Compilation of statements delivered by non-State stakeholders during the State-led negotiations of the ninth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights

Note by the Secretariat

Summary

The present document contains a compilation of statements made by non-State stakeholders during the State-led negotiations of the ninth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights.[1] It has been prepared in accordance with paragraph 31 (b) (iii) of A/HRC/55/59. Statements have been reproduced in the original language of submission and are included only if they were shared with the Secretariat in written form.

[1] These statements have also been posted online at https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/session9/oral-statements.

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Compilation of statements made by non-State stakeholders during the State-led negotiations of the ninth session

A. Preamble

1. CETIM

Mr Chairperson my name is Anesu Dera from the Centre for Applied Legal Studies in South Africa. I make these submissions relating to Article PP9 – PP11 on behalf of CETIM and the Global Campaign.

In PP9, the proposals from Palestine and Cuba, namely PP9bis, PP9ter, and PP9 quarter, which included references to self-determination, the Covenant on Economic, Social and Cultural Rights, and the Declaration on the Granting of Independence to Colonial Countries and Peoples, were excluded. Additionally, PP9 quinquies, which were included and became the main PP9, lost its mention of remedies and procedures with a focus on children. For the same reasons as in PP3, this could weaken the interpretation of the text. It would be advisable to support these proposals for a more comprehensive and rights-focused approach.

In PP10, the Global Campaign supports the change from "capacity" to "potential", but it's important to maintain references to labor rights, health and safety standards, the environment, and climate. What appears to be happening here is a consistent attempt to eliminate mentions of Economic, Social, Cultural, and Environmental Rights, which is highly concerning as these are the primary rights violated by TNCs. These parts of the 3rd draft need to be reinstated.

In PP11, previously PP10bis, the mention of transnational corporations is removed, along with the reference to corporate responsibility for human rights. While the scope of previous drafts already covered all type of business enterprises, the current draft entirely removes the reference to transnational corporations. This is a flagrantviolation of the mandate established in Resolution 26/9, as part of a clear intended strategy to make the scope of the Binding Treaty broader and less effective, as the Global Campaign has already warned since the first draft expanded its scope in 2018.

One of the most significant losses in this updated draft is the exclusion of PP11bis proposed by Palestine, which mentioned the primacy of human rights over free trade agreements and investment treaties. This is extremely important as it establishes a significant basis for interpretation and effectiveness and recognize the higher hierarchy of human rights in International Law and in several domestic systems. A well-established primacy is one of the frontiers of a truly effective treaty.

I thank you.

2. Joint statement on behalf of DKA Austria, Child Rights Connect, ECPAT International and the Human Rights Clinics of the Federal University of Minas Gerais and PUC Paraná

On behalf of DKA Austria, Child Rights Connect, ECPAT International and the Human Rights Clinics of the Federal University of Minas Gerais and PUC Paraná, once again we state that highly support the current wording proposal of the draft to have the best interest of the child as a primary consideration in all actions concerning children, including in the context of business activities, as stated in PP9. Therefore, in order to guarantee the best interest of the child when pursuing remedies, Article 7 to Article 10 have to be adapted, for instance, when it comes to the right of children to be heard and to a child friendly access to justice.

We also propose to add the word “abuses” after the term “violation” for PP9 to be coherent with the definitions of Article 1.

We suggest adding to PP3 the UN Declaration on Human Rights Defenders, which is especially relevant for the access to justice or the Third Pillar of the UNGPs as endorsed by PP13.

Still on PP3, we propose to also expressly mention the UN Declaration on the Rights of Peasants and other peoples living in rural areas. In this sense, the term “peasants and rural communities” should be added after “migrants and refugees” on PP14.

On PP12, we propose to add “and value chains” after “own activities”, in line with Article 1.6 on business relationship.

As to PP18, we propose to expressly mention ILO Declaration 138, on the minimum age for admission to employment, and ILO Declaration 182, on prohibition and elimination of the worst forms of child labour.

Finally, regarding PP19, we propose to add “territorial or domestic and extraterritorial” before the expression “responsibilities of business enterprises”, in order to highlight the purpose of the LBI and be in agreement with Article 1.5.

Thank you.

3. Joint Statement on behalf of Friends of the Earth International and Justiça Global, members of the Global Campaign.

Thank you Mr Chair. My name is Flávia Cieplinski from Sweden, speaking on behalf of Friends of the Earth International and Justiça Global, members of the Global Campaign.

We would like to reiterate that the updated draft does not have the legitimacy to form the basis of these negotiations. It is therefore key to recover fundamental elements of the third draft that were supported by several committed States, and consolidate them, in compliance with the mandate of Resolution 26/9 and the needs of those affected by TNC violations.

First, we want to highlight the change from the term "obligation" to "responsibility" in PP12 and PP19, which creates a serious legal problem, since an obligation arises directly from the provision in the text, whereas responsibility is a term used in private law that requires a decision (by the responsible entity, judicial or non-judicial) to be enforceable.

The original wording should be retained as proposed by Cuba and Egypt, as well as Brazil's proposal to include the term “violations” and “direct and indirectly linked” recalling a proposal from last year.

> *(PP11) Underlining that business enterprises, regardless of their size, sector, location, operational context, ownership and structure have the obligation to respect internationally recognized human rights, including by avoiding causing or contributing to human rights abuses and violations through their own activities and addressing such abuses when they occur, as well as by preventing or mitigating human rights abuses and violations that are directly and indirectly linked to their operations, products or services by their business relationships; (Palestine)*

We also support Colombia’s proposal to reincorporate Palestine’s proposal PP11bis from last year, on the primacy of human rights obligation over other agreements, especially trade and investment treaties.

> *(PP11 bis)To affirm the primacy of human rights obligations in relation to any conflicting provision contained in international trade, investment, finance, taxation, environmental and climate change, development cooperation and security agreements.*

Moreover, PP11ter mentioned the obligations of States regarding the Covenant on Economic, Social, and Cultural Rights and was removed without an explicit request from any country. The same happened with PP12bis (on the importance of protecting human rights and environmental defenders) and PP14bis (on the inclusion of key instruments of environmental law) and they should be reinstated. We also support Colombia, Bolivia, Namibia, and South Africa in the inclusion of peasants in PP14, previously PP13.

In PP16 previous resolutions of the Human Rights Council, that have been discarded, should be kept.

Finally, several discarded amendments proposed by Cameroon should be re-incorporated. Indeed, they were very important for the Preamble, as they allowed to set the scope of the challenges posed by TNCs and thus provide a good basis for interpretation.

The first one is the former PP18 ter, and the second one is PP18 bis (former PP18 quarter) established clear and proper obligations on TNCs in a specific section, independent and distinct from those of state.

> *(former PP18 ter) Stressing the growing economic might of some business entities, in particular transnational corporations, and their particular responsibility and impact on human, labour and environmental rights;*
>
> *(PP18 bis - former PP18 quater) Recalling that transnational corporations and other business enterprises of transnational character have obligations derived from international human rights law and that these obligations are different, exist independently and in addition of the legal framework in force in the host and home States;*

Thank you Mr Chair.

4. Joint statement on behalf of Institute for Policy Studies-Transnational Institute and Corporate Accountability, members of the Global Campaign

Dear Mr. Chair, I am Manoela Roland, a member of Homa-Human Rights and Business Institute and I speak on behalf of Institute for Policy Studies-Transnational Institute and Corporate Accountability, members of the Global Campaign. First We would like to reiterate that the updated draft does not have the legitimacy to form the basis of these negotiations. It is therefore key to recover fundamental elements of the third draft that were supported by several committed States, and further consolidate them, in compliance with the mandate of Resolution 26/9 and the needs of those affected by TNC violations.

We are alarmed to watch this session moving forward despite an explicit attempt to violate the mandate of Resolution 26/9 by the imposition of a broad scope to “all business”. This Working Group has no mandate to do it, as was confirmed by the Chair himself yesterday. These negotiating sessions are supposed to bridge dissent and build consensus.

So we thank Chile for reminding us, as we and many other committed states have been doing for years, the scope established by Res 26/9 and its footnote: TNC and other business enterprises that have a transnational character in their operational activities. This is the right common ground for the scope of the future treaty.

The preamble is the part of a treaty that sets forth the principles and documents upon which the instrument will be interpreted. It is an essential section to clearly define the human rights character and perspective of the document, and to set the right basis for its interpretation, as envisioned in Resolution 26/9.

However, here we realize that significant mentions of social, economic, cultural, and environmental rights have been removed, which weakens the final text. To begin, in PP3, references to important instruments such as the Declaration on Human Rights Defenders and the Declaration on the Rights of Indigenous Peoples, but also important other agreements on the linkages to the environment, such as to the Rio Declaration on Environment and Development, have been removed and replaced with "all other internationally agreed." Mentioning specific declarations or other international instruments has the advantage of establishing the framework to be used for the implementation and interpretation of the LBI. Failing to do so, the updated draft may leave the door open for interpretations that exclude some instruments that are considered rules of customary international law, even without ratification, due to the hierarchy of norms in international law. So we support Brazil´s proposals presented today.

Moreover, Cuba's proposal for a PP4bis was not included in the new draft, even though there were no objections from other states. This, along with the exclusion of several other provisions, highlights the arbitrariness of the Chair in considering or discarding States' proposals in this update draft.

