

## Oral contribution on Prevention during the 7th IGWG session in the UN Human Rights Council

By ActionAid Netherlands, Afreewatch, Al-Haq, ECCJ, FIDH, IUCN Netherlands, Lawyers for Human Rights (South Africa), Manushya Foundation, SOMO, WILPF, and WO=MEN

28 October 2021

Thank you, Mister Chair. I make this contribution on behalf of ActionAid Netherlands, Afreewatch, Al-Haq, ECCJ, FIDH, IUCN Netherlands, Lawyers for Human Rights (South Africa), Manushya Foundation, SOMO, WILPF, and WO=MEN.

We welcome the general direction in which the draft text has evolved.

With the aim of further clarification of the text, and to prevent misinterpretations and inconsistencies in the implementation of the instrument by the States Parties, we would like to suggest the following changes to article 6 on prevention:

- Articles 6.1 and 6.2 contain significant overlap and we would suggest merging those provisions.
- We strongly support Mexico, Palestine, and Panama's suggestion to delete references to mitigation of abuses in articles 6.2, 6.3.b, and 6.3c. Due diligence obligations should not seek to "mitigate abuses", which could imply accepting a certain level of abuse, contrary to the objectives of this treaty. However, we ask Panama, Mexico and Palestine to consider slightly modifying their amendment to 6.3.b by adding the words "prevent and" before "mitigate effectively", so that the provision aims to prevent risks *as well as* mitigate them.
- Article 6.3b introduces the word "manages". In our view, this term requires a clear definition which should be added to article 1.
- We suggest adding "**independent**" before "assessment" in article 6.4a, and to further clarify requirements for an independent assessment.
- The word "**meaningful**" in article 6.4c - concerning **consultations** - also requires further precision, in terms of requirements. It should be made clear that business enterprises should take into account all potential barriers to effective engagements, and that consultations should take place regularly at all stages of the due diligence process. To this end, we suggest adding the following language to article 6.4c: "*For a consultation to be meaningful, business enterprises should take into account all potential barriers to effective engagements, including language, gender, physical ability and accessibility, literacy, risks of reprisals. States parties shall ensure that human rights defenders and affected community members, including members of the LGBTIQ+ community, peasants and other rural people and ethnic and linguistic minorities are consulted throughout the planning, implementation and follow-up of a given business activity. Consultations should take place regularly at all stages of the due diligence process and be carried out in a free, informed and timely manner. The business enterprise should take into account the interests of affected individuals and communities in decision making and ensure that consultations are conducted with, and drawing from input and knowledge of those likely to be impacted.*" This would bring the article closer in line with article 6 of ILO convention 169.
- Article 6.8 does not deal with 'prevention' as such but rather with the obligation of States Parties to implement the provision in a transparent manner and safeguarded against corporate capture. We suggest moving that provision to article 16.

Overall, the text of Article 6 falls short of **addressing the role of the State as an economic actor** with a heightened duty to respect human rights. It is key that the LBI better address the obligation for a State to conduct due diligence when it engages in economic activities or when it offers financial or

other support to businesses, such as granting export licenses or conducting commercial transactions with businesses.

Finally, the word “severe” was removed from art. 6.3 so that all human rights abuses now fall within the scope of the treaty. We welcome this change.

Thank you, Mister Chair.

*This oral statement was in part informed by an expert consultation participated in by academics, litigators, and civil society experts, held on 7 October 2021 at the Asser Institute in The Hague (The Netherlands).*