



**4th session of the Intergovernmental Working Group on transnational corporations and other business enterprises with respect to human rights
(15-19 October 2018)**

**Article 2: Statement of purpose
&
Article 8: Rights of Victims**

Thank you Chair,

I deliver this statement on behalf of the International Organisation of Employers ([IOE](#)) - the largest private sector network in the world. The IOE does not support the Zero Draft Treaty or the Draft Optional Protocol and we strongly argue for preserving the approach outlined by the UN Guiding Principles on Business and Human Rights ([UNGPs](#)).

From the outset, we would like to note that we find the order in which the IGWG's fourth session is discussing the Articles of the Zero Draft Treaty confusing. It would surely have made better sense to take each Article in numerical order and start with the "scope" and "definitions".

That said, in accordance with the Programme of Work we would like to make the following points about the Article 2 and Article 8.

Ladies and gentlemen,

The IOE has a number of concerns with Article 2 on the "Statement of Purpose". This section in the Zero Draft Treaty introduces significant and problematic terms that affect the rest of the text:

- Article 2 touches upon the draft Treaty's "scope", which is limited to human rights "in the context of business activities of a transnational character." If such a narrow-focused instrument were to come into force, it would not achieve the goal of widespread human rights protection and increased access to remedy. It would leave the vast majority of rights-holders outside the Treaty's mandate - victims of harms caused by purely domestic companies or State-owned enterprises would not be afforded the same protection or remediation avenues. Such a narrow scope would create a lopsided global governance system that would result in significant gaps in human rights protection.
- Article 2 also makes the first reference of the term "violations" - instead of using the term "abuses" as the UNGPs do. Adopting the term "violation" adds to a sense that the Zero Draft Treaty could be seeking to impose international human rights obligations directly on business – especially when considering its use alongside other considerations. As a practical convention used by Governments, the text should adopt the term "abuse" instead of "violations" or at least state that companies would have a duty not to violate national laws that reflect the provisions of this Treaty.

- Finally, the Treaty's stated purpose to advance "international cooperation with a view towards fulfilling States' obligations" should be understood alongside other provisions in this draft text. Improving State performance on human rights, such as by achieving policy coherence between existing standards and national laws, is a long-standing challenge. With the draft Treaty's narrow scope that seeks enhanced liability on global business and its many provisions on extra-territorial jurisdiction, it does not give States the impetus to address underlying challenges in their jurisdictions. Furthermore, the draft Treaty does not propose any "sticks" to accompany the "carrots" for States or other measures to increase peer pressure between States to ensure they meet their human rights duties at the national level.

Ladies and gentlemen,

Given the short speaking slot now, please refer to the many points raised on Article 8 on "Rights of victims" in the [Joint Business response to the Zero Draft Treaty and Draft Optional Protocol](#).

However, I would like to highlight the following concerns with this expansive Article:

- First, the section on "Rights of Victims" includes provisions (that appear elsewhere) that would seek to increase victims' ability to bring extraterritorial claims against a company for violations in the context of business activities of a transnational character. As we will explain later this week, there are many problems with this, not least concerning sovereignty.
- Second, many provisions in Article 8 are vague: The overall definition of victim as a person "alleged" to have suffered harm does not make sense as it would allow anyone to claim victim status and the corresponding rights simply by *alleging* that a harm occurred. It is not clear how the various forms of reparation would relate to companies and States. Also, the text does not specify how consideration for domestic and international law would be managed, especially if the two systems are incompatible.
- Third, the inclusion of "environmental remediation and ecological restoration" as a form of remedy that victims would be entitled to opens the door to another body of law that is not part of the IGWG's mandate (under Resolution 26/9) and it does not clarify the relationship between the environment and human rights.
- Fourth, the provision that stipulates that "State Parties... shall take action against those natural or legal persons allegedly responsible" is ambiguous. There is no explanation of the type of action State Parties would be expected to take in relation of allegations and it implies that "alleged responsibility" means guilt.
- Fifth, the provision that "victims shall be guaranteed appropriate access to information" in relation to "the pursuit of remedies" would mean that the principle on the production of evidence would not apply. At the same time, the provision may contradict other laws, principles and incentives governing corporate conduct.
- Sixth, the draft text encourages frivolous litigation and bad-faith actions being filed against businesses when it says that "in no case shall victims be required to reimburse any legal expenses of the other party to the claim."
- Seventh, it is not clear what the terms "satisfaction" as a form of remedy means. Similarly, it

is not clear what the provision that victims' "psychological well-being and privacy shall be ensured" means and how State Parties would "ensure" this.

Thank you very much.