Regarding article 8 on liability, due to the complexity of the issue, we will provide only brief comments here that will be followed by more detailed comments in writing.

I would like to repeat the general comment made earlier and to emphasise once more the importance of remaining faithful to the mandate stipulated under HRC resolution 26/9. Another over-arching comment relates to the need to refer to both abuses and violations.

Apart from these two points, we welcome the new references in article 8.1 that ensure a States’ obligation to legislate for the legal liability for TNC’s and OBE’s domiciled or operating within their territory or jurisdiction, or otherwise under their control.

We also welcome the new references in 8.7 on liability for failure to prevent business partners from causing or contributing to human rights abuses and violations, particularly since this applies when the threshold is met of legal or factual control and supervision, or when they should have foreseen the risk of such abuse or violation.

We also welcome and support the reference in article 8(8) that human rights due diligence does not automatically absolve the TN or OBE from liability. We believe this should be read in conjunction with article 6.6.

With respect to article 8 para 9, we are still examining this as we believe the issue of criminal liability in this context could prove complex, taking into consideration that many legal systems do not provide for the criminal liability of legal persons, and in other systems, this is only possible for economic crimes. Also, it is not clear to us what is meant by criminal offences under international human rights law. We have said earlier on several occasions that we support references to customary international law throughout the LBI; however under article 8.9, we are carefully considering the issue of criminal liability under customary international law, to make sure it does not contradict the principles of nullem crimen and nulla poena sine lege. It is therefore appropriate to reference to criminal or “administrative” liability, and to delete the term “functionally equivalent” as suggested by other Speakers, in order to account for the differences in legal systems.