**USCIB Statement on Article 7 LBI**

Yesterday a number of interventions highlighted the fact that fine words are not enough. We agree. Lofty aspirations can only be fulfilled if they are clearly and fully articulated. Mandates can only be converted into impacts on the ground if they are expressed in language that is widely understood and confers legal certainty. For this reason we continue to have concerns over the use in the draft treaty of terms that are subjective, imprecise and/or incompletely defined . This is meant to be a legal text and in legal texts words matter.

For example,

The word “victim” first appears in Article 1. This is a term used to describe a person who has suffered harm and been found to have so suffered by a court of law. No matter how grave the alleged harm or how much sympathy they might command, until then they are a person alleging an abuse. The word victim is not used in the UNGPs and should not be used here, because it prejudges and prejudices — it gives an adjudicative status to a person before the harm itself has been proven. This is not a small point. Words matter.

Similarly, the phrases “imposition of strict or absolute liability in appropriate cases” and “ensuring fair disclosure” provide insufficient legal clarity. We urge that such subjective language be avoided wherever possible.

Legal concepts matter as well. Article 7.3 advises States to reverse or reduce the evidential burden of proof. In some cases this could be admissible, especially for serious violations. However, the reversal of the burden of proof should not become the norm. It contravenes the well settled legal principle of “innocent until proven guilty” and the notion that “he who asserts must prove.” Indeed, requiring that an accused party prove his or her innocence violates due process principles and fundamental notions of fairness in most jurisdictions.