The following sets out the submission of Liberty Shared to the secretariat of the Office of the United Nations High Commissioner for Human Rights and identifies the issues and concerns that we believe are relevant to inform the formulation and further drafting of the Legally Binding Instrument to Regulate, In International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises.

About Liberty Shared

Liberty Shared was established in 2011 with the goal of providing solutions to change the way human trafficking is addressed. The organisation is made up of a group of dedicated professionals from different industries who feel strongly that a more effective, coordinated response to human trafficking is essential.

Our core aims are to: (a) prevent human trafficking through the strategic capture and communication of intelligence, information, knowledge and data, using technology, publications, and training to develop and empower stakeholders' capacities and collaboration; (b) make positive recommendations to improve the rule of law insofar as it relates to human trafficking; (c) promote greater access to justice for victims of human trafficking; and (d) disrupt trafficking through banking and private sector interventions.

Liberty Shared's long term strategy is to use information to ensure the costs of protection and prevention relating to human trafficking are priced into and reflected by the market. This can only be done by increasing awareness through improved access to knowledge, information and intelligence. Wider and deeper transparency allows consumers, stakeholders and society in general, to better assess: (i) the implications and potential outcome of their decisions and those of their elected representatives; (ii) the effects of choices they make; and (iii) what they will and will not accept.

Ultimately, Liberty Shared seeks to improve the lives of some of the most vulnerable in society by highlighting the human cost of trafficking in persons and thereby influencing those who are in a position to effect positive change – from individual consumers to global businesses and governments.

Our key work streams include:

- Information and Data Collaboration (IDC);
- Victim Case Management System (VCMS);
- Legal Impact Hub (LIH);
- Freedom Collaborative (FC);
- Industry on Community (IoC); and
- Operational Research and Analysis (ORA).

Further information about our programs and publications can be accessed at www.libertyshared.org.

Definitional note

References throughout the submission to the "*Treaty*" are to the Legally Binding Instrument to Regulate, In International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises (zero draft dated 16 July 2018); references to the "*Optional*

Protocol" are to the Draft Optional Protocol to the Legally Binding Instrument to Regulate, In International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises (draft dated 4 September 2018); references to the "*Working Group*" are to the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, whose mandate is to elaborate an international legally binding instrument to regulate in international human rights law, the activities of transnational corporations and other business enterprises; and references to the "*UNGPs*" are to the Guiding Principles on Business and Human Rights of the United Nations. Unless otherwise specified below, all other defined terms are as set forth in the Treaty.

Key Considerations and Recommendations

The Treaty is a unique and expansive opportunity to regulate the activities of transnational and other businesses around the world, and the zero draft of the Treaty represents an important first step in setting forth a regime to hold businesses to legal account for their activities in an international context. In the absence of any legally binding instrument of its kind in international law, the onus to strike the right balance between detail and publishing a workable Treaty is an important one. We have reviewed the Treaty and Optional Protocol and agree with much of the text as provided in their respective drafts dated 16 July 2018 and 4 September 2018. However, in recognition that the final form of the Treaty must be both realistically workable and conceptually significant by capturing (i) the harsh realities of supply chain exploitation; (ii) the abuse of labour rights; (iii) and the differing standards of protection by the law of these rights in states where remedy is sorely required, we suggest how this might be further addressed below.

Suggested Action Points

In the light of our own experience, discussions with stakeholders and the work we have undertaken in the field of business human rights, we propose several suggested action points (subsequently detailed) to the Working Group to contribute to the development of the Treaty before its ratification, and to assist in the creation of a truly impactful and transformative business human rights framework:

1. **The scope of the meaning of "business activities of transnational character"**: Extend the scope of the Treaty to include businesses of both national and transnational character so as to align itself with the UNGPs and ensure all businesses respect human rights, regardless of their size, sector, operational context, ownership and structure, including state-owned enterprises, with further clarification on how the Treaty should apply to more "remote" companies in the supply chain who nonetheless may contribute to adverse human rights impacts.

2. **Prevention and Due Diligence**: Raise the standard of human rights due diligence required by companies to that detailed in the UNGPs, and further promote a detailed remedial component which is necessary to mitigate, stop and remedy any human rights violations which may have already occurred. The Treaty should also clarify the grounds behind which states may elect to exempt small and medium enterprises ("**SMEs**") from compliance with human rights due diligence obligations.

