

**IOE Statement on article 6 of the draft LBI on BHR**

**8th Session OEIGWG**

24-28 October 2022, UN Palais, Room XX, 10:00–13:00 and 15:00-18 :00 CET

**Article 6. Prevention**

Thank you Chair, I am speaking on behalf of the International Organisation of Employers.

As a general comment, the draft provision seems to be far from possible **implementation**.

As for **the scope**, we continue to express our concerns as for the limited scope referring only to **transnational companies**.

On 6.3. the entire provision **should be aligned to the UNGPs 15, 17 and 18**.

On 6.4, the clause should be deleted in its entirety and replaced with the language of the UNGP 21. The current text is too vague, and problematic

On 6.4.bis parent and outsourcing enterprises cannot have obligations whatsoever to give “all the necessary technical and financial means” to their business relationships in their global value chain for them to be able to implement their due diligence.

On 6.7. Reference to “adequate penalties” should be omitted as penalties should be set in line with national judicial systems.

On 6.7.bis: the proposal is calling for “universal jurisdiction” which is largely unimplementable and should be left to States to decide. It should be deleted.

On 6.8. This provision restricts freedom of speech and expression enshrined in Article 19 of the Universal Declaration and should be omitted.

On 6.8. bis and ter. The proposals regarding “international financial institutions” loses sight of the fact that this draft is aimed at States and non-state actors such as companies.

Turning to the Chair’s new proposals:

**On 6.1,** this proposal should refer explicitly to the obligations of States (First pilar)to support businesses in their responsibility to respect. Prevention is a shared responsibility between States and businesses.

* The wording on 6.1. (b) “strengthen the practice of human rights due diligence by business enterprises” is not clear enough and should be replaced by “**provide support, advice and guidance to business enterprises on respecting human rights by appropriate methods, including on HRDD, as well as through capacity-building and awareness-raising.**”.
* “**Active participation from businesses, in particular, SMEs, as well as Employer Organisations**” under (d) should be explicitly included.

**On 6.2.** “**Necessary independence and resources**” should be added to this proposal. Also, to avoid any subjective language, the term “undue influence” should be omitted.

**On 6. 3.** Again, this proposal does not consider the obligations arising from the State’s duty to protect human rights which should provide guidance and support to companies when undertaking their HRDD. Additionally, these legally new enforceable requirements would be **extremely burdensome for business enterprises**.

* Point 6.3. (d) remains unimplementable. Public security is granted by States: not by a company, as a consequence of its HRDD

**Finally,** State Parties should have the possibility to exclude micro-companies and small and medium enterprises (MSMEs) from legally binding due diligence obligations.

On 6.4, What does “third party” means in this context? Are we referring to suppliers? This **language should be clarified**.

Thank you.