

Thank you Mr. Chair,

I speak on behalf of the Brazilian AIDS Interdisciplinary Association. We coordinate a group of 17 NGOs in Brazil working to remove patent barriers to the access to health. We are also part of the Global Campaign to Dismantle Corporate Power, which comprises more than 250 organizations, movements and networks, at national, regional and global levels.

In respect to Article 6, we believe that it should be reformulated to include direct responsibility to TNCs and other OBEs with transnational character. That way this article stands, it is unthinkable that the future legally binding instrument will be able to deal with the human rights violations perpetrated by TNCs.

Therefore, Mr. Chair, this article must explicitly include TNCs' obligation to repair human rights violations and should include their subsidiaries, branches, subcontractors, suppliers, and all other entities in their global value chains. Article 6.1 should read as follows:

***Amendment 6.1:** State Parties shall regulate effectively the activities of **transnational corporations and other business enterprises of transnational character** domiciled within their territory or jurisdiction. For this purpose States shall take all necessary legal and policy measures to ensure that transnational corporations and other business enterprises **of transnational character**, within their territory or jurisdiction, or otherwise under their control, respect all internationally recognized human rights and prevent, **repair** and mitigate human rights **violations** throughout their operations, **including through their business relationships and global value chain**.*

Mr. Chairperson, this article should also be reformulated to impose directly on TNCs, without the need of passing a national law. We will submit to the secretariat text suggestions in the spirit of improving this future instrument.

Lastly, whereas the issue of undue influence of TNCs on public policies is key, it should be addressed on another Article. This way, it will be possible to cover the full extent of the Treaty and deal with this important issue. We will also submit a text suggestion.

Thank you, Mr. Chair.

Text suggestions:

***Amendment 6.1:** State Parties shall regulate effectively the activities of **transnational corporations and other business enterprises of transnational character** ~~all business enterprises~~ domiciled within their territory or jurisdiction, ~~including those of a transnational character~~. For this purpose States shall take all necessary legal and policy measures to ensure that ~~business enterprises, including but not limited to~~ transnational corporations and other business enterprises **of transnational character**, within their territory or jurisdiction, or otherwise under their control, respect all internationally recognized human rights and prevent, **repair** and mitigate human rights ~~abuses~~ **violations** throughout their operations, **including through their business relationships and global value chain**.*

***Proposed new paragraph 6.1.bis:** In order to comply with their obligations to respect, protect and fulfill the rights of this instrument, States parties shall adapt their administrative law to prevent the authorization of business activities of transnational character that would not meet*

the standards of human rights protection provided in this Legally Binding Instrument. States shall adopt higher standards in their own business relationships, in particular but not limited to public contracts, public-private partnership services and not enter into any type of collaboration with transnational corporations and other business enterprises of transnational character condemned for human rights violations.

Proposed new paragraph 6.2 pre: Transnational corporations and other business enterprises of transnational character shall not take any measures that present a real risk of undermining and violating human rights. They shall identify and prevent human rights violations and risks of violations throughout their operations, including through their business relationships.

Amendment 6.2bis: ~~For the purpose of Article 6.1, State Parties shall require~~ **Transnational corporations and other business enterprises of transnational character shall** undertake human rights due diligence proportionate to their size, risk of ~~severe~~ human rights impacts and the nature and context of their operations, as follows:

- a. Identify and assess any actual or potential human rights **violations** ~~abuses~~ that may arise from their own business activities, or from their business relationships **and publish the results of this assessment, including a list of activities, countries of operations and individual projects that are identified among their operations as posing risks to human rights and the environment;**
- b. Take **and implement effectively** appropriate measures to prevent **human rights violations, prevent** and mitigate effectively ~~the identified actual or potential risks of~~ human rights **violations**, including in their business relationships;
- c. Monitor the **implementation and** effectiveness of their measures to prevent, **repair** and mitigate human rights **violations**, including in their business relationships;
- d. Communicate regularly and in an accessible manner, **through participatory mechanisms, to the public and to other** stakeholders, particularly to affected or potentially affected persons, to account for how they will address, through **the effective implementation of** their policies and measures, any actual or potential human rights **violations** that may arise from their activities including in their business relationships.

Proposed new paragraph 6.2 bis2: Failure to comply with due diligence duties under this article shall result in commensurate liability, administrative sanctions such as exclusions from public procurement and compensation in accordance with the articles of this convention.

