



ICJ statement Article 1- Third Revised Draft LBI

Mr Chairperson,

The definition of "victims" has been shortened, mostly in a sensible way. But it should be amended in two aspects. First, a victim is defined by reference to a human rights abuse, a term usually taken to refer attributable to the conduct of a non state actor, such a business enterprise. Because in many cases of abuses by companies there is participation (in the modality of complicity or otherwise) by a state agent, it is important that the term "violation" is added here to account for situations of State involvement in the causing harm to the victim.

Secondly, the deletion of "persons who have suffered harm in intervening to assist victims in distress or to prevent victimization" from the definition of "victims" weakens this definition in a manner inconsistent with international human rights standards set in art 2 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. That part of the definition should be restated.

The definition of "**human rights abuse**" in the Draft is now detached from any conduct by a business enterprise. As it stands, an "abuse" may be committed by business enterprises and States alike. While "abuse" can refer to a wrong by any kind of actor, in international human rights law the term "violations" is used to refer to conduct attributable to States. Departure from that practice would create confusion and lead to inconsistencies in usages in the generally applied human rights lexicon. The revised Draft should avoid unduly conflating the usages of both "abuse" and "violation".

The ICJ is of the view that the term "abuse" should be reserved for business' conduct and the term "violations" to state conduct to reflect the different position of each actor under international law.

Business activities.- Like several state delegations in this room, the ICJ is concerned by the open ended broad definition of "business activities" in Article 1.3 that can potentially encompass also other persons and organizations as well as any of their activities under its purview. The provision defines "business activities" that covers "any economic or other activity", ...undertaken "by a natural or legal person", including a number of actors. As such this definition risks to encompass also activities carried by NGOs, trade unions, churches that have nothing to do with commercial or economic activities. If adopted, this definition would take the scope of this treaty far beyond its original mandate and could pose undue impediments to the legitimate activities of other actors.

To remedy this, we agree with others to define “business activities” as “any activity of economic or commercial nature or associated activity”, ...undertaken “by a natural or legal person”.

The ICJ also supports the references to the right to a safe and healthy environment which has been recognised by the Human Rights Council early this year.