

**Oral statement by FIAN International during the 6th session of the OEIGWG on TNCs and other business enterprises with respect to human rights:**

**Article 5 (Protection of victims)/Article 6 (Prevention)/Article 7 (Access to remedy)**

Thank you Mr. Chairperson-President,

Regarding article 5, we suggest adding the following to article 5.2: “*This obligation requires taking into account States Parties’ international obligations in the field of human rights, their constitutional principles and the basic concepts of their legal systems.”*

Regarding article 6: Prevention and not mitigation should be at the core of human rights due diligence. As mitigation can result more cost-effective than prevention for certain transnational corporations, these might prefer to mitigate instead of effectively invest in prevention. Including mitigation in article 6 as a component of human rights due diligence standards **sends the wrong message**. We therefore propose **the deletion of references to “mitigation” in articles 6.1, 6.2b and 6.2c.**

On article 6.3c. regarding **meaningful consultations**, these should be conducted in a continuous manner, both prior as well as during the business activities. They shall respect the principles of transparency, independency and participation, meaning that these shall be undertaken by an independent State body and protected from any undue influence from the business enterprises. We also propose **the inclusion of peasants as a group requiring special attention**. Besides, we welcome article 6.3d’s replacement of “consultation” by the term “consent”, following internationally agreed standards, such as UNDRIP, which must be defended here.

The inclusion of article 6.6 is very welcomed and we strongly support its remainder in the legally binding instrument. It should however stipulate even stronger the principle established in article 8.8., whereby **the compliance with due diligence standards cannot absolve legal or natural persons from legal liability** when they cause, contribute or fail to prevent human rights abuses. **Due diligence cannot simply be a ‘check-list’ procedure** with the potential safeguarding legal and natural persons from legal liability. In addition to being an ‘obligation of conduct’, **due diligence should also be an ‘obligation of result’**.

Regarding article 7, we welcome the inclusion of article **7.5 preventing the use of the doctrine of *forum non conveniens*. We however recommend to refrain from using the term “legitimate”,** which is vague and open for interpretation, and instead make reference to the grounds for jurisdiction laid down in article 9, in particular art. 9.3, which defines under which conditions *forum non conveniens* shall not be used.

I thank you.