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**Re:** Comment on Zero Draft of Legally Binding Instrument

Please consider two comments regarding the Zero Draft of the UN’s LEGALLY BINDING INSTRUMENT TO REGULATE, IN INTERNATIONAL HUMAN RIGHTS LAW, THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES.

**Article 8, Section 1, states (highlight added):**

1. Victims shall have the right to fair, effective and prompt access to justice and remedies in accordance with international law. Such remedies shall include, but shall not be limited to:
2. Restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition for victims.
3. Environmental remediation and ecological restoration where applicable, including covering of expenses for relocation of victims, and replacement of community facilities.

Comment:  The statements highlighted are valued in that they provide for the many victims who allege violations that are wrongly denied by those accused.  However, with reference to the definition of “victim” in Article 4, this statement requires that any person(s) claiming they are a victim, rightly or wrongly, shall have the right to restitution and other remedies.  To allow for the occasional but important occurrences in which person(s) wrongly allege that they were victims, we suggest adding language to Article 8 or 4 to provide a fair process of validating the allegation prior to requiring remedies.

**Article 10, Section 6, states (highlight added):**

6.        All persons with business activities of a transnational character shall be liable for harm caused by violations of human rights arising in the context of their business activities, including throughout their operations:

* 1. to the extent it exercises control over the operations, or
  2. to the extent it exhibits a sufficiently close relation with its subsidiary or entity in its supply chain and where there is strong and direct connection between its conduct and the wrong suffered by the victim, or
  3. to the extent risk have been foreseen or should have been foreseen of human rights violations within its chain of economic activity.

Comment: Our work on assessment of modern slavery conditions in supply chains has shown that it is very difficult for even the most responsible businesses to determine how far down into tiers of suppliers their responsibility for human rights performance extends.  The IFC Performance Standards provide some guidance with discussion around the concepts of *control* and *leverage*.  However, for the Legally Binding Instrument to be effective for States to enforce on business, more clarity will be needed to help define the terms “exercises control over” and “sufficiently close relationship”.

Thank you,

Acorn International LLC  
Dean Slocum, President