

CHECK AGAINST DELIVERY

Thank you chair,

I'm speaking on behalf of Clean Clothes Campaign and Sudwind.

The chapter on liability is the crucial article providing real effect and meaning to the draft legally binding instrument. We agree with the sentiment expressed earlier that it is more important to prevent human rights violations, it is crucial that the preventative steps are seen in the shadow of possible and accessible legal enforcement. At the same time, while this section will reinforce the applicable provisions on prevention and human rights due diligence, it is equally welcome to have liability foreseen in a separate provision in its own right.

We would like to focus on article 6.6. We feel this article is crucial, but could still benefit from additional clarifications in order to make the article as performant as possible. Here are some suggestions from our perspective.

1/ We would join the calls made earlier to enlarge the notion to contractual relationship to business relationships. This would bring the article in closer alignment with the UNGPs and also further shift the focus of this article to the de facto situation.

2/ We feel the notion "failure to prevent" limits the scope to omissions, while we think the article equally needs to cover positive acts or contributions of companies while causing and contributing to harm.

3/ The UNGPs also differentiates between causing, contributing and directly linked. We think it is important to use both causing and contribution as separate grounds for liability. We think it is important to clearly recognise the notion of contribution to a human rights violation in this article and remove some current ambiguities. We feel it would strengthen and sharpen the readability of the article and the associated standard it seeks to establish.

4/ We feel that there is a lot of ambiguity around the concepts of "control" "supervision" and also "foresability". One way of developing these notions more clearly, while at the same time increase the clarity, would be to restructure the article and maybe develop the grounds of liability based on the notion of control and supervision in one sub section of the article. Another subsection could then be used to craft a more a more clear and developed ground for liability regarding human rights risk and violations to which a company causes or contributes and that have or should have been foreseen. We feel it is important to develop this notion independently of the notion of "control" and "supervision" hence another subsection

A small note on article 6.7. While we understand the value of having a specific details on what we understand the criminal liability of companies under international law for worst human rights violations, we think it merits an upgrade in an article in its own right.

Thank you Mr. Chair,