

## SOMO

### Panel VIII - Content: Mechanisms for Access to Remedy, including international cooperation

Thursday 8 July 2015 15-18:00

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Thank you Madam Chair,

I am speaking on behalf of SOMO, Friends of the Earth Europe, CIDSE, Brot für die Welt, IBFAN, IBFAN-GIFA and Global Policy Forum, who made a joint submission to this intergovernmental working group. Our organizations are also members of the Treaty Alliance.

**If there is one thing states**, civil society organizations and affected people agree on and have stressed continuously in the last couple of days, it is the fact that victims of business related human rights abuses are deprived from effective remedy and that corporate impunity prevails. **Especially** when abuses take place in weak governance zones and conflict affected areas, access to justice is extremely limited and the human rights regime does not function as intended, Prof John Ruggie already stated years ago.

The treaty needs to address the urgent need to provide access to justice and eliminate barriers that obstruct this fundamental human right. The point made yesterday by Prof. Surya Deva is also important here, which is that non-judicial remedies, as well as the Guiding Principles more broadly, would work better with a legally binding instrument in place.

We want to make **three suggestions** for the treaty to address this major remedy gap:

**The first** is that the State duty to provide access to remedy should include provisions on extraterritorial jurisdiction. The treaty should establish beyond a doubt **that whenever victims cannot access effective** judicial remedy in their own state, it is the duty of the home states to provide this access. This is in line with developments in international law.

To respect state sovereignty, the **Treaty could ensure complementarity between** host and home state jurisdiction. Where host states are unwilling or unable to provide access to justice, home states have a duty to provide a remedy forum by exercising extraterritorial jurisdiction. This can include a 'consultation clause' that obliges a Home State to consult the Host State before exercising its extraterritorial jurisdiction. **If** the Host State refuses to pursue the case or does not respond, the Home State can proceed. Examples of such a system already exist, for example at the level of the International Criminal Court which only has jurisdiction if a state is 'unable or unwilling' to investigate and prosecute.

**The second suggestion is that the State duty to provide access to remedy should include mutual legal assistance.** Extraterritorial jurisdiction risks being ineffective if the host State opposes the litigation and decides not to cooperate with an investigation. In international law it is increasingly acknowledged that, in transnational situations, States should cooperate in order to ensure that any victim of human rights

violations caused by the activities of non-State actors, has access to an effective remedy. The treaty should build on this State duty to cooperate. This would facilitate in particular the collection of evidence, including the hearing of witnesses and access to financial records, the freezing and confiscation of assets; and the enforcement of judgments delivered against the corporations concerned.

**Finally**, and building on the 'unable or unwilling' rationale just before, the treaty **should consider establishing a new** monitoring and enforcement mechanism applying directly to transnational operations corporations. Signatory States then agree that the corporation has to respond to allegations before an international mechanism, **unless** the violation has been sufficiently addressed through legal remedies available within the State concerned. A Treaty thus conceived could provide a significant incentive for the State to improve the remedies available in the domestic legal order to victims of corporate human rights harms, as well as for the corporations concerned to prevent, and where necessary remedy, any such harm.

I want to conclude this statement by stressing that **for the binding instrument to deliver any real value** for victims of business related human rights abuses, it needs to be accompanied by a robust enforcement mechanism.

Thank you Madam Chair.