

**ANNEX: #FEMINISTSFORABINDINGTREATY (F4BT) SUGGESTIONS FOR AMENDMENTS TO THE REVISED DRAFT OF THE LEGALLY BINDING INSTRUMENT TO REGULATE, IN INTERNATIONAL HUMAN RIGHTS LAW, THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES – 9 OCTOBER 2019**

CURRENT DRAFT TEXT	RECOMMENDED AMENDMENTS
<b>Preamble</b>	
<p>The State Parties to this (Legally Binding Instrument),</p> <p>Recalling the principles and purposes of the Charter of the United Nations,</p> <p>Recalling also the nine core International Human Rights Instruments adopted by the United Nations, and the eight fundamental Conventions adopted by the International Labour Organization;</p> <p>Recalling further the Universal Declaration of Human Rights, as well as the Declaration on the Right to Development, the Vienna Declaration and Programme of Action, the Durban Declaration and Programme of Action, and the UN Declaration on the Rights of Indigenous Peoples, as well as other internationally agreed human rights-relevant declarations;</p>	<p>The State Parties to this (Legally Binding Instrument),</p> <p>Recalling the principles and purposes of the Charter of the United Nations,</p> <p>Recalling also the nine core International Human Rights Instruments adopted by the United Nations, and the eight fundamental Conventions adopted by the International Labour Organization;</p> <p>Recalling further the Universal Declaration of Human Rights, as well as the Declaration on the Right to Development, the Vienna Declaration and Programme of Action, the Durban Declaration and Programme of Action, and the UN Declaration on the Rights of Indigenous Peoples, <b>the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, commonly referred to as the Declaration on Human Rights Defenders</b>, as well as other internationally agreed human rights-relevant declarations;</p>

<p>Reaffirming the fundamental human rights and the dignity and worth of the human person, in the equal rights of men and women and the need to promote social progress and better standards of life in larger freedom while respecting the obligations arising from treaties and other sources of international law as set out in the Charter of the United Nations;</p> <p>Stressing the right of every person to be entitled to a social and international order in which their rights and freedoms can be fully realized consistent with the purposes and principles of the United Nations as stated in the Universal Declaration of Human Rights;</p> <p>Reaffirming that all human rights are universal, indivisible, interdependent and inter-related;</p> <p>Upholding the right of every person to have effective and equal access to justice and remedy in case of violations of international human rights law or international humanitarian law, including the rights to non-discrimination, participation and inclusion;</p> <p>Stressing that the primary obligation to respect, protect, fulfil and promote human rights and fundamental freedoms lie with the State, and that States must protect against human rights abuse by third parties, including business enterprises, within their territory or otherwise under their jurisdiction or control, and ensure respect for and implementation of international human rights law;</p> <p>Recalling the United Nations Charter Articles 55 and 56 on</p>	<p>Reaffirming the fundamental human rights and the dignity and worth of the human person, in the equal rights of men and women and the need to promote social progress and better standards of life in larger freedom while respecting the obligations arising from treaties and other sources of international law as set out in the Charter of the United Nations;</p> <p>Stressing the right of every person to be entitled to a social and international order in which their rights and freedoms can be fully realized consistent with the purposes and principles of the United Nations as stated in the Universal Declaration of Human Rights;</p> <p>Reaffirming that all human rights are universal, indivisible, interdependent and inter-related;</p> <p>Upholding the right of every person to have effective and <b>participatory</b> equal access to justice in case of violations of international human rights law or international humanitarian law, including the rights to an <b>effective remedy, equality and non-discrimination before courts and tribunals, and to a fair trial</b>;</p> <p>Stressing that the primary obligation to respect, protect, fulfil and promote human rights and fundamental freedoms lie with the State, and that States must protect against human rights abuse by third parties, including business enterprises, within their territory or otherwise under their jurisdiction or control, and ensure respect for and implementation of international human rights law;</p> <p>Recalling the United Nations Charter Articles 55 and 56 on</p>
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<p>international cooperation, including in particular with regard to universal respect for, and observance of, human rights and fundamental freedoms for all without distinction of race, sex, language or religion;</p> <p>Upholding the principles of sovereign equality, peaceful settlement of disputes, and maintenance of the territorial integrity and political independence of States as set out in Article 2 of the United Nations Charter;</p> <p>Acknowledging that all business enterprises have the capacity to foster the achievement of sustainable development through an increased productivity, inclusive economic growth and job creation that protects labour rights and environmental and health standards in accordance with relevant international standards and agreements;</p> <p>Underlining that all business enterprises, regardless of their size, sector, operational context, ownership and structure have the responsibility to respect all human rights, including by avoiding causing or contributing to adverse human rights impacts through their own activities and addressing such impacts when they occur, as well as by preventing or mitigating adverse human rights impacts that are directly linked to their operations, products or services by their business relationships;</p> <p>Emphasizing that civil society actors, including human rights defenders have an important and legitimate role in promoting the respect of human rights by business enterprises, and in preventing,</p>	<p>international cooperation, including in particular with regard to universal respect for, and observance of, human rights and fundamental freedoms for all without distinction of race, sex, language or religion;</p> <p>Upholding the principles of sovereign equality, peaceful settlement of disputes, and maintenance of the territorial integrity and political independence of States as set out in Article 2 of the United Nations Charter;</p> <p>Acknowledging that all business enterprises have the capacity to foster the achievement of sustainable development through an increased productivity, inclusive economic growth and job creation that protects labour rights and environmental and health standards in accordance with relevant international standards and agreements;</p> <p>Underlining that all business enterprises, regardless of their size, sector, operational context, ownership and structure have the responsibility to respect all human rights, including by avoiding causing or contributing to adverse human rights impacts through their own activities and addressing such impacts when they occur, as well as by preventing or mitigating adverse human rights impacts that are directly linked to their operations, products or services by their business relationships;</p> <p>Emphasizing that civil society actors, including human rights defenders have an <b>positive</b>, important and legitimate role in <b>the promotion and protection of human rights as they relate to business activities, and that states have a corresponding</b></p>
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mitigating and seeking effective remedy for the adverse human rights impacts of business enterprises,

