

## Oral statement

### **Sixth session of the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG)**

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Sixth session - OEIGWG: Plenary discussions in accordance with the programme of work –  
Articles 5, 6, 7  
Tuesday 27 October 2020

#### **Thank you M. Chairperson,**

I am delivering this statement on behalf of FIDH, Altsean Burma, LHR, Al Haq, ESCR-net and Franciscans International, CIHRS, SOMO.

We recommend for article 5.1 to cover not only victims, but also “complainants, witnesses, representatives and families, (or) persons participating in any complaints”

In article 5.3, negotiators could add an explicit mention to the necessity for “**State Parties to ensure access to information and effective participation of victims and their legal representatives**” The reference to domestic law should be deleted.

We also recommend adding paragraphs at the end of article 5, on (4) the State’s duty to remedy its own failures, (5) the need to reflect the broad range of reparations that might be needed as a result of an environmental disaster and (7) for reparations processes established after such disasters be designed and implemented with the full participation of those affected.

In article 6, we propose:

1. to align the steps of human rights due diligence with those found in existing international standards such as the UNGPs and OECD Guidelines. This means adding the obligations to (d.) Track the effectiveness of their response (e.) Account for how they address their human rights impacts by communicating this externally (f.) Addressing impacts when they occur, including by adopting immediate and effective measures to cease ongoing violations or abuses and prevent further ones
2. It is also paramount to clarify that companies should “**prevent and mitigate risks**” **on the one hand and “prevent abuses” on the other.** The suggested language is consistent with General Comment 24 of the ESCR Committee, par. 16
3. to specifically address compliance with due diligence obligations for companies that provide goods and services to States or receive subsidies from States;

4. To better include **protection of human rights defenders** as a key element for an effective prevention. We would like here to remember Fikile Ntshangase, , killed in South Africa last Friday because of her activism in opposing the extension of a coalmine
5. It must be integrated in art. 6.3.g that appropriate action in these contexts may include refraining from or ceasing certain operations or business relationships in circumstances in which due diligence cannot guarantee respect for human rights and the rules of international humanitarian law.

Finally, in art. 7:

- we recommend the use of the phrase “**prompt** and effective remedy”
- and to eliminate the ambiguous criteria of “consistency with the rule of law requirements” which risk only to limit the use of the burden of proof.

Thank you