At the suggestion of the United States, the reference to International Humanitarian Law and the rights to non-discrimination, participation, and inclusion has been removed from the PP6, even though Palestine and Kenya requested its retention. Maintaining this reference is fundamental because these are essential rights for affected individuals and communities. International Humanitarian Law is jus cogens, and TNCscan play a role in strengthening and expanding occupations and apartheid regimes, as seen in Palestine. Although International Humanitarian Law is mentioned in the PP7, it's removal in the PP6 is another example of the lack of consistency on the part of the Chair.

We would like to express that the UK´s proposal is an example of intent to reinforce the voluntary nature of the LBI, just turning it into a useless instrument.

But one of the most significant losses in this updated draft is the exclusion of PP11bis proposed by Palestine, which mentioned the primacy of human rights over free trade agreements and investment treaties. This proposal is extremely important as it establishes a significant basis for interpretation and effectiveness and recognizes the higher hierarchy of human rights in International Law and in several domestic systems. A well-established primacy is one of the frontiers of a truly effective treaty. Due to that we support Colombia's proposal for PP 12, including the provision related to the "obligations" for corporations as we reject the Panama allegation. The corporations already have many rights, for instance on international investment Law, but remain without specific and self-recognized international obligations related to Human Rights and this is one of the reasons why they benefit from systematic impunity. Reminding that this provision does not transform corporations into subjects of international law as already clarified by a huge number of international specialists.

Thank you Mr Chair.

5. Center for Constitutional Rights

Thank you, Chair.

As we sit in these negotiations our focus is deeply divided by the extremely grave developments in Palestine. ALL states here, ALL states Mr Chair, must IMMEDIATELY uphold their obligations under the Genocide Convention to stop Israel bombing the 2.3 million people of Gaza.

Last year the Center for Constitutional Rights was concerned by the United States' attempt to remove a reference to International Humanitarian Law from PP6. Sadly this perspective is wholly consistent with the United States current, unconditional support for Israel's illegal actions.

The Center for Constitutional Rights, a human rights institution with over 55 years of expertise in these matters, recently released an Emergency Legal Briefing Paper detailing, on the basis of powerful factual evidence, that the United States' actions to further the Israeli military operation, closure and campaign against the Palestinian population in Gaza may rise to the level of complicity in the crime of genocide under international law.

We call on the United States, in the strongest possible terms, to undertake its legal obligation to exercise maximum leverage in its relationship with the Government of Israel to come into alignment with international law, namely to achieve a ceasefire in Gaza, end military aid to Israel, end the illegal occupation of the Palestinian territory, and dismantle Israel's the apartheid regime across historic Palestine.

Consistent with this, we urge the U.S. delegation to voice strong support for the inclusion of International Humanitarian Law in the treaty text.

Thank you, Chair.

6. **Joint Statement on behalf of CIDSE, CCFD-Terre Solidaire and CRAAD-OI.**

Je parle au nom de la CIDSE, du CCFD-Terre Solidaire et de l'organisation CRAAD-OI de Madagascar.

Le projet mis à jour perd les références subtiles aux obligations directes en matière de droits de l'homme pour les entreprises, remplaçant les références aux « obligations » présentes dans l'ancien préambule par le mot « responsabilités » dans les dispositions équivalentes. Les précédents termes devraient être rétablis.

En outre, le projet mis à jour ne fournit pas beaucoup plus d'orientations aux États parties sur les mesures visant à surmonter les obstacles spécifiques auxquels sont confrontés les groupes à risque, tels que les femmes, les peuples autochtones, les communautés locales et les défenseurs des droits de l'homme lorsqu'ils cherchent à obtenir réparation. Le préambule peut donc jouer un rôle important à cet égard.

Le treizième paragraphe du préambule du projet actualisé souligne que les États sont tenus de prendre toutes les mesures appropriées pour garantir que les défenseurs des droits de l'homme et les acteurs de la société civile disposent d'un environnement propice et sûr dans lequel ils peuvent exercer librement leur rôle. Cela n'a pas été explicitement mentionné dans les versions précédentes et l'accent mis dans le préambule sur le devoir de l'État de garantir un environnement favorable et sûr pour les défenseurs des droits de l'homme est un bon pas en avant.

Cependant, la référence précédente à la Déclaration des Nations Unies sur les défenseurs des droits de l'homme, ainsi qu'à la Déclaration des Nations Unies sur les droits des peuples autochtones et aux conventions de l'OIT, a été supprimée et remplacée par l'expression « autres déclarations des droits de l'homme convenues au niveau international ». Il est important de réinscrire la référence à ces conventions et déclarations.

Les « communautés locales » devraient systématiquement être répertoriées avec les peuples autochtones (comme dans PP14) par souci de clarté, car les impacts sont les mêmes alors que les droits des communautés locales ne sont pas spécifiquement ni suffisamment inscrits dans les instruments des droits de l'homme, ce qui rend difficile pour elles de revendiquer leurs droits.

En outre, certaines propositions textuelles faites lors des 7e et 8e sessions, notamment les paragraphes 13 et 14 du préambule, qui soulignent l'urgence climatique et le rôle des entreprises dans la mise en œuvre des traités internationaux sur l'environnement tels que la Convention-cadre des Nations Unies sur les changements climatiques, n'ont pas été incluses dans le texte mis à jour. Cela est extrêmement regrettable et devrait apparaître dans les paragraphes de la nouvelle version.

Les États devraient également rétablir la déclaration précédente du paragraphe 10 du préambule du troisième projet, qui inclut la reconnaissance du rôle important du secteur privé dans l'atténuation du changement climatique en période d'urgence.

7. **FIAN**

Monsieur le Président, Mesdames et Messieurs les délégués.

Je parle au nom de FIAN International et de la FIDH, et aussi en tant que membre des organisations de la société civile africaines présentes ici.

Conformément à la déclaration faite hier par la délégation de la Palestine, nous souhaitons défendre fermement le maintien dans le préambule des références au droit humanitaire international et rejeter les propositions des États qui suggèrent sa suppression.

Les propositions de FIAN International sont basées sur les leçons tirées de notre travail et des réalités du terrain. Ces cas incluent ma communauté au Sénégal, qui est affectée par l'impact d'une société espagnole et d'une société sénégalaise dont la majorité du capital provient d'une personne physique espagnole.

Nous soutenons la modification proposée par le Panama, qui consiste à éliminer le chiffre 9 dans l'alinéa 2 et à faire référence aux instruments en général, afin d'avoir une référence plus cohérente au droit international existant et à venir, ainsi que toutes les autres propositions du Panama et des États qui le soutiennent concernant le préambule, y compris les références au droit international humanitaire. Nous soutenons également la proposition de la Colombie d'inclure dans le préambule la primauté des droits de l'homme sur le commerce et l'investissement et la référence aux droits des paysans.

Nous insistons également sur la pertinence de maintenir la référence au genre et à l'âge dans l'alinéa 15, étant donné que les femmes et les filles ainsi que les différents groupes d'âge subissent les impacts des sociétés transnationales et des autres entreprises de manière différenciée, et nous soutenons les propositions du Panama et du Mexique.

Nous sommes déconcertés par le rôle de la délégation des Etats-Unis et du Royaume-Uni dans ce processus, car ils disent avoir des réserves sur l'ensemble du projet et continuent à faire des commentaires substantiels sur le projet. Nous aimerions leur demander une clarification à cet égard.

Sur le point 8, nous sommes en désaccord avec le Royaume-Uni sur l'élimination des références à la Charte des Nations Unies en tant qu'instrument contraignant, en les remplaçant par les Principes directeurs des Nations Unies qui sont une norme volontaire.

Concernant l'alinéa 22 : nous ne sommes pas d'accord avec le Royaume-Uni sur la formulation des attentes, étant donné qu'il s'agit d'un traité sur les droits de l'homme, dans lequel les obligations devraient être au centre et non les attentes.

Nous exprimons notre désaccord avec les changements apportés par le Royaume-Uni à l'alinéa 16, qui modifie la référence à la résolution 26/9 et qui devrait constituer la base de cet instrument juridique international.

8. Franciscans International

We do not agree with the removal of "international humanitarian law" in PP6, and support Panama and others' position that is should be included, so that the end reads, "access to justice and remedy in case of violations of international human rights law and international humanitarian law." We underscore the importance of including reference to "international humanitarian law" throughout the LBI, and the need for accountability in cases where businesses violate both international human rights law and international humanitarian law.

This addition would also add to the draft's coherence, given the addition of language in PP7 to "respect and ensure respect for international humanitarian law" (which we support).

We support the addition of language on children in PP9, and the additional language proposed by Panama and others.

In PP10, we support reintroducing language at the end of paragraph on "labour rights, health and safety standards, the environment and climate, in accordance with relevant international standards and agreements" as suggested by Brazil.

We support Cuba's suggestion in PP12 to change "responsibility" to "obligation," and have this reflected throughout the text. We also support Brazil's suggestion in this paragraph to have "human rights abuses and violations" and have this phrasing throughout the text.

We support inclusion of language on State obligations towards HRDs in PP13.

In PP14, we support Panama's addition of "marginalized situations", and suggest adding, "including protected persons in conflict-affected areas." We also support Mexico's suggestion so that it reads a "human rights perspective", and not a "business and human rights perspective."

We support the suggestion of the UK to have a preambular paragraph on conflict, but would edit PP14 bis to "Recognizing the heightened risks of gross human rights violations in conflict-affected areas, including situations of occupation."

