



**Franciscans International**  
A voice at the United Nations

## **PANEL VIII - Building National and international mechanisms for access to remedy**

Thank you Madame President

This statement is made on behalf of:

- Franciscans International
- Sisters of Mercy, Mercy International Association
- The Center for research on environment, democracy, and Human Rights of the DRC
- GRUFIDES
- IBASE
- SINFRAJUPE
- NGO MINING WORKING GROUP

We are especially concerned that the treaty must require states to provide civil damage remedies for victims of human rights abuses in which business enterprises are involved.

We know victims of human rights abuses face numerous challenges to bring claims against corporations, and particularly against those that are transnational. To flag just a few legal and logistical barriers that are of most concern for our coalition, there are:

- Territorial jurisdictional limitations
- The complexity of corporate structures, including the so-called corporate veil
- Impediments to the disclosure of documents relating to the connection between parent companies and subsidiaries
- Gaps in legal codes that exclude causes of action definitions for victims to make a claim
- Statutes of limitation that restrict the possibility for prosecution after a certain time period
- Unavailability of class or collective actions
- Dramatic power imbalances between claimants and defendants
- Loser-pays rules for legal costs which discourage the filing of claims
- And difficulties in quantifying actual damages for harms suffered to cover real costs of extractive activities

To address some of these challenges, we recommend that the Treaty:

- Require states to ensure that through judicial, administrative, legislative or other appropriate means, victims have access to effective judicial remedy

- Establish the general rule that courts have jurisdiction in the state where the company is domiciled and that the Treaty require States to exercise jurisdiction over human rights abuses committed by their companies outside their territories
- Clearly establish the necessary circumstances to lift the corporate veil and hold parent companies liable
- Shifts the burden of proof away from victims when human rights violations occur by establishing the presumption that the parent company was in control of its subsidiary and was negligent in its duty of care
- Require states to establish causes of actions without dictating any statute of limitation or other periods of prescription that endanger accountability and remedy
- Require states to establish the possibility for collective action in their legal systems
- Ensure that damages are adequately quantified taking into account the relevance of the damage for the victims.
- And clearly address any financial barriers to pursuit of and access to effective remedy such as loser pays rules and high costs of litigation overseas

Thank you Madame Chair

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.