

Article 6 - 27 October 2021

This is a joint statement by the Feminists for a Binding Treaty and ESCR-NET

First, In regard to 6.1, “We look favorably to the proposal by Palestine for a 6.1 ter on precautionary measures.”

In regard to Article 6.2, we would like to suggest editing the text so that it reads in part “respect internationally recognized human rights, **avoid and** prevent human rights abuses and **violations** throughout their business activities and relationships.” The term “mitigate” would be deleted as abuses should be prevented, not mitigated. The word “avoid” is added in line with 6.3(b), as well as the term “violations” of human rights.

In 6.3(a), We recommend adding, at the beginning, **“In partnership with potentially affected communities and individuals, identify, assess and publish in an accessible manner”**

We agree with Mexico regarding 6.3(b) that abuses should not be mitigated but prevented. We however suggest retaining “avoid” (so that it reads “take appropriate measures to avoid and prevent abuses..” In that regard, we also support Palestine’s remark on adding a sentence in 6.3 b on situations where mitigation of risks is impossible such as in certain contexts of conflict.

In Art. 6.3(d), we suggest adding to the text so that it reads, **“Communicate regularly and in a public, appropriate, and accessible manner to the public and stakeholders, including gender-responsive consultation with local and indigenous communities”**

With regard to Egypt’s proposal, we would like to ask, through you Mr. Chairperson-Rapporteur, for a clarification as to whether it seeks to replace the whole 6.4 with Egypt’s proposed text. If that’s indeed the case, this would effectively delete the important subparagraph 6.4 b) about integrating a gender perspective. We urge all delegations to keep the text of 6.4 b) as drafted and with Panama’s addition of the word “age”.

The issue of immitigability should be reasserted in Article 6(4)(g), with an additional emphasis in relation to compliance with international humanitarian law, so that it reads:

“Adopting and implementing enhanced and ongoing human rights due diligence measures to prevent human rights abuses in conflict-affected areas, including situations of occupation, and ensure that businesses respect international humanitarian law standards. Given the risk of gross human rights abuses in conflict-affected areas, certain situations may require that businesses refrain from entering into activities and/or relationships or cease them depending on the phase of operation.”

We regret that the role of the State as an economic actor is still not addressed in the text including under article 6. We suggest adding a new Art. 6(5)bis, which would read: “States Parties shall take all necessary additional steps, including through human rights impact assessments and other

measures, to respect and protect human rights in the context of business activities that the State Party is engaged in, supports, or shapes. This includes but is not limited to, State ownership or control in business activities, State engagement in business activities with companies or other States, including trade and investment agreements, State regulatory oversight, or political or financial support. State Parties shall refrain from adopting laws and policies that directly or indirectly result in violations of human rights protected under this (Legally Binding Instrument).”