Mr. Chair-Rapporteur,

I am Pochoy Labog from the Legal Rights and Natural Resources Center or Friends of the Earth Philippines. Our organization works with Indigenous Peoples to support them  in their struggle to regain full enjoyment of their rights, often violated by Transnational Corporations through land grabbing, destruction of forests, mountains and river systems.

First, the Treaty should not be forged in a vacuum and should take into account realities on the ground that are terribly disadvantageous to indigenous peoples and other victims of human rights violations of TNCs. TNCs, apart from their complex structure, have all the resources in the world to help them in the defense of their cases, including hiring an army of lawyers, that indigenous or local communities do not have. In the Philippines, for example, indigenous peoples, in the defense of their ancestral domains, are faced with threats, harassment and other violations to their life, liberty and security which makes the fight against corporate powers extremely difficult. Article 4 must be crafted based on this context to ensure prompt, efficient and effective access to justice.

Article 4, indeed, establishes a workable framework, but it has gaps that need improvement. We therefore propose the following changes.

With regard to Access to information, the general guarantee to access to information in the pursuit of remedies should include  access, not only to publicly available information, but also those held by private enterprises throughout the whole value chain. This will help victims in mapping out the chain of actors who would be accountable under the Treaty.

Complementing the guarantee to access to information is the provision on the reversal of the burden of proof, which again recognizes the realities on the ground and counterbalances the problems caused by the opaque functioning of TNCs. This provision must be uniformly applied in all jurisdictions and should not be subject to Domestic Law.

Similarly, the references to national legislation in the following paragraphs should be deleted:

a.)   Paragraph 11, on access to information,

b.)   Paragraph 12.b, on victims’ right to be heard, and

c.)   Paragraph 14, on the prompt execution of judgments and awards.

With regard to non-judicial mechanisms in Article 4.8, a safeguard clause should be included to ensure that their use does not compromise the access of victims to judicial mechanisms.

Finally, despite the provision on human rights defenders and the recognition of their role in the draft treaty, it is important to specify in this article special guarantees concerning them and to recognize their status as vulnerable persons.