3. **Access to Justice**: Close gaps relating to access to justice by clarifying the relationship between national law and the Treaty, such that companies / states will not be able to

avoid accountability by the failure of their national law to recognise human rights (and such violations). This can be achieved by ensuring that the minimum standard for human rights states are required to uphold under national law reflect the standards states are expected to uphold under the UNGPs.

4. **Enforcement**: Create an effective enforceability mechanism which has sufficient powers to ensure State Parties are transparent and accountable, and are not able to avoid providing business human rights remedies by virtue of not being willing or able to provide them.

5. **Primacy**: Strengthen human rights language in the Treaty so as to provide a detailed framework which provides sufficient protection of said human rights, while providing a basis for such protection to develop further.

We set out additional observations to each of these respective points below.

1. The scope of the meaning of "business activities of transnational character"

The potential scope of the Treaty, and the exercise to have it ratified and brought in to effect, is notably wide in how labour abuse from business practices might be addressed. The preamble in Article 1, for example, sets out by underlining that "*all business enterprises, regardless of their size, sector, operational context, ownership and structure shall respect human rights*" – mirroring the language set out in Article 14 of the UNGPs. However, the preamble subsequently ties itself down to "*the mandate established by the Human Rights Council Resolution 26/9*", and accordingly, the key drafting in respect of the scope of business to whom the Treaty is due to apply, set out in Article 3, is centred around the more restrictive concept of preventing human rights violations in the context of "*any business activities of a transnational character*". A few points to consider here:

1. "*Business activities of a transnational character*" has been drafted to mean economic activities" *that take place or involve actions, persons or impact in two or more national jurisdictions*".

   In respect of sub-point 1 above, we note that the application of the Treaty is to a narrower set of business concerns than the UNGPs (which concerns all types of business, without limitation to domestic or transnational character or otherwise), despite the preamble's initial implicit alignment with Article 14. There is a concern that such a restrictive definition as the Treaty currently provides for denies access to remedy for victims of human rights abuses committed by national companies with domestic operations only. This concern stems from the widely acknowledged fact that supply chain exploitation occurs in SMEs, which are very likely to be domestic entities with no transnational connection other than being part of an extended supply chain.

   It is also noted that, while the Treaty may be widely enough drafted to address mainly domestic businesses with some material transnational element (though what constitutes this "material" transnational element requires further clarification), there remains a risk that this definition of "*business activities of a transactional character*" (particularly with its requirement for a foot-stamp in "*two or more national jurisdictions*") may leave gaps for distant partners in supply chains to escape the scrutiny of the Treaty. There are two main points arising from this:

- this definition has the effect of allowing large multinationals some freedom to transact with supply chain partners without censure if they do not form part of each other's business group. If the intention under the Treaty is that business activities between supply chain suppliers from outside the same business organisation but within wider supply chains are to be covered, there may be benefit in making this more explicit in the drafting of the Treaty. The reality of modern supply chains is that the majority of human rights abuses are committed "upriver" or at a safe geographic and distance from parent organisations or heads of supply chains. The notion of a "global" supply chain has not been transmuted into the drafting of the Treaty as it currently reads (or at least, has failed to be clarified as such); and

- human rights violations are ultimately not relevant to any transnational characteristic and are just as capably performed by national companies as those with a transnational character.

The definition of "*transnational character*" should not define "*activity*" simply as a specific commercial, economic or contractual transaction, but as the sequence of events that are necessary for an economic activity to take place, to take into account economic actors and businesses who may be "complicit" in human rights violations. The economic activity to be considered would not only be, for example, a sale of goods between a retailer and an importer located in a specific jurisdiction, but also the chain of contractual and commercial relations that made it possible for the final retailer to sell such products in its market.

2. Under Article 4, business activities are drafted to include "*any for-profit economic activity, including but not limited to productive or commercial activity*".

   The inference in the drafting is broad and clear enough on the face of it – in particular with respect to the reference to "*productive or commercial activity*." We do not doubt the intention of the drafters of the Treaty to include state-owned enterprises within the ambit of the Treaty drafting but we do feel there may be benefit in tightening the drafting here to either specifically reference state-owned enterprises, or to add another reference which specifically does not exempt arms of the state (including, for example, ministries and other bodies of state within State Parties' jurisdictions).

3. The weak basis of restricting the scope of the Treaty to only covering "*business activities of a transnational character*".

