

## OEIGWG CHAIRMANSHIP REVISED DRAFT 16.7.2019

### LEGALLY BINDING INSTRUMENT TO REGULATE, IN INTERNATIONAL HUMAN RIGHTS LAW, THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES

**ZERO DRAFT 16.7.2018**

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**Preamble**

The State Parties to this ~~Convention~~ (Legally Binding Instrument),

Recalling the principles and purposes of the Charter of the United Nations,

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;

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;

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;

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;

Reaffirming that all human rights are universal, indivisible, interdependent and inter-related;

Upholding ~~that the right of~~ every person ~~has the right to~~ ~~equal and~~ ~~have~~ effective ~~and equal~~ access to justice and ~~remedies~~ ~~remedy~~ in case of ~~risk or harm decisive for the enjoyment~~ ~~violations~~ of their rights; Recognizing the rules of international law and international human rights law ~~with respect to the~~ ~~or~~ international ~~responsibility of States~~ humanitarian law, including the rights to non-discrimination, participation and inclusion;

Stressing that the ~~obligations and~~ primary ~~responsibility~~ obligation to ~~promote,~~ respect, protect, fulfil and ~~fulfill~~ 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;

Recalling the ~~UN~~ United Nations Charter ~~articles~~ Articles 55 and 56 on 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;

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;

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;

Underlining that all business enterprises, regardless of their size, sector, operational context,

ownership and structure ~~shall~~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;

~~Upholding the principles of non-discrimination, participation and inclusion, and self-determination;~~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, 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.

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.

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;

Noting also the ILO 190 Convention concerning the elimination of violence and harassment in the world of work;

*Desiring* to contribute to the development of international law, international humanitarian law and international human rights law in this field;

~~Pursuing the fulfillment of the mandate established by the Human Rights Council Resolution 26/9;~~

*Hereby agree as follows:*

## **Article 2. Statement of purpose**

~~1. The purpose of this Convention is to:~~

- ~~a. To strengthen the respect, promotion, protection and fulfilment of human rights in the context of business activities of transnational character;~~
- ~~b. To ensure an effective access to justice and remedy to victims of human rights violations in the context of business activities of transnational character, and to prevent the occurrence of such violations;~~
- ~~c. To advance international cooperation with a view towards fulfilling States’ obligations under international human rights law;~~

## **Section III**

### **Article 3. Scope**

~~1. This Convention shall apply to human rights violations in the context of any business activities of a transnational character.~~

~~2. This Convention shall cover all international human rights and those rights recognized under domestic law.~~

#### **Article 41.**

##### **Definitions**

1. ~~“Victims/victims” shall mean any persons or group of persons who individually or collectively have suffered or have~~ alleged to have suffered ~~harm~~ 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.
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, through acts or omissions in the context of business activities of a transnational character. Where appropriate, and in accordance with domestic law, the term “victim” also includes the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.
3. ~~2. “Business activities of a transnational character” shall mean~~ means any for-profit 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, that take place or involve actions, persons or impact in two or more national jurisdictions.

##### **Article 5. Jurisdiction**

~~1. Jurisdiction, with respect to actions brought by an individual or group of individuals, independently of their nationality or place of domicile, arising from acts or omissions that result in violations of human rights covered under this Convention, shall vest in the court of the State where:~~

- a. ~~such acts or omissions occurred or;~~
- b. ~~the Court of the State where the natural or legal person or association of natural or legal persons alleged to have committed the acts or omissions are domiciled.~~

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.

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).

##### **Article 2. Statement of purpose**

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. 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;
- 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.

**Article 3. Scope**

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.

