Art 9 - Mai Taqueban Friends of The Earth International

Thank you, Mr. Chairman.

On behalf of our partner indigenous communities, I speak on behalf of my home organisation in the Philippines, Legal Rights and Natural Resources Center, Friends of the Earth International and the Asia Task Force on the LBI, members of the Global Campaign.

First, I would like to reiterate that the 3rd draft is the only representative document of these Inter-State negotiations and serves as the legitimate basis for this session.

The wording of the provisions of Article 9, which speak of jurisdiction, are of key importance and represent one of the main points to ensure the effectiveness of the treaty. Jurisdiction is one of the main gaps in international law and impedes the right of those affected to access to justice. For this reason, the Chair's proposals represent an unacceptable regression.

We agree with the Palestinian proposal in 9.1 and 9.1.c.

In 9.1, it is important to specifically mention commercial relations and global value chains of transnational corporations—to ensure that it will be possible to take legal action in the country of origin of the parent company or contractor, even as this may be provided for in various national due diligence laws passed in recent years.

In this regard, we also support the Palestinian proposal in Article 9.2. We welcome the reintroduction of paragraph 9.1 (d), which states that the country of which the victim is a national or in which they are domiciled also has jurisdiction.

On the other hand, in 9.2, the inclusion of the definition of domicile encompassing the "assets" of companies is positive, but 9.2.b should be reworded: The criterion should be the existence of sufficient resources to ensure remedies for those affected, and in accordance with the demands of the plaintiffs.

Expressions that leave a loophole in the questioning of companies to avoid liability, such as "activity on a regular basis" in 9.2.d, should also be eliminated, as they can be difficult to interpret and seem redundant with "where operations are located" in 9.2.b.

In addition, "principal place of business" should be in the plural; and we support Palestine's 9.2.d bis proposal to add "substantial business interests", which is a well-known expression in European law, for example.

Regarding Article 9.2, it is also very important that the *forum necessitatis* be established as a criterion of jurisdiction, articulated with the proposal in 9.5 for the establishment of non-traditional links for the application of jurisdiction.

A document with established prevention measures and human rights obligations is of no use if there is no guaranteed access to justice for those affected, including through the judiciary. Moreover, with the de-territorialization of production, the constitution of economic groups and the rise of digital media, the traditional criteria for the establishment of jurisdiction are no longer sufficient. According to the principle of progressive development of international law, as Bolívia mentioned yesterday, this treaty should be a pioneer and close this gap.

Thank you, Mr. Chairman.