

Thank you Chairperson-Rapporteur, I am speaking on behalf of the IOE, the largest network of the private sector in the world.

This intervention briefly responds to Article 5 (Protection of victims), Article 6 (Prevention), and Article 7 (Access to remedy), components of the Second Revised Draft Treaty.

Initially and very critically, we remain committed to discussing how to improve access to justice and remedies. Equally critical, is that we consider that the greatest barrier to achieve this goal is the weak rule of law in countries where human rights abuses are often most prevalent. The lack of enforcement of existing laws, lack of independent and sufficiently-resourced adjudicative and investigative bodies, and corruption, have led to regrettable and unsatisfactory conditions for both rights holders and business.

Therefore, we ask the Chairperson as to how the Intergovernmental Working Group may seek to incentivize State Parties to better implement and enforce their existing laws?

We believe that the work of the OHCHR's Accountability and Remedy Project, which seeks to improve access to remedies under domestic laws – both in judicial and non-judicial fora – is a good starting point to this most fundamental exercise.

Turning more specifically to Articles 5, 6 and 7 of the Second Revised Draft Treaty, and acknowledging that there is simply not enough time within this context to meaningfully discuss each aspect of these key provisions, I wish to share several thoughts.

First, it is important to acknowledge and appreciate the importance of language in this endeavor. It is thus also important to acknowledge and appreciate that the use of the word “victim” is emotionally-charged and connotes a counterproductive and inappropriate prejudgment of liability or guilt, depending on the context. We can and should do much better here, and the use of the more neutral and appropriate term “rights holder” would be far preferable and not result in any prejudice to any rights holder who may seek to exercise any rights he or she may have.

Second, the Second Revised Draft Treaty requires that the term “victim” include the immediate family members or dependents of the direct victim, and persons who have suffered harm in intervening to assist. There are certainly instances in which related individuals should be included as rights holders, but that it is context-specific and rights-specific inquiry that would be precluded, without legitimate justification, by using the term “shall.”

Third, the concept of “business relationships” remains counterproductively vague and broad. The Second Revised Draft Treaty definition includes “any relationship between natural or legal persons to conduct business activities ...including activities undertaken by electronic means.” This definition could be read to include literally every business dealing within literally every relationship any business may have ever had with any other person or business. The scope of appropriate human rights due diligence certainly cannot be this broad, and this scope was certainly not what the drafters of the UNGPs intended. We therefore respectfully suggest that the necessary and appropriate flexibility of such due diligence mechanisms be both emphasized and rewarded

by, for example, creating some legal defense to claims through the design and implementation of such robust mechanisms.

I thank you for your attention.

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