

**Check against delivery!**

**5th session of the Inter-Governmental Working Group on transnational corporations and other business enterprises with respect to human rights**

**(14-18 October 2019)**

**Legal liability**

**Thank you Chair,**

I deliver this statement on behalf of the International Organisation of Employers ([IOE](http://www.ioe-emp.org/)). I note again the [Joint Business Response](https://www.ioe-emp.org/index.php?eID=dumpFile&t=f&f=145680&token=9dbcc1f8414128d575cd6bef9f36b84ec106a386) to the Revised Draft Treaty, which describes the business community's points on "legal liability" in more detail.

* The Revised Draft Treaty raises many concerns about legal definition, applicability, enforcement. Yesterday, we explained some of these concerns in relation to the article on prevention.
* At the same time, we note that the scope of liability is broad and far-reaching and there remain two fundamental questions: who exactly should be held legally liable, and how is this to be determined?
* On civil liability: The Revised Draft Treaty takes an overly broad approach to civil liability that could foresee civil liability without causality in some jurisdictions. It also offers no safe harbour provisions for companies that are taking meaningful steps to prevent or halt an abuse in their supply chain. Equally, the provision on "foreseeability" is very expansive. It is not clear if the intention is to use foreseeability in its conventional legal sense to limit liability for unforeseeable impacts or to expand liability to include all foreseeable human rights violations, independent of causation.
* On criminal liability: we note the differing views in the IGWG on the list of criminal offences that would fall under the Treaty's scope. We have concerns and questions about the applicability of these criminal offences to natural and legal persons.

Linked to this, assigning liability to natural and legal persons for acts that constitute "complicity in a criminal offence" raises concerns about which modes of complicity would be applicable - those under international or domestic law? Such an instrument should avoid creating uncertainty, whereby a natural person's conduct may be lawful under the domestic law of one State but the same conduct may amount to complicity in genocide or war crimes in another.

* There is another problematic finance-related provision in this article. The proposal that State Parties may require all persons engaged in business activities "to establish and maintain financial security, such as insurance bonds or other financial guarantees to cover potential claims of compensation" risks creating situations where individuals and companies are extorted for money for perceived violations of the draft Treaty.
* Finally, we would like to note that the provisions on supply chain liability ignore situations where States are failing to meet their international human rights obligations on the ground and where systemic human rights issues occur that are not unique to one company. The Revised Draft Treaty risks encouraging companies to adopt a "cut and run" approach instead of a "stay and help improve" approach to a country's complex and endemic issues.

**Thank you very much for your attention.**