Recognizing the distinctive and disproportionate impact of certain business-related human rights abuses on women and girls, children, indigenous peoples, persons with disabilities, migrants and refugees, and the need for a perspective that takes into account their specific circumstances and vulnerabilities.

**responsibility to take all appropriate measures to ensure an enabling and safe environment for the exercise of such role; promoting the respect of human rights by business enterprises, and in preventing, mitigating and seeking effective remedy for the adverse human rights impacts of business enterprises,**

**[new] Concerned, that despite these instruments and undertakings, individuals and communities continue to face business-related human rights violations and abuses in all parts of the world, including in connection with economic, social and cultural rights and in connection with the human rights implications of environmental damage, and deeply concerned that human rights defenders working on human rights issues related to business, are among those most exposed and at risk;**

Recognizing the distinctive and disproportionate impact of certain business-related human rights abuses on women and girls, children, indigenous peoples, persons with disabilities, migrants and refugees, and the need for a perspective that takes into account their specific circumstances and vulnerabilities, **and additional barriers to effective remedy, as well as a framework for meaningful engagement in decision-making processes about the effective regulation of business activities;**

**[new] Recognizing that an inclusive, integrated and gender-responsive approach, which tackles underlying causes and risk factors, including gender stereotypes, multiple and intersecting forms of discrimination, and unequal gender-based power relations, is essential to prevent and remedy business-related**

<p>Taking into account all the work undertaken by the Commission on Human Rights and the Human Rights Council on the question of the responsibilities of transnational corporations and other business enterprises with respect to human rights, and all relevant previous Human Rights Council resolutions, including in particular Resolution 26/9.</p> <p>Noting the role that the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework have played in that regard;</p> <p>Noting also the ILO 190 Convention concerning the elimination of violence and harassment in the world of work;</p> <p>Desiring to contribute to the development of international law, international humanitarian law and international human rights law in this field;</p>	<p><b>human rights violations and abuses against women and girls;</b></p> <p>Taking into account all the work undertaken by the Commission on Human Rights and the Human Rights Council on the question of the responsibilities of transnational corporations and other business enterprises with respect to human rights, and all relevant previous Human Rights Council resolutions, including in particular Resolution 26/9.</p> <p>Noting the role that the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework have played in that regard;</p> <p>Noting also the ILO 190 Convention concerning the elimination of violence and harassment in the world of work;</p> <p>Desiring to contribute to the development of international law, <b>including</b> international humanitarian law and international human rights law in this field;</p>
<p><b>Article 1. Definitions</b></p>	
<p>1. “victims” shall mean any persons or group of persons who individually or collectively have suffered or have alleged to have suffered human rights violation or abuse as defined in Article 1 paragraph 2 below. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependents of the direct victim.</p>	

<p>2. “Human rights violation or abuse” shall mean any harm committed by a State or a business enterprise, through acts or omissions in the context of business activities, against any person or group of persons, individually or collectively, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their human rights, including environmental rights.</p>	
<p>3. “Business activities” means any economic activity of transnational corporations and other business enterprises, including but not limited to productive or commercial activity, undertaken by a natural or legal person, including activities undertaken by electronic means.</p>	<p>3. “Business activities” means any <del>economic</del> activity of transnational corporations and other business enterprises <b>linked to its products or services</b>, including but not limited to productive or commercial activity, undertaken by a natural or legal person, including activities undertaken by electronic means.</p>
<p>4. “Contractual relationship” refers to any relationship between natural or legal persons to conduct business activities, including but not limited to, those activities conducted through affiliates, subsidiaries, agents, suppliers, any business partnership or association, joint venture, beneficial proprietorship, or any other structure or contractual relationship as provided under the domestic law of the State.</p>	<p>4. “<del>Contractual</del><b>Business</b> relationship” refers to any relationship between natural or legal persons to conduct business activities, including but not limited to, those activities conducted through affiliates, subsidiaries, agents, suppliers, any business partnership or association, joint venture, beneficial proprietorship, <b>financial investment</b>, or any other structure or contractual relationship as provided under the domestic law of the State.</p>
<p>5. “Regional integration organization” shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this (Legally Binding Instrument).</p>	
<p><b>Article 2. Statement of purpose</b></p>	
<p>1. The purpose of this (Legally Binding Instrument) is: a. To strengthen the respect, promotion, protection and fulfilment of human rights in the context of business activities;</p>	<p>1. The purpose of this (Legally Binding Instrument) is: a. To strengthen the respect, promotion, protection and fulfilment of human rights in the context of business activities <b>for all, without</b></p>