Thank you.

9. **IOE**

Thank you Chair, I am speaking on behalf of the International Organisation of Employers.

All words are important as they determine the way in which a treaty may be interpreted should it be ratified. The Preamble is no exception.

Unfortunately, the preamble blurs the clear and respective role of States and companies which carries important risk of impossible implementation as going against national law and States' prerogatives.

The draft also continues to lack legal clarity as well as too vague, repetitive and subjective language still persists which leave room for contradicting interpretation.

In particular:

- A major concern comes from PP10, where we are disappointed by the change from "capacity" to "potential" proposed by Brazil last year as this disregard the important existing efforts by companies which should be reinstated.

- On PP11, countries, not business, have the responsibility for follow-up and review the progress made in implementing the 2030 Agenda. this point should leave no room for ambiguity in the distinctive role and responsibilities of States and business.
    - Yet, to achieve this goal, there is a critical need from States to provide a conducive environment for sustainable business.

- Another key concern comes from PP12 which is diverging from the UNGPs by removing the wording "that are directly linked" which is a central element when it comes to business responsibilities.
    - As it stands, enterprises would have a responsibility to "preventing human rights abuses or mitigating human rights risks linked to their operations, products or services by their business relationships;" without direct business relation.
    - Excluding the direct causality could entail prevention and mitigation responsibility for companies that go well beyond what is reasonably possible for a company to do. This would overbroadly extends the scope of the corporate responsibility to respect and go against UNGP 13 (b).

Second, PP12 should also include the wording "seek(ing) to prevent or mitigate" from UNGP 13 (b) as it reflects the reality that in some instances, companies are simply not unable to prevent or mitigate based on many factors out of their control.

- In PP13, the role of human rights defenders does not limit itself to promote the respect of human rights by business but should include primarily the promotion of the States' duty to protect.

Thank you.

10. **Global Trade Union**

> Recalling the nine core international human rights treaties adopted by the United Nations, and the ~~eight~~ ten fundamental conventions adopted by the International Labour Organization, as well as other relevant international human rights treaties, ~~and~~ conventions and declarations adopted by the United Nations and by the International Labour Organization;

PP2 should be amended to reflect the fact that we now have ten fundamental ILO conventions. At its 110th Session in June 2022, the International Labour Conference amended paragraph 2 of the ILO Declaration on Fundamental Principles and Rights at Work (1998) to include "a safe and healthy working environment" as a fundamental principle and right at work. With the adoption of this Resolution, the International Labour Conference decided to designate the Occupational Safety and Health Convention, 1981 (No. 155) and the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) as fundamental Conventions bringing the total number of 'fundamental conventions' to ten.

We further encourage the inclusion of ILO and UN Declarations in PP2. ILO Declarations are resolutions of the International Labour Conference used to make a formal and authoritative statement and reaffirm the importance which the constituents attach to certain principles and values. Although declarations are not subject to ratification, they are intended to have a wide application and contain symbolic and political undertakings by the Member States. Relevant Declarations for the LBI include the ILO's Declaration of Philadelphia (1944), the Declaration on Social Justice for a Fair Globalization (2008), and the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, as amended.

Proposed new PP5

Then, we have a proposal for a new PP5. We strongly recommend the inclusion of a new paragraph to better articulate the scope of labour rights within the context of the LBI. This paragraph would read as follows:

Recalling that International Labour Standards provide States with the tools to implement their obligations concerning human rights at work and establish mechanisms for labour inspection and enforcement necessary to realize decent work for all.

Recalling the State duty to exercise adequate oversight in order to meet their international human rights obligations when they contract with, or legislate for, business enterprises to provide services that may impact upon the enjoyment of human rights.

Proposed new PP8

We also recommend the inclusion of a new PP8 to highlight the State duty to protect human rights in situations where a commercial nexus exists between public actors and business, such as when government bodies purchase goods and services through public procurement, and in connection to privatisation. This paragraph would read as follows:

Proposed new PP10

Reaffirming the primacy of international human rights law over any other international agreement, including those related to trade and investment;

We would then propose a new PP10, which would reaffirm the primacy of international human rights law over trade and investment agreements. This would reflect the spirit of Article 103 of the Charter of the United Nations and help set the context for Article 15.5(b) of the Legally Binding Instrument. The paragraph would read as follows:

Proposed new PP12

Recognizing that inclusive and concerted action is essential to realize human rights, including a just transition towards environmentally sustainable economies for all, achieve social justice, promote universal and lasting peace, and acknowledging that the failure to respect and fulfil human rights constitutes a threat to social progress;

We also propose a new PP12 to highlight the importance of fulfilling and respecting human rights in a business context for the achievement of environmental and social justice. This paragraph would read as follows:

> (PP12) Underlining that business enterprises, regardless of their size, sector, location, operational context, ownership and structure have the ~~responsibility~~ obligation to respect internationally recognized human rights, including by avoiding causing or contributing to human rights abuses through their own activities and addressing such abuses when they occur, as well as by preventing human rights abuses or mitigating human rights risks linked to their operations, products or services by their business relationships;

PP12

In PP12 and PP19, the term "obligation" has been deleted in favour of the term "responsibility". While this is intended to help the LBI not diverge from Pillar II of the UN Guiding Principles on Business and Human Rights, it's use in the context of an LBI, which aims to hold business enterprises accountable and liable for human rights abuses, is not appropriate. The LBI places obligations on States to regulate corporate behaviour with a strong liability framework. The use of the term "responsibility" in this context is completely incongruent with aims and objectives of the LBI. We suggest reverting to original language.

PP14

Recognizing the distinctive and disproportionate impact of business-related human rights abuses on women and girls, children, indigenous peoples, persons with disabilities, workers, people of African descent, older persons, migrants and refugees, and other persons in vulnerable situation, as well as the need for a business and human rights perspective that takes into account specific circumstances and vulnerabilities of different rights-holders; and the structural obstacles for obtaining remedies for these persons;

Regarding PP14, we stress that with multiple global health, social and economic crises exposing the fragility of global supply chains and business models built on non-standard forms of employment and informality, the LBI represents a unique opportunity to end the impunity for corporate human rights abuses. As such, we believe it is important to highlight the clear, distinctive, and disproportionate impact of business-related human rights abuses on *workers*.

11. USCIB

Chair-Rapporteur,

USCIB remains concerned about the feasibility and practicality of this legally binding instrument, as well as its unintended negative consequences.

I would like to focus my intervention on PP7 and PP12.

First, in the middle of PP7, the 3rd revised version stated that "States must protect against human rights abuse by third parties, including business enterprises, within their territory, jurisdiction, or otherwise under their control", and, in the 4th draft, we see a deletion of the words "within their territory, jurisdiction, or otherwise under their control". We have difficulties understanding how States could have obligations beyond their jurisdiction. The 4th draft continues to promote extraterritorial jurisdiction, which would cause significant legal uncertainty for business.

Further on PP7, we see an added reference to humanitarian law. The scope of this draft Treaty continues to expand, and we remain concerned about how this would work in practice.

Second, PP12 refers to the responsibility of businesses to respect human rights. However, last year's text referred to "directly linked to their operations, products or services by their business relationships", and we note the deletion of "directly" in this year's text. This change, combined with the inclusion of value chains in the definition of business relationships in Article 1.6, implies that businesses should be held accountable for adverse human rights

impact by actors far beyond the business' control. Today's value chains are global, very complex and multi-tiered, and this draft Treaty is simply not in line with that reality.

I thank you.

B. Article 1

1. ADC

Merci M. Le Président de m'avoir passée la parole que je prends en tant que ADC, Action pour le Développement Communautaire, Cameroun, et au nom de Young Friends of the Treaty. Il s'agit d'un mouvement de jeunes dynamiques, victimes des violations de leurs droits par les multinationales. Ces jeunes viennent d'Afrique, d'Asie, d'Amérique et d'Europe et militent pour un Traité qui répond aux intérêts et surtout aux besoins des jeunes et autres groupes vulnérables ou marginalisés.

Nous soutenons la proposition faite par l'Indonésie et soutenue par d'autres Etats et acteurs de la société civile, sur l'ajout du groupe de mots "Communautés locales" chaque fois qu'est évoqué le terme "Populations autochtones". Le Mexique s'y est opposé au motif que le terme "Communautés locales" ne fait pas encore l'objet d'une définition consensuelle sur le plan international.

J'aimerais poser une question. Qui fait et défait les lois? Qui donne un sens aux concepts? C'est nous bien évidemment.

C'est la raison pour laquelle nous suggérons que le terme "Communautés locales", en plus d'être systématiquement ajouté au terme "Peuples autochtones", fasse l'objet d'une définition dans ce Traité.

Je vous remercie.

2. CETIM

Dear Mr. Chair, I am Ana Laura Figueiredo, a member of Homa- Human Rights and Business Institute,and I speak on behalf of Institute for Policies Studies and CETIM, both members of the Global Campaign.

First, we would like to reiterate that the updated draft does not have the legitimacy to form the basis of these negotiations. It is therefore key to recover fundamental elements of the third draft that were supported by several committed States, and further consolidate them, in compliance with the mandate of Resolution 26/9 and the needs of those affected by TNC violations.

