



**Check against delivery!**

**Seventh session of the Intergovernmental Working Group on  
transnational corporations and other business enterprises with respect  
to human rights**

**Item 4: “Article 1 - Definitions (Tuesday PM)”  
October 26, 2021**

- Thank you, Chair.
- We wish to align ourselves with the comments made earlier on this section by the United States Government.
- Further, and to our dismay, several of the issues that have been raised over the years of negotiation remain in place in this Third Revised Draft.
- With respect to the definitions laid out in Article 1, this LBI does not reflect generally accepted legal norms and is too general to ensure consistent application.
- The term ‘Victim’ in 1.1 is misused and should be replaced by the word ‘plaintiff’ or ‘complainant.’
- Victims are those who have been found by a court of law to have suffered a harm. Therefore, use of term victim throughout the text presupposes guilt by a third-party, rather than more precisely capturing the rights of an individual who alleges harm has been done.



- Extension of the definition of victim to immediate family members and dependents of the direct victim is yet another example of the misuse of the word victim.
- Determination of harms affecting dependents of direct victims are matters to be decided by courts based on the facts of individual cases.
- This additional language should be deleted
- Article 1.2 seeks to redefine internationally recognized human rights as including the right to a safe, clean, healthy and sustainable environment. Not only does no such right exist in international human rights law, but its insertion will ultimately lead to interpretive inconsistency. This phrase should be deleted.
- Concerning Article 1.3, defining “business activities” as including “any other activity” is overly vague. Business activities must be linked to trade, commerce or other economic action. The definition should be made more precise.
- We have serious concerns about the inclusion of business “conducted by electronic means.” Given the pace of digitization, the complexity of digital networks and transactions, and the potential negative consequences of this type of liability on SMEs, the imprecision of this definition needs to be clarified or the clause should be deleted.



- Similar issues arise with the definition of business relationships in Article 1.5 as capturing “any other structure or relationship...including activities taken by electronic means.” This ambiguous language would extend due diligence duties and liability beyond the scope of a business’ contractual relationships, where they have little to no leverage or control.
- The UNGPs and the OECD MNE Guidelines provide a clear definition of “business relationships” that should be mirrored here. Those instruments define business relationships as relationships with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services.