RG Draft Comments on New Chair Proposals for Article 6

We thank the Chair for his efforts and we believe these proposals are indeed a step in the right direction. However, we do have suggestions for clarifying improving the text even further.

Article 6.1 should refer explicitly to the obligations of States as set out in the UNGPs. Prevention is a shared responsibility: States have a duty to protect human rights and associated obligations to support businesses in their responsibility to respect. Indeed, the UNGPs state that “the failure to enforce existing laws that directly or indirectly regulate business respect for human rights is often a significant legal gap in State practice. Adopting laws and other measures will not make an effective difference if they are not properly implemented, enforced and reviewed at national level where and when needed.”

We further suggest that the words “strengthen the practice of human rights due diligence by business enterprises” be replaced by “provide support, advice and guidance to business enterprises on respecting human rights by appropriate methods, including on human rights due diligence, as well as through capacity building and awareness raising.”

In Article 6.2, we recommend adding the word “resources”—Competent authorities should not simply have the necessary independence to carry out their function. They should have the resources to do so. But what is “undue” influence in this regard? Who determines it? Here as elsewhere subjective language should be avoided.

In Article 6.3 companies are required to “ensure the safety of those who may be at risk of retaliation.” Presumably we are not speaking here merely of protecting the jobs of corporate whistle blowers. How is a company meant to ensure individuals’ safety through its due diligence process. Public safety and security are prerogatives of the State.

Finally, who are the “third parties” referred to in Article 6.4? If this means suppliers, the text should say so. But more to the point, every enterprise has a responsibility to respect human rights. The proposal seems to shift the responsibility of enterprises in a supply chain to the parent company, an explicit contradiction of UNGP 13. A parent company has a responsibility to use its leverage, if such exists, to encourage entities in its supply chain that cause or contribute to human rights impacts to mitigate them and prevent their recurrence. This does not absolve the enterprise in question from its own responsibilities.