burden of proof from the claimant to the defendant. This would imply that companies would be expected to show what human rights due diligence they conducted in order to prevent violations, rather than that the victim would have to prove that the company has violated its obligation to respect human rights.

That having said, we are wary of the risk that companies could hide behind their HRDD procedures in legal cases, for example by using audit reports as a way of demonstrating that a company has done

everything it could while at the same time using business strategies that incentivise human rights violations. We ask the Intergovernmental Working Group to consider ways to avoid this loophole.

We are looking forward to continued substantive discussions in this chamber on how to precisely develop the above liability provisions.

I thank you Madam Chair