

**OEWG ON A LEGALLY BINDING INSTRUMENT ON TNCs AND OBE AND HUMAN RIGHTS**

**6TH SESSION, 2020**

**ICJ Oral intervention on the Preamble, Articles 1 and 2**

26 October, 2020

Mr Chairperson-Rapporteur,

The International Commission of Jurists welcomes the second Revised Draft of the Legally Binding Instrument on TNCs and OBEs as an improved, coherent and well-structured draft which, with some additional revision, could serve its purpose of advancing human rights and justice for people adversely impacted by the conduct of business enterprises. We thank you for the opportunity to engage with this sixth session of the Open-Ended Intergovernmental Working Group

In relation to the Preambular paragraph 4, the ICJ reiterates its recommendation to make full reference to the principal international instruments, including the nine core UN human rights treaties, and their substantive protocols, and the eight ILO fundamental rights conventions. Other international legally binding instruments such as the Convention on the Rights of Persons with Disabilities have made such references irrespective of even if not all States are party to them. In any event, they will only be fully applicable to states that are a party to the respective treaties.

We would suggest that in PP5 there should be recognition of the status of the child as a subject of rights with evolving capacities. In PP8, as well as other parts of the draft, reference to “reparations” in addition to access to a remedy has to be explicit. A reference to the 1999 ILO Declaration on Fundamental Principles and Rights at work should be introduced in PP19.

The ICJ welcomes the broader definition of “victims”, “human rights abuse” and “business relationship” that better capture the wide spectrum of abuses that occur in the context of business operations. However, the OEWG should consider also addressing situations where there may be abuses by businesses that occur in tandem with some violations of human rights for which States may also bear responsibility through its contribution by facilitating and aiding certain business operations that create harm. Therefore, the text should reintroduce the word “violations”, in the text where relevant, as the 2019 draft did. The notion of “business activities” that includes “other activity undertaken by a natural or legal person” should also be revised as it appears at the moment too broad.

Finally, the ICJ supports the statement of purposes of the treaty in article 2.