Amendment 6.3.a and .b: State Parties shall ensure that human rights due diligence measures undertaken by **transnational corporations and other** business enterprises **of transnational character** under Article 6.2 shall include **but not be limited to:**

- a. Undertaking regular environmental and human rights impact assessments **ex ante and ex post** throughout their operations, **including in their business relationships and global value chains;**
- b. Integrating a gender perspective, in consultation with potentially impacted women and women's organizations, in all stages of human rights due diligence processes to identify and address the differentiated risks and impacts experience by women and girls;
- ~~c. Conducting meaningful consultations with individuals or communities whose human rights can potentially be affected by business activities, and with other relevant stakeholders, while giving special attention to those facing heightened risks of business-related human rights violations, such as women, children, persons with disabilities, indigenous peoples, migrants, refugees, internally displaced persons and protected populations under occupation or conflict areas;~~
- ~~d. Ensuring that consultations with indigenous peoples are undertaken in accordance with the internationally agreed standards of free, prior and informed consent;~~

e. Reporting publicly and periodically on non-financial matters, including information about group structures and suppliers as well as policies, risks, outcomes and indicators concerning human rights, labour rights and environmental standards throughout their operations, including in their business relationships

f. Making publicly available and in an accessible manner all ex ante and ex post documents related to the human rights and environmental impacts of their projects and operations, long time before any consultations with individuals or communities are organised, and cooperating to the fullest extent needed with the State entities in charge of organising these consultations;

Proposed new paragraph 6.3 bis : States shall guarantee the right to consultation by :

a. Conducting **mandatory and** meaningful consultations with individuals or communities whose human rights can potentially be affected by business activities, and with other relevant stakeholders, while giving special attention to those facing heightened risks of business-related human rights violations, such as women, children, persons with disabilities, indigenous peoples, migrants, refugees, internally displaced persons and protected populations under occupation or conflict areas;

b. Ensuring that consultations with indigenous peoples, **peasants and other concerned populations** are undertaken in accordance with the internationally agreed standards of free, prior, informed **and continued** consent;

Proposed new paragraph 6.4: States parties shall designate a competent authority with allocated responsibilities and adequate financial and human resources to monitor the effectiveness of the due diligence measures undertaken by business enterprises as well as their effective implementation.

Proposed new paragraph 6.4.bis: States parties shall ensure that parent and outsourcing business enterprises give all the necessary technical and financial means to the legal persons with whom they have business relationships and/or within their global value chain for them to be able to effectively implement the due diligence measures identified in 6.2 and 6.3. Complying with this duty of effective implementation remains the responsibility of the parent or outsourcing company.

Proposed new paragraph 6.4.2bis: States parties shall provide mechanism for financial guarantees to communities for activities with a high potential of damage to human rights, to be made immediately available in case of harm.

In setting and implementing their public policies with respect to the implementation of this (Legally Binding Instrument), **as well as international norms and agreements**, State Parties shall act to protect these policies, **laws, policymaking processes, government and regulatory bodies, judicial institutions and intergovernmental institutions from undue influence of commercial and other vested interests of the private sector, of persons conducting business activities, including those of transnational character, in accordance with domestic law.** Moreover, transnational corporations and other business enterprises of transnational character shall be bound by their obligations under this Treaty and shall refrain from obstructing its implementation by States Parties to this instrument, whether home states, host States or States affected by the activities of TNCs.

Proposed new paragraph 6.8: International financial institutions shall identify and prevent human rights violations by any entity they support financially. They shall not give any form of financial support (such as loans, subsidies, guarantees) to business enterprises, including through their business relationships, if they know or should have known that the operations of those entities present risks for human rights and the environment. Any conduct of these institutions and their managers that contravenes these duties stands to be corrected by suitable disciplinary, administrative or other measures including the possibility of affected

people or communities seeking compensation and reparations from the concerned International Financial Institutions.

Proposed new paragraph 6.10: *When participating in decision-making processes or any other action as member of International Financial Institutions, States shall do so in accordance with the States Parties' obligations established by the current (Legally Binding Instrument). They shall take all steps at their disposal to ensure that the institutions or the agreement concerned does not contribute to violations of human rights caused by transnational corporations and other business enterprises of transnational character, including in their business relationships.*