

IOE Comments on Article 6 of the third revised draft treaty

Chair

I would like to make 5 points

1) We see again efforts to focus only on transnational companies. As said numerous times before, it would mean that the legally binding instrument is not in line with the UN Guiding Principles and would not create a level playing field. Let me give you a very practical example. Just imagine two mines, which are 10 kilometres away from each other. One mine is operated by a purely domestic company and the other mine by a transnational company. The text as it stands at the moment would mean that the latter mine is in the scope of the treaty, but not the first one. Thus, workers and communities of the mine which is operated by the transnational company would benefit from all the due diligence requirements and access to remedy, but not the stakeholders of the purely domestic mine. In effect the treaty would establish a two-tier system, where one group of workers and communities is better protected than the other one. This can not be in the interest of anyone.

2) On Due Diligence: Through the many amendments we moving further away from anything which is implementable, which is in line with the UN Guiding Principles, and which is consensual. For that reason we need to step back and see what is in the UNGPs.

3) On 6.3 what we should do is to focus on UNGP 15, which outlines what is needed for prevention: policy commitment, due diligence and remediation. We should then include UNGP 17, which clearly outlines what due diligence means. This due diligence concept of the UNGPs were incorporated into the OECD MNE Guidelines and other instruments. Thus, focusing on the wording of UNGP 17 creates policy coherence, which is of utmost importance.

4) On Art. 6.4, we need to incorporate the wording of UNGP 21, which clearly outlines what are the requirements for being transparent. The aim of all this proposal is to create policy coherence on all these issues.

5) On Art. 6.8. This Article is exclusionary and restricts freedom of speech and expression enshrined in Article 19 of the Universal Declaration. Business has a key and legitimate role to play in speaking to the development and implementation of business and human rights policies. Indeed, this article questions and undermines the legitimate right of business to be involved in expressing its views in such dialogues

at national level and impacts on the tri-partite discussions that are embraced by the ILO and other UN agency approaches to consultation and dialogue. This paragraph must be **omitted**.