

**IOE Statement on articles 1of the draft LBI on BHR**

**8th Session OEIGWG**

24-28 October 2022, UN Palais, Room XX, 10:00–13:00 and 15:00-18 :00 CET

**Article 1. Definitions (additions and changes)**

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

Let me start with IOE’s comments on the proposals that came out from the seventh session for article 1 which cannot be accepted as they stand:

The use of “victim” should be replaced by **“plaintiff” or “complainant” a**nd should not extend the term “victim” to apply to “**immediate family members or dependents of the direct victim**”. Victim must be recognised by a court of law. Until then, they are a person alleging an abuse and should not create a preferential category of rights holders who have not suffered direct harm.

The draft continues to consider “**business relationships**” as “**any relationship**” and defines “**business activities**” to include activities “**undertaken by electronic means**”. These should be omitted as it would create legal uncertainty and would expand extensively the scope of diligence obligations and liability to companies’ relationships without direct link.

The inclusion of a **new point 1.5 bis** to define “**other business enterprises**” would include TNCs only and should be also **omitted.**

Let me now turn to the Chair’s new proposals:

We welcome the definitions of “**adverse human rights impact**” as well as “**Human rights abuse**” which are in line with the UNGPs.

On the definition of “**Human rights due diligence**”, we appreciated the Chair’s efforts, however, the requirement of a complete due diligence process for companies “**in every case**” would create important financial burdens on companies, notably MSMEs. This definition should be replaced by **the text from the UNGPs 17 to 22 in full which is a language understandable and implementable for companies.**

* Also, on point (b), it should be added “**in cases where the business enterprise causes or may cause as well as contributes or may contribute to an adverse impact**” to be in line with the sense of UNGP 19. As it stands, the proposal is too vague and could be interpreted as an obligation of prevention and mitigation measures for a company’s entire supply chain.
* **Point (d) should be modified as to reflect UNGP 21** where the only requirement of formal reporting is for business enterprises whose operations or operating contexts pose risks of **severe human rights impacts**. The draft should not create an automatic reporting obligation for companies regardless of the context and potential gravity of human rights harms.
* Regarding the **definition of “remedy”** and “**effective remedy”,** it should specify that effective judicial mechanisms provided by States.are at the core of ensuring access to remedy.
	+ Here again the reference to “victim” should be replaced by “**plaintiff” or “complainant**

Thank you.