**6th Session of IGWG on TNCs and OBEs with respect to Human Rights**

**Comments on Articles 5,6 & 7**

**Article 5 – Protection of victims**

In Article 5(3), we recommend adding the “and violations” after “human rights abuses”. This suggestion comes in line with our efforts in strengthening the language on State accountability throughout the text.:

“State Parties shall investigate all human rights abuses and violations covered under this (Legally Binding Instrument), effectively, promptly, thoroughly and impartially, and where appropriate, take action against those natural or legal persons found responsible, in accordance with domestic and international law.”

**Article 6 – Prevention**

We believe it is important to reinclude the provision on universal jurisdiction from the zero Draft. This would ensure a more comprehensive approach to criminal liability. The LBI must do more to ensure that conflicts, including situations of occupations, do not become incentivized in a manner that prolongs situations of conflict, rather than bring them to an end.

Once again, we reiterate that States must prevent both State and non-State infringements of human rights. Accordingly, in Article 6(1), it is important to add the word “violations” after “Human rights abuses” to the provision.

The obligation for States to take precautionary measures in the case of serious or urgent situations of imminent human rights abuses or violations leading to irreparable harm, should be reflected in this article. We therefore propose an additional paragraph after article 6(1), which would read as follows:

“State Parties shall take precautionary measures, including the halt of business activities, when such activities can cause imminent human rights abuses or violations causing irreparable harm, independently from the existence or outcome of a legal proceeding relative to the situation.”

In Article 6(2) The due diligence obligation should further be an ongoing process across the full value chain, rather than just a single assessment. Accordingly, we recommend the text be changed to the following provision:

“…for the purpose of Article 6(1), State Parties shall require business enterprises and other actors across the full value chain – including State entities, to undertake ongoing and frequently updated human rights due diligence ~~proportionate to their size, risk of severe human rights impacts and the nature and context of their operations~~, as follows…”

Also, in Article 6(3) should be updated to: “State Parties shall ensure that human rights due diligence measures undertaken by business enterprises and other actors across the value chain under Article 6.2 shall include…”

In Article 6(3)(c), we propose adding a guarantee to non-interference in consultations. In this regards we suggest adding the following at the end of the drafted para:

“such consultations shall be undertaken by an independent public body and protected from any undue influence from commercial and other vested interests - where it is not possible to conduct meaningful consultations such as in conflict areas, business operations should refrain from operating unless it is for the benefit of the oppressed population.”

In Article 6(3)(g) on conflict-affected areas, State violations, as well as the responsibility of those involved across the value chain are key to highlight. It is also important to make a distinction between the responsibility for those already conducting business in conflict-affected areas and those yet to venture into business therein

Under Article 6(3), an operational paragraph on the right to self-determination should be added in line with the suggested text in the Preamble. Here is the suggested Article 6(3)(d) bis: “Respecting that peoples have a right to self-determination and, therefore, a right to refuse business activity on their land.”