We agree with Colombia (and echoed by Cameroon and Malawi) that International Human Rights Law refers to "violations" rather than 'abuses' so as to properly give effect to human dignity, and that the Treaty should consistently reflect the same throughout.

We agree with Cote d'Ivoire on behalf of the Africa Group, that articles 1.4 and 1.5 as currently drafted go beyond the mandate of the IGWG under Resolution 26/9 as regards the scope of the Treaty. Hence, once more the Global Campaign supports the definition proposed by Cameroon on the third draft and reinstated today on the updated draft by the African Group (Colombia and Bolivia), which preserves the scope of Resolution 26/9, so that the language of transnational corporations be reinstated, as suggested by South Africa. We furthermore support the suggested reference to "global value chains" advocated for by Ghana and supported by Egypt, which reinforces the transnational character of the business activities along the value chain.

1.3. "Business activities" means any economic or other activity, including but not limited to the manufacturing, production, transportation, distribution, commercialization, marketing and retailing of goods and services, undertaken by transnational corporations and other business enterprises of transnational character (natural or legal person), which can be private,

public or mix, a natural or legal person, including State-owned enterprises, including financial institutions and investment funds, joint ventures, and any other business relationship undertaken by a natural or legal person. This includes activities undertaken by electronic means. (Cameroon).

The definition of "Business Relationship" in paragraph six includes a reference to the "value chain," which is positive and should be retained. However, the best text option would be the proposal from Palestine in the third draft, which removes the reference to the national legal system and describes better that the relationship is not necessarily contractual. This amendment shall be modified to also include financial capital that finances TNCs. Therefore we propose the following addition, as I quote: "The business relationship shall include financial entities as investors, shareholders, banks and pension funds that finance the activities of TNCs", same as Ghana's proposal for PP11.

The definition of "Human Rights Due Diligence" in article 1.8 is quite weak, as it does not mention value chains and does not present due diligence as an obligation for the TNCs while using the problematic term "adverse impacts" rather than 'human rights abuses'. Moreover, this definition is much more limited than the one presented in several domestic laws, and even the one provided in the Guiding Principles. By including this definition within article 1, the new draft removes it from one of the prevention measures in article 6 and promotes it as the primary focus of the text. While due diligence can be a useful tool (if well-defined and with clear obligations for TNCs), the treaty should address other mechanisms of prevention, liability, and jurisdiction that due diligence does not cover. We thus support Mexico's proposal to delete this definition and ally with Colombia's statement on this topic.

It is also important to support Brazil's proposal in article 1.9 that concerns the concept of full reparation based on the victim centered approach. .

The updated draft adds the definition of "Relevant State agencies" in article 1.10, because throughout the text this term replaces the terms "courts and non-judicial mechanisms". This substitution is problematic because in cases of human rights violations the remedy can be pursued administratively, without a legal recourse. Thus, undermining the access to justice for those affected. On that account, these substitutions should be rejected, and this definition should be removed from the draft as proposed by Colombia.

Thank you Mr Chair

3. Joint Statement on behalf of the International Federation for Human Rights (FIDH) and its members the Association for Human Rights of Spain (APDHE), the Kenya Human Rights Commission, Justiça Global and Lawyers for Human Rights.

Thank you, Mister Chair.

I make this contribution on behalf of the International Federation for Human Rights (FIDH) and its members the Association for Human Rights of Spain (APDHE), the Kenya Human Rights Commission, Justiça Global and Lawyers for Human Rights.

First, we regret the deletion of the reference to 'collectively suffered harm' in article 1.1 and to the right to a safe, clean, healthy and sustainable environment in article 1.3., since they are both particularly relevant to corporate abuses.

Second, in the definitions and throughout the text, the use of "rights-holders" would be preferable to use of the term "victim". The term victim may be kept in specific instances when it refers to a rights-holder whose rights have been violated or who alleges that their rights have been violated – as recognised in international human rights law and jurisprudence.

Third, although state-led violations of human rights are understood to be encompassed in the definition of Article 1.2 and 1.3., it would be more relevant to use "abuses and violations" throughout the text to correspond to internationally recognized understandings of these terms.

Moreover, it seems that the two-step definition of human rights impacts and abuses creates more confusion in the formulation. We suggest eliminating the reference to human rights impacts, to better define human rights abuses and use this definition throughout the text.

Additionally, the definition of "business activity" in Article 1.4 could be narrowed since it currently encompasses any possible human activity.

Lastly, regarding Article 1.8, the definition of due diligence should refer to several elements in order to align with international standards. This includes a clear reference to "potential" abuses, to the ongoing nature of due diligence, as well as an explicit reference to the need to "cease" ongoing abuses. It should also differentiate between human rights abuses which a business enterprise may 'cause or contribute to' and which are 'directly linked to its operations, products or services'. Finally, there is a risk that the list of the due diligence steps in Article 1.8 be read as a closed list. It would be beneficial to leave some flexibility to suggest that they could be complemented by other actions.

Thank you, Mister Chair

4. ICJ

Thank you, Mr Chairperson-Rapporteur.

The ICJ reiterates its reservations to previous iterations of the Article 1 on Definitions.

It seems that the updated draft attempts to redefine fundamental concepts already of widespread use in human rights law, such as the concept of "victim", or "remedy", risking a departure from these largely agreed concepts. Some definitions are otherwise so general or over encompassing that they may become devoid of any meaningful use.

Among others, the definition of "victims" largely corresponds to accepted definitions in UN instruments, such as the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. But it should be further refined in two respects. First, a victim is defined by reference to a human rights abuse, a term usually taken to refer to the conduct attributable to 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.

In ICJ's view, another example is the definition of "business activities". The concept is currently defined as any economic or other activity- which could be performed by any person in any form. It is difficult to distinguish this kind of activity from any other activity performed by a person in the course of their daily life.

These issues need to be addressed in a future iteration of the draft LBI.

Thank you for your attention.

5. IOE

Thank you Chair, I am speaking on behalf of the International Organisation of Employers.

Definitions in any treaty are central to ensure proper interpretation and legal certainty throughout the text for each article. Unfortunately, Article 1 continues to lack clear definitions that would provide legal certainty.

We strongly suggest that the whole of Article 1 be revised to improve legal certainty and clarity. There is no need to reinvent the wheel, the UNGP should provide the foundational basis of any of these definitions.

Major flaws persist with:

The definition and concept of "victim" which should be replaced by "rights holder". The misuse of the term here gives a pejorative status to a person as a "victim" before the harm itself has been proven.

The definition of "business activities" is too vague to provide any legal certainty and should be removed. What is meant by "other activities" or "undertaken by electronic means"? The vagueness of this wording is concerning and would vastly expand the regulatory scope of the draft.

Major concerns persist with the definition of business relationship as "any relationship including activities undertaken by electronic means".

Defining business relationships as "any relationship" is unworkable, as it is indefinite, vague, and overly broad. As it stands, this definition does not provide any legal certainty nor clarity and should be entirely redrafted.

The addition of "including throughout their value chains" in the new draft is worrisome as it is trying to target multinational companies.

This language expands the potential scope of diligence duties and liability to companies' relationships to entities with whom they have no contractual relationship and into whose operations the companies have no insight nor control.

This could have negative unintended consequences, especially for MSMEs and go against the UNGPs which underline that "business relationships" are understood to include company's relationships directly linked to its business operations, products or services.

On the definition of "human rights due diligence" the draft continues to divert significantly from the definition of the UNGPs. We call on States to take the text from the UNGPs 17 to 22 in full.

Lastly, the definition of "access to remedy" has also seen no improvement since last year. the UNGPs remain silence on defining "effective remedy" as this is a matter of national law to decide.

Thank you.

6. Joint Statement on behalf of the Feminists for a Binding Treaty.

This joint statement is made on behalf of the Feminists for a Binding Treaty.

We'd like to start by emphasizing once again that women, girls and gender-diverse people, rural communities and indigenous folks, especially from the Global South, bear the biggest brunt of the climate crisis. However, they are also at the heart of climate justice, in their fundamental role as human rights defenders, environmental defenders, guardians of biodiversity and providers of alternatives, which we would like to see better reflected in the treaty.

Therefore, we would like to suggest some changes in several articles that better recognize the inextricable link between the environment, human rights and gender equality.

PP 11 should be amended to add, after the reference to the Agenda for Sustainable development, the following language: "and recognizing the violence to individuals, communities, biodiversity and the environment associated with the current economic system and associated business activities that are predicated on extraction and unlimited growth, adversely impacting on the enjoyment of human rights and unable to be sustained within our planetary boundaries and resources."

In addition, PP 13 should include a specific reference to the role that human rights defenders have in protecting the environment, biodiversity, and the rights of nature affected by business activities.

We do not support the removal, in the draft, of the reference to the right to a safe, clean, healthy, and sustainable environment and to fundamental freedoms in the definition of human rights abuse and we request that this language be retained in Article 1.3.

We also do not support the removal, from Article 6, from the third revised draft of the requirement for businesses to undertake environmental and climate change impact assessments and to report on environmental and climate change information regularly and publicly. These provisions should be retained.

We strongly encourage the inclusion in Article 8 of a provision that requires criminal liability for attacks on human rights, nature's rights and environmental defenders.

Considering that fossil fuel industries are by far the largest contributors to the climate crisis, which they have lied about and covered up for decades, we reiterate the urgent need for a strong legally binding instrument that can hold these transnational corporations accountable for their complicity in the current ecocide and prevent them from further leading all of us to an uninhabitable planet.

