

**Seventh Session of the Open-ended intergovernmental working group on
transnational corporations and other business enterprises
with respect to human rights
ORAL STATEMENT – ARTICLE 6**

On behalf of: CIDSE, CCFD-Terre Solidaire, Broederlijk Delen, CAFOD, Entraide et Fraternité, Fastenopfer, Focsiv, KOO, DKA Austria, Misereor, Maryknoll Office for Global Concerns, Trócaire, Alboan and Commission Justice & Paix Belgium.

28 October 2021

Mr. Chair,

I would like to deliver this statement on behalf of CIDSE, CCFD-Terre Solidaire, Broederlijk Delen, CAFOD, Entraide et Fraternité, Fastenopfer, Focsiv, KOO, DKA Austria, Misereor, Maryknoll Office for Global Concerns, Trócaire, Alboan and Commission Justice & Paix Belgium.

Yesterday, the Financial Times reported that Apple is opposing a petition by its shareholders to ask for more transparency on forced labour in its supply chain. This goes to show that we've run out of carrots, Mr. Chair. It is now time for sticks.

Article 6 on prevention is one of the crucial articles in this text. We believe the current formulation is a slight advancement compared to the previous draft. We do not share the comment of the Brazil delegation and others who are concerned about the level of details. **Where others lament prescription, we welcome clarity, guidance and precision.**

We are surprised by the United States' comments regarding voluntary approaches, which the article is in line with. Voluntary due diligence guidelines are not new, yet they have bluntly failed. **We are way passed companies needing encouragement and are now at the point where they need clear obligations.**

We would like to suggest a few improvements to go beyond the prevention element, and to effectively **recognise the primacy of human rights over economic interests.**

Mr. Chair,

Companies should not only have a responsibility to prevent, but also to **cease and redress** adverse impacts when they have caused or contributed to them.

Adverse human rights impacts should only be **mitigated** when it is not in the capacity of a business, but of another over which it has not control, to cease them **entirely**.

In order to operationalise this principle, Article 6.3.b on due diligence should be rephrased as suggested:

*Art 6.3.b – Take appropriate measures to avoid, prevent, mitigate, **cease and redress** effectively the identified actual or potential human rights abuses (...)*

In its current form, Art 6.4 remains overall vague on the issue of communities' consent to the presence of business activities that might negatively affect them or their territories.

Free, prior and informed consent (FPIC) is mentioned for indigenous communities, but it is not clear whether a denial of consent from the same communities would be enough to actually **prevent** business activities from taking place or **cease** ongoing activities.

Additionally, while FPIC is an internationally recognised right for indigenous communities, there is a lack of a similar requirement for communities impacted by business activities that do not fall under the 'indigenous' umbrella.

The **beginning** of Article 6.4 should therefore be amended as follows:

Art 6.4. - Ensuring that consultations with indigenous peoples are undertaken in accordance with the internationally agreed standards of free, prior and informed consent and that denial of such consent constitutes sufficient grounds for preventing or ceasing business activities.

To ensure that the consent of all affected communities is always a requirement, a new letter should be added following Art 6.4.d:

Art 6.4.e - Ensuring that right-holders who may be affected by the negative human rights impacts of business activities have a right to express their consent or lack of thereof, and that denial of consent constitutes a sufficient basis for preventing or ceasing the business activities.

Moreover, a new letter in Art 6.4 should explicitly mandate States to require companies to include, in their due diligence assessments, the risks of abuse arising from their own **security forces** or from the security forces they may hire. Thus, a new letter in Art 6.4 should read:

Art 6.4.x – Reporting on the provision of security for their operations, regardless or whether they are directly employed by the company, hired, or through other arrangement.

Thank you, Mr. Chair.