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

~~2. A legal person or association of natural or legal persons is considered domiciled at the place where it has its:~~

~~a. statutory seat, or~~

~~b. central administration, or c. 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~~

b. It is undertaken in one State but has substantial business interest, or

~~d. subsidiary, agency, instrumentality, branch, representative office or the like. effect in another State.~~

~~Where a claim is submitted on behalf of an individual or group of individuals, this shall be with their consent unless the claimant can justify acting on their behalf without consent.~~

**Article 6. Statute of limitations**

~~1. — Statutes of limitations shall not apply to violations of international human rights law which constitute crimes under international law. Domestic statutes of limitations for other types of violations that do not constitute crimes under international law, including those time limitations applicable to civil claims and other procedures, should not be unduly restrictive and shall allow an adequate period of time for the investigation and prosecution of the violation, particularly in cases where the violations occurred abroad. This (Legally Binding Instrument) shall cover all human rights.~~

**Section II**

**Article 7. Applicable law**

~~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 Convention shall be governed by the law of that court, including any rules of such law relating to conflict of laws.~~

~~2. At the request of victims, all matters of substance regarding human rights law relevant to claims before the competent court may be governed by the law of another Party where the involved person with business activities of a transnational character is domiciled. The competent court may request for mutual legal assistance as referred to under Article 11 of this Convention.~~

~~3. The Convention does not prejudice the recognition and protection of any rights of victims that may be provided under applicable domestic law.~~

## **Article 84. Rights of Victims**

1. Victims of human rights violations shall be treated with humanity and respect for their dignity and human rights, and their safety, physical and psychological well-being and privacy shall be ensured.
2. Victims shall be guaranteed the right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement.
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.
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.
5. ~~1.~~Victims shall have the right to fair, effective ~~and~~, 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:
  - 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.
6. ~~2.State Parties~~Victims shall ~~guarantee the right of victims, individually or as a group, to present claims to their Courts, and~~be guaranteed access to information relevant to the pursuit of remedies.
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 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.
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 ~~Convention~~(Legally Binding Instrument), as applicable, in order to allow for victim's access to adequate, timely and effective remedies.
9. 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 act free from threat, restriction and insecurity.
10. ~~3.States~~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 ~~allegedly~~found responsible, in accordance with domestic and international law.

~~11. 4. Victims shall be guaranteed appropriate access to information relevant to the pursuit of remedies.~~  
State ~~parties~~Parties shall ensure that their domestic laws and ~~Courts do not unduly limit such right, and courts~~ facilitate access to information through international cooperation, as set out in this ~~Convention~~(Legally Binding Instrument), and in ~~line~~a manner consistent with ~~confidentiality rules under their~~ domestic law.

~~12. 5. States~~State Parties shall provide proper and effective legal assistance to victims throughout the legal process, including by:

- a. ~~Informing~~Making information available to victims of their ~~procedural~~ rights and the ~~scope, timing and progress~~status of their claims in an ~~opportune~~appropriate and adequate manner;
- b. Guaranteeing the rights of victims to be heard in all stages of proceedings ~~without prejudice to the accused and as~~ consistent with ~~the relevant~~their domestic law;
- c. Avoiding unnecessary ~~formalities,~~ costs or ~~delay~~delays for bringing a claim and during the disposition of cases and the execution of orders or decrees granting awards ~~to victims~~;
- 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 ~~full~~ 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.

~~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.

~~13. 6. Inability to cover administrative and other costs shall not be a barrier to commencing proceedings in accordance with this Convention. States~~(Legally Binding Instrument). State Parties shall assist victims in overcoming such barriers, including through waiving costs where needed. ~~States~~State Parties shall not require victims to provide a warranty as a condition for commencing proceedings.

~~14. 7. States~~State Parties ~~shall establish an International Fund for Victims covered under this Convention, to provide legal and financial aid to victims. This Fund shall be established at most after (X) years of the entry into force of this Convention. The Conference of Parties shall define and establish the relevant provisions for the functioning of the Fund.~~

~~8. States~~ shall provide effective mechanisms for the enforcement of remedies for violations of human rights, including through prompt execution of national or foreign judgements or awards, in accordance with the present ~~Convention~~(Legally Binding Instrument), domestic law and international legal obligations.

~~9. Victims shall have access to appropriate diplomatic and consular means, as needed, to ensure that they can exercise their right to access justice and 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.~~

~~10. Victims shall be treated with humanity and respect for their dignity and human rights, and their safety, physical and psychological well-being and privacy shall be ensured.~~

~~15. 11.~~ State Parties shall ~~protect victims, their representatives, families and witnesses from any unlawful interference with their privacy and from intimidation, and retaliation, before, during and after any proceedings have been instituted.~~ 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.

~~12. States shall guarantee the right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement of victims, their representatives, families and victims.~~

~~13. 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.~~

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.