<p>b. To prevent the occurrence of such violations and abuses, and to ensure effective access to justice and remedy for victims of human rights violations and abuses in the context of business activities;</p> <p>c. To promote and strengthen international cooperation to prevent human rights violations and abuses in the context of business activities and provide effective access to justice and remedy to victims of such violations and abuses.</p>	<p><b>discrimination of any kind as to race, colour, sex, gender identity, sexual orientation, language, religion, political or other opinion, national, ethnic, indigenous or social origin, property, birth, disability, age and/or other protected status;</b></p> <p>b. To prevent the occurrence of such violations and abuses, and to ensure effective access to justice and remedy for victims of human rights violations and abuses in the context of business activities;</p> <p>c. To promote and strengthen international cooperation to prevent human rights violations and abuses in the context of business activities and provide effective access to justice and remedy to victims of such violations and abuses.</p>
<p><b>Article 3. Scope</b></p>	
<p>1. This (Legally Binding Instrument) shall apply, except as stated otherwise, to all business activities, including particularly but not limited to those of a transnational character.</p>	
<p>2. For the purpose of paragraph 1 of this Article, a business activity is of a transnational character if: a. It is undertaken in more than one national jurisdiction or State; or b. It is undertaken in one State through any contractual relationship but a substantial part of its preparation, planning, direction, control, designing, processing or manufacturing takes place in another State; or c. It is undertaken in one State but has substantial effect in another State.</p>	
<p>3. This (Legally Binding Instrument) shall cover all human rights.</p>	
<p><b>Article 4. Rights of Victims</b></p>	
<p>1. Victims of human rights violations shall be treated with humanity</p>	<p>1. Victims of human rights violations <b>and abuses</b> shall be treated</p>

<p>and respect for their dignity and human rights, and their safety, physical and psychological well-being and privacy shall be ensured.</p>	<p>with humanity and respect for their dignity and human rights, and their safety, physical and psychological well-being and privacy shall be ensured.</p>
<p>2. Victims shall be guaranteed the right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement.</p>	<p>2. Victims shall be guaranteed the right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement, <b>as well as all other human rights, in connection with access to justice and the right to an effective remedy.</b></p>
<p>3. Victims, their representatives, families and witnesses shall be protected by the State Party from any unlawful interference against their privacy and from intimidation, and retaliation, before, during and after any proceedings have been instituted.</p>	<p>3. Victims, their representatives, families and witnesses shall be protected by the State Party from any unlawful interference against their privacy and from intimidation, and retaliation, before, during and after any proceedings have been instituted. <b>State Parties shall take adequate and effective measures to guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights and the environment, so that they are able to access justice free from threat, restriction and insecurity.</b></p>
<p>4. Victims shall have the right to benefit from special consideration and care to avoid re-victimization in the course of proceedings for access to justice and remedies, including through appropriate protective and support services that ensures substantive gender equality and equal and fair access to justice.</p>	
<p>5. Victims shall have the right to fair, effective, prompt and non-discriminatory access to justice and adequate, effective and prompt remedies in accordance with this instrument and international law. Such remedies shall include, but shall not be limited to:</p>	<p>5. Victims shall have the right to fair, effective, prompt, <del>and</del> non-discriminatory <b>and gender-responsive</b> access to justice and adequate, effective and prompt remedies in accordance with this instrument and international law. Such remedies shall include, but</p>



<p>a. Restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition for victims;  b. Environmental remediation and ecological restoration where applicable, including covering of expenses for relocation of victims and replacement of community facilities.</p>	<p>shall not be limited to:  a. Restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition for victims;  b. Environmental remediation and ecological restoration where applicable, including covering of expenses for relocation of victims and replacement of community facilities.</p>
<p>6. Victims shall be guaranteed access to information relevant to the pursuit of remedies.</p>	
<p>7. Victims shall have access to appropriate diplomatic and consular means, as needed, to ensure that they can exercise their right to access justice and effective remedies, including but not limited to, access to information required to bring a claim, legal aid and information on the location and competence of the courts and the way in which proceedings are commenced or defended before those courts.</p>	
<p>8. Victims shall be guaranteed the right to submit claims to the courts and State-based non-judicial grievance mechanisms of the State Parties. Where a claim is submitted by a person on behalf of victims, this shall be with their consent, unless that person can justify acting on their behalf. State Parties shall provide their domestic judicial and other competent authorities with the necessary jurisdiction in accordance with this (Legally Binding Instrument), as applicable, in order to allow for victim's access to adequate, timely and effective remedies.</p>	<p>8. Victims shall be guaranteed the right to submit claims to the courts and State-based non-judicial grievance mechanisms, <b>having human rights competence</b>, of the State Parties. Where a claim is submitted by a person on behalf of victims, this shall be with their consent, unless that person can justify acting on their behalf. State Parties shall provide their domestic judicial and other competent authorities with the necessary jurisdiction in accordance with this (Legally Binding Instrument), as applicable, in order to allow for victim's access to adequate, timely and effective remedies.</p>
<p>9. State Parties shall take adequate and effective measures to guarantee a safe and enabling environment for persons, groups and</p>	<p><b>[delete - merged with Article 4(3) above]</b></p>

