

PANEL VI - Legal liability of TNCs and other business enterprises

Thank you Madame President.

This statement is made on behalf of:

- FRANCISCANS INTERNATIONAL
- SISTERS OF MERCY, MERCY INTERNATIONAL ASSOCIATION
- CENTER FOR RESEARCH ON ENVIRONMENT DEMOCRACY AND HUMAN RIGHTS OF THE DRC (CREDDHO)
- GRUFIDES - PERU
- IBASE - BRAZIL
- SINFRAJUPE - BRAZIL
- NGO MINING WORKING GROUP

One of the main objectives of the Treaty is to engender legal liability for corporate abuses. Based on our grassroots experiences of direct and indirect corporate abuse impacting human rights of peoples and the uncontested failure of corporate social responsibility doctrine worldwide, we've arrived at the following conclusions regarding accountability:

First: The treaty should provide for statutory cause of actions for human rights abuses committed by TNCs as well as other business enterprises.

Second: In addition, the Treaty should also clarify different ways in which business enterprises contribute to and participate in human rights abuses, including through omission or negligence, and clearly define forms of corporate complicity. Complicity should be understood as co-responsibility in criminal offences, involving adverse impact on rights through their relationship of ties.

Third: The Treaty should clarify liability for human rights abuses in complex corporate structures, including the liability of the parent companies for abuses committed by the subsidiary.

Finally: In line with mandatory due diligence recommendations, the Treaty should state that failures to observe human rights due diligence process lead to legal liability.

In conclusion we recommend that the Treaty should:

1. Establish criminal, administrative, and civil liability for human rights abuses with reference to all human rights, as expressed and guaranteed by international law, in the

forms of treaties, customary international law, and general principles, and other sources.

2. Establish corporate criminal liability for certain severe human rights violations such as torture, slavery, and environmental damage with consequent harm to individuals or groups of individuals.
3. Ensure that corporate liability for legal persons does not prevent liability for natural persons.
4. Ensure that criminal proceedings do not prevent victims from seeking remedies according to civil law.
5. Clearly define liability for parent companies, including presumptions of negligence by the parent and of causal links between the harm and the actions or omissions of the parent company.
6. Identify and criminalize situations of complicity in an offence, including negligence and omission, as well as passive or silent complicity.

Thank you, Madame President.

For further information:

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Franciscans International (FI) is an international non-governmental organization with general ECOSOC consultative status, working for the promotion, protection, and respect of human rights, as well as social and environmental justice. Since its establishment in 1989, FI has used advocacy as a tool to combat and curb human rights abuses. FI relies on the expertise and first-hand information of a large network of partners working with the most vulnerable strata of society in approximately 160 countries. From our offices in Geneva and New York, FI works together with grassroots movements and national and international civil-society organizations to advocate at the United Nations for structural changes addressing the root causes of injustice.