

STATEMENT OF INTERNATIONAL INDIAN TREATY COUNCIL

On Articles 3 and 4

Open-ended intergovernmental working group for the elaboration of an International Legally Binding Instrument on Transnational Corporations and other Business Enterprises with respect to human rights

17 October 2018, Geneva, Switzerland

Thank you Mr.Chair. This statement is made on behalf of the International Indian Treaty Council, [the Indigenous Peoples' Centre for Policy Research and Education, and the Mainyoto Pastoralists Integrated Development Organization.] ?

We have listened carefully to the comments shared on Articles 3 and 4, and provide the following observations and recommendations for improving the Zero Draft.

Article 3 Scope

Appears to be inconsistency between the overarching – and appropriate—statement in Article 3.1 that the convention shall apply to “human rights violations in the context of any business activities of a transnational character.” However, the language of Article 4.1 seems to limit this to harm to “**substantial** impairment of human rights.” This type of language has the potential to place an unfair burden to prove that harm has been “substantial.” We therefore propose deletion of the word “substantial.”

Article 4 Definitions

At the outset we note that **all** those groups named in Article 9.2 (g) would include Indigenous people and peoples: women, children, persons with disabilities, migrants, refugees and internal displaced persons. In fact, all these groups are addressed in various articles found in both the UNDRIP and the ADRIP. So when we address the definition of “victim” in Article 4, it is essential to pay attention to these declarations, which elaborate specific rights.

Art. 4.2 defines victims, and includes persons, individually and collectively. As drafted it does not include “peoples.” We believe this would be an important enhancement to Article 4. The UN Declaration provides that “*indigenous peoples possess collective rights which are indispensable for their existence, well-being and integral development*

as peoples.” (preamble). Article 1 of the UNDRIP uses the language “Indigenous peoples, as a collective or as individuals”

“Indigenous peoples have the right to the full enjoyment, as a collective or as individuals, of all human rights and fundamental freedoms as recognized in the Charter of the United Nations, the Universal Declaration of Human Rights⁴ and international human rights law.” We propose that similar wording be used in this treaty.

The second sentence of Article 4, as drafted, would privilege a domestic law definition of the family, using language of “immediate family or dependents.” This ignores provisions of the American Declaration on the Rights of Indigenous Peoples; Article 27 provides that States shall recognize, respect and protect the various Indigenous forms of family.

States shall recognize, respect, and protect the various indigenous forms of family, in particular the extended family, as well as the forms of matrimonial union, filiations, descent, and family name.

Thank you.