## **Article 95. Prevention**

1. State Parties shall regulate effectively the activities of business enterprises within their territory or jurisdiction. For this purpose States shall ensure in that their domestic legislation ~~that~~ requires all persons ~~with~~ conducting business activities, including those of a transnational character ~~within such,~~ in their territory or jurisdiction, to respect human rights and prevent human rights violations or abuses.

2. For the purpose of paragraph 1 of this Article, State Parties' territory or otherwise under their jurisdiction or control shall adopt measures necessary to ensure that all persons conducting business activities, including those of transnational character, to undertake human rights due diligence obligations throughout such business activities, taking into consideration the potential impact on human rights resulting from the size, nature, context of and risk associated with the business activities.

~~2. Due diligence referred to above under Article 7.1 shall include, but shall not be necessarily limited to as follows:~~

~~a. Monitoring the human rights impact of its business activities including the activities of its subsidiaries and that of entities under its direct or indirect control or directly linked to its operations, products or services.~~

~~a. b. Identify and assess any actual or potential human rights violations or abuses that may arise through from their own business activities including that of, or from their subsidiaries and of entities under their direct or indirect control or directly linked to its operations, products or services.~~

~~c. Prevent contractual relationships;~~

~~b. Take appropriate actions to prevent human rights violations within or abuses in the context of its business activities, including those under their contractual relationships;~~

~~c. Monitor the activities of its subsidiaries and that of entities under its direct or indirect control or directly linked to its operations, products or services, including through financial contribution where needed.~~

~~d. Reporting publicly and periodically on non-financial matters, including at a minimum~~



~~environmental and human rights matters, including policies, risks, outcomes and indicators. The requirement to disclose this information should be subject to an assessment of the severity of the potential impacts on the individuals and communities concerned, not to a consideration of their materiality to the financial interests of the business or its shareholders.~~  
human rights impact of their business activities, including those under their contractual relationships;

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.

3. Measures referred to under the immediately preceding paragraph shall include, but shall not be limited to:

a. ~~e.~~ Undertaking pre and post environmental and human rights impact assessments covering in relation to its activities and that of its subsidiaries and entities under its control those under their contractual relationships, and integrating the findings across results of such assessments into relevant internal functions and processes, and taking appropriate action actions.

~~f. Reflecting the requirements in paragraphs a. to e. above in all contractual relationships which involve business activities of transnational character.~~

b. ~~g.~~ Carrying out meaningful consultations with groups whose human rights are 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 and internal, internally displaced persons, and protected populations under occupation or conflict areas. Consultations with indigenous peoples will be undertaken in accordance with the internationally agreed standards of free, prior and informed consultations, as applicable.

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.

d. ~~h. Due diligence may require establishing and maintaining financial security, such as insurance bonds or other financial guarantees to cover potential claims of compensation.~~ Integrating human rights due diligence requirements in contractual relationships which involve business activities of a transnational character, including through financial contributions where needed.

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;

4. ~~3.~~ State Parties shall ensure that effective national procedures are in place to enforce ensure compliance with the obligations laid down under this article 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 and legal persons having a legitimate interest, in accordance with national domestic law, in ensuring that the article is respected.

- ~~5. 4.Failure to comply with due diligence duties under this article shall result in commensurate liability and compensation in accordance with the articles of this Convention.~~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.
- ~~6. 5.States Parties may elect to exempt certain~~provide incentives and other measures to facilitate compliance with requirements under this Article by small and medium- sized undertakings ~~from the purview of selected obligations under this article with the aim of not~~conducting business activities to avoid causing undue additional ~~administrative~~ burdens.

### **Article 106. Legal Liability**

1. State Parties shall ensure ~~through that~~ their domestic law ~~that natural~~provides for a comprehensive and adequate system of legal ~~persons may be held criminally, civil or administratively liable~~liability for ~~violations of~~ human rights ~~undertaken~~violations or abuses in the context of business activities, including those of transnational character. ~~Such liability shall be subject to effective, proportionate, and dissuasive criminal and non-criminal sanctions, including monetary sanctions.~~
2. Liability of legal persons shall be without prejudice to the liability of natural persons.
3. ~~2.~~Civil liability shall not be made contingent upon finding of criminal liability or its equivalent for the same ~~actor~~acts.
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.
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.
- ~~3.~~Where a person with business activities of a transnational character is found liable for reparation to a victim, such party shall provide reparation to the victim or compensate the State if the State has already provided reparation to the victim.
- ~~4.~~Subject to domestic law, courts asserting jurisdiction under this Convention may require, where needed, reversal of the burden of proof for the purpose of fulfilling the victim's access to justice.