Finally, we wish to reiterate our utmost solidarity with the people of Palestine and condemn the ongoing genocide against the Palestinian people.

Thank you.

7. Joint statement on behalf of DKA Austria, Child Rights Connect, ECPAT International and the Human Rights Clinics of the Federal University of Minas Gerais and PUC Paraná

On behalf of DKA Austria, Child Rights Connect, ECPAT International and the Human Rights Clinics of the Federal University of Minas Gerais and PUC Paraná, we address our suggestions on Article 1 as it follows.

On 1.1 we propose to reframe the wording to include "and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization" after "direct victim", as stated by Mexico and as was included in the previous draft.

On 1.3, we propose to reinstate the right to a clean, healthy and sustainable environment and to keep the definition of the last draft.

On 1.4, we suggest adding the terms "recycling, release and waste disposal as well as restoration and repair" after "retailing of goods and services," since these are business activities that could also severely impact victims, especially children and future generations.

On 1.5.b, we propose to add "recycling, release and disposal" to address Illegal waste disposal across borders.

On 1.8, we understand that due diligence should also cover the impact of business activities on the environment and the climate change along its value chain. We propose that due diligence should also entail putting in place necessary measures to consult all relevant stakeholders, especially groups that are usually forgotten or that are harder to reach out to, such as children.

On 1.8.c, we propose to also address the obligation of businesses to take immediate action to prevent the occurrence of imminent damages that have been identified.

On the communication proposed in 1.8.d, we stress that due diligence reports must be made available to the public.

As to the definition of "remedies" in 1.9, we propose that the expression "child-sensitive" be used, in line with the recommendations of the Committee on the Rights of the Child, and to add the term "disability-inclusive".

Thank you.

8. Joint statement on behalf of Centre Europe Tiers Monde and Friends of The Earth

Estimado señor presidente:

Mi nombre es Pablo Fajardo, miembro de la Unión de Afectados por Texaco, de la Amazonía ecuatoriana. Hablo en nombre de la UDAPT, Amigos de la Tierra Internacional y como miembro de la Campaña Global. Mi intervención está fundamentada en la experiencia de haber litigado 30 años en contra de la empresa Norteamericana Chevron por el crimen ambiental cometido en Ecuador desde hace más de 50 años. Primero, enfatizamos que el único documento legítimo para la negociación es el tercer borrador con la herramienta de control de cambios. En ese sentido, reiteramos que el proyecto actualizado no tiene legitimidad para constituir la base de estas negociaciones. Por lo tanto, es clave recuperar elementos fundamentales del tercer borrador que fueron apoyados por varios Estados comprometidos, y consolidarlos aún más para cumplir el mandato de la Resolución 26/9 y satisfacer las necesidades de las comunidades afectadas por las violaciones de los derechos humanos, por las empresas transnacionales como es el caso de Chevron en Ecuador.

Con respecto al artículo 1 que establece las definiciones del texto, quisiera empezar mencionando que se trata de un artículo crucial para garantizar la exhaustividad y eficacia del instrumento.

En la definición de "víctima" (1.1), si bien se sostiene que grupos de individuos pueden ser víctimas, se eliminó la mención de sufrir violaciones de derechos humanos colectivos. Esta eliminación refleja la idea errónea de que los derechos humanos son derechos individuales y no derechos colectivos. Esto es consistente con la eliminación de disposiciones legales relevantes en el preámbulo que apuntaban a reconocer a los "colectivos" como sujetos de derecho, como las comunidades campesinas y los pueblos indígenas. Por ello, debe insertarse la noción de "individuos y/o comunidades afectadas", como lo propusieron anteriormente la Campaña Mundial y los Estados de Camerún y Palestina, y como lo propone en esta sesión el Estado de Brasil.

Por otro lado, en el segundo párrafo hay una nueva definición del concepto de "impacto adverso sobre los derechos humanos". Este término representa la dimensión pasiva de la persona afectada, la cual es muy problemática: se alinea con la lógica del derecho consuetudinario y del derecho privado, los cuales están diseñados para abordar los daños o impactos de los contratos, pero no los que se derivan de violaciones de los derechos humanos. También es una definición que se aparta de lo establecido en el derecho internacional de los derechos humanos. Por ello apoyamos a Chile, China y México sobre la eliminación del numeral 1.2, con el objetivo de que las definiciones respondan a los conceptos propios del derecho internacional de los derechos humanos.

Por otro lado, a continuación se tiene la definición de "abuso", la cual se describe como una acción que produce un impacto y representa una dimensión activa. Una vez más reiteramos que esto debería caracterizarse como una violación. Como lo explica la Campaña Global, el término "abuso" crea una jerarquía falsa entre los Estados que violarían los derechos humanos mientras que las empresas transnacionales solo pueden causar "abusos" contra los derechos humanos. Bajo esta definición las empresas transnacionales no pueden cometer violaciones y, por lo tanto, no tienen la obligación de respetar los derechos humanos. Según las teorías predominantes sobre los derechos humanos en el derecho internacional, una violación se caracteriza como tal si hay un atentado a la dignidad humana, y no por quien la causó, sea un Estado, una persona o una empresa transnacional. Por estas razones, es imperativo usar el término "violación" en lugar a "abuso", como propuso Camerún en 1.3 y como proponen Colombia, Malawi , y estandarizar esta terminología en todos los artículos del futuro tratado.

Consideramos que la propuesta del Reino Unido en el 1.3. constituye una mirada aún más limitada del ya débil concepto de "abuso", pues su propuesta apunta a delimitar las violaciones de derechos humanos dentro de las fronteras estatales, limitando el desarrollo de obligaciones extraterritoriales, las cuales son indispensables para el acceso a la justicia en casos como el de Chevron en Ecuador que yo represento.

Otro punto problemático es la omisión de referencias al impacto indirecto y al derecho a un medio ambiente limpio, saludable y sostenible, entonces apoyamos a la propuesta de Camerun, Mexico en otros Estados en 1.3. Resaltamos que el borrador actualizado elimina varias menciones a los derechos ambientales, lo cual es problemático ya que estos son los derechos principalmente violados por las empresas transnacionales. Por ello, es necesario restablecerlos.

Gracias señor Presidente.

9. Joint Statement on behalf of the global trade union

Thank you, Chairperson. I speak on behalf of the global trade union movement.

Article 1.1

"Victim" any person or group of persons who suffered a human rights abuse or violation in the context of business activities, irrespective of the nationality or domicile of the victim. The term "victim" may **shall** also include the immediate family members or dependents of the direct victim, **and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.** A person shall be considered a victim regardless of whether the perpetrator of the human rights abuse is identified, apprehended, prosecuted, or convicted.

With regards to the definition of 'victim', we would note that in international human rights law, the term "abuse" generally refers to conduct by any actor, private or otherwise, whereas "violations" are reserved for conduct attributable to States. In order to keep a clear distinction between state and non-state conduct, we suggest an amendment to reflect both human rights "abuses" and "violations".

A comprehensive definition of victim should include persons who have suffered harm in intervening to assist victims in distress or to prevent victimization so that human rights defenders, including trade unionists, are implicitly covered by the term. In line with best practice under international human rights law, we recommend the categorical inclusion of immediate family members or dependents of the direct victim in the definition of victim.

Article 1.2

"Adverse human rights impact" shall mean ~~a harm which corresponds to~~ a reduction in or removal of a person's ability to enjoy an internationally recognized human right as a result of a human rights abuse or violation.

We note that the concept of "adverse human rights impact" has been defined for the first time in line with amendments to the definition of "human rights abuse" and "human rights due diligence". While we appreciate the use of this term in the context of the human rights due diligence framework articulated in the UN Guiding Principles on Business and Human Rights, the LBI should be referring to human rights abuses and violations, which form the basis of the instrument. However, if this definition is limited to helping define "human rights due diligence", we could accept it with our suggested amendment above.

"Human rights abuse or violation" shall mean any direct or indirect harm in the context of business activities, through acts or omissions, against any person or group of persons, that impedes the full enjoyment of internationally recognized human rights and fundamental freedoms, including the right to a safe, clean, healthy and sustainable environment ~~take place in connection with business activities and that results in an adverse human rights~~

Article 1.3

We would recommend reverting back to the definition in the third revised draft with the above amendment. Please see commentary on Article 1.1 regarding the reference to "violation".

We also believe that it is essential for this definition to recognise abuses and violations of the human right to a safe, clean, healthy and sustainable environment.

Article 1.5

"Business activities of a transnational character" means any business activity described in Article 1.3 above, when:

a. It is undertaken in more than one jurisdiction or State; or

b. It is undertaken in one State but a significant part of its preparation, planning, direction, control, design, processing, manufacturing, storage or distribution, takes place through any business relationship in another State or jurisdiction; or

c. It is undertaken in one State but has a significant effect in another State. or jurisdiction.

We strongly recommend the deletion of the undefined and vague qualifying term significant which could lead to unnecessary debates about what constitutes a business activity of a transnational character.

> "Remedy" shall mean the restoration of a victim of a human rights abuse to the position they would have been had the abuse not occurred, or as nearly as is possible in the circumstances. An "effective remedy" involves reparations that are adequate, effective, and prompt; are gender and age responsive; and may draw from a range of forms of remedy such as restitution, compensation, reinstatement in employment, rehabilitation, satisfaction, such as cessation of abuse, apologies, and sanctions), as well as and guarantees of non-repetition.

