OEIGWG for the elaboration of an International Legally Binding Instrument on TNCs and other Business Enterprises with respect to human rights

**Item 4 – Article 3 (Scope) and Article 4 (Right of victims)
15 October 2019, 10:00-13:00**

Intervention by Ruwan Subasinghe (International Trade Union Confederation – ITUC)

Thank you, Chairperson Rapporteur.

I speak on behalf of the ITUC and the Global Union Federations IndustriAll, ITF, IUF, PSI, and UNI Global Union, who together represent over *207 million* workers worldwide. The joint trade union response to the revised draft of the LBI can be found on the ITUC website and a few hard copies are also available at the back of the room.

Due to the time constraints, I will only highlight our main technical comments on these two Articles.

Article 3 (Scope):

The unions have always advocated for a *broad substantive scope* covering all internationally recognised human rights, *including fundamental workers’ and trade union rights*, as defined by relevant international labour standards. We have also called for the coverage of *all* business enterprises regardless of size, sector, operational context, ownership and structure. We are pleased that the present Article 3 brings a *balance* of focus on cross-border activities of business enterprises while also applying its principal provisions to other business enterprises that do not operate across borders.

Article 4 (Rights of Victims):

We believe that the LBI should adopt the broader term *rights-holders* instead of *victims*.

While Article 4.5 provides a non-exhaustive list of remedies, we believe that it is important to explicitly add to this list *private and public apology* and, most importantly, *reinstatement in employment*. A significant challenge for workers exercising their right to freedom of association is the fear of *discriminatory dismissal*. In such cases, reinstatement is often the only effective remedy.

Article 4.9 on measures to protect human rights defenders should explicitly refer to *trade unionists* given the enormous risk of threats and retaliation that exist in practice.

In Article 4.16, the “reversal of the burden of proof” should be captured in national legislation and not left to the discretion of judges. States should be required to provide for the *shifting of the burden of proof*.

Thank you