   The preamble to the Treaty limits itself to the admittedly restrictive mandate of the Working Group as established by Human Rights Council Resolution 26/9 of 14 July 2014 ("**HRC 26/9**") and is reflected in Article 3. However, there is a poor paper trail to justify the Treaty covering only "*business activities of a transnational character*". We note that the background to the definition provided by HRC 26/9, and therefore the reasons to continue to rely on it, are actually quite weak for opponents who reject extending the scope of this Article, on the grounds that:

   i. it was passed on a plurality basis, rather than by majority; and

ii. its definition of "other business enterprises" which excludes domestic companies, is provided as of the date of that resolution only, with no such qualification appearing in previous resolutions including all those explicitly referenced in HRC 26/9. Indeed, such discussion up until that point had been informed by a definition of "other business enterprises" which includes ANY business entity, regardless of the international or domestic nature of its activities, as set out in a report by the UN Sub Commission on the Promotion and Protection of Human Rights titled "Norms on the responsibilities of transnational corporations and other business enterprises with regard to human rights" dated 26 August 2003 (the "**Norms**"). Notably, despite the various criticisms of the Norms by Professor Ruggie in his 2008 report to the Human Rights Council, he nonetheless found that governments' failure to hold companies accountable is a dynamic "*hardly limited to transnational corporations*" and that treaty bodies suggest that the duty to regulate and adjudicate corporate activities in respect of human rights which "*applies to the activities of all types of business – national and transnational, large and small*". This appears to be an implicit recognition that the application of a framework for business human rights is one which should encompass both domestic and transnational companies, as envisaged by the UNGPs.

Indeed, to reinforce our finding above that there is no relevant connection to require a business to have transnational characteristics to have accountability for human rights violations, even the Working Group appears to struggle in their drafting to keep this distinction. As indicated previously, the preamble seems to have a contradictory conceptual scope (by underlining the duty of all businesses to respect human rights, while pursuing the mandate of HRC 26/9 to only apply to businesses that have a transnational character) and there are multiple provisions which refer to "*human rights violations*" without any transnational qualification – for example, Article 10.11, which states: "*States shall incorporate or otherwise implement within their domestic law appropriate provisions for universal jurisdiction over human rights violations that amount to crimes*." On these grounds, there is scope for reconsidering the formulation of Articles 3 and 4 in regard to the scope of the existing Treaty, ideally to include all business entities regardless of whether they are of a national or transnational nature.

2. Prevention and Due Diligence

Article 9 of the Treaty sets out the obligation on State Parties to adopt mandatory due diligence legislation over companies domiciled in their territory or under their jurisdiction or control. The proposed draft further clarifies the obligation of State Parties to regulate the activities of their own businesses taking place overseas and makes human rights due diligence a part of State Parties' duty to protect human rights from third parties' conduct.

It is to be applauded that the draft does effectively establish a link between the failure to comply with the human rights due diligence requirements of Article 9 and liability and compensation. The existence of adequate sanctions and liability for non-compliance with human rights due diligence obligations is fundamental in order for the Article and the Treaty to be effective.

It is particularly noteworthy and positive that the proposed draft includes a requirement that human rights due diligence should include pre- and post-impact assessments as part of required human rights due diligence exercise, as well as by a requirement for businesses to undertake meaningful consultations with potentially affected groups.

Article 9(2) sets out a non-exhaustive series of due diligence descriptors, which in and of themselves provide some useful guidance as to key steps in a human rights due diligence methodology. Unfortunately, we note that these are not entirely consistent with the UNGPs in particular, or with other guidance on due diligence in general. This strikes us as a missed opportunity to engage with and underline the importance and prominence of the due diligence sections in the UNGP, which since their publication, have become foremost in most companies minds as a (non-binding) guide as to how to improve compliance in this field. While the references in Article 9(2) to "*monitoring the human rights impact of…business activities*" (Article 9(2)a), "*identify and assess any actual or potential human rights violations*" (Article 9(2)b) and the reference to the activities of subsidiaries (Article 9(2)c) are useful and worthwhile, the most stringent and productive way forward here would either be a full alignment with the UNGPs, or a side reference to meeting the standard set out in the UNGPs. It is quite because the UNGPs have proven so successful in engaging businesses in human rights due diligence that the Treaty would do well to adopt the standard set out there. We would recommend adopting alignment with the UNGPs as a minimum standard.