Article 1.9

We believe that this non-exhaustive list of remedies should include apologies (both public and private) and, most importantly, reinstatement in employment. A significant challenge for workers exercising their right to freedom of association is the fear of discriminatory dismissal. In such cases, the remedy must be reinstatement given that compensation alone may continue to contribute to an atmosphere of intimidation in the workplace.

10. USCIB

Chair-Rapporteur,

USCIB believes that the effectiveness of a Treaty like this depends on its ability to provide legal certainty. As it stands, the draft accomplishes the complete opposite – its broad terms and flawed terminology would contribute to expanded liability for companies and legal uncertainty.

Allow me to highlight 5 examples from Article 1:

First, the term "victim" is not in line with the UNGPs and should not be used here as it prejudges the alleged harm. No matter how grave the alleged harm is, the correct term would be "plaintiff" or "complainant". Further, this definition should not encompass immediate family members.

Second, we are deeply concerned about the inclusion of "value chains" in the definition of business relationships. This is unacceptable. Value chains refer to upstream and downstream

supply chains, including relationships where there is no contractual relationship. This expanded scope of diligence obligations and liability to companies would create severe legal uncertainty. It would mean that companies could be held liable for activities far beyond their control.

Third, on human rights due diligence, this text is not in line with UNGPs, and for a company to complete due diligence “in every case”, as stated in the text, would cause unbearable operational and financial burden on companies. Further, formal reporting should be limited to businesses whose operations pose a risk of severe human rights impacts, in line with the UNGPs.

Fourth, on remedy, it must be noted that ensuring access to effective remedy is the responsibility of the State.

Fifth, on a positive note, we welcome the removal of last year’s 1.5bis, which provided a carve-out for “local businesses registered in terms of relevant domestic law”. We understand that, now, the text more clearly covers all enterprises, including State-owned Enterprises. We welcome this development.

I thank you.

11. Verein Sudwind

Thank you Chair!

Sudwind and the other members of the Treaty Alliance Austria, a coalition of over 15 Austrian NGOs and trade unions, together with a youth delegation here appreciate the opportunity to contribute.

For Article 1 recommend the following improvements:

Article 1.1 should consider the circumstance, that persons have suffered harm, because of supporting victims. Therefore it should use a broader definition of victim, such a formulation already existed in Article 1.1 of the “Second Revised Draft”.

Include the Definition from 2nd Draft: “and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.”

On 1.3. We regret that the right to a safe, clean, healthy and sustainable environment has been deleted and therefore demand to reinclude it in Article 1.3., as human rights abuses and violations and environmental destruction are closely intertwined. Just in July 2022 the UN General Assembly has passed resolution A/76/L.75 unanimously recognizing this right to a clean, healthy, and sustainable environment as a human right, so it cannot be omitted in this binding treaty

Logically also in Article 1.8 defining Human Rights Due Diligence should be reworded to Human Rights and Environmental Due Diligence

Article 1.4 should maintain a broad definition of business activities, it is particularly important that it includes also state-owned enterprises. In addition to the specific sectors which have already been mentioned, the extraction of raw materials should also be mentioned, because it is strongly intertwined with human rights violations and environmental damage.

Many thanks!

C. Article 2

1. South Centre

Mr. Chairperson,

As the international community struggles with the ongoing polycrisis and armed conflicts, the role of business enterprises, especially transnational corporations, needs to be further monitored and regulated to ensure that they are not involved in human rights violations in their business activities or across their value chains.

While some legal and policy initiatives are already underway at the national and regional levels notably to implement due diligence mechanisms, it is essential to elaborate a common set of broader binding multilateral rules that can bridge the existing gaps in the international legal system for providing access to justice and effective remedies for victims of business-related human rights violations.

In addition, clarifying the obligations of enterprises with regard to human rights could help increase regulatory certainty, enhance business efficiencies and result in lower compliance costs for corporations.

The majority of human rights abuses and violations by corporate actors have occurred in developing countries. Therefore, the views and concerns of developing countries must be reflected throughout the text and included in all discussions seeking to address the rights of victims to access justice and effective remedies.

The active and constructive participation from all members of the OEIGWG is necessary to achieve the mandate of Resolution 26/9, that is, to establish a comprehensive and effective legally binding framework that can prevent the violation of human rights, particularly those committed by transnational corporations, and provide effective remedies and access to justice for victims in local and foreign jurisdictions.The views and inputs of civil society and grassroots organizations are also vital to achieve this objective.

Finally, we would like to reiterate the South Centre's strong support for ensuring a timely and positive outcome of this important process and wish you fruitful discussions this week.

Thank you Chair.

2. Joint statement on behalf of corporate accountability International et Institute for Policies Studies-TNI

Merci monsieur le président,je suis membre de La Via Campésina et je parle au nom de Corporate accountability International et Institute for Policies Studies-TNI toutes deux membre de la campagne mondiale.

Nous tenons à réaffirmer que le projet actualisé n'a pas la légitimité nécessaire pour constituer la base de ces négociations. Il est donc essentiel de reprendre les éléments fondamentaux du troisième projet révisé qui ont été soutenus par plusieurs États engagés, et de les consolider davantage, conformément au mandat de la résolution 26/9 et aux besoins des personnes affectées par les violations des multinationales.

Il convient de noter que le statement of purpose ne correspond toujours pas aux objectifs fixés par la résolution 26/9. Comme l'indique clairement la résolution, il est nécessaire de faire de la réglementation des activités des sociétés transnationales, dans le cadre des dispositions du traité contraignant, l'objectif principal de ce processus.En ce sens, nous appuyons la proposition 2a bis proposée par l'Egypte et la Colombie.

L'amendement proposé par l'Egypte et la Colombie pour l'article 2b est nécessaire pour aligner le paragraphe avec le mandat établi dans la Résolution 26/9. Pour ce paragraphe 2b il est aussi fondamental d'incorporer les propositions de Cuba et du Brésil visant à remplacer "responsabilities" avec "obligations". Comme nous l'avons expliqué, les STN ont des obligations

Nous soutenons également la proposition de la Colombie de remplacer "abuses" par "violations", au 2.e, s'alignant avec la proposition de Chine et Égypte.

Nous apportons notre soutien à l'amendement 2c proposé par le Brésil, et celui du Brésil et du Panama au point 2.1e, qui suppriment le terme "atténuation" ("mitigation") lorsqu'il est fait référence aux violations des droits humains. En effet, les violations des droits humains ne doivent pas être "atténuées" mais avant tout prévenues, ou faire l'objet d'une réparation

intégrale si elles se produisent. Ce sont les risques de violations qui doivent et peuvent être atténués. En ce sens, nous soutenons les propositions faites par Cuba et l'Egypte pour supprimer la mention de "mitigation" au paragraphe e.

Il est également important de mentionner au Royaume-Uni, et surtout aux États-Unis, qui ne ratifient généralement pas les traités relatifs aux droits humains, qu'il existe des références plus appropriées et plus protectrices que l'UNGPS, correspondant au stade de négociation auquel nous nous trouvons et à l'objectif du traité.

Merci monsieur le président.

3. IOE

Thank you Chair, I am speaking on behalf of the International Organisation of Employers.

As a general comments, major issues were retained in the new updated draft treaty.

In particular, in article 2, a focus on transnational companies continues to pose a significant risk to the real intended scope of this treaty. Such as focus on transnational companies and not on all business activities would go against a level-playing field by explicitly take out domestic companies.

The fact that this treaty remains ambiguous in this regard is concerning. The fact that this treaty might not apply to all companies has been a longstanding concern for the business community.

The draft treaty cannot have a differentiated approach between transnational companies and national companies, as this could have unintended negative consequences such as unfair competition.

For the sake of consistency in the draft and to align with the intended scope of this treaty which would be applicable to all enterprises, in accordance with Article 3, we strongly call on States to delete throughout the text any reference to wording such as "in particular those of a transnational character" in order to remove this unnecessary ambiguity once and for all.

Also, regarding 2.1 (b), as mentioned above, obligations only fall on companies where the law requires it or they themselves have agreed to be bound. The draft cannot therefore impose those obligations without individual State ratification and legislation. This needs additional language clarifying that this applies "where required by national law".

Lastly, article 2.1 (c), remains ambiguous and vague. What are the "effective mechanisms of monitoring and enforceability" and how will these work in practice? The UNGPs themselves do not provide a grievance mechanism as this is something States and companies must implement, nor do they provide a dedicated accountability mechanism. This should be removed.

Thank you.

4. Joint statement on behalf of Centre Europe Tiers Monde and Friends of The Earth International

Estimado Sr. Presidente, soy Andressa Soares, miembro de Homa - Instituto de Derechos Humanos y Empresas y hablo en nombre de CETIM y Friends of The Earth como miembro de la Campaña Global.

En primer lugar, queremos reiterar que es clave recuperar elementos fundamentales del tercer borrador que fueron apoyados por varios Estados comprometidos y se perdieron en el nuevo texto.

