



International Organisation of Employers  
Organisation Internationale des Employeurs  
Organización Internacional de Empleadores  
*The Global Voice of Business*

**Check against delivery!**

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

**Article 9: Prevention**

**Thank you Chair,**

The IOE is fully aligned with the remarks made by USCIB from the panel. We too, refer people to the [Joint Business Response](#) on the Zero Draft Treaty and Draft Optional Protocol.

Human rights prevention is extremely important and the UNGPs' approach to human rights due diligence - with its focus on risk to people – lays out an appropriate and proven four-step process.

Under the UNGPs, carrying out human rights due diligence allows a company to show that it recognizes and acts upon its human rights risks, and that it is serious about not causing abuses, or contributing and being directly linked to harms caused by others.

**The IOE shares the concerns raised by USCIB with the Zero Draft Treaty's provisions on human rights due diligence:**

1. The provisions in Article 9 unduly mess with and create confusion with the four-step human rights due diligence process under the UNGPs that is well-understood and being carried out by more and more businesses (as well as other actors such as sports bodies). The Zero Draft Treaty's formulation is unworkable by establishing human rights due diligence as a standard of outcome.
2. It is also very problematic to attach liability for non-compliance of the human rights due diligence provisions as it exposes parent companies, buyers and retailers to legal risk regardless of their involvement in the harm.

Companies that would face liability under the prevention Article would need to adopt a stricter policeman-like policies in their cross-border supply chains that would require vastly greater abilities and powers to ensure their business partners act responsibly.

Worryingly, this approach would further undermine the State as some of its traditional functions and powers - such as carrying out inspections and awarding penalties of business partners - would need to be transferred to global business. All these unwanted outcomes would hugely undermine the development and partnership model for countries espoused under the SDGs.

## **Chair**

We would also like to raise our concerns about SMEs. While there is a separate provision that tries to offer an exemption to SMEs (Article 9, para 5) it is wholly insufficient because it only suggests that States "may" choose to exempt "certain SME undertakings" from "selected obligations." This gives no assurance that this would happen in reality and it offers no clarity as to how these vague terms would be applied.

The provision in the Zero Draft Treaty that requires "all persons with business activities of transnational character" to undertake due diligence obligations is completely unrealistic.

## **Chair**

Earlier this year, the IOE published a [paper](#) on State policy responses on human rights due diligence in which it outlined a number of concerns, risks and challenges with the move towards mandatory human rights due diligence. For example:

- i. Laws encourage companies to take a passive, risk-averse approach that limits the potential for creative partnerships and transformative impact;
- ii. It is not easy or necessarily desirable to translate the human rights due diligence process into laws (the UN Working Group on Business and Human Rights in its most recent report on the HRDD process called it "more of an art than a science");
- iii. There are important questions and concerns over judicial interpretation and enforcement;
- iv. Concerns over how legal compliance measures will impact on different types of companies up and down the value chain, especially SMEs;
- v. No evidence that laws have any impact on a critical stakeholder group: end consumers / high-street shoppers.

**Thank you for your attention.**