Like the UNGPs, the Treaty also fails to address the remedial component inherent in human rights due diligence, which is necessary for it to represent an effective tool able not only to prevent abuses from occurring but also to mitigate, stop and remedy those that have already occurred. Ensuring this effective remedial component is particularly urgent for states which have a weak concept of the rule of law, or where corporates take retaliatory action or use Strategic Lawsuits against Public Participation (SLAPP) against human rights defenders (often under the guise of claiming "criminal defamation"), effectively silencing any human rights concerns from being raised. In many states, migrant workers even have no freedom to associate, which further highlights the need for remediation.

Our concerns in this regard are to be distinguished from the reference placed in Article 9, which as described above, does provide for liability and compensation for failure to comply with obligations to carry out human rights due diligence as set out in the Article. Human rights due diligence should not only uncover and identify human rights violations, but allow for the prevention of actual and potential instances of the same at an earlier point in time. The promulgation of the *Devoir de Vigilance* in France is an indication of the beginning on a trend in this direction, and should be merited and built upon in the current Treaty. Moreover, it should also constitute the basis for the company to mitigate and take remediation action against those violations as clarified by the recently adopted OECD Due Diligence Guidance for Responsible Business Conduct. We would also propose that there must be an alignment of due diligence provisions with Pillar II of the UNGPs to reduce some definitional and operational ambiguities.

Finally on this point, Article 9 includes a proposed election for State Parties to exempt SMEs from compliance with human rights due diligence obligations. It is not made clear on what grounds this would take place other than to avoid causing "undue additional administrative burdens", or any real limitation on State Parties' right of election in this respect. While there is a case for stating that such a right could be useful in certain limited cases, the right of individual State Parties to effectively derogate from this is problematic. In particular:

- We would recommend some form of procedure or standard for justifying such election to allow such an exemption, as well as some general and/or uniform criteria and procedural rules fixed by the Treaty itself or by the Conference of State Parties (in cooperation with civil society and in line with the principle of non-discrimination).

- Any such exemption should not be sought for use by subsidiaries which are part of larger multinational corporations or groups as a way of circumventing the obligations under the Treaty.

In both scenarios above, there is significant scope for undue pressure to be placed on the administrative organs of State Parties by SMEs seeking a derogation, with associated risks of corruption.

3. Access to Justice

While the Treaty has taken steps to enhance victims' access to effective justice and remedy – notably through Article 5, which expands (i) judicial competence to extraterritorial abuses and (ii) provides for justice to be brought in the country where a company is based or a "*substantial business interest*" – these are significantly undercut by the Treaty's focus on such access to remedy being dependent on national/domestic laws providing a route for human rights violations to be addressed. This focus appears to assume that State Parties already have strong corporate legal regimes whereby corporations may be held responsible in domestic courts for human rights violations. Though also undoubtedly a nod toward state sovereignty and the recognition of a need to be sensitive to differences between legal systems, such an assumption is an inaccurate one which does not hold true for many jurisdictions, and in effect provides a loophole allowing State Parties to avoid their international human rights obligations. Furthermore, this passive "giving way" to national/domestic laws fails to provide incentive for State Parties to address potentially quite substantial barriers to access to remedy which may exist, including (but not limited to) the following:

- inadequate recognition, if any, of human rights standards, in part arising from a lack of engagement of and between states, business and stakeholders to promote and implement such standards, and a lack of incentive for there to be such engagement. To take an example reflecting purely on the stance of businesses (and the pressure put on states by businesses to implement higher human rights standards), Oxfam's analysis in 2018 of how 70 US companies used their corporate voice to lobby Congress reported that, of the $280 million spent for said purpose, lobbying on climate change occurred 19 times (~$1,5 million expenditure), lobbying on diversity and inclusion occurred 138 times (almost $11 million expenditure) and lobbying on tax occurred 552 times (almost $44 million expenditure);

- jurisdictional issues between MNC home state courts and MNC local subsidiaries exist even if no local justice is available – further complicated by international law doctrines / issues such as *forum non conveniens*, *lis alibi pendens*, and "forum shopping";

- the concept of the "corporate veil", which protects an MNC parent company from the legal liability of its subsidiary where it is sufficiently remote from alleged acts committed of its subsidiary – whereby often the only realistic means of accessing justice would be by suing the MNC parent company in its home court. Even in the UK, only a restricted circumvention of the corporate veil has developed – as clarified in the Unilever case of 2018;

- further to the concept of the "corporate veil", complications around how to hold corporations accountable for actions across global supply chains, which are insufficiently detailed by Articles 9.2(f) and 10.6 under the Treaty;

- limitations surrounding the provision of legal representation and expert assistance;
- the absence of recognition of class actions and class rights in most jurisdictions;
- the influence of MNCs over states and policy-making;
- in turn, the complicity of states in the acts and human rights violations by MNCs; and
- Context-specific social / economic / legal / political issues in obtaining justice in MNC home courts.

