



ICJ statement Article 1 to 5- Third Revised Draft LBI- 8<sup>th</sup> session IGWG

Mr Chairperson,

The International Commission of Jurists reiterates its position in favour of adopting a broad scope including all business enterprises for the Legally Binding Instrument under discussion. Most companies are by definition incorporated under national law and are creatures of domestic law. Excluding these companies from the scope will severely undermine the potential effectiveness of the proposed instrument.

The definition of “victims” in Article 1 of the 3<sup>rd</sup> Revised draft, largely corresponds to accepted definitions in UN document, such as the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. But it should be further refined in two respects. First, a victim is defined by reference to a human rights abuse, a term usually taken to refer attributable to the conduct of a non state actor, such a business enterprise. Because in many cases of abuses by companies there is participation (in the modality of complicity or otherwise) by a state agent, it is important that the term “violation” is added here to account for situations of State involvement in the causing harm to the victim.

Secondly, the deletion of “persons who have suffered harm in intervening to assist victims in distress or to prevent victimization” from the definition of “victims” weakens this definition in a manner inconsistent with international human rights standards set in art 2 of the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. The ICJ joins other groups and States to ask for this part of the definition to be restated.

The ICJ recognizes the efforts to align article 4 with adopted language in existing UN instruments, but it also stresses that the draft needs much more alignment, always acknowledging the need to adapt and update them to the context of protecting rights in the context of business human rights abuse may require amendment. In this regard, the ICJ welcomes the changes operated in this article incorporating more clearly a gender perspective, collective reparations and age-sensitive approaches.

Paragraph (b) of 4.2 should be deleted as it overlaps with and effectively contradicts 4.1., which already guarantees all human rights for victims, whereas paragraph (b) unnecessarily only recognizes a few. This would signal an inappropriate expression of hierarchy among human rights, where certain rights are accorded or perceived to be accorded enhanced protected status, contrary to the principle of indivisibility and interrelatedness of human rights, affirmed by all States in the Vienna Declaration and Programme of action.

Article 5.2 contains protections for human rights defenders, which should be further strengthened by adding a specific reference to trade unionists as human rights

defenders, which seems necessary on the face of persistent and growing risk of threats and attacks to unions and workers.

In addition, Art. 5 (2) should integrate “harassment and retaliation” at the end of the provision to protect victims, human rights and workers’ rights defenders against such conduct by businesses and States. The ICJ supports amendments in this regard proposed by Panama and South Africa.

Thank you