**IGWG 8th Session - Global Union Comments:**

**Article 11**

Chair,

We did not comment on Article 9 this morning because we believe that the third revised draft essentially offers a broad choice of competent jurisdiction to ensure that remediation is provided either through the forum where the harm was caused, or the forum where the parent company is incorporated or where it has a substantial presence. We welcome the efforts by some States to strengthen the Article. However, Chair, we are also deeply disturbed by what appears to a lack of ambition by some States on the need to overcome jurisdictional barriers by limiting the use of the doctrine of forum non conveniens or the need to apply forum necessitatis allowing a court to be used as a *last resort*, should no other effective forum guarantee a fair judicial process.

Chair,

One of the major problems in global supply chains is that the local suppliers are unlikely to face justice because the administrative or judicial processes may not be able to deal with claims for various reasons. Further, many companies may be significantly undercapitalized, making them essentially judgement-proof even if workers were to obtain a judicial order and efforts were made to enforce those orders. At the same time, lead firms are usually immune from lawsuits, as there is no legal cause of action or jurisdiction over them in the host country or in their home country when the violation is caused by a supplier in a contractual relationship.

This is the reality. An LBI needs to push the agenda *forward*. It needs to be rights-holder centred. It is the needs of rights-holders that should drive this entire process. We strongly encourage States to continue to engage with Art.9 in the 3rd revised draft and look to strengthen it further.

In relation to Article 11, Chair, it goes without saying that this Article is critical if we are to have a rights-holder-centred LBI that is truly effective. Article 11 provides a strong choice to victims to request the applicability of the law of another State Party. This provision is important, particularly because lead firms frequently engage in jurisdiction shopping and choose to engage in host countries with legal frameworks that may not be able to address complex cross-border cases.

Our only proposal here is an insertion of a *little c* at Article 11.2 – to include the *law of the domicile of the victim*.

Thank you, Chairperson.