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), **CIDSE** (International family of Catholic social justice organisations), **Global Policy Forum, MISEREOR, Südwind Austria** (Verein Sudwind Entwicklungspolitik) and **SOMO** (Centre for Research on Multinational Corporations)

Scope of application

Thankyou Mr. Chairperson, I am speaking on behalf of Brot für die Welt, CIDSE, FIDH, Global Policy Forum, MISEREOR, Südwind Austria and SOMO.

We welcome the proposed elements on the scope of a future instrument and would like to highlight some positive aspects as well as a few concerns.

We welcome the broad scope of rights covered in the elements. We also welcome the primary focus of the elements to address accountability gaps caused by transnational activities regardless of the mode of creation, control, ownership, size or structure of an enterprise. Transnational corporate activities are not, as the EU implied, sufficiently regulated under domestic law: Our experience working with affected people and communities show that transnational activities pose specific accountability challenges due to complex business structures, jurisdictional restraints and divergent legal systems and levels of enforcement.

However, while we agree that addressing these accountability gaps posed by transnational activities should remain the focus of the treaty, we strongly recommend that a future instrument should also reaffirm the existing state duty to protect against human rights abuses by all business, whether transnational or entirely domestic. For affected people and communities it makes no difference whether abuses result from a transnational activity or an entirely domestic activity. Measures described in the elements to improve access to justice must therefore also apply to cases of human rights abuses by domestic companies and the regulation of transnational companies should be consistent with the regulation of domestic business activities.

We agree that a legal definition of TNCs and other OBEs is not required, however some further elaboration is needed to fully understand the subjective scope suggested: Currently it is unclear when exactly a business activity has a transnational character and whether the human rights abuse has to result from the transnational activity. Would a future treaty apply to severe water contamination caused by a national mining company if this mining company has a parent company in another country? Is the water pollution a result of this transnational activity? Does the treaty apply if the raw material sourced by a domestic company is sold to companies abroad? The proposed scope under section 2.2 includes branches, subsidiaries, affiliates or other entities directly or indirectly controlled, but does

not mention suppliers, buyers or other business partners. Does this mean that harmful activities that feed into international supply chains are not covered by the proposed treaty? These uncertainties as to the scope may create loopholes and risk to enable companies to effectively exclude themselves from the application of the treaty by defining their activities narrowly.

We therefore believe that the elements put forward on the subjective scope need some further clarification and would like to call for a continuing dialogue on these issues. We urge States to make sure that the Treaty does not create loopholes for any company to escape accountability for human rights abuses.