

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

### **Oral Statement**

By **ActionAid**, **Brot für die Welt** (Social Service Agency of the Protestant Church in Germany), **CAFOD** (Catholic Overseas Agency for Development), **CIDSE** (International family of Catholic social justice organisations), **MISEREOR**, and **SOMO** (Centre for Research on Multinational Corporations)

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### **Subject 3 : General Obligations**

Thank you Mr. Chair. This statement is on behalf of CIDSE, CAFOD, MISEREOR, SOMO, ActionAid and Brot für die Welt.

Businesses of all kinds are a vital part of our society but we must recognize that powerful private sector actors can have negative impacts as well as positive ones. In 2016, nearly four people were killed every week protecting their land from projects linked to industries such as mining, logging and agribusiness. There is a strong demand from communities on the ground for urgent international action to tackle the flagrant imbalances in power between transnational corporations and people and ensure protection of human rights.

In this context we welcome the elements put forward by the Chair as a constructive starting point for negotiations on the draft legally binding instrument.

The general obligations reaffirm the primary responsibility of States to protect against human rights violations and abuses, including by corporate actors, and stress that States have to take all necessary measures to obtain such an objective.

In this context, we would like to underline that State measures should include coverage of business operations and relationships in countries other than the countries where the business may be domiciled or headquartered, in line with their extraterritorial obligations as defined in General Comment 24 of the UN Committee on Economic, Social and Cultural Rights (CESCR).<sup>1</sup>

With regards to business operations where States have a particular influence (State-business nexus), similarly to public procurement, this obligation should explicitly cover external trade promotion and subsidies. We also encourage States to elaborate more explicitly and systematically on extraterritorial State obligations on the basis of General Comment 24 in the future text of the Treaty.

Prevention of human rights abuses should be at the heart of the Treaty and is an essential part of the State's obligations. In practical terms, we welcome the fact that the elements include ways to strengthen preventive mechanisms, reinforcing the due diligence approach of the UN Guiding Principles on Business & Human Rights by giving it a legally binding nature. They build upon important recent developments in national law, in particular the 2017 French duty of care legislation requiring large corporations to adopt preventive vigilance plans. This demonstrates the feasibility of such a measure, together with the potential of enhancing global standards and a level playing field.

We encourage States to refer even more explicitly and systematically to the concept of human rights due diligence (HRDD), elaborated in the UN Guiding Principles on Business and Human Rights. Moreover, the definitions of the elements of binding HRRD should be coherent in all sections of the Treaty (see sections 3.1., 3.2. and 4). The text of the treaty should clearly state that HRDD must not only cover operations and supply chains of companies but also any other business relationships throughout the whole value chain such as supply, export, services, insurance and finance and investment. To be effective, due diligence procedures must be public and transparent and include the participation of the individuals and communities potentially affected by the activities of transnational corporations and other business enterprises.

We welcome the explicit text in the General Obligations that ‘States shall take all necessary and appropriate measures to ensure access to justice and effective remedy for those affected by human rights violations or abuses of transnational corporations and other business enterprises’. This is a priority but we have seen too little progress in practice and it is an area of weakness we have identified in many national action plans on business and human rights. Making progress with the Treaty on specific measures to access to justice will therefore clearly complement and strengthen implementation of the UN Guiding Principles to date.

Thank you.

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<sup>i</sup> The Covenant establishes specific obligations of States Parties at three levels – to respect, to protect and to fulfil. These obligations apply both with respect to situations on the State's national territory, and outside the national territory in situations over which States Parties may exercise control.