

Open-ended Inter-Governmental Working Group on transnational corporations and other business enterprises with respect to human rights

Oral Statement

By **Brot für die Welt** (Social Service Agency of the Protestant Church in Germany), **CCFD-Terre Solidaire**, **CIDSE** (International family of Catholic social justice organisations), **Entraide et Fraternité**, **Global Policy Forum**, **MISEREOR** and **SOMO** (Centre for Research on Multinational Corporations)

General statement

Dear Chairperson, I am speaking on behalf of MISEREOR, CIDSE, CCFD, Entraide et Fraternité, Brot für die Welt, SOMO and the Global Policy Forum. We welcome the draft elements as a good basis for further negotiations and we call upon all States to engage constructively in the negotiations towards a future text of a Treaty. States must now consider the different elements and formulate constructive proposals for their further elaboration in the text of the Treaty, so that at the end of the session we have the basis for building a draft text for continuing negotiations in the next session under this mandate.

I would like to react to two arguments by the European Union this morning:

- 1) The EU has referred to the UN Guiding Principles on Business and Human Rights (UNGPs) as the relevant international consensus, and to the efforts made by governments to implement them. As European CSOs some of us have been very actively engaged in the processes in EU Member States to develop National Action Plans (NAPs) on Business and Human Rights. We recognize that NAP processes have raised awareness in the public, within governments and parliaments. Some European NAPs contain positive elements, such as better monitoring of human rights due diligence efforts of companies.

We welcome that some States have also taken first legislative steps to make human rights due diligence binding for companies.

At the same time we have to acknowledge that current NAPs have clear gaps, limits and shortcomings: Almost none of the NAPs contain concrete measures to make human rights due diligence a binding requirement for companies in their activities and business relationships abroad. None of the National Action Plans improve access to justice for victims of corporate human rights abuses in home States of transnational corporations (TNCs). They do not recognize extraterritorial State obligations as they have been reconfirmed in the recent General Comment 24. Nor do they recognize the primacy of human rights over trade and investment agreements or take substantive steps to secure this primacy. The reasons for these shortcomings are to be found in the lack of political will and excessive influence of the business sector on the NAPs. But part of the problem is also that these issues are not adequately addressed in the UNGPs.

- 2) The EU has criticized that **only transnational corporations** are covered in the elements for the draft instrument. If we look at chapter 2.3. of the elements however, they clearly say that TNCs AND Other Business Enterprises are to be covered. However it puts emphasis on acts that have a “transnational character”. We consider this emphasis legitimate as it is in these constellations where we have the biggest challenges. OECD countries themselves have recognized the special importance of TNCs by adopting its

Guidelines on Multinational Enterprises. At the same time we recognize that the concept of “transnational character” in the draft elements needs more clarification and legal certainty in a future text. Moreover, we recommend that, while putting emphasis on acts with a transnational character, the treaty should not exclude other acts from the coverage of the treaty. The text should also recall that States are already obliged by the existing Human Rights Covenants to protect human rights from abuses by third parties, including business enterprises, whether transnational or domestic.

Thank you very much for your attention.