

GIFA Oral Statement
1st session of IGWG on TNCs and human rights
July 8, 10H-13H

Panel V: Content: Obligations of States to guarantee the respect of human rights by TNCs and other business enterprises, including ETOs

Thank you Chairperson. I am speaking on behalf of the International Baby Food Action Network, the Pesticide Action Network Asia and Pacific, Brot für die Welt, Friends of the Earth Europe and the Global Policy Forum, members of the Treaty Alliance, as well as on behalf of the Society for International Development.

Most violations of human rights derived from activities of corporations are occurring outside of their home countries. Let us take the example of the country which hosts this present session, Switzerland. Switzerland is home for many corporations with a transnational character, including the well known Syngenta and Nestlé.

Syngenta produces a highly hazardous pesticide name “paraquat” which continuously poisons thousands of plantation workers and farmers who spray it without any protection and without having been trained to reduce risks. These workers suffer acute and chronic poisonings including chronic respiratory disease. Some of them even died after having used paraquat since there is no antidote. In addition, children who live around these plantations are also exposed and suffer negative effects. However, Syngenta continues to produce and sell this product knowing that it seriously endangers health, therefore violating the right to health of exposed communities.

Meanwhile, Nestlé, Swiss industrial flagship and so-called “Health & Wellness” company, has been violating the WHO Code on the Marketing of Breastmilk Substitutes since decades. Last year, IBFAN released a monitoring report in which Nestlé’s offences in this regard are presented in more than 40 pages. In 2013, the Committee on the Rights of the Child, in its General Comment No 15 on the right of the child to the enjoyment of the highest attainable standard of health, set a direct obligations on private companies, providing that « among other responsibilities and in all contexts » they should comply with the WHO Code and the relevant subsequent World Health Assembly

resolutions. Even though Nestlé has been repeatedly informed about the systematic violations of the Code identified by IBFAN as well as about the obligation set by the General Comment No 15, the company did not improve its practices.

Unfortunately, Switzerland has failed to regulate appropriately the conduct of corporations domiciled on its territory and/or jurisdiction and thus, has left Syngenta and Nestlé free to perpetrate their abuses abroad.

States have the obligation to protect citizens against harm derived from the activities of companies based in their territory and/or jurisdiction. Children are particularly vulnerable and damages affecting them are often irreversible, as highlighted by Dr. Kotrane. Therefore, the Committee on the Rights of the Child has explicitly affirmed that obligations of States should include protection of child's rights beyond their territorial borders. In particular, States must ensure that all business enterprises, including transnational corporations operating within their borders, are adequately regulated and do not adversely impact on children's rights in foreign jurisdictions. Other HRTBs including the Committee on Economic, Social and Cultural Rights and the Committee on the Elimination of Racial Discrimination, have also called upon States to regulate the extraterritorial actions of third parties registered in their territory.

The Maastricht Principles further clarify extraterritorial obligations of States, in particular the obligation to protect. Therefore, a legally binding instrument should seek inspiration from Principles 24 and 25. Finally, a legally binding instrument should oblige States to ensure effective judicial remedy for those affected by corporate misconduct.

Thank you.