

IOE Comments on Article 8 of the third revised draft treaty

Chair

On article 8.4: The article says that “States Parties shall adopt measures necessary to ensure that their domestic law provides for adequate, prompt, effective, gender and age responsive reparations to the victims of human rights abuses”. We take note that there are proposals made during this negotiation to link this exclusively to business activities of a transnational character. What does this mean? Should victims of domestic companies should not have access to “adequate, prompt, effective, gender and age responsive reparations”? Again, what is happening here is that we create a two-tier system in which certain workers and communities better protected than others. This is not only not in line with the UN Guiding Principles, but also again against any idea of fairness.

On article 8.5: The request for financial securities for any business activity to cover potential claims is not feasible, will be a major obstacle for any trade or investment and will have huge negative impacts on the employment prospects in and development chances of the weakest economies.

On article 8.6: In a significant departure from the UNGPs, the draft’s due diligence process requires that companies actually prevent human rights violations, or face liability. The UNGPs, on the other hand, more appropriately present human rights due diligence as a process in which companies take adequate measures to seek to prevent, mitigate and account for human rights impacts. The third revised draft treaty continues to seek to transform due diligence from a process-based standard to an outcome-based standard. Moreover, UNGP 15 and 22 require remedies only where the enterprise caused or contributed to the human rights violation. Furthermore, this contradicts basic legal traditions from all over the world. Liability should only take place where a clear and foreseeable link between the victim’s harm and the business held responsible is given.