<p>organizations that promote and defend human rights and the environment, so that they are able to act free from threat, restriction and insecurity.</p>	
<p>10. State Parties shall investigate all human rights violations and abuses effectively, promptly, thoroughly and impartially, and where appropriate, take action against those natural or legal persons found responsible, in accordance with domestic and international law.</p>	
<p>11. State Parties shall ensure that their domestic laws and courts facilitate access to information through international cooperation, as set out in this (Legally Binding Instrument), and in a manner consistent with their domestic law as well as relevant international law norms and standards.</p>	
<p>12. State Parties shall provide proper and effective legal assistance to victims throughout the legal process, including by:</p> <ul style="list-style-type: none"> <li>a. Making information available to victims of their rights and the status of their claims in an appropriate and adequate manner;</li> <li>b. Guaranteeing the rights of victims to be heard in all stages of proceedings as consistent with their domestic law;</li> <li>c. Avoiding unnecessary costs or delays for bringing a claim and during the disposition of cases and the execution of orders or decrees granting awards;</li> <li>d. Providing assistance with all procedural requirements for the presentation of a claim and the start and continuation of proceedings in the courts of that State Party. The State Party concerned shall determine the need for legal assistance, in consultation with the victims, taking into consideration the economic resources available to the victim, the complexity and</li> </ul>	<p>12. State Parties shall provide <b>accessible, gender-responsive</b> and effective legal assistance to victims throughout the legal process, including by:</p> <ul style="list-style-type: none"> <li>a. Making information available to victims of their rights and the status of their claims in an appropriate and adequate manner;</li> <li>b. Guaranteeing the rights of victims to be heard in all stages of proceedings as consistent with their domestic law, <b>[as consistent with international human rights standards/provided that domestic law affords at least the same level of protection for victims as that required by international human rights law]</b>;</li> <li>c. Avoiding unnecessary costs or delays for bringing a claim and during the disposition of cases and the execution of orders or decrees granting awards;</li> <li>d. Providing assistance with all procedural requirements for the presentation of a claim and the start and continuation of</li> </ul>

<p>length of the issues involved in the proceedings.</p> <p>e. In no case shall victims that have been granted the appropriate remedy to redress the violation, be required to reimburse any legal expenses of the other party to the claim. In the event that the claim failed to obtain appropriate redress or relief as a remedy, the alleged victim shall not be liable for such reimbursement if such alleged victim demonstrates that such reimbursement cannot be made due to the lack or insufficiency of economic resources on the part of the alleged victim.</p>	<p>proceedings in the courts of that State Party. The State Party concerned shall determine the need for legal assistance, in consultation with the victims, taking into consideration the economic resources available to the victim, the complexity and length of the issues involved in the proceedings <b>and shall take appropriate measures to remove gender-based and other obstacles to accessing justice, in consultation with those most at risk of business-related human rights abuses and violations.</b></p> <p>e. In no case shall victims that have been granted the appropriate remedy to redress the violation, be required to reimburse any legal expenses of the other party to the claim. In the event that the claim failed to obtain appropriate redress or relief as a remedy, the alleged victim shall not be liable for such reimbursement if such alleged victim demonstrates that such reimbursement cannot be made due to the lack or insufficiency of economic resources on the part of the alleged victim.</p>
<p>13. Inability to cover administrative and other costs shall not be a barrier to commencing proceedings in accordance with this (Legally Binding Instrument). State Parties shall assist victims in overcoming such barriers, including through waiving costs where needed. State Parties shall not require victims to provide a warranty as a condition for commencing proceedings.</p>	<p>13. Inability to cover administrative and other costs shall not be a barrier to commencing proceedings in accordance with this (Legally Binding Instrument). State Parties shall assist victims in overcoming <b>gender-based and other</b> such barriers, including through waiving costs where needed. State Parties shall not require victims to provide a warranty as a condition for commencing proceedings.</p>
<p>14. State Parties shall provide effective mechanisms for the enforcement of remedies for violations of human rights, including through prompt execution of national or foreign judgements or</p>	<p>14. State Parties shall provide effective <b>and participatory</b> mechanisms for the enforcement of remedies for violations of human rights, including through prompt execution of national or</p>

awards, in accordance with the present (Legally Binding Instrument), domestic law and international legal obligations.	foreign judgements or awards, in accordance with the present (Legally Binding Instrument), domestic law and international legal obligations.
15. State Parties shall take adequate and effective measures to recognize, protect and promote all the rights recognised in this (Legally Binding Instrument) to persons, groups and organizations that promote and defend human rights and the environment.	<b>[delete - now covered in Article 5: prevention]</b>
16. Subject to domestic law, courts asserting jurisdiction under this (Legally Binding Instrument) may require, where needed, reversal of the burden of proof, for the purpose of fulfilling the victim’s access to justice and remedies.	
<b>Article 5. Prevention</b>	
1. State Parties shall regulate effectively the activities of business enterprises within their territory or jurisdiction. For this purpose States shall ensure that their domestic legislation requires all persons conducting business activities, including those of a transnational character, in their territory or jurisdiction, to respect human rights and prevent human rights violations or abuses.	1. State Parties shall regulate effectively the activities of business enterprises within their territory or jurisdiction. For this purpose States shall ensure that their domestic legislation requires all persons conducting business activities, including those of a transnational character, in their territory or jurisdiction, to respect human rights and prevent human rights violations or abuses <b>including in their business relationships.</b>
2. For the purpose of paragraph 1 of this Article, State Parties shall adopt measures necessary to ensure that all persons conducting business activities, including those of transnational character, to undertake human rights due diligence as follows: a. Identify and assess any actual or potential human rights violations or abuses that may arise from their own business activities, or from their contractual relationships;	2. For the purpose of paragraph 1 of this Article, State Parties shall adopt measures necessary to ensure that all persons conducting business activities, including those of transnational character, <del>to</del> undertake human rights due diligence as follows: a. Identify and assess any actual or potential human rights <del>violations or abuses</del> <b>impacts</b> that may arise from their own business activities <del>or</del> <b>and</b> from their <del>contractual</del> <b>business</b> relationships;

