

CIDSE Oral Statement

*1st session of the IGWG on TNCs and other business enterprises
with respect to human rights*

Panel I: Principles, 6 July 2015

Thank you Madam Chair. I am speaking on behalf of CIDSE, the international alliance of Catholic justice and solidarity organizations, who together with the organizations Friends of the Earth Europe, Brot für die Welt, SOMO, IBFAN and IBFAN-GIFA and Global Policy Forum, made a joint submission to this intergovernmental working group. We are also members of the Treaty Alliance, and are among the nearly 400 organizations from around the world who have signed the Treaty Alliance joint statement, many of whom are present this week both inside this room and outside in a wider mobilization.

First I wish to say that our organizations have been calling for constructive engagement by all States in this process. Therefore we are pleased at the openness shown yesterday for an inclusive process, and as a number of our members are based in Europe we very much welcome the presence and a constructive participation from the EU and its Member States in this group's work.

We wish to highlight 3 sets of principles we believe to be fundamental to this treaty process. These have also been strongly raised in several cases during yesterday's side event on the impact of transnational corporations and other businesses on grassroots communities, co-organized by several of our organizations.

The first is Accountability.

States have the duty to protect human rights by regulating the behavior of private (non-State) actors. States are expected to take all measures that could reasonably be taken, in accordance with international law, in order to prevent private actors from adopting conduct that may lead to human rights violations. I want to underline this aspect of prevention. Yesterday our colleague speaking about mining in Colombia emphasized that communities' rights are being violated from the very beginning of corporate activities, for example their right

to land by forced displacement for big mining projects, not to speak of their right to health by environmental contamination and their very right to life. Therefore the duty to protect includes both a duty to provide access to remedy, as well as a duty of preventative regulation and sanction.

The obligation of a State to control the conduct of non-State actors where such conduct might lead to human rights violations also outside its territory has been explicitly affirmed by various United Nations human rights treaty bodies, and in several opinions of the International Court of Justice related to environmental harms.

The second is Equality and non-discrimination.

As stated in Article 1 of the Universal Declaration of Human Rights, “All human beings are born free and equal in dignity and rights.” The prohibition against discrimination is at the heart of human rights law and is clearly established in numerous human rights texts. Each State must ensure that all individuals subject to its jurisdiction are protected against corporate human rights abuse, without distinction of any kind.

Of key relevance here is the need to redress the current power imbalances between both States and affected peoples vis-à-vis transnational corporations. Affected communities face huge imbalances in trying to defend their rights and also in litigation against transnational companies, it was said yesterday, with unlimited resources and influence. States also experience such power imbalances in negotiating investment/trade agreements and attracting foreign direct investment. Here I want to underline the message from affected communities expressed in yesterday’s side event, that human rights for all must take primacy over the rights of some investors in the context of trade and investment agreements.

The third is Participation and transparency.

People have a right to participate in how decisions are made regarding protection of their rights. Affected people are also actors, not just States and companies. Transparency means that governments must be open about all information and decision-making processes related to rights. This should empower concerned actors by equipping them with information and creating a precondition for holding power-holders to account. Transparency has arguably

already become a general principle of international law, for example within international environmental law and disarmament treaties.

Of key relevance here is Free, Prior and Informed Consent. As we heard yesterday from Victoria Tauli Corpuz, the very survival of indigenous peoples around the world is threatened by corporate activity. During the side event yesterday, we heard that the damages to cultures, to nature, are increasingly becoming irreversible and irreparable, so we must act urgently so that companies respect the autonomy of communities and their own, other conceptions of development and progress. International law has now recognized that FPIC is a legal norm imposing clear affirmative duties and obligations on States with regard to indigenous rights. The recent development of FPIC in national and international law is demonstrative of its widespread support as a principle of international law by the international community.

Madame Chair, our organizations work with communities and individuals currently suffering abuses and violations of their human rights a result of business activity. Our colleague from an indigenous communities in Canada put it very eloquently yesterday, when she said that this process is about “shining light where there’s only darkness on abuses of human rights.” Concrete measures are urgently needed to protect women and men seeking to defend their rights and the environment in the face of harmful corporate practice, and to address the denial of access to justice to communities in numerous countries. Thank you Madam Chair.