

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

ORAL STATEMENT – ARTICLE 8

Joint Statement on Article 8 by CIDSE, ALBOAN, Broederlijk Delen, CAFOD, CCFD-Terre Solidaire, DKA Austria, Entraide et Fraternité, Fastenopfer, Focsiv, KOO, Misereor, Trócaire, and SIEMBRA.

25 October 2022

Dear Mr. Chair,

I am delivering this statement on behalf of CIDSE, ALBOAN, Broederlijk Delen, CAFOD, CCFD-Terre Solidaire, DKA Austria, Entraide et Fraternité, Fastenopfer, Focsiv, KOO, Misereor, Trócaire, and SIEMBRA.

My name is Marina, I come from Brazil and I am affected by the Vale dam collapse in Brumadinho, Brazil. 272 dead, we still search some bodies, hundreds of houses, plantations and biodiversity destroyed. People, water, soil and air contaminated by heavy metals. 26 cities and about 1 million people affected by this crime.

5 months before Vale's dam failure, the Brazilian subsidiary of German Company TUV SUD attested to the dam's stability. There were email exchanges between the company's employees, indicating problems in the dam. More than 3 years later, neither company has been held responsible and now the victims are asked to prove the control of the parent company over its subsidiary.

As the draft lacks a rebuttable presumption of control, it can be assumed that "to establish legal liability, it must be proven in each individual case that a company effectively exercised control over their business relationships."

Victims of corporate activities in intricate value chains cannot be asked to prove the control of one entity over the other, as corporate structures are often intentionally opaque and difficult to scrutinise. The percentage of shares held by different actors, contractual relationships, and purchasing practices, all contribute to the *de facto* control of one business entity over another.

To reflect the variety of control situations and the differences between legal systems, the text should require States to ensure that their domestic systems provide for a **presumption of control** in the meaning of Art 8.6.

A sentence should be added to Art 8.6, worded as follows:

*"States Parties shall determine in their domestic law that control over one legal person by another legal person **is presumed** with reference to corporate, contractual and other business relations between the former and the latter into account."*

We support the strengthening of provisions on civil liability, including several and joint liability, as per the amendment proposed by the delegation of Palestine on Art 8.1 this year.

We reiterate the importance of separating liability for harm from sanctions for failure to comply with the corporate due diligence duty. For this, Art 8.7 should be amended as proposed by the Palestinian delegate in the text of the third revised draft.

Thank you, Mr. Chair