

**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), **FoEE** (Friends of the Earth Europe), **IBFAN** (International Baby-Food Action Network), **SOMO** (Centre for Research on Multinational Corporations)

Panel V: Strengthening cooperation with regard to prevention, remedy and accountability and access to justice at the national and international levels

I am delivering this statement on behalf of CIDSE, Bread for the World, Friends of the Earth Europe, IBFAN, and SOMO, all members of the Treaty Alliance.

Thank you, Madam Chair.

A number of our organizations have been closely engaged in the implementation of the Guiding Principles. For example CAFOD is actively part of National Action Plan process. Our experience of both the potential and the limitations of the Guiding Principles underpins our thinking on the complementarity of an international legally binding instrument.

The Guiding Principles have contributed to advancing the concept of preventative corporate human rights due diligence. However, they do not bind States to translate this into legal requirements. As noted by Robert McCorquodale on the panel this morning, the Treaty could take this step forward.

The current reality is that affected communities have no or very few options of preventing foreseeable harmful impacts from projects.

Among the options for enforcement of the Treaty, it could establish a Treaty body which would include the power to take preventative measures, such as halting of projects in order to protect communities from harmful impacts.

At the same time, the instrument should ensure enforceability through a combination of mechanisms. There is a clear continuing lack of progress on access to justice, where implementation of the Guiding Principles is weakest.

The treaty will only be as strong as its enforcement mechanism. Irrespective of whether the duty bearer of the treaty is State and/or business, the instrument should ensure enforceability through a combination of mechanisms.

Different options for enforcement of the treaty can be identified, varying in possible effectiveness, reach, and powers.

- Domestic courts should play an important role in the enforcement of the treaty provisions. We also heard yesterday of a number of practical measures, such as removing the statute of limitations, allowing class actions etc. which could be included in the treaty and would make it easier for affected people to use existing legal routes.

- Beyond national systems the treaty should also draw on the potential of regional courts to deal with alleged human rights violations by business. This would depend on the mandate of the different regional courts.
- Establishing an international court on business enterprises and human rights – possibly operating on the basis of a complementarity principle – is another possible enforcement mechanism. As an alternative to establishing such a court at this point in time, the treaty could include a provision which stipulates that in the future States will explore the possibilities of establishing a court which can issue binding judgments.
- In addition, States could seek to amend the Rome Statute to allow prosecution of corporate entities for their role in international crimes, although this would only cover international crimes and not the complete spectrum of human rights.
- Implementation of the treaty provisions will need to be monitored by a robust treaty body

Thank you.