



IOE Opening Statement on the LBI on BHR

8th Session OEIGWG

24 October 2022, UN Palais, Room XX, 10:00–13:00 and 15:00-18 :00 CET

Thank you Chair,

The International Organisation of Employers, which represents more than 150 Employer Organisations and 50 million companies worldwide, welcomes the opportunity to express its comments for the eighth session.

Let me start with two comments **on the process**:

- While acknowledging that this is an inter-governmental process, we again insist that **business representatives should have been at the table in the actual drafting**.
- After seven years, there continues to have no increasing State’s support or participation as well as no agreement on major provisions of the draft treaty. This **distances the draft treaty even** more from the process-based approach of the UNGPs, making it less implementable and preventing any possible consensus-building.

IOE welcomed the Chair’s proposals. Unfortunately, the following key areas continue to **raise serious concerns** for the business community:

1. **The definitions in Article 1** continue to consider “business relationships” as “any relationship”, including through “electronic means” as well as resorting to **vague language** such as “business activities” or “human rights due diligence”. These definitions create legal uncertainty and extend the **scope of diligence obligations and liability** to companies’ relationships without a direct link.
2. **For the scope in article 3, we regret the absence of any Chair’s new proposal**. The current draft would apply only to transnational companies and explicitly exempt domestic

companies. This would exclude 95 per cent of the world's workers who are employed by purely domestic entities where most human rights deficits arise.

3. In **article 6 on prevention**, the proposals continue to remain silent on the fact that prevention is a shared responsibility where States have an obligation to support businesses in their responsibility to respect.
4. In **article 7 on access to remedy**, the language does not yet provide enough legal clarity, in particular on issues of “reversal of the burden of proof” or liability.
5. The proposals for **Article 8 on legal liability** could introduce liability for a company based on a violation occurring **anywhere in its entire supply chain** without requiring a causal connection between the business and alleged harm. Also, it would also extend **liability to natural persons**, overriding settled local law principles on “piercing the corporate veil”.
6. **On jurisdiction (article 9)**, the proposals continue to promote extremely broad extraterritorial jurisdiction, encouraging plaintiffs to forum shop, again creating great legal uncertainty as to where a business may be hauled into court.

IOE remains committed to advancing human rights and responsible business conduct, including in this treaty process. Yet, important changes are necessary to reach a balanced outcome for all.

Thank you.