The Treaty's lack of clarification of the relationship between national/domestic laws and the Treaty itself, which currently provides a broad discretion to the status of national/domestic laws, allows gaps between international law and national/domestic laws to perpetuate that create access to justice issues, while providing states little incentive to remove existing barriers to access to justice. This is despite many of these barriers already being identified in Pillar III of the UNGPs – including, for example, issues surrounding creating incentives to provide positive measures for businesses and stakeholders to engage with business human rights, legal representation and class action. The Treaty's failure to capitalise on the more "rounded" and detailed scope of the UNGPs is a wasted opportunity to coordinate an effective regime to uphold, in this incidence, access to justice. It is hoped that, in later drafts of the Treaty, recognition of national/domestic laws could be framed in a more fruitful manner to ensure access to effective remedy and justice. It is suggested that the Treaty's focus on paying due respect to national/domestic laws could have a workable solution if coupled with a tighter mirroring of the UNGPs – for example, if the standards set by the UNGPs were built on as a "baseline" for national/domestic laws to meet their obligations under as a minimum standard, allowing states to depart from this standard only where the applicable national/domestic law ensures higher standards of protection for human rights.

4. Enforcement

Enforcement mechanisms are set forth in the Treaty through Articles 11 and 12 on Mutual Legal Assistance and International Cooperation respectively, and in the Optional Protocol, which creates the National Implementation Mechanism (the "**NIM**") to monitor and implement the Treaty, which has further capacity to advise and make recommendations on human rights violations issues referred to it. Articles 11 and 12 certainly contribute to improving the surrounding corporate accountability landscape and are critical to reinforcing access to remedy (as detailed above). However, any positive impact of these articles relies on State Parties to comply with those obligations under the Treaty, which is optimistic given the state of most corporate accountability frameworks across the globe, especially in areas where there may be a weak concept of the rule of law. If a State Party is unwilling to or incapable of carrying out its obligations under the Treaty – "hard cases" where there is no applicable business human rights remedy State Parties are willing or able to provide – then the Treaty must provide a more certain solution to ensure an effective enforcement mechanism by, for example, allowing for legal persons to sue State Parties for non-cooperation, formalising a more active role for civil rights organisations, developing international complaint mechanisms and / or creating further judicial / non-judicial remedial mechanisms.

It appears the Optional Protocol was released so as to address these issues, by creating the NIM as a mechanism to deal with international complaints. Unfortunately, as currently

contemplated, the NIM appears to fall short of being the panacea required, and therefore continues to leave risks of no remediation. While it is agreed that a separate optional protocol containing an enforcement mechanism is an appropriate approach, by delicately avoiding "scaring off" State Parties which would fear an overly burdensome Treaty and allowing State Parties to choose to opt-in to its provisions, the body so envisaged lacks the oversight and monitoring powers to implement any effective enforcement regime. According to the current draft of the Optional Protocol, a NIM may only mediate parties to achieve an "*amicable settlement*". There is no further clarification of process should an amicable settlement not be achieved, with no mentioned capacity for NIMs to issue binding decisions, hearing complaints or petitions of human rights violations, or meaningful interactions with competent administrative and judicial national authorities. Even in terms of exercising its own limited capacity to give advice and make recommendations, there is little detail on how a NIM may exercise its powers to demand information from companies and state agencies; there is barely any provision for the NIM to follow-up after receiving a complaint – no obligation is detailed for the NIM to publish any of its findings or even communicate them to the relevant plaintiff; and there is no civil society oversight or democratic participation. Far from complementing the Treaty, which contains ambitious plans including for State Parties to "*incorporate or otherwise implement within their domestic law appropriate provisions for universal jurisdiction over human rights violations*", the Optional Protocol detailing the NIM process appears to encourage inactivity among State Parties to not address lax human rights standards, in full knowledge that no enforcement mechanism exists that could provide any incentive for them to do otherwise. It is suggested that the mandate of the NIM requires re-conceptualisation to avoid the problems mentioned above, as providing for an ineffective enforcement mechanism is arguably more damaging than none being detailed at all.

