



**IOE-USCIB Joint Statement on second grouping (article 4,5 and 14) LBI on BHR**

**8th Session OEIGWG**

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

Thank you, Chairperson-Rapporteur. This intervention is a response to Articles 4, 5, and 14 of the Third Revised Draft Treaty.

Under Article 4, the rights of complainants in these cases should be limited to internationally recognized human rights. Going further afield, as some State parties have suggested, will distract from the focus of this treaty process.

The protection of complainants’ rights should be balanced against the rights of the alleged defendants. Unfortunately, there is no mention of this balancing act in either this article or any section of the draft treaty. Indeed, there should be careful consideration given to the due process rights of the defendants, including the fundamental and universal tenet of the presumption of innocence.

Moreover, this article creates certain mechanisms for protecting complainants’ rights that can lead to abuse and violate those rights of the alleged defendants. For example, allowing third parties to bring actions, as well as class actions, can lead to such abuses, subjecting the alleged defendants to costly and perhaps frivolous lawsuits, the claims of which may not accurately represent complainants’ genuine concerns and serve as vehicles to only further the interests of interested third parties.

Article 5 requires States to provide for the judicial and executive elements to ensure that complainants’ rights are effectively protected. This goes to the heart of why many other human rights treaties have failed: the lack of State capacity to deliver. Indeed, many States sign on to treaties with such obligations but cannot meet those obligations because of numerous structural factors, including lack of funding, weak rule of law, corruption, lack of political will, and so on. Neither this article nor the rest of this draft treaty provide an effective solution to this fundamental problem.

The bottom line is that any treaty – if finalized – is only as good as the States that ratify and implement it under local law. After all, under international law, the treaty cannot place direct obligations on private businesses, it can only place obligations on States parties, which in turn must regulate private businesses in their respective jurisdictions via local law.

We have heard a great deal in this session about the need to regulate business because, if unregulated, business will invariably cause or contribute to adverse impacts. Unfortunately, this view disregards the reality that businesses are regulated everywhere they operate. It also disregards the substantive work that has been done by business in this space under the UN Guiding Principles. As my colleagues and I have noted, no one is here to excuse bad actors. Instead, we wish to simply note that what is lacking in the treaty process is a meaningful engagement with the fundamental and threshold question of States’ inability or unwillingness to enforce the treaty obligations. We sincerely hope that the Working Group will devote its attention to this important question, and business stands ready to engage in that analysis.

Given that my time is up, I thank the Chairperson and the Intergovernmental Working Group for their kind attention to these serious concerns of the international employer community.

Thank you.