



Third session of the Intergovernmental Working Group on transnational corporations and other business enterprises with respect to human rights

Subject 4: Preventive Measures

Thank you Mr Chairperson-Rapporteur,

This intervention responds to the "Preventive Measures" part of the "elements" paper.

- Carrying out human rights due diligence is understood to be the best way for *all* companies to prevent a human rights harm. While due diligence is an established risk management approach for business, the UNGPs have been instrumental in applying this to human rights in a manner that is both practical and transformative.
- Carrying out human rights due diligence in line with the UNGPs is already a fundamental component of the corporate responsibility to respect human rights. Many companies are doing this and openly communicating their efforts in this regard using tools like the UNGPs Reporting Framework and other reporting mechanisms. The phrasing of the "elements" paper on this point creates unwelcome confusion on an otherwise clear and settled expectation and standard.
- UNGP 17 clearly explains what is meant by human rights due diligence and reflects the different ways that a company can be involved in a human rights harm (ie: by causing, contributing, or being directly linked to a harm). However, the language in the "elements" paper on obliging under international law on TNCs and OBEs to carry out human rights due diligence on "their activities" risks bringing about unintended consequences and creates unnecessary confusion. It will likely drive the business and human rights agenda into a largely legal compliance direction that would result in a one-size-fits-all, box-ticking compliance and boiler-plate reporting, instead of critical thinking undertaken by different company functions to put the respect for human rights into practice. Also, companies may decide to start sourcing or operating in countries that pose a low risk of being involved in an adverse human rights impact and avoiding suppliers where harms may be a problem. The "elements" should not run counter to the spirit and effectiveness of the UNGPs, which encourages companies to use their "leverage" to mitigate harms to the greatest extent possible.
- Furthermore, the introduction in the "elements" paper of a new undefined and unclear scope for binding human rights due diligence unnecessarily muddies what was previously a clear and accepted concept. Creating confusion on such a central and effective piece of the UNGPs is not helpful.
- Finally, it is important to note that, while the UNGPs recommend "a smart mix of measures – national and international, mandatory and voluntary – to foster business respect for human rights" they also explicitly recommend that States may require "business enterprises that are owned or controlled by them, or those that receive substantial support and services from States agencies to undertake human rights due diligence". Too often, States set higher expectations of private businesses than of their own companies, such as SOEs. We would like to underscore the importance of States "leading by example" and not focusing all their regulatory efforts purely on TNCs.

I thank you for your attention.