<p>b. Take appropriate actions to prevent human rights violations or abuses in the context of its business activities, including those under their contractual relationships;</p> <p>c. Monitor the human rights impact of their business activities, including those under their contractual relationships;</p> <p>d. Communicate to stakeholders and account for the policies and measures adopted to identify, assess, prevent and monitor any actual or potential human rights violations or abuses that may arise from their activities, or from those under their contractual relationships.</p>	<p>b. Take appropriate actions to prevent, <b>mitigate and remedy</b> human rights violations or abuses in the context of its business activities, including those under their <del>contractual</del> <b>business</b> relationships;</p> <p>c. Monitor the human rights impacts of their business activities, including those under their <del>contractual</del> <b>business</b> relationships;</p> <p>d. Communicate to stakeholders and account for the policies and measures adopted to identify, assess, prevent and monitor any actual or potential human rights <del>violations or abuses</del> <b>impacts</b> that may arise from their activities, or from those under their <del>contractual</del> <b>business</b> relationships.</p>
<p>3. Measures referred to under the immediately preceding paragraph shall include, but shall not be limited to:</p> <p>a. Undertaking environmental and human rights impact assessments in relation to its activities and those under their contractual relationships, integrating the results of such assessments into relevant internal functions and processes, and taking appropriate actions.</p> <p>b. Carrying out meaningful consultations with groups whose human rights can potentially be affected by the business activities, and with other relevant stakeholders, through appropriate procedures including through their representative institutions, while giving special attention to those facing heightened risks of violations of human rights within the context of business activities, such as women, children, persons with disabilities, indigenous peoples, migrants, refugees, internally displaced persons and protected populations under occupation or conflict areas. Consultations with</p>	<p>3. Measures referred to under the immediately preceding paragraph shall include, but shall not be limited to:</p> <p>a. Undertaking environmental and human rights impact assessments, <b>incorporating an explicit gender analysis and the collection of disaggregated data</b>, in relation to its <b>business</b> activities and those under their <del>business contractual</del> relationships, integrating the results of such assessments into relevant internal functions and processes, and taking appropriate actions.</p> <p>b. Carrying out meaningful consultations with groups whose human rights can potentially be affected by the business activities, and with other relevant stakeholders, including through their representative institutions, and through <del>appropriate</del> <b>gender-responsive and participatory</b> procedures while giving special attention to those facing heightened risks of <b>specific or cumulative violations or abuses</b> of human rights within the context of business activities, such as women, children, persons with disabilities, indigenous peoples, migrants, refugees, internally displaced persons. Consultations with</p>

<p>indigenous peoples will be undertaken in accordance with the internationally agreed standards of free, prior and informed consultations, as applicable.</p> <p>c. Reporting publicly and periodically on financial and non-financial matters, including policies, risks, outcomes and indicators on human rights, environment and labour standards concerning the conduct of their business activities, including those of their contractual relationships.</p> <p>d. Integrating human rights due diligence requirements in contractual relationships which involve business activities of a transnational character, including through financial contributions where needed.</p> <p>e. Adopting and implementing enhanced human rights due diligence measures to prevent human rights violations or abuses in occupied or conflict-affected areas, arising from business activities, or from contractual relationships, including with respect to their products and services;</p>	<p>indigenous peoples <del>shall</del><b>will</b> be undertaken in accordance with the internationally agreed standards of free, prior and informed <del>consultation</del> <b>consent</b>, as applicable. <b>Participation of potentially affected communities, experts and other stakeholders should also be facilitated during the monitoring and evaluation phases of human rights due diligence.</b></p> <p>c. Reporting publicly and periodically, <b>in a timely manner and accessible language and format</b>, on financial and non-financial matters, including policies, risks, outcomes, <b>benchmarks</b> and indicators on human rights, environment and labour standards concerning the conduct of their business activities, including those of their <del>contractual</del><b>business</b> relationships.</p> <p>d. Integrating human rights due diligence requirements in <del>contractual</del><b>business</b> relationships which involve business activities of a transnational character, including through <b>relevant contractual provisions or</b> financial contributions where needed.</p> <p>e. Adopting and implementing enhanced human rights due diligence measures <b>which shall include conflict-sensitivity analysis and continuous monitoring</b> to prevent human rights violations or abuses in occupied <b>territories, armed</b> conflict-affected areas, arising from business activities, or from <del>contractual</del><b>business</b> relationships, including with respect to their products and services. <b>Where a high risk of contributing to, or being linked to, violations or abuses of international human rights law or violations of international humanitarian law is identified and cannot be prevented or mitigated, business activities or contractual relationships shall not</b></p>
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	<b>be undertaken, or shall be suspended or terminated.</b>
<p>4. State Parties shall ensure that effective national procedures are in place to ensure compliance with the obligations laid down under this Article, taking into consideration the potential impact on human rights resulting from the size, nature, context of and risk associated with the business activities, including those of transnational character, and that those procedures are available to all natural and legal persons having a legitimate interest, in accordance with domestic law.</p>	<p>4. State Parties shall ensure that effective national procedures are in place to ensure compliance with the obligations laid down under this Article, taking into consideration the potential impact on human rights resulting from the size, nature, context of and risk associated with the business activities, including those of transnational character, and that those procedures are available to all natural and legal persons having a legitimate interest, in accordance with domestic law.</p>
	<p><b>[new 4 bis]</b></p> <p><b>4. State Parties shall ensure that effective national frameworks are in place to create an enabling environment for compliance with the obligations laid down under this Article, including but not limited to the adequate and effective measures to:</b></p> <ul style="list-style-type: none"> <li><b>a. Recognize, protect and promote the rights of persons, groups and organizations that promote and defend human rights and the environment;</b></li> <li><b>b. Ensure the meaningful engagement of all relevant stakeholders, including human rights and gender experts, in the development of legal and policy measures to implement this (Legally Binding Instrument);</b></li> <li><b>c. Support the ability of groups whose human rights can potentially be affected by business activities, and other relevant stakeholders, to participate in meaningful engagement across all stages of human rights due diligence, to provide parallel information to assessment processes and, as far as possible, to conduct human rights impact assessments directly;</b></li> </ul>

