

Oral Statement on article 2

Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights

Seventh session (25-29 October 2021)

Item 4: Article 2.

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Signatories (add your organisation) : FIDH, Organisation Guinéenne de défense des droits de l'homme (OGDH), EQUIDAD (peru), Observatorio Ciudadano (Chile), Organisation Marocaine des Droits Humains (OMDH), Lawyers for Human Rights (South Africa), Franciscans International, the “Feminists for a Binding Treaty”, ESCR-Net

Thank you Chairman,

We have 2 suggestions regarding this article

First, we suggest deleting the words “and mitigate” both in 2.1.c and in 2.1.e.

Throughout the text, the LBI continues to carry an important level of confusion when referring to the objective of “mitigation” (not just prevention). It is paramount to clarify that due diligence obligations seek to “prevent and mitigate risks” on the one hand, and “prevent abuses” on the other, not “mitigate abuses”.

Following the UNGPs, the term “mitigation abuses” may have a place in article 6, but it should be in the very specific cases where a company has limited or no leverage on a business relationship that is linked to abuses.

However, article 2 sets out the general purpose of the instrument and it simply would not be acceptable to develop an international human rights instrument whose aim is to “limit” abuses rather than to prevent and remedy them.

To clarify the use of mitigation and prevention throughout the text, we suggest that the drafters seek inspiration in the wording of General Comment 24 of the Committee on Economic, Social and Cultural Rights.

We note the proposal made by China in regards to Art. 2.1 is unclear

Second, the reference to mechanism of monitoring and enforceability in Art 2.1(c) is welcome to reinforce the (usually weak) implementation by States of their obligations in the context of business activities. However this purpose should be operationalized by adding a specific article on 'Monitoring and Enforcement' with an aim to reaffirm the role of the State as a guarantor and enforcer of rights, rather than leaving enforcement almost fully to victims through private complaint procedures.

We welcome suggestions by South Africa and Panama to add, under section d, references to "gender responsive, age-responsive and victim-centered" access to justice.

As stated previously, we recommend that throughout this article as well as the entire treaty, adding "and violations" after the word abuses, including in article 2.1.c. Reintroducing the notion of human rights violation in the text is essential with regard to the accountability of States when implementing their obligations under the treaty.

This change would be in line with article 2(1)(a), which makes clear that the LBI will address both the State's obligations in the context of business activities and the responsibilities of business enterprises.