

# 9th Session of the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights

## ITEM 4 – GENERAL STATEMENTS: JOINT ORAL STATEMENT OF CIDSE ET AL.

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24 October 2023

Thank you, Mr. Chair-Rapporteur:

I am speaking on behalf of CIDSE, Misereor, Broederlijk Delen, CCFD-Terre Solidaire, Trócaire and Fastenaktion.

We deeply regret that the **EU still lacks a mandate** for actively and formally engaging in the negotiations. As the European Commission, the Council and the European Parliament have already formulated their respective positions on the *Corporate Sustainability Due Diligence Directive* and coincide in many key aspects, the EU would have been in a position to develop such mandate and to engage in the negotiations instead of just commenting from the sidelines.

While the **Updated Draft** contains a few improvements with respect to the protection of human rights defenders and financial assistance to facilitate access to justice, we regret **important steps back**, of which we want to highlight the following ones:

- 1) Art. 8 of the Updated Draft still requires the introduction of a comprehensive system of **liability**. However, a new **qualifier** subjects the type of liability to the consistency with domestic and administrative systems. Moreover, the former reference to the need for “**reparations** to victims” was deleted. Both changes create legal uncertainty on whether, and under which conditions, business enterprises shall be liable under civil law and have to provide reparation to the victims.
- 2) Art. 14 still obliges States to interpret and implement **trade and investment agreements** in a manner that does not restrict their capacity to fulfill their human rights obligations. However, under the Updated Draft, States would no longer be required to make sure that **new** trade and investment agreements are compatible with human rights obligations under the LBI. This deletion is unacceptable given the huge negative impact, new trade agreements can have on policy spaces of States to comply with human rights obligations.
- 3) The deletion of the right to a safe, clean, healthy and sustainable **environment** from Art. 1.2. of the Third Draft is a huge step back behind the international consensus on the inseparability of human rights and environmental protection. The same is true for the complete deletion of environmental due diligence measures.

In these and many more aspects, the **Updated Draft is an unacceptable step back** compared to the Third Draft that already contained many insufficiencies. We call on States to reject these modifications and further improve the text. In our written submission we have proposed concrete wording for such improvement based on our **legal opinion** on the Updated Draft written by Prof. Markus Krajewski and others.

Thank you very much!

Delivered by Armin Paasch