**5th session of the Open-ended Inter-Governmental Working Group on transnational corporations**

**and other business enterprises with respect to human rights**

**Oral Statement**

Dear chairperson, I am speaking on behalf of the Treaty Alliance Germany, consisting of 27 civil society organisations. We welcome the improvements achieved with the *Revised Draft*, especially that it places a special focus on improved access to justice and remedies for those affected by human rights violations or environmental destruction, thereby strengthening the third pillar of the UNGPs.

In our view, liability rules as foreseen in *Article 6* of the draft are a key element of the future treaty. They ensure that companies invest in the **prevention** of harm and, in the case of damages already occurred, they allow for **compensation** claims by those affected.

However, to ensure the effectiveness of the liability regime, we have the following recommendations:

* as others have already mentioned the orientation on **“*contractual relationships*”** lags behind the understanding of responsibility used in the UNGPs
* The reversal of the **burden of proof** should not only be listed as a possibility in Art. 4, but should be enshrined *Article 6, paragraph 6* on civil liability because those affected of business-related human rights abuses typically do not have insight into the internal company processes that led to the abuse and are not in a position to prove the breach of due diligence requirements in court.
* Criminal or administrative liability should **not be limited** to the list of particularly serious criminal offences such as war crimes, torture and forced labour proposed in *paragraph 7*. Even below this threshold, regulatory law must be parallel to individual civil law in order to adequately sanction disregard for human rights due diligence obligations by companies.

Finally, we would like to express that we regret that after four sessions of the working group, the EU still has not resolved the question of the mandate and is not engaging constructively in this process. This is particularly true since there is currently a strong momentum in the EU for human rights due diligence legislation. Several member states like France, the UK and the Netherlands already require companies to exercise human rights due diligence. Others like Germany and Finland have the introduction of such laws in their government programs. Moreover, there are currently civil society campaigns demanding mandatory human rights and environmental due diligence in 13 member states and 650.000 European citizens signed a petition to call on the EU to actively support the treaty. This is a critical mass.

Therefore, it should be of particular interest to the EU and its member states to constructively contribute to the historic chance to establish an international *“level playing field”* regarding mandatory human rights due diligence and to ensure the successful continuation of the treaty process.

In this regard, Germany should not hide behind the EU and engage actively in the process.

Thank you chair!