En el Artículo 2, "Statement of Purposes", se añadió la referencia a "gender-responsive, child-sensitive and victim-centred, lo que se apoya, así como la inclusión de violaciones y age responsive propuesta por Brasil. Sin embargo, hay que señalar que el propósito sigue lejos

del alcance de la Resolución 26/9. Como se indica claramente en la Resolución, es necesario prever la regulación de las actividades de las ETN como el principal objetivo de este proceso, sencillamente. Apoyamos la propuesta de redacción de Egipto para el (a) bis pero sugerimos que sea el párrafo inicial del artículo, o aún incorporar el lenguaje propuesto por Cuba, China, Egipto y Colombia.

Como bien proponen Brasil y Egipto, debe ser eliminado el término "mitigación" al referirse a violaciones de derechos humanos. Los riesgos pueden y deben mitigarse en algunas circunstancias, pero no hay un nivel aceptable de violaciones y por lo tanto no pueden ser mitigadas, sino prevenidas y reparadas en su totalidad.

En el texto actualizado, así como pasó en el preámbulo, "obligaciones" se sustituye por "responsabilidades". En la presente sesión, Cuba, Egypt, Bolivia, Malawi, Colombia ya se opusieron al cambio en el preámbulo, y por Egipto, Brasil y Cuba en este artículo. Una fuente primaria de derecho internacional y hard law como es un tratado crea obligaciones. El uso de "responsabilidades" es un lenguaje que además de cumplir un rol político de debilitación del texto, no es técnico. Es increíble que en 2023 se ponga en duda algo tan básico como que entes privados tengan obligaciones erga omnes de respeto a derechos humanos, algo ya firmado por la Corte Internacional de Justicia desde Barcelona Traction en 1970 sin hablar de los sistemas regionales de protección, y jurisprudencias nacionales. Igual de increíble es cuestionar la primacía de los derechos humanos, que son sabidamente normas de derecho internacional general, y jerárquicamente superiores a normas dispositivas, es decir tratados de otras materias, como inversión, libre comercio, entre otras. Si hay delegaciones que desconocen esos fundamentos jurídicos, podemos fornecer extenso material que hemos producido desde la Campaña Global durante estos 9 años, y también pueden consultar la jurisprudencia de sistemas regionales de protección como el interamericano por ejemplo, o incluso a un manual de derecho internacional.

Por último, hay que decir que hablar de ocupaciones, apartheid y genocidio como ocurre en Palestina no es complejo, y es materia de jurisdicción universal. Tenemos la obligacion legal y moral de hacerlo, especialmente en el Consejo de Derechos Humanos.

Gracias Señor Presidente

5. Joint Statement on behalf of DKA Austria, Child Rights Connect, ECPAT International, Human Rights Clinics of Federal University of Minas Gerais and PUC - Paraná.

We support the amendment to **Article 2.d** in highlighting the purpose of the Legally Binding Instrument in ensuring child sensitive access to justice and remedy. It is crucial that the Legally Binding Instrument underlines the difficulties for children to access the justice system and the vast power imbalances between children and business. It is also crucial that the Legally Binding Instrument removes the barriers for children to have access to effective judicial mechanisms without discrimination, in accordance with General Comment 16 (para 66-68) from the Committee on the Rights of the Child.

Also, we propose to add "and environmental impact" after human rights abuses in Article 2.e.

Thank you chair.

6. Sudwin

For Article 2 we recommend the following:

As we see in the world child labour and modern slavery are a big problem in global supply chains. According to recent UN statistics 218 million children work, many full time.

The Sustainable Development Goals (SDGs), include a renewed global commitment to ending child labour. Specifically, target 8.7 of the Sustainable Development Goals calls on the global community to: "Take immediate and effective measures to eradicate forced labour,

end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour, including recruitment and use of child soldiers, and by 2025 end child labour in all its forms."

In line with the Agenda 2030 as well as International Labour Organisation (ILO)'s Conventions No. 138 and No 182 we want to achieve the effective abolition of child labour.

For this reason we want to add to Article 2c:"prevent and mitigate" and add explicit mention of child labour and modern slavery

So that the Article 2 c would read:

To prevent and mitigate the occurrence of human rights abuses such as child labour and modern slavery in the context of business activities by effective mechanisms of monitoring, enforceability and accountability.

Many thanks!

7. USCIB

Chair-Rapporteur,

USCIB continues to see major issues with Article 2 of the draft Treaty. Allow me to highlight 4 points in this regard:

First, in 2(a) and 2(e), we believe the focus on business activities of "transnational character" is inappropriate, as it implies that certain businesses should be treated differently. Given the removal of 1.5bis from last year's draft, i.e. the loophole for local businesses, we urge the Chair to apply this approach consistently and remove all references to "transnational character" throughout the text. The UNGPs apply to all companies.

Second, on 2(b), it is important to add "where required by national law", as business obligations only exist where the law requires it. This draft Treaty cannot impose those obligations without individual State ratification and legislation.

Third, on 2(c), the text is ambiguous in its reference to "effective mechanisms of monitoring, enforceability and accountability". It is the role of States to enforce existing laws, and this is at the core of realizing human rights globally.

Fourth, in 2(d), the focus should be on remediation, which would be more in line with the UNGPs. This is important, as remediation includes both judicial and non-judicial means.

I thank you.

D. Article 3

1. FIAN

Gracias Señor Presidente.

Apoyamos todas las delegaciones estatales que respalden el lenguaje y el mandato de la Resolución 26/9.

Consideramos que el uso del lenguaje contenido en la resolución 26/9 sobre empresas transnacionales y otras empresas es el que se debe usar, para mantenerse dentro del mandato establecido y considerando que esto podría ayudar a acercar las posturas de las diferentes delegaciones de los Estados.

Queremos también apoyar la propuesta de México en lo que se refiere a la supresión de "internationally recognized" y "binding on the State Parties of this (Legally Binding Instrument)."

Esto es crucial sobre todo cuando se lee junto con el artículo 11 sobre la ley aplicable, donde si un Estado parte no ha firmado o ratificado un tratado internacional básico de derechos humanos, las víctimas no podrán invocar la ley aplicable en sus propios sistemas jurídicos.

En otras palabras, mientras que el 11.2 parece permitir a las víctimas elegir el derecho sustantivo aplicable, el 3.3 reducirá el alcance de esta selección, especialmente en los países de origen que no hayan ratificado los tratados relevantes. Por lo tanto, 3.3 debería ser más amplio, para asegurar que las víctimas puedan utilizar la ley aplicable más favorable. Esto estaría en consonancia con los principios pro-persona y de efectividad de los derechos humanos.

Muchas gracias.

2. Center for Constitutional Rights

Thank you Chair.

Mit̄akuyapi, ċante waṡt̄e nap̄e ċiyuzap̄i, Ohit̄ik̄awin miye, k̄sto, My name is Anne White Hat, I'm a member of the Aṡke Gluwipi Tioṡpaye (clan) and citizen of the sovereign Lakota Nation.

We are one of the first Indigenous Nations to enter into an international treaty with the United States, the Fort Laramie Treaty of 1868. The US has broken their international treaty obligations and supported transnational corporations as they have violated our human rights, the rights of nature and indeed our tribal sovereignty.

The US abrogated the Fort Laramie Treatywhen gold was discovered in our sacred lands of Ḣe Sapa, the Black Hills of what is now the state of South Dakota, forcing our sovereign nation into domestic dependent status. In 1980 the US Supreme Court found that "[a] more ripe and rank case of dishonorable dealing will never, in all probability be found in our history." They continue to extract from our water and mineral resources as we speak.

Mr Chair, we are strongly concerned that the most recent version of this treaty text has deleted reference to all core ILO conventions, which means ILO Convention 169 covering a set of fundamental rights for Indigenous Peoples have been deleted from the treaty.

A treaty that does not prioritize the rights of Indigenous peoples and the International Human Rights Defenders Declaration undermines a central objective for developing this instrument.

Finally, we recognize our obligations to and speak on behalf of nations not represented here, specifically the Nations of Plants, the Nations of Animals and the Waters and to safeguard them we strongly call on states present to ensure the Scope of the treaty explicitly covers the right to a clean, healthy and sustainable environment.

Thank you.

3. FIDH

Thank you, Mister Chair.

I make this contribution on behalf of the International Federation for Human Rights (FIDH), Association for Human Rights of Spain (APDHE) and Lawyers for Human Rights.

We strongly oppose the attempts to restrict the material scope of the draft instrument reflected in Article 3.3 and more generally throughout the text. The LBI must thoroughly respond to the broad number of issues at stake with regards to abuses and violations of human rights in the context of business activities. This includes human rights, labour rights, gender, intersectional and environmental issues, but also the specific challenges linked to business involvement in conflict-affected areas, including areas under occupation.

Overall, the formulation "internationally recognized human rights and fundamental freedoms binding on the State Parties" risks restricting the scope to the instruments ratified by each state and excluding all non-binding instruments such as UN Declarations. Additionally, because the list of specific instruments has been deleted, a restrictive interpretation of the phrase "internationally recognized human rights" could lead to excluding human rights treaties other than the Universal Declaration of Human Rights and the two Covenants on Civil and Political Rights and Economic, Social and Cultural Rights.

We recommend re-incorporating a non-limitative list of instruments similar to that of the Third Revised Draft; mentioning the Universal Declaration of Human Rights, all core international human rights treaties and fundamental ILO Conventions; and referring to international humanitarian, criminal, and environmental law, as well as customary international law. This could facilitate a broad interpretation of the material scope of this instrument in the implementation phase.

Thank you, Mister Chair.

