

8th Session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights

Art. 8: Legal Liability
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Thanks to the Chair,

In regard to article 8.1 from the 3rd draft, we suggest adding, “causing or contributing to” before human rights abuses, to be consistent with 8.3.

In 8.3, we suggest amending so that it reads “where legal or natural persons conducting business activities have caused or contributed to human rights abuses or violations of international humanitarian law.”

For consistency, we suggest adding “abuses” in 8.4, so that the first sentence reads in part, “reparations to the victims of human rights violations or abuses. And we then suggest adding, “Particular attention should be given to cases of environmental damage or contamination in order to limit ongoing and future human rights abuses or violations, including to ensure that all necessary measures are undertaken in close consultation with impacted communities.”

We also suggest adding 8.6 bis, which would read “State Parties shall also ensure that their domestic law provides for liability of state authorities who fail to adopt and adequately enforce environmental and other related legislation, which may unduly permit and prolong human rights abuses from business activities.”

We underscore the necessity of Art. 8.7. This is particularly important as more States are negotiating and implement due diligence laws; given the varying standards and rigor in application of human rights due diligence, businesses must continue to be held accountable for any adverse human rights impacts that they have caused or contributed to. We cannot accept any language that would imply that human rights due diligence can shield business from liability. We support Palestine’s proposal to delete the last line of that paragraph.

Finally, we would like to warn against the inadequate and disproportionate deference to domestic law that de facto may interfere with States’ mandate to negotiate and implement international binding rules. We also warn against any language that would imply that different types of liability may be mutually exclusive; or any language that would exclude the direct liability of business for human rights abuses (as the main perpetrators).