

## **IGWG on Transnational Corporations (TNCs) and Other Business Enterprises with respect to Human Rights**

**Intervention Panel VII - Legal liability of TCNs: What standard for corporations' legal liability and for what conduct?**

Mr. Eduardo Toledo

Intervention on behalf of **UN ECOSOC Organization:**

**Institute for Policies Studies - Transnational Institute.**

And on behalf of the Campaign to Dismantle corporate power and stop impunity.

Madame Chair,

At this point of the discussions, I would like to address the issue of criminal liability that the International Legally Binding Instrument on Transnational Corporations (TNCs) and other business enterprises with respect to Human Rights should integrate to the field of International Human Rights Law and, indirectly, to the field of International Criminal Law.

As it has been said in many interventions from the panelist during this Session, we need to create a new list of standards with the aim to fill the gap that allows TNCs to avoid its responsibility and also to fill the gaps that have resulted in millions of victims as a consequence of the activities of TNCs.

I'm interested in the subject of this panel because I believe that the discussions here could help to understand which are the different possibilities that the victims will have to attribute the consequences of the conducts of legal entities using both national and international frameworks. Instead, today, the possibilities that the International Criminal Law offers are limited in terms of liability for TNCs. As I stated in my intervention on Panel II, the activities of TNCs that violate Human Rights need to be characterized as crimes under the future Treaty, so the protection of Human Rights of the civil populations around the Globe will be assured.

Madame Chair,

As it has been shown in the 5th point of the document presented to the IGWG by the Campaign for Dismantle Corporate Power: the international binding treaty must reaffirm the hierarchical superiority of human rights norms and it should enlighten the rest of the legal system. A consequence could be, in the field of International Criminal Law, the enhancement of criminal liability. Alongside the Individual Criminal Responsibility of article 25 of the Statute of the International Criminal Court, I believe that this Treaty could include within its norms the criminal liability of legal entities, as it's already recognized in many national legal systems and help moving towards a consensus in the matter.

I agree with Professor Lopez that we have many states that don't have this form of liability, but we can also quote the case of the Netherlands, Belgium or Australia where the liability of the legal entities is part of the legal system.

In fact, in the first example the principle of mixed liability assure the responsibility of the legal entity and the responsibility of its executives as consequence of the activities of the TNCs.

Thus, the New Binding Treaty should include a clear coordination of the joint work of different jurisdictions to control and to assure the cooperation between magistrates. In this regard the Mission of Ghana explained during Panel V the problem of evidence in cases against legal entities: the discovery processes to obtain the internal information are useless in criminal cases because there it's often impossible to prove the relationship between the parent company and its subsidiary.

Madame Chair,

In conclusion, the future Binding Treaty should enhance national and international jurisdictions, and develop tools for the states to protect the populations. Under such a framework States must be bound to cooperate in cases where the conducts of TNCs are under investigation, so as to stop impunity of the perpetrators of crimes, legal entities or individuals, and finally to contribute to the prevention of such crimes.

Thank you.