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Oral Intervention

Article 5 (Prevention), Item 4

Tuesday, 15 October 2019 (3:00 – 6:00)

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Thank you, Chair.

I speak on behalf of Al-Haq, ESCR-Net, FIDH, SOMO, Trocaire, Stop the Wall, Via Campesina, and Trade Union Confederation of the Americas (TUCA-CSA).

We welcome the language added in Article 5, particularly on conflict-affected and occupation settings and protected persons.

In particular, we welcome paragraph (3) (e) and recommend that it further requires State Parties to impose mandatory enhanced human rights due diligence for businesses operating or plan to operate in conflict-affected areas, including more immediate effective preventive measures, such as divestment and disengagement policies and actions.

Where businesses fail or are unable to conduct enhanced human rights due diligence and risk being involved in human rights abuses and internationally recognised crimes in situations of conflict and occupation, Article 5 should provide for the possibility of explicitly prohibiting businesses from pursuing their relevant operations and relationships.

Additional language should be included for State Parties to ensure adequate sanctions when failing to comply with obligations in Article 5.

Also, following recommendations made yesterday under Article 1 (4), paragraph 5(2)(b) should substitute "contractual relationship" with "business relationship".

We recommend that "appropriate actions" are defined in line with Principles 12, 15 and 19 of UNGPs and international law. Businesses could prevent and mitigate adverse human rights impacts, including by effective integration of their impact assessments, adopting immediate and effective measures to cease or prevent abuses, and where necessary end their relationship. The term should be coined as "immediate appropriate and effective actions".

Finally, paragraph (3) (b) should be in line with relevant provisions of international humanitarian law and the internationally accepted right of Free, Prior and Informed Consent, not only consultations.

Thank you.