	<p><b>d. Identify, in consultation with relevant stakeholders and human rights and gender experts, and support independent and credible impact assessments with respect to the sectors, occupations, work arrangements in which workers and other groups are more exposed to human rights violations and abuses.</b></p> <p><b>e. Develop tools, guidance, education and training, and raise awareness, in accessible formats, as appropriate, to provide support for business enterprises in their human rights due diligence obligations;</b></p> <p><b>f. Ensure that human rights violations and abuses in the context of business activities are addressed in relevant national policies and that State-based institutions that shape business practices are aware of and observe the State Party's human rights obligations when fulfilling their respective mandates, including by ensuring coherence in their policies and laws and by providing their agencies with relevant information, training and support.</b></p> <p><b>g. Adopt measures necessary to provide enhanced human rights due diligence obligations regarding their business activities and business relationships carried out in occupied territories, armed conflict-affected areas, taking into account the specific risks posed by certain sectors. States Parties shall caution business enterprises operating in their territory and/or jurisdiction against operating in armed conflict-affected and high-risk areas where it might not be possible to prevent or mitigate risks. States shall create disincentives, including withdrawal of economic diplomacy and financial support, to deter business enterprises domiciled in their territory and/or jurisdiction from causing, contributing to, or being directly linked to human rights abuses and violations arising from their business activities or business relationships in occupied</b></p>
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	<b>territories, armed conflict-affected areas.</b>
5. In setting and implementing their public policies with respect to the implementation of this (Legally Binding Instrument), State Parties shall act to protect these policies from commercial and other vested interests of persons conducting business activities, including those of transnational character, in accordance with domestic law.	<del>5. In setting and implementing their public policies with respect to the implementation of this (Legally Binding Instrument), State Parties shall act to protect these</del> <b>the negotiation, setting and implementing of their laws and public</b> policies from commercial and other vested interests of persons conducting business activities, including those of transnational character, in accordance with domestic law.
	<b>[New 5Bis]</b>  <b>States Parties shall take all necessary additional steps, including through human rights impact assessments, to respect and protect human rights in the context of business activities that the State Party is engaged in, supports, or shapes. This includes but is not limited to, State ownership or control in business activities, State engagement in business activities with companies or other States, State regulatory oversight, or political or financial support.</b>
6. States Parties may provide incentives and other measures to facilitate compliance with requirements under this Article by small and medium sized undertakings conducting business activities to avoid causing undue additional burdens.	
<b>Article 6. Legal Liability</b>	
1. State Parties shall ensure that their domestic law provides for a comprehensive and adequate system of legal liability for human rights violations or abuses in the context of business activities, including those of transnational character.	

<p>2. Liability of legal persons shall be without prejudice to the liability of natural persons.</p>	
<p>3. Civil liability shall not be made contingent upon finding of criminal liability or its equivalent for the same acts.</p>	
<p>4. States Parties shall adopt legal and other measures necessary to ensure that their domestic jurisdiction provides for effective, proportionate, and dissuasive sanctions and reparations to the benefit of the victims where business activities, including those of transnational character, have caused harm to victims.</p>	
<p>5. State Parties may require natural or legal persons engaged in business activities to establish and maintain financial security, such as insurance bonds or other financial guarantees to cover potential claims of compensation.</p>	
<p>6. States Parties shall ensure that their domestic legislation provides for the liability of natural or legal persons conducting business activities, including those of transnational character, for its failure to prevent another natural or legal person with whom it has a contractual relationships, from causing harm to third parties when the former sufficiently controls or supervises the relevant activity that caused the harm, or should foresee or should have foreseen risks of human rights violations or abuses in the conduct of business activities, including those of transnational character, regardless of where the activity takes place.</p>	<p>6. States Parties shall ensure that their domestic legislation provides for the liability of natural or legal persons conducting business activities, including those of transnational character, for its failure to prevent another natural or legal person with whom it has a <del>contractual</del><b>business</b> relationships, from causing harm to third parties when the former sufficiently controls or supervises the relevant activity that caused the harm, or should foresee or should have foreseen risks of human rights violations or abuses in the conduct of business activities, including those of transnational character, regardless of where the activity takes place.</p>
<p>7. Subject to their domestic law, State Parties shall ensure that their domestic legislation provides for criminal, civil, or administrative liability of legal persons for the following criminal offences:</p>	

