

IGWG 7th Session - Global Union Comments:

Article 8

Thank you, Chairperson. I speak on behalf of the global trade union organisations: ITUC, BWI, EI, IndustriAll, ITF, IUF, PSI, and UNI.

Chairperson,

Article 8 goes to the very heart of what we're here to achieve. Two of the global trade unions' five priorities are (1) that this Treaty covers business enterprises regardless of size, sector, operational context, ownership and structure and (2) Parent company-based extraterritorial regulation and access to justice for victims of transnational corporate human rights violations. So, a comprehensive and clear liability regime is essential.

Therefore, we commend the drafters' efforts in putting together Article 8.6. However, we think that a slight re-ordering the Article will help *differentiate* the forms of liability – namely tortious negligence and strict liability - applicable to the various way in which lead firms - or economic employers as we call them – organise their supply chains.

So, a revised Article 8.6 would read as follows:

States Parties shall ensure that their domestic law provides for the liability of business enterprises for human rights abuses caused or contributed to by another legal or natural person where a business enterprise:

- a. that controls, manages, supervises or otherwise assumes responsibility of another legal or natural person with whom they have a business relationship fails to prevent that person's activity which caused or contributed to human rights abuse; or
- b. effectively controls another legal or natural person that caused or contributed to human rights abuse; or
- c. should have reasonably foreseen the risk of human rights abuses in its business activities or business relationships but failed to prevent the human rights abuse.

Regarding Article 8.7, we welcome the inclusion of a provision stating that HRDD shall not automatically absolve an enterprise from liability for rights abuses. It is our firm view that the requirement to practice human rights due diligence and the requirement to remedy any harm resulting from human rights violations should be treated as separate and complementary obligations. While the language used in the present text partly reflects that used in the UNGPs in relation to this issue – that is – HRDD should not 'automatically and fully absolve' – we believe that the word 'necessarily' may be more appropriate than 'automatically' as this would make it appear less an assumption that hrdd would otherwise provide a shield *but for* this language.

Chairperson,

We also strongly recommend that the final sentence of Article 8.7 be deleted in its entirety. This sentence seems to suggest that the implementation of human rights due diligence standards *does* determine the liability of a business entity, which seems to be in conflict with Article 6 and the first part of the present Article. Again, we would emphasise that the requirement to practice human rights due diligence and the requirement to remedy any harm resulting from human rights violations

should be treated as separate and complementary obligations. For these reasons, we would strongly recommend the deletion of the final sentence in this Article.