

**Seventh Session of the Open-ended intergovernmental working group on
transnational corporations and other business enterprises
with respect to human rights
ORAL STATEMENT – ARTICLE 14**

On behalf of: CIDSE, CCFD-Terre Solidaire, Broederlijk Delen, CAFOD, Entraide et Fraternité, Fastenopfer, Focsiv, KOO, DKA Austria, Misereor, Maryknoll Office for Global Concerns, Trócaire, Alboan and Commission Justice & Paix Belgium.

29 October 2021

Mr. Chair,

I deliver this statement on behalf of CIDSE, CCFD-Terre Solidaire, Broederlijk Delen, CAFOD, Entraide et Fraternité, Fastenopfer, Focsiv, KOO, DKA Austria, Misereor, Maryknoll Office for Global Concerns, Trócaire, Alboan and Commission Justice & Paix Belgium.

We welcome the general principles underlined in Art 14.5 regarding trade and investment agreements. Provisions in this article are crucial to ensure that human rights and our planet are not sacrificed in the name of profit, and that companies cannot exercise undue influence on States' capacity to protect and fulfil human rights. However, we still consider that the article is too vague insofar as it does not specify how States should practically ensure that existing agreements do not violate human rights.

In particular, the question of how a human rights approach might apply in the context of Investor-State Dispute Settlement Tribunals remains unaddressed. Such Tribunals are unfairly biased towards corporate actors and a means for corporations to exercise undue influence on governments' policies and undermine workers' rights and environmental protection.

While independent international agreements establish ISDS, the LBI should ensure that such tribunals safeguard the primacy of human rights and the environment over trade and investment concerns.

To specify better how States Parties shall ensure the primacy of human rights over trade and investment agreements, a few lines should be added at the end of Art 14.5.a. reading as follows:

14.5.a – All existing bilateral or multilateral agreements, including regional or sub-regional agreements, on issues relevant to this (Legally Binding Instrument) and its protocols, including trade and investment agreements, shall be interpreted and implemented in a manner that does not undermine or restrict their capacity to fulfill their obligations under this (Legally Binding Instrument) and its protocols, if any, as well as other relevant human rights conventions and instruments, *inter alia* by ensuring that members of a dispute settlement entity charged with interpreting and implementing these agreements have specialised knowledge in human rights law and by referring to the obligations under this LBI as well as other relevant human rights conventions and instruments in their submissions to such a dispute settlement entity.

We also notice the same vagueness is reflected in Art 14.5.b, referring to new trade and investment agreements. While the article mandates States Parties to ensure that new agreements are "compatible with the States Parties' human rights obligations under this Legally Binding Instrument and its protocols, as well as other relevant human rights conventions and instruments", it does not specify

how such compatibility should be ensured. We therefore reiterate the need for comprehensive environmental and human rights impact assessment before the negotiation and signature of any new trade or investment agreements by State Parties.

This is why we suggest adding at the end of Art 14.5.b:

“14.5.b. To ensure the compatibility of these agreements with States Parties' human rights obligations, States Parties shall:

1. conduct impact assessments based on the UN Guiding Principles on human rights' impact assessments of trade and investment agreements before and during the negotiations, before the ratification and periodically after the entry into force of such agreements.

2. include specific exception clauses in all new trade and investment agreement to allow States Parties to fulfil their obligations under this (Legally Binding Instrument) and its protocols, if any, as well as other relevant human rights conventions and instruments with measures which would otherwise violate their obligations under the respective trade and investment agreement.”

Moreover, the LBI should require States to revise trade and investment agreements that can negatively impact human rights. To do so, we suggest adding a new lit, c), that would read as follows:

”14.5.c. All existing bilateral or multilateral agreements, including regional and sub-regional agreements, on issues relevant to this (Legally Binding Instrument) and its protocols, including trade and investment agreements, to be reviewed in light of their impact on States Parties' obligations under this (Legally Binding Instrument) and its protocols, if any, as well as other relevant human rights conventions and instruments, and shall be revised if necessary

Thank you, Mr. Chair.