<p>a. War crimes, crimes against humanity and genocide as defined in articles 6, 7 and 8 of the Rome Statute for the International Criminal Court;</p> <p>b. Torture, cruel, inhuman or degrading treatment, as defined in article 1 of the UN Convention against Torture and other cruel, inhuman or degrading treatment or punishment;</p> <p>c. enforced disappearance, as defined in articles 7 and 25 of the International Convention for the Protection of All Persons from Enforced Disappearance;</p> <p>d. extrajudicial execution, as defined in Principle 1 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions;</p> <p>e. Forced labour as defined in article 2.1 of the ILO Forced Labour Convention 1930 and article 1 of the Abolition of Forced Labour Convention 1957;</p> <p>f. The use of child soldiers, as defined in article 3 of the Convention on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour 1999</p> <p>g. Forced eviction, as defined in the Basic Principles and Guidelines on Development based evictions and displacement;</p> <p>h. slavery and slavery-like offences;</p> <p>i. Forced displacement of people;</p> <p>j. Human trafficking, including sexual exploitation;</p> <p>k. Sexual and gender-based violence.</p>	
<p>8. Such liability shall be without prejudice to the criminal liability under the applicable domestic law of the natural persons who have committed the offences.</p>	
<p>9. State Parties shall provide measures under domestic law to</p>	

<p>establish legal liability for natural or legal persons conducting business activities, including those of a transnational character, for acts that constitute attempt, participation or complicity in a criminal offence in accordance with Article 6 (7) and criminal offences as defined by their domestic law.</p>	
<p><b>Article 7. Adjudicative Jurisdiction</b></p>	
<p>1. Jurisdiction with respect to claims brought by victims, independently of their nationality or place of domicile, arising from acts or omissions that result in violations of human rights covered under this (Legally Binding Instrument), shall vest in the courts of the State where: a. such acts or omissions occurred; or b. the victims are domiciled; or c. the natural or legal persons alleged to have committed such acts or omissions in the context of business activities, including those of a transnational character, are domiciled.</p>	
<p>2. A natural or legal person conducting business activities of a transnational character, including through their contractual relationships, is considered domiciled at the place where it has its: a. place of incorporation; or b. statutory seat; or c. central administration; or d. substantial business interests.</p>	<p>2. A natural or legal person conducting business activities of a transnational character, including through their <del>contractual</del> <b>business</b> relationships, is considered domiciled at the place where it has its: a. place of incorporation; or b. statutory seat; or c. central administration; or d. substantial business interests.</p>
<p><b>Article 8. Statute of limitations</b></p>	
<p>1. The State Parties to the present (Legally Binding Instrument) undertake to adopt, in accordance with their domestic law, any legislative or other measures necessary to ensure that statutory or other limitations shall not apply to the prosecution and punishment of all violations of international human rights law and international humanitarian law which constitute the most serious crimes of</p>	

concern to the international community as a whole.	
2. Domestic statutes of limitations for violations that do not constitute the most serious crimes of concern to the international community as a whole, including those time limitations applicable to civil claims and other procedures shall allow a reasonable period of time for the investigation and prosecution of the violation, particularly in cases where the violations occurred in another State.	
<b>Article 9. Applicable law</b>	
1. Subject to the following paragraph, all matters of substance or procedure regarding claims before the competent court which are not specifically regulated in the (Legally Binding Instrument) shall be governed by the law of that court, including any rules of such law relating to conflict of laws.	
2. All matters of substance regarding human rights law relevant to claims before the competent court may, in accordance with domestic law, be governed by the law of another State where: a) the acts or omissions that result in violations of human rights covered under this (Legally Binding Instrument) have occurred; or b) the victim is domiciled; or c) the natural or legal person alleged to have committed the acts or omissions that result in violations of human rights covered under this (Legally Binding Instrument) is domiciled.	
3. The (Legally Binding Instrument) does not prejudice the recognition and protection of any rights of victims that may be provided under applicable domestic law.	
<b>Article 10. Mutual Legal Assistance</b>	

<p>1. States Parties shall afford one another the widest measure of mutual legal assistance in initiating and carrying out investigations, prosecutions and judicial and other proceedings in relation to claims covered by this (Legally Binding Instrument), including access to information and supply of all evidence at their disposal and necessary for the proceedings in order to allow effective, prompt, thorough and impartial investigations.</p>	
<p>2. The requested State Party shall inform the requesting State Party, as soon as possible, of any additional information or documents needed to support the request for assistance and, where requested, of the status and outcome of the request for assistance. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request.</p>	
<p>3. Mutual legal assistance under this (Legally Binding Instrument) is understood to include, but is not limited to: a. Taking evidence or statements from persons; b. Effecting service of judicial documents; c. Executing searches and seizures; d. Examining objects and sites; e. Providing information, evidentiary items and expert evaluations; f. Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records; g. Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes; h. Facilitating the voluntary appearance of persons in the requesting State Party; i. Facilitating the freezing and recovery of assets; j. Assistance to, and protection of, victims, their families, representatives and witnesses, consistent with international human rights legal standards and subject to international legal requirements</p>	

<p>including those relating to the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment; k. Assistance in regard to the application of domestic law; l. Any other type of assistance that is not contrary to the domestic law of the requested State Party.</p>	
<p>4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit and exchange information relating to criminal offences covered under this (Legally Binding Instrument) to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this (Legally Binding Instrument). The transmission and exchange of information shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information.</p>	
<p>5. States Parties shall consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are subject of investigations, prosecutions or judicial proceedings under this (Legally Binding Instrument), the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place is fully respected.</p>	
<p>6. States Parties shall carry out their obligations under the previous paragraph in conformity with any treaties or other arrangements on</p>	

