

Summary of presentation by Mr. Martin Khor, Executive Director of the South Centre¹.

Mr. Martin Khor commenced his presentation by focusing on the importance of the issue of business and human rights especially given the increasing role that transnational corporations (TNCs) play in the world. For example, the assets in the world are concentrated in the hands of fewer and fewer companies. TNCs' activities leave massive impacts on the environment, health, human activities and human rights. He referred to several examples of transnational activities that affected human rights and health of people all around the world.

Mr. Khor gave an overview of the existing soft law instruments, including the UN Guiding Principles on Business and Human Rights (i.e. the Protect, Respect and Remedy Framework), but remarked that these instruments are insufficient. He noted the systematic violations of human rights by TNCs.

Mr. Khor mentioned five key points on why the adoption of the binding instrument is necessary.

First, powerful countries can regulate the activities of TNCs, yet developing countries face a lot of limitations in practice.

Second, for host countries to regulate the activities of TNCs, they need the cooperation of home States. He added that some States are not as powerful as some TNCs. Thus, while they may exercise jurisdiction in their own territory, they are ineffective unless other States, especially home States of corporations, cooperate with them in order to enforce obligations on TNCs.

Third, there are currently limitations in regard to extraterritorial obligations of States; while home States are able to apply norms within their territory, however, the activities of TNC's leave impacts beyond the territorial jurisdiction.

Fourth, Mr. Khor highlighted the limitations of remedies available for victims, because of the weaknesses mentioned above, leaving victims unable to obtain remedy.

Fifth, there is an asymmetry between rights and obligations of TNCs. Mr. Khor noted that TNCs have been given rights through hard law instruments. For example, bilateral investment agreements and investment rules in free trade agreements recognize the rights of an investor and afford them the right to sue the State in an international tribunal, under terms very often different to those under national law. These instruments create a mechanism that extends beyond the territory of the State in order to protect the rights of corporations. Yet, he noted, there is still debate over whether TNCs have any obligations.

Finally, Mr. Khor underlined the necessity of establishing an intergovernmental group to study these shortcomings, address the obligations and liability of TNCs for infringing human rights, and explore the possibility of establishing a complaint's mechanism to provide redress to victims. He also stressed the importance of establishing a monitoring mechanism for

¹ The South Centre is an intergovernmental organization with 51 developing countries as members, and focuses on conducting research and supporting member countries in regard to international events and processes and national policies.

systemic violations of human rights, and exploring the possibilities for drafting a binding instrument to regulate TNCs in relation to human rights.