GIFA Oral Statement
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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 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.