IC statement on Scope and Rights of victims

Thank you Mr Chairperson-Rapporteur

The International Commission of Jurists welcomes the Revised draft treaty’s broader scope in respect to business enterprises. The Revised draft will cover all business enterprises with particular emphasis on businesses with transnational activities, adopting in that way a balanced approach.

However, the revised draft could be further improved. Article 3.1 could be streamlined by the deletion of the phrase “particularly but not limited”, which does not add anything substantive to the provision.

In relation to article 3.3, the ICJ is of the view that the Draft treaty needs a definition of what “human rights” encompasses for the purposes of this treaty and a better place for such a definition is the article 1 on definitions.

Article 4 on the rights of victims is largely a restatement of international law and standards on the right to an effective remedy and reparation and access to justice and it would be very important to follow the same language used in the original instruments. The references to “environmental remediation” and “ecological restoration” from the zero draft are still kept in the Revised draft without definition.

The various statements in articles 4.2 and 4.9, 4.15 that provide for the protection of victims and human rights defenders working in the context of corporate accountability are a welcome addition to the draft. But article 4.8 is still unclear on whether or not it requires domestic law to provide some forms of collective complains.

Finally, Article 4.16 allows national courts to require, where needed, reversal of the burden of proof in civil proceedings, but it needs further clarity. First, the various qualifications (” subject to domestic law” or “where needed”) should be deleted to strengthen the provision, but its formulation also needs improvement. Comparative practice show important changes in the attribution of the burden of proof in civil proceedings in various parts of the world. In Latin America, procedural reforms have introduced more flexible evidentiary rules taking into account the context of inequality of the parties and the principles of good faith and procedural loyalty that govern the judicial process. The concept of "dynamic burden of proof" has been introduced, for instance in article 167 of the General Procedural Code of Colombia, allowing the judge in certain cases to distribute the burden of proof when ordering the production of evidence.

Thank you.