

**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), **CAFOD, CIDSE** (International family of Catholic social justice organisations), **FIAN International, FIDH** (The International Federation for Human Rights), **Global Policy Forum**, and **SOMO** (Centre for Research on Multinational Corporations)

Subject 6 – Access to justice, effective remedy and guarantees of non-repetition

Thank you Mr. Chair. I make this statement on behalf of Brot für die Welt, CAFOD, CIDSE, FIAN International, FIDH, Global Policy Forum, and SOMO.

We welcome the fact that the elements document as put forward by the Chair dedicates a separate section to Access to Justice, and signals the clear ambition to significantly improve access to remedies for victims of business related human rights abuse. We also welcome that, judging from the State contributions made to this 3rd session so far, there is the wide state recognition that access to justice and remedy for victims of business related human rights abuse is largely lacking at present. As organisations working directly with communities and workers negatively affected by business operations, we can confirm that obstacles to remedy are real and need to be addressed urgently.

[Access to justice and effective remedy is a recognized area of weakness in many national action plans on business and human rights. Making progress with the Treaty on specific measures to access to justice will therefore also complement and strengthen implementation of the UN Guiding Principles.]

A number of our organisations have commissioned a report titled ‘Removing Barriers to Justice’ that analyses how a treaty could address current barriers to justice, of which copies are available at the back of the room. The analysis in this report makes clear that for barriers to be removed, a number of interconnected areas of law need to be addressed:

- there needs to be a legal basis to establish liability of corporations for human rights abuses,
- HRDD and liability should be linked to one another, [so that a corporation incurs liability when it cannot show that it had adequate HRDD measures in place to prevent the harm,]
- jurisdictional barriers need to be overcome,

- there is a need for state cooperation in investigation, collection of evidence and the enforcement of judgements,
- and there is a whole array of measures that need to be taken to facilitate access to courts for victims.

In this statement we would like to highlight the importance of a number of elements in the access to justice section of the elements document, and urge states to develop those further into **concrete actions**. First of all, we welcome the inclusion in the elements document to **reduce regulatory, procedural and financial obstacles** which prevent victims from having access to effective remedy. At the same time, we want to echo Amnesty International's written submission that care should be taken **not to suggest** a closed list of barriers that excludes, or can be read as excluding, certain critical barriers

Furthermore we want to highlight the importance for the future instrument to include a **provision on access to information** that can substantiate claims of victims, and that is often in the possession of corporations. [Information on corporate structures and activities is often crucial to determine the role of corporations in human rights abuses.] Furthermore, the **reversal of the burden** of proof in cases of business related human rights abuse is of crucial importance to empower victims to overcome current barriers.

In memory of all the human rights defenders who have been killed, and aware of the risks continuously faced by many others, we want to emphasize the importance that victims can access remedy mechanisms **safely and without fear of retaliation**. We therefore welcome that the elements document includes a provision concerned with the protection of human rights defenders and whistle blowers, and we would like to propose that in developing the treaty text, it would include that **retaliations against HRDs should be prevented, investigated, and punished**.

We want to close this statement with an urgent appeal to negotiating states: in order for the treaty to result in real improvements for victims in daily life, it would need to go **beyond** the reaffirmation and expansion of existing obligations. It would need to specify required state actions and provisions that need to be in place at the national level to actually improve access to remedy for victims and remove existing barriers. We think the UN Convention against Corruption provides an inspirational model in this regard.

I thank you Mr. Chair.