

Wednesday - 28 October 10am - 15pm (Amsterdam time) - Jill McArdle

Thank you Mr. Chair,

My name is Jill McArdle, speaking on behalf of Friends of the Earth International - member of the Global Campaign – and of my own organisation: Friends of the Earth Europe.

I wish to begin by noting that this morning - as we meet here to discuss legal liability - the French transnational corporation Total is in court for human rights and environmental abuses in Uganda and Tanzania. And two weeks ago in the Netherlands, the Dutch transnational Shell had yet another hearing in the decades-long effort to bring them to justice for their pollution of the Niger Delta.

These cases highlight the total inability of the EU and the international order to hold these transnational corporations accountable in the courts.

With that in mind, we note that Article 8.7 is welcome but several points must be clarified to ensure transnational companies cannot escape their liability.

Firstly, it should **clarify that companies are also liable for not preventing harms in "their own activities", we propose the amendment:**

*States Parties shall ensure that their domestic law provides for the liability of natural or legal persons conducting business activities **of transnational character, including those of transnational character, for their failure to prevent human rights violations caused by their own activities, and for their failure to prevent another legal or natural person company with whom they have a business relationship and/or within their global value chain, from causing or contributing to human rights violations abuses, when the former legally or factually controls or supervises such person or the relevant activity that caused or contributed to the human rights abuse, or or when they should have foreseen risks of human rights violations abuses** in the conduct of their business activities, ~~including those of transnational character,~~ or in their business relationships **and/or global value chain.***

Secondly, due diligence must not be used as a shield against liability. Total, for instance, publishes inadequate due diligence reports that distract the courts' attention from the actual harms on the ground. Article 8.7 and 8.8 should emphasise the **effectiveness** of due diligence, not the process by **deleting the phrase "but failed to put adequate measures in place to prevent the abuse" as well as the second sentence of 8.8.**

Finally, it can be very difficult to prove control or supervision between different companies even within the same family, as in the case of Shell who deny responsibility for harm caused by their

subsidiaries. Therefore we propose a new paragraph in 8.7:

In addition, States Parties shall ensure that their domestic legislation provides for a rebuttal presumption of control of the controlling or parent companies. Such information shall serve for the adjudicator to determine the joint and several liability of the involved companies, according to the findings of the civil or administrative procedure. In the conditions defined above, any transnational corporations and other business enterprises of transnational character will be found liable for the damages caused by the activities of the entities in its global value chain or with which it has business relationships.

Thank you.