

**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)**

**Preamble, Definitions and Statement of Purpose**

**Thank you Chair,**

I deliver this statement on behalf of the International Organisation of Employers ([IOE](http://www.ioe-emp.org/)). Due to limited speaking time, I would like to refer participants to the [Joint Business Response](https://www.ioe-emp.org/index.php?eID=dumpFile&t=f&f=145680&token=9dbcc1f8414128d575cd6bef9f36b84ec106a386) to the Revised Draft Treaty. It is available on the IOE's website.

**Firstly, regarding the "preamble"**

* While the preamble explicitly recognises the UN Guiding Principles on Business & Human Rights and notes the positive role that business can play - problems remain.
* For example, the phrasing on the corporate "responsibility to respect" human rights is not in line with the UNGPs in two important areas. First, saying that all businesses have "the responsibility to respect all human rights…" raises significant questions about the range of human rights that would fall under this Treaty as the term "all human rights" has no legal basis. Second, the word "including" implies that the responsibility to respect involves doing more than what is described in the preamble text, which is not the case.

**Second, regarding the article on "definitions"**

* An illustration of the overly broad and legally imprecise nature of the Revised Draft Treaty is the repeated use of the word "any" in many articles, including the definitions. For example, the definition of a human rights violation or abuse ("any harm"), as well as what constitutes business activities ("any economic activity…") and a contractual relationship (any relationship between natural or legal persons to conduct business activities...") is unclear and unlimited.
* We note other problems with the article on definitions:
* No distinction is made between presumed victims (those that have "alleged to have suffered") and actual victims, which creates tremendous legal uncertainty.
* Similarly, the language concerning the "immediate family or dependents" does not reflect many civil law traditions which cover such victims and damages only under certain conditions. It is also unclear if the protections offered to the "immediate family or dependents of the direct victim" would apply if none of their human rights are abused.
* Defining a violation or abuse as "any harm" committed through "omissions" (as well as "acts") is too vague and would unduly broaden the scope of companies' liability while creating legal uncertainty. It is unclear what "omissions" means. It is also unclear what is meant by "emotional suffering" and "substantial impairment of their human rights" and how they would be interpreted, especially given the Treaty's use of the ill-defined term "all human rights." Lastly, the inclusion of "environmental rights" demonstrates the IGWG exceeding its mandate.
* Furthermore, the definition of business activities as "any" means of economic activity “undertaken by natural or legal persons" including by "electronic means” is extremely vague and far-reaching. It is understood to have no precedent in other Treaties and it creates huge legal uncertainty.
* Overall, the Revised Draft Treaty does not answer fundamental questions such as: Under what circumstances would a violation/abuse be judged to be the responsibility of either a natural or legal person (or both), and on what legal grounds? If the former category, which natural persons specifically would be held liable and for what alleged violations/abuses? How would such a broad approach manage the likelihood of multiple parallel lawsuits on the same case, perhaps in different jurisdictions, with the possibility of competing and contradictory judgements?
* Lastly, we will address the point about "contractual relationships" in our oral statement tomorrow on the "scope".

**Third, we would like to address the "statement of purpose."**

* Reading the draft Treaty's "statement of purpose" alongside its other articles, we do not think it is compatible with the UNGPs and other authoritative global standards.
* As mentioned already, the Revised Draft Treaty does not sufficiently address the need for "implementation coherence" of international standards by *all* States at the national and local level. The Joint Business Response describes this challenge further and explains that what is needed is far greater intra-national effort and coordination *inside* each State's executive, legislative and judicial branches (and at all levels) to address adverse human rights impacts at source. We fear that the Revised Draft Treaty seeks transnational businesses to fill the on-the-ground governance gaps that exist in many parts of the world.

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