

RG DRAFT INTERVENTION ON THE BUSINESS & HUMAN RIGHTS TREATY PROCESS

The business community is committed to do our utmost to respect human rights, in line with our obligations under the UN Guiding Principles. In order for this commitment to have impact on the ground, the expectations and requirements placed upon companies must be clear and achievable. We welcome the Chair's proposals, but we continue to have grave concerns over the potential viability and utility of the draft text before us. A treaty that does not command widespread support and that contains provisions incapable of being implemented will not further its own objectives.

Only a very limited number of countries are actively engaging in the drafting process. After seven years we see no increased support for the process.

Moreover, there continues to be no agreement on the scope of the draft treaty. Whereas some States welcome the draft's application to all business enterprises, many continue to argue to exclude domestic companies. This not only puts the text at odds with the UNGPs; it fails to cover human rights abuses taking place in vast areas of economic activity, including in the informal sector.

The text also contains provisions that are simply incapable of being implemented or that go against accepted principles of international law. For example:

- 1) It states that Businesses will be held liable for activities under “**any** relationship,” presumably including even electronic transactions—raising vast practical and legal complexities.
- 2) It imposes liability for failing to “prevent” human rights harms, without requiring a causal connection between the business and alleged harm, upending the UNGP's guidance on process-based due diligence.
- 3) It allows States with no jurisdiction over businesses/persons to hold them liable for civil and criminal offences to which they are not causally connected.

- 4) It allows jurisdiction for claims in countries where the business may have no ties, and allows the plaintiff to choose which law will govern, leading to great uncertainty and raising legal competence issues.

In sum, while we appreciate The Chair's proposals, they fall well short.

USCIB will continue to constructively engage in the discussions, but fundamental changes are necessary to make the text the basis for finding a consensus.

Thank you.