

7th session - ARTICLE 8 Liability - Jill

Thank you Mr. Chair,

My name is Jill McArdle, from Friends of the Earth Europe, speaking on behalf of Friends of the Earth International and Transnational Institute, members of the Global Campaign.

This time last year I spoke on this article and noted that we were in the midst of court cases against Shell for human rights violations.

This year we have seen a major outcome in one case - after a 13 year struggle, a court ruling ordered Shell to compensate Nigerian farmers whose environment was devastated by its oil activities. And we saw another court rule that Shell must reduce its climate impact throughout its global value chains.

Those cases succeeded because of **unique rules** in the Dutch legal system - we cannot rely on that to solve the global problem of impunity - we need this treaty to set **global rules** on liability.

With that in mind:

We support Egypt's proposals throughout the article 8 to add the terms "violations" and "of transnational character".

***8.1:** should explicitly state the need for **administrative, civil and criminal regimes** of liability. Criminal liability is necessary since civil convictions do not always act as a sufficient deterrent.*

***8.3** We support Palestine's proposal. Besides, the text should be revised to make it explicit that States should provide for the liability of TNCs established in their territory **regardless of the place where they have caused or contributed to the violations** through their global production chains.*

***8.6 and 8.7 :** These provisions remain difficult to interpret. A provision in article 8.6 should be added to cover the liability of TNCs for their failure to prevent violations arising from their own activities.*

*Furthermore, it is very difficult to prove the links of control or supervision between different companies or entities; so a **provision on the presumption of control of parent companies** and on the **reversal of the burden of proof** should be added.*

*Further in 8.6 - with regard to liability for violations when the corporations **legally or factually** controls or supervises another person or the relevant activity - the addition of the words "but failed to put adequate measures to prevent the abuse" is problematic as it could be used by corporations to escape from their liability. In the same sense, we reject the restricting changes proposed by Mexico's in 8.6. And we support Namibia's proposal not to limit this provision to civil liability.*

Moreover, it creates confusion as it contradicts the welcomed first sentence of article 8.7 “Human rights due diligence **shall not** automatically absolve a legal or natural person conducting business activities from liability...”. However, in that sentence, **the word “automatically” should be suppressed.**

We support Palestine’s proposal to suppress the last sentence of article 8.7

8.8 on criminal liability -

We agree with Palestine’s suggestion to delete ‘Subject to their legal principles’ and “binding on a State party”, as well as the addition of a reference to humanitarian law. A reference to international criminal law should also be included.

But we disagree with the suppression of “**or functionally equivalent liability**” that allows for an easier adoption by countries that have different regimes of criminal liability.

However it is a step backward that the new revised draft has deleted **the incentive for States Parties to “individually or jointly advance their criminal law”**. we think the Treaty should go even further by setting an ambitious criminal liability regime applicable to all States.

Finally we agree with the new article 8.10 bis proposed by Palestine on joint and several liability and fully disagree with Brazil’s proposal about exhausting all legal instances at national level.

[As our esteemed chair noted in his opening - we should avoid a mere repetition of what exists in international law – but move forward in protection of human rights and be ready to adapt domestic law -**for clarity we will send our concrete proposal of amendments to the Secretariat.**