

**OEWG ON A LEGALLY BINDING INSTRUMENT ON TNCs AND OBE AND HUMAN RIGHTS**

**6TH SESSION, 2020**

**Joint ICJ and DKA- Austria Oral intervention on Articles 5, 6 and 7**

27 October, 2020

The ICJ welcomes the protections Article 5 would provide to victims and their representatives, families, witnesses and human rights defenders. We would suggest that trade unionists are mentioned as human rights defenders and that therefore 5(2) read “promote and defend human rights, labour rights and the environment”. Because of its focus, this article may be better titled “protection of victims and human rights defenders” or simply “protection”, and further developed.

On Article 6, prevention, the ICJ considers that Article 6(2) appropriately addresses mandatory human rights due diligence legislation. However, due diligence alone is not enough and its inclusion should not obscure the general purview of article 6(1) that goes beyond this measure, as provided for in the UNGPs.

The ICJ suggests strengthening the language on the rights of individuals from groups in situations of particular vulnerability, including children, under impact assessments in Article 6.3.a. Meaningful consultations prescribed in art. 6(3)(c) should specifically include meaningful engagement with trade unions and other affected groups**.** Children should be engaged in consultations in accordance with the principle of the child’s right to be heard, and this should be provided for in the text.

In Article 7, adding “and reparations” next to “access to remedy” will make clear that both remedy and reparations are essential part of access to justice. In respect of article 7 (3) (a), the information to be made available to victims on their rights and the status of their claims should also be in **relevant languages and accessible formats to adults and children alike, including those with disabilities. The same article (b) should guarantee the** rights of victims to be heard in all stages of proceedings **according to their special needs and rights**.

Access to remedy in Article 7 should also include provisions on non state-based grievance mechanisms, which under certain strict conditions of transparency and stakeholder participation, can play a role in providing rapid redress to harms caused. However, in no circumstance should these grievance mechanisms be considered as a waiver of the right to a judicial remedy.