



NGO Statement for the Sixth Session of the Open-ended intergovernmental working group for the elaboration of an International Legally Binding Instrument on Transnational Corporations and other Business Enterprises with respect to human rights, Resolution A/HRC/26/9 - 26 to 30 October 2020

Thank you, Chair.

I would like to make a statement on behalf of the [Mind the Gap consortium](#), a group of 11 NGOs from every region of the world exposing harmful corporate strategies that result in the avoidance of responsibility for human rights or environmental impacts. We welcome the general direction in which the draft text has evolved and, as requested by the secretariat, hereby, **concrete wording (text in *italic*) to improve the text of the LBI on item 4 Article 6. on Prevention.**

On Art 6.1, to clarify that companies should “prevent and mitigate risks” and “prevent abuses”, not “mitigate abuses”. This language is consistent with General Comment 24 of the ESCR Committee, par. 16 and represents a step forward in the understanding of human rights due diligence as defined by the UNGPs. The reworded article should read as follows:

6.1 State Parties shall effectively regulate the activities of all business enterprises domiciled within their territory or jurisdiction, including those of a transnational character. For this purpose States shall take all necessary legal and policy measures to ensure that business enterprises, including but not limited to transnational corporations and other business enterprises that undertake business activities of a transnational character, within their territory or jurisdiction, or otherwise under their control, respect all internationally recognized human rights and prevent and mitigate human rights ***risks and prevent human rights*** abuses throughout their operations.

On Art 6.2 we suggest the LBI refers to due diligence obligations proportional to risk of human rights impacts removing the word “***severe***” in coherence with the recognition of all the human right recognized under the current text. Consequently, we also suggest modifications in sub-articles a. and b. that follow:

6.2 For the purpose of Article 6.1, State Parties shall require business enterprises, to undertake human rights due diligence proportionate to their size, risk of human rights impacts and the nature and context of their operations, as follows:

- a. Identify and assess any actual or potential human rights ***impacts*** that may arise from their own business activities, or from their business relationships.
- b. Take appropriate measures to ***prevent identified potential human rights violations and abuses and mitigate effectively identified actual human rights violations and abuses***, including in their business relationships;

We suggested that Article 6.3 sub-articles b., c. and g. should be modified as follows:

b. ***Explicitly*** integrating a gender perspective, ***with the leadership of and in meaningful*** consultation with potentially impacted women and women’s organizations, in all stages of human rights due diligence processes, to identify and address the differentiated ***and intersectional*** risks and impacts experienced by women and girls, ***including through the collection of data disaggregated by gender and other major variables relevant to the communities potentially affected by their operations;***

c. Conducting ***in good faith effective,*** meaningful ***and informed*** consultations, ***throughout the planning, implementation and follow-up of business activities,*** with individuals or communities whose human rights can potentially be affected by business activities, and with other relevant stakeholders, ***including human rights defenders, workers or their representatives, trade unions and civil society organisations,*** while

giving special attention to those facing heightened risks of business-related human rights abuses, such as women, children, persons with disabilities, indigenous peoples, migrants, refugees, internally displaced persons and protected populations under occupation or conflict areas;

g. Adopting and implementing enhanced human rights due diligence measures, **including conflict-sensitivity analysis, continuous monitoring, and suspension or termination of operations if necessary**, to prevent human rights abuses **and violations of international humanitarian law in conflict affected areas, including in situations of occupation, and in other operating contexts which pose risks of severe human rights impact**

Article 6.5 should be complemented with two new sub-articles as follows:

a. Ensure the meaningful and participatory engagement of all relevant stakeholders, including human rights and gender experts, in the development of such national measures;

b. Develop tools, guidance, education and training, and raise awareness, in accessible formats, to provide support to enable business enterprises to undertake their obligations effectively and to enable affected communities, including through financial support, to participate in all stages of human rights due diligence effectively and, as far as possible, conduct human rights impact assessments directly themselves.

Additionally, we propose the following rewording of art. 5.2 to better include protection of human rights defenders, and align it with the UN Declaration on Human Rights Defenders as a key element for an effective prevention of human rights abuses and violations in the context of business activities.

5.2 State Parties shall take adequate and effective measures to guarantee *the protection of persons, groups and organizations against any violence, threats, retaliation, adverse discrimination, pressure or any other arbitrary action as a consequence of their activities to promote and defend human rights and the environment.*

Finally, we propose additional wording on Article 6.7 to strengthen the provisions on transparency to prevent corporate capture.

6.7 In setting and implementing their public policies with respect to the implementation of this (Legally Binding Instrument), State Parties shall act to protect these policies from the influence of commercial and other vested interests of business enterprises, including those conducting business activities of transnational character. ***For this purpose, State Parties should require disclosure of corporate donations to political parties, communications between lobbyists and civil servants, and of the awarding of licenses and public procurement.***

Thanks.

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