<p>mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance to the fullest extent possible under domestic and international law.</p>	
<p>7. State Parties shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution, in accordance with their domestic laws.</p>	
<p>8. State Parties shall provide legal assistance and other forms of cooperation in the pursuit of access to remedy for victims of human rights violations covered under this (Legally Binding Instrument).</p>	
<p>9. Any judgement of a court having jurisdiction in accordance with this (Legally Binding Instrument) which is enforceable in the State of origin of the judgement and is no longer subject to ordinary forms of review shall be recognized and enforced in any State Party as soon as the formalities required in that State Party have been completed, whereby formalities should not be more onerous and fees and charges should not be higher than those required for the enforcement of domestic judgments and shall not permit the re-opening of the merits of the case.</p>	
<p>10. Recognition and enforcement may be refused, at the request of the defendant, only if that party furnishes to the competent authority or court where the recognition and enforcement is sought, proof that: a. the defendant was not given reasonable notice and a fair opportunity to present his or her case; or b. where the</p>	



<p>judgement is irreconcilable with an earlier judgement validly pronounced in another Party with regard to the same cause of action and the same parties; or c. where the judgement is likely to prejudice the sovereignty, security, ordre public or other essential interests of the Party in which its recognition is sought.</p>	
<p>11. Mutual legal assistance under this article may be refused by a State Party if the violation to which the request relates is not covered by this (Legally Binding Instrument) or if it would be contrary to the legal system of the requested State Party.</p>	
<p>12. A State Party shall not decline to render mutual legal assistance in claim involving liability for harms or criminal offences, within the scope of this (Legally Binding Instrument) on the ground that the request is considered to involve fiscal matters or bank secrecy.</p>	
<p><b>Article 11. International Cooperation</b></p>	
<p>1. States Parties shall cooperate in good faith to enable the implementation of commitments under this (Legally Binding Instrument) and the fulfilment of the purposes of this (Legally Binding Instrument).</p>	
<p>2. State Parties recognize the importance of international cooperation and its promotion for the realization of the purpose of the present (Legally Binding Instrument) and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society. Such measures could include, but are not limited to: a. promoting effective technical cooperation and capacity-building among policy</p>	

<p>makers, operators and users of domestic, regional and international grievance mechanisms; b. Sharing experiences, good practices, challenges, information and training programs on the implementation of the present (Legally Binding Instrument); c. Facilitating cooperation in research and studies on the challenges and good practices and experiences for preventing violations of human rights in the context of business activities, including those of a transitional character.</p>	
<p><b>Article 12. Consistency with International Law</b></p>	
<p>1. States Parties shall carry out their obligations under this (Legally Binding Instrument) in a manner consistent with the principles of sovereign equality and territorial integrity of States and that of non-intervention in the domestic affairs of other States.</p>	
<p>2. Notwithstanding art 7.1, nothing in this (Legally Binding Instrument) entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State by its domestic law.</p>	
<p>3. Nothing in the present (Legally Binding Instrument) shall affect any provisions that are more conducive to the respect, promotion, protection and fulfilment of human rights in the context of business activities and to guaranteeing the access to justice and remedy to victims of human rights violations and abuses in the context of business activities which may be contained: a. In the domestic legislation of a State Party; or b. In any other regional or international, treaty or agreement in force for that State.</p>	

<p>4. The provisions of this (Legally Binding Instrument) shall be applied in conformity with agreements or arrangements on the mutual recognition and enforcement of judgements in force between State Parties.</p>	
<p>5. This (Legally Binding Instrument) shall not affect the rights and obligations of the State Parties under the rules of general international law with respect to the international responsibility of States.</p>	
<p>6. States Parties agree that any bilateral or multilateral agreements, including regional or sub-regional agreements, on issues relevant to this (Legally Binding Instrument) and its protocols, shall be compatible and shall be interpreted in accordance with their obligations under this (Legally Binding Instrument) and its protocols.</p>	
<p><b>Article 14. Implementation</b></p>	
<p>1. State Parties shall take all necessary legislative, administrative or other action including the establishment of adequate monitoring mechanisms to ensure effective implementation of this (Legally Binding Instrument).</p>	
<p>2. Each State Party shall furnish copies of its laws and regulations that give effect to this (Legally Binding Instrument) and of any subsequent changes to such laws and regulations or a description thereof to the Secretary-General of the United Nations, which shall be made publicly available.</p>	
<p>3. Special attention shall be undertaken in the cases of business activities in conflict-affected areas including taking action to identify,</p>	<p>3. Special attention shall be undertaken in the cases of business activities in <b>occupied territories, armed</b> conflict-affected areas</p>

<p>prevent and mitigate the human rights-related risks of these activities and business relationships and to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence.</p>	<p>including taking action to identify, prevent and mitigate the human rights-related risks of these activities and business relationships and to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence.</p>
<p>4. In implementing this (Legally Binding Instrument), State Parties shall address the specific impacts of business activities on while giving special attention to those facing heightened risks of violations of human rights within the context of business activities, such as women, children, persons with disabilities, indigenous peoples, migrants, refugees and internal displaced persons.</p>	<p>4. In implementing this (Legally Binding Instrument), State Parties shall address the specific impacts of business activities on <b>all relevant stakeholders</b>, while giving special attention to those facing heightened <b>specific or cumulative</b> risks of violations <b>or abuses</b> of human rights within the context of business activities, such as women, children, persons with disabilities, indigenous peoples, migrants, refugees and internally displaced persons <b>among other groups, paying particular attention to the multiple or intersectional forms of discrimination faced by persons belonging to more than one of these groups.</b></p>
<p>5. The application and interpretation of these Articles shall be consistent with international human rights law and international humanitarian law and shall be without any discrimination of any kind or on any ground, without exception.</p>	