

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), **Global Policy Forum**, **RIDH** (Réseau International des Droits Humains), **SOMO** (Centre for Research on Multinational Corporations), and **Südwind** (Verein Südwind Entwicklungspolitik)

Subject 1 : General Framework

Thank you Mr. Chair. I speak on behalf of CIDSE, Global Policy Forum, Brot für die Welt, SOMO, Südwind, RIDH and CCFD-Terre Solidaire, organizations based in Europe, working with partners and affected communities around the world, and members of the Treaty Alliance.

We would like to highlight two aspects. First, we welcome, and believe it is essential, that the Principles and Objectives reaffirm the primacy of human rights obligations over trade and investment agreements.

There is ample evidence of conflicts between State obligations under current trade and investment agreements on the one hand, and obligations under international human rights law on the other. This has led to a high scale of negative impacts on human rights, and women's livelihoods in particular, in the practice of the corporate trade and investment agreements.

And so this issue cannot be ignored or left only in the hands of those working on trade and investment policy: it is now an urgent matter for this working group. Should foreign investors continue to have privileged access to private arbitration tribunals, while communities whose rights have been abused struggle to have access to justice? Trade and investment agreements are reinforcing a power imbalance, allowing corporate actors to drive decisions on national regulation on labor rights, health and environmental standards. This undermines democracy and the constitutional obligations of States to fulfill human rights and defend the common good.

The Treaty could help to rectify this imbalance. One way would be through a primacy clause, which would allow Treaty obligations to prevail in case of conflict with a trade and investment agreement, Another way would be through a requirement that States conduct human rights impact assessments early enough so as to inform decisions on the negotiation mandate for these agreements, and periodically review their impact on human rights. A final way would be through a clause that ensures the Treaty obligations are taken into account in any trade and investment dispute settlement mechanism. These provisions are not mutually exclusive and could be combined. The related elements included for the draft instrument should be further developed.

Would establishing the primacy of human rights lead to an environment hostile to investors? A number of empirical studies could not find a significant impact of investment agreements on foreign direct investment. To the contrary, clarifying the relationship between trade and investment and human rights could add to regulatory certainty and a stable legal environment.

Second, the Treaty should further contain provisions that require States to establish legislation, policy or administrative or judicial oversight to avoid undue corporate influence on domestic and international decision-making and to safeguard the public's interest over commercial interests.

Mr. Chair, the general framework presents a holistic view of the challenges requiring international action. We encourage States to consider the different elements and formulate constructive proposals for their further elaboration in the text of the Treaty.