If an international enforcement body was conceived with the power to make binding decisions, effectively engaged relevant parties to ensure transparency and accountability and, as a consequence, encouraged State Parties to uphold their obligations under the Treaty, this could go a long way to plugging gaps in corporate accountability regimes which currently exist from "hard cases". To show due respect for national/domestic laws, a qualification could be imposed for communications only to be made once all avenues to acquire remedy under the relevant national/domestic law have been exhausted.

5. Primacy

The Treaty does not address human rights issues in a method anticipated from a document supposedly containing a transformative business human rights framework. Many commentators have voiced disappointment at the Treaty's absence of providing direct corporate human rights obligations or corporate criminal responsibility to businesses (transnational or otherwise) under international law, and for focussing on the international obligations of states only. Others have noted the "weak" language of the Treaty which provides limited detail or substance as to key protective measures or content to safeguard human rights, and no specific human rights are themselves mentioned. In many ways, as highlighted by Professor Ruggie in his 2008 report to the Human Rights Council, these concerns are ill-founded. It is well-established that states are the sole full subjects of international law – meaning that an attempt to extend international law obligations to businesses, i.e. to treat businesses as analogous to states, is a fundamental misunderstanding of what the Treaty can or should achieve. Such an extension would also be an entirely inappropriate treatment of businesses as entities created for economic interest, as opposed to state bodies which are entities created in the public interest.

The respective obligations between private and public enterprises differ inherently for good reasons. Similarly, in the context of any businesses activity potentially spanning endless human rights impacts, it would be dangerous to specify a limited "list" of direct corporate human rights obligations for states / businesses / stakeholders for businesses to uphold. This is because human rights due diligence and assessment reports carried out by businesses should be a constant monitoring process in relation to all potential human rights impacts, not a save few recognised by such a hypothetically-limiting Treaty. Having said this, however, the approach taken by the Treaty merely to "*cover all international human rights and those rights recognized under domestic law*" is the other extreme, with a complete lack of detail as to what these rights might entail raising a multitude of concerns on the Treaty level that require further substantiation or clarity including, but not limited to, the following:

- both Articles 9.2(g) and 15.5 require "*special attention*" to be given to those facing "*heightened risks of violations of human rights within the context of business activities, such as women, children, persons with disabilities, indigenous peoples, migrants, refugees and internal displaced persons*". This is an incredibly broad-brush approach to deal with a plethora of human rights issues which require more specific responses for each target group or on a themed basis – for example, the risks of modern slavery that children would be more exposed to – especially in the context of conflict-affected areas which necessitates a more detailed but delicate approach;

- further to the above, the Treaty has weak recognition of gender rights, which are almost exclusively addressed in the Articles described immediately prior. This fails to acknowledge the power imbalances and barriers that women face in relation to free, prior and informed consent and access to justice, and is unlikely to prevent gender-based discrimination or encourage State Parties to set up special measures to prevent gender-specific risks. Acknowledgement of these issues would require strong and clear language to uphold non-discrimination based on gender and gender impact assessments to be made on a frequent basis;

- the Treaty does not appear to provide protection to human rights defenders, who are a crucial part of the Treaty recognition and implementation process. Human rights defenders monitor and help companies respect human rights, which often makes them the target of corporate human rights abuses – it is therefore essential for State Parties to ensure a safe and enabling environment for civil organisations to promote and defend human rights. This is particularly prominent in situations of conflict, where the rule of law and human rights standards are often paid little heed to, human rights defenders are required to be particularly active, and are as a result much more likely to be targeted. It is the role of the Treaty to acknowledge the positive contribution of human rights defenders and require an environment where they can effectively operate to be cultivated; and

- the Treaty weakly refers to environmental rights in Articles 4.1, 8.1 and 9.2 but is a long way short to detailing them on any substantive level – this is a poor reflection of the recognition of environmental rights in current business human rights law today.

As previously provided, such rights should not be explicitly included as part of a "list" of direct human rights obligations, rather, these are rights (amongst others) which should be non-exhaustively included with adequate detail in the Treaty. In its current form however, the

Treaty provides a general, unclarified jurisdiction to address general, unclarified rights by not providing any substantive rights guidance– which is a step back, rather than a step forward in many respects. The references to these rights across the Treaty are a poor substitute for a more comprehensive text as one would expect from a landmark document covering this topic.

While no-one can expect the Treaty to perfectly address all business human rights violations going forward, it must be drafted in a way to provide a framework for business human rights to develop further and for future regulatory initiatives and treaties to build on.