

Intervention from the floor during Panel VII

Delivered by Dominic Renfrey

Thank you Madam Chair,

I would like to start by echoing the sentiments of my colleagues in congratulating all states for participating in this historic first meeting of this IGWG, and particular congratulations go to the co-sponsors for so ably guiding this initiative forward this week.

We hope all states will participate actively in the inter-sessional period, including by undertaking meaningful domestic processes of consultation with representatives of affected people and communities and other civil society organisations. Civil society stands ready to support these activities in all states.

With regard to today's panels, Madam Chair, we as a member of the treaty alliance draw attention to the Treaty Alliance Joint Statement of May 2015, particularly sub-paragraph c) which states that:

“The treaty should elaborate on the modalities in which TNCs and other business enterprises participate in the commission of human rights abuses, including corporate complicity and parent company responsibility for the offences committed by its subsidiary. Corporate legal responsibility should not exclude the legal responsibility of company directors or managers”.

Further, Madam Chair, in this context we support the previous intervention of Mr. Eduardo Toledo, and humbly offer to the UN Intergovernmental Working Group for consideration reference to Australian Criminal Code, section 12.3. From this section I quote:

“12.3 Fault elements other than negligence

- (1) If intention, knowledge or recklessness is a fault element in relation to a physical element of an offence, that fault element must be attributed to a body corporate that expressly, tacitly or impliedly authorised or permitted the commission of the offence.
- (2) The means by which such an authorisation or permission may be established include:
 - (a) proving that the body corporate's board of directors intentionally, knowingly or recklessly carried out the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence; or
 - (b) proving that a high managerial agent of the body corporate intentionally, knowingly or recklessly engaged in the relevant conduct, or expressly, tacitly or impliedly authorised or permitted the commission of the offence; or
 - (c) proving that a corporate culture existed within the body corporate that directed, encouraged, tolerated or led to non-compliance with the relevant provision; or

(d) proving that the body corporate failed to create and maintain a corporate culture that required compliance with the relevant provision.”

We offer this reference to the Intergovernmental Working Group as a current example of national legislation that may support the development of this important aspect of the future legally binding instrument.

Thank you, Madam Chair.