4. IOE

Thank you Chair, I am speaking on behalf of the International Organisation of Employers.

As a general comment, we strongly recommend deleting any reference to the wording "including business of a transnational character" throughout the entire text to remove the longstanding ambiguity on the scope of application of the instrument once and for all.

On the specific subparagraphs:

Regarding article 3.1., the reference to "business of a transnational character" should be removed as it creates ambiguity on the intended scope of the treaty.

Not only business of a transnational character but also "local business registered in terms of relevant domestic law" which includes State-owned enterprises should be covered. 95% of the world's workers are not employed by exporters and not part of global supply chains, but purely in domestic supply chains and most of human rights deficits arise in the domestic economy and not in global supply chains.

Restricting the scope of the treaty to a minority of business activities, might also create negative consequences such as unfair competition between national and transnational enterprises.

However, we once again stress the critical need to insert a clause excluding micro, small, and medium-sized enterprises is essential to respect their limitations.

Regarding article 3.2., it should make it clear that exceptions at the national level should be clearly laid down, made truly exceptional and time bound as well as subjected to regular domestic review with stakeholders. In addition, the grounds to differentiate obligations should also include "the ownership" and "the structure" of business enterprises.

These are fundamental factors in determining the ability of businesses to meet corporate responsibilities and are also included in UNGP 14.

It should apply to all companies but a clause excluding micro, small, and medium-sized enterprises is essential to respect their limitations.

Regarding article 3.3, we welcome the clarification that it shall cover all internationally recognised human rights "binding on States Parties" to the instrument.

Thank you.

5. Joint statement on behalf of FOE

Soy Mayra Piaguaje, de la nacionalidad Siekopai de la comunidad de San Pablo de Katetsiaya, miembro de la Unión de Afectados por las Operaciones Petroleras de Texaco, y la Campaña Global, me dirijo en nombre de las comunidades Waorani, Siekopai, Siona, A'I Kofan, Shuar, Kichwa y campesinos de la provincia de Orellana y Sucumbios de la region amazonica norte del Ecuador.

Antes de que nuestros territorios conocieran el extractivismo de Texaco, practicábamos nuestras formas de vida según nuestra cosmovisión indigena que significaba tener una vida libre y en armonía con la naturaleza. En la medida que intervino la petrolera Texaco, fueron invadiendo nuestro territorio, fuimos despojados y desplazados.

Los impactos de esta empresa transnacional empezaron en 1964. Los ríos fueron contaminados. Contaminar el agua, para nosotros significa que le han matado la espiritualidad al agua. Limitar el acceso a la agua limpia, como hizo Texaco, afecta profundamente a nuestra capacidad de vivir de forma saludable, de alimentarnos, de bañarnos, y de mantener nuestras tradiciones. Afecta nuestra identidad y dignidad.

El 72.6% de las mujeres indígenas sufren de cáncer, y hay casos de cáncer en niñas y niños menores de 10 años.

Son ya 30 años de lucha desde que los Pueblos Indígenas y campesinos de las provincias de Orellana y Sucumbios pusieron la demanda contra Texaco, ahora Chevron. Nunca tuvimos acceso a la reparación y justicia por los daños ocasionados, a pesar de haber ganado en todas las instancias judiciales. Muchos afectados y demandantes ya se han muerto esperando justicia, muchos con cáncer. Como ecuatoriana, como afectada, como mujer indigena resistiendo al poder corporativo de las transnacionales, quería llegar a la sensibilidad del señor presidente. Hubiese querido que se tome el pedido de la mayoría de los Estados, que están efectivamente buscando proteger los derechos humanos por encima de cualquier otro interés. Apelamos que no se acepte ninguna tentativa de desvirtuar este importante proceso, y que haga su papel conforme al mandato de la Resolución 26/9. Apelamos igualmente a los países que son sede de las empresas matrices de muchas transnacionales, que asuman su obligación de contribuir para um tratado fuerte y efectivo enfocado en las transnacionales y sus cadenas de valor, porque son éstas que vienen a nuestros territorios, capturan nuestros Estados, y nos matan con impunidad. Es absurdo intentar defender doctrinas jurídicas incoherentes con la realidad y con el derecho internacional para decir que empresas no violan derechos humanos, o cometen "abusos" solamente.

Nosotras no estamos luchando por recursos económicos que son los intereses que mueven a las transnacionales. Estamos defendiendo la vida, la naturaleza, la madre tierra, nuestros ríos. Que los crímenes corporativos y la impunidad de poderosas transnacionales no siga sucediendo en nuestro territorio y en otros territorios en que estas actúan. No es por nosotras que luchamos por un tratado vinculante que regule a las transnacionales, es para que ni un niño más tenga que morir de cáncer por causa de la codicia de las empresas transnacionales. Apelo al señor presidente relator que no se olvide del propósito que nos une en este proceso, y que nos enfoquemos en donde está el problema: en las transnacionales, sus cadenas de suministro, de producción y valor, y sus financiadores.

6. Joint statement on behalf of the global trade union

Thank you, Chairperson. I speak on behalf of the global trade union movement.

Chair,

We regret that nine sessions into this process questions relating to the personal scope of the LBI still remain outstanding. We didn't comment on the discussion on Article 2(a), but feel compelled to do so now in relation to Article 3.1. For the avoidance of doubt, the global unions wish to reiterate its position that Article 3.1, as currently drafted, offers the most comprehensive personal scope from a rights-holder and victim-centric perspective. The Treaty should absolutely address the human rights obligations of all companies. The approach taken in Article 3.1, which is the same as the two previous drafts, helps focus the operational provisions of the LBI on cross-border activities of business enterprises while maintaining a broad scope, which includes transnational and other enterprises. We welcome this hybrid approach, which will prevent enterprises using their form of incorporation to evade accountability. This approach also ensures that the LBI is clearly geared towards addressing business activities of a transnational character, which is where the main normative gaps in international human rights law lie.

Chair, we urge all delegations to engage with this Article by taking into account the very real needs of rights-holders and victims of corporate human rights violations.

Chair, in relation to Article 3.3, while appreciating your efforts to streamline this important provision, we still feel that there is too much ambiguity with respect to norms that are

categorised as ‘binding’ on States. As this formulation still causes some confusion, we would recommend tighter language, which would read as follows:

Article 3.3

This Legally Binding Instrument shall cover all internationally recognized human rights and fundamental freedoms which the State Parties of this (Legally Binding Instrument) have ratified, including:

a. those recognized in the Universal Declaration of Human Rights;

b. all core international human rights treaties;

c. ILO Conventions;

as well as those to which they are otherwise bound, including,

d. the ILO Declaration on Fundamental Principles and Rights at Work; and

e. customary international law.

Thank you, Chairperson.

7. MALOCA

Gracias presidente,

En estos momentos, en el sistema multilateral, la sociedad civil esta construyendo la gobernancia global democrática, un proyecto que por supuesto tiene sus oponentes.

Que el ámbito sea específicamente concentrado a las empresas transnacionales en el artículo 3, es importante porque con este instrumento queremos construir gobernancia global. Es decir, necesitamos instrumentos destinados al espacio interestatal y de mercado donde normalmente no alcanzan las leyes domésticas. Estas leyes domesticas tienen ya medidas en cuanto a las empresas nacionales.

Sobre Empresas transnacionales, no hay nada vinculante en el estado del arte jurídico actual, y por lo tanto, en aras de la construcción de la gobernancia global democratica, que es necesaria para nuestra supervivencia en el planeta gracias a la cooperación que plantea en la administración de los bienes globales, el instrumento negociado debería referirse particularmente a las entidades transnacionales, y tal vez dejar espacio interpretativo para captar la evolución del comercio global.

8. Suedwin

Thank you Chair!

As a member of the Sudwind youth delegation together with Treaty Alliance Austria we appreciate the opportunity to contribute.

For Article 3 we recommend the following change:

Acknowledging the SDG 13 Climate Action and the human right on a clean healthy and sustainable environment as unanimously recognized in resolution A/76/L.75 passed in July 2022 by the UN General Assembly

Also the scope in article 3.3 should contain a detailed reference, which clarifies the importance of fighting against global warming and highlight human rights in the context of the environment and climate change.

Therefore we support the proposal of the State of Palestine as it stands in the track changes version of the updated draft

Quote:

Proposal of Palestine

3.3. This (Legally Binding Instrument) shall cover all internationally recognized human rights and fundamental freedoms binding on the State Parties of this (Legally Binding Instrument), including those recognized in the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, all core international human rights treaties and fundamental ILO Conventions to which a State is a Party, international humanitarian law, international criminal law, international environmental law, and customary international law.

Many thanks!

9. USCIB

Chair-Rapporteur,

As noted in my previous statement, USCIB urges the Chair to remove references to “business activities of a transnational character”. We emphasize that the UNGPs apply to all businesses.

On Article 3.2, we do understand that States may need some flexibility on how to operationalize a Treaty at the national level. However, the provision in 3.2 gives rise to protectionist measures by States. Allowing States to decide which businesses are subjected to the onerous provisions of this draft Treaty, including the impractical due diligence obligations, the wide-ranging criminal, civil, and administrative liability, and the broad extraterritorial jurisdictional provisions, would give a carte blanche for protectionism and would distort competition and market fairness. This is in stark contrast to the UNGPs, which – we underscore once again – applies to all businesses.

I thank you.