Oral statement

Date and Time: Oct 16 morning

Panel: Article 6 ON LEGAL LIABILITY

Friends of the Earth International speaker: Pochoy Labog

Mr. Chair-Rapporteur,

I am Pochoy Labog from Friends of the Earth International.

Article 6 on Legal Liability can be viewed as the heart of this Treaty. Thus, the Article should clearly establish which entities and how these entities should be made accountable for human rights violations.

As you know, there can be several key actors in the supply chain that needs to be addressed by the LBI.

As currently drafted, the article, particularly Paragraph 6, only addresses liability of the parent company for the violations of its immediate subsidiaries and contractees, and not for the violations of the subsidiaries and the contractees of the latter.  For example, the third party security contractees outsourced by mining companies operating for TNCs, may not fall under the current chain of liability. It also does not contemplate liability for violations caused by the activities of the parent company itself.

Further, the current liability scheme does not contemplate liabilities of financers of TNCs, such as investment firms, banks and international financial institutions.

As mentioned, in crafting this Treaty, we cannot be oblivious to realties on the ground and should consider the power and resource imbalance between TNCs and affected communities, such as indigenous peoples. In this regard, the Treaty should highlight procedural measures that compensate for the patent disadvantages faced by affected communities as against TNCs.

One of these measures is the provision on the shifting of the burden of proof that should not be dependent on domestic legislation. This provision does not violate due process as it merely shifts the burden of evidence and does not, in any way, prejudge the outcome of a case. It has also been a feature in certain human rights remedies such as the Writ of Amparo which also recognizes power imbalances between parties in dispute.

The Treaty should also provide joint and several liability of parent companies and their subsidiaries as well as all entities in their whole supply chain to accommodate the prompt and effective dispensation of justice for victims. Further, the Treaty should allow for the piercing of the corporate veil of TNCs which may use its complex corporate structure to evade liability.

Relevant to Prevention, the Article should also impose liability on TNCs for the failure to conduct proper due diligence on actors along its supply chain. In this sense, administrative review mechanisms and sanctions should be developed within the framework of contractual administrative law or the administrative responsibility of the State in the event of failure to exercise due diligence.

Also, Paragraph 7 must more clearly establish criminal liability without prejudice to civil reparations and administrative sanctions for the said offenses.  And the crimes specified on this Paragraph must not be an exhaustive list and should include more violations relevant to economic, social and cultural rights. These categories of rights are those often violated by TNCs, such as rights to ancestral domains, right to water, livelihood and health.

Finally, references to national legislation in paragraphs 7, 8 and 9 limit the scope of article 6 and should therefore be deleted.