#### *Civil Liability*

- ~~5.~~State Parties shall provide for a comprehensive regime of civil liability for violations of human rights undertaken in the context of business activities and for fair, adequate and prompt compensation.
- ~~6.~~All persons with business activities of a transnational character shall be liable for harm caused by violations of human rights arising in the context of theirStates Parties shall ensure that their

- domestic legislation provides for the liability of natural or legal persons conducting business activities, including throughout their operations:
- ~~a. to the extent it exercises control over the operations, or~~
  - ~~b. to the extent it exhibits a sufficiently close relation with its subsidiary or entity in its supply chain and where there is strong and direct connection between its conduct and the wrong suffered by the victim, or~~
  - ~~c. to the extent risk have been foreseen or should have been foreseen of human rights violations within its chain of economic activity, 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.~~
6. Civil Subject to their domestic law, State Parties shall ensure that their domestic legislation provides for criminal, civil, or administrative liability of legal persons ~~shall be independent from any~~ for the following criminal ~~procedure~~ offences:
- a. War crimes, crimes against that entity, humanity and genocide as defined in articles 6, 7 and 8 of the Rome Statute for the International Criminal ~~liability~~ Court;
  - ~~b. State Parties shall provide measures under domestic law to establish criminal liability for all persons with business activities of a transnational character that intentionally, whether directly or through intermediaries, commit human rights violations that amount to a criminal offence, including crimes recognized under international law, international human rights instruments, or domestic legislation. 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;~~
  - c. enforced disappearance, as defined in articles 7 and 25 of the International Convention for the Protection of All Persons from Enforced Disappearance;
  - d. extrajudicial execution, as defined in Principle 1 of the Principles on the Effective Prevention and Investigation of Extra-Legal, Arbitrary and Summary Executions;
  - 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;
  - 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
  - g. Forced eviction, as defined in the Basic Principles and Guidelines on Development based evictions and displacement;
  - h. slavery and slavery-like offences;
  - i. Forced displacement of people;
  - j. Human trafficking, including sexual exploitation;
  - k. Sexual and gender-based violence.
7. Such criminal liability for human rights violations that amount to a criminal offence, shall apply to principals, accomplices and accessories, as may be defined by domestic law.
- ~~9. Criminal liability of legal persons~~ shall be without prejudice to the criminal liability under the applicable domestic law of the natural persons who have committed the offences.
- ~~8. 10. Each State Party~~ Parties shall, ~~in particular, ensure that legal persons held liable provide~~ measures under domestic law to 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 ~~this article are subject to~~

~~effective, proportionate~~ [Article 6 \(7\)](#) and ~~dissuasive criminal or non-criminal sanctions, including monetary sanctions.~~

~~11. Where applicable under international law, States shall incorporate or otherwise implement within their domestic law appropriate provisions for universal jurisdiction over human rights violations that amount to crimes.~~

~~12. In the event that, under the legal system of a Party, criminal responsibility is not applicable to legal persons, that Party shall ensure that legal persons shall be subject to effective, proportionate and dissuasive non-criminal sanctions, including monetary sanctions or other administrative sanctions, for acts covered under the previous two paragraphs.~~ [offences as defined by their domestic law.](#)

### Article 7. Adjudicative Jurisdiction

[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.](#)

[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.](#)

### Article 8. Statute of limitations

[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 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.](#)

### Article 9. Applicable law

[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.

#### **Article 14~~10~~. Mutual Legal Assistance**

~~1. States Parties shall cooperate in good faith to enable the implementation of commitments under this Convention and the fulfillment of the purposes of this Convention.~~

1. ~~2.~~ 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 ~~the cases~~ claims covered by this ~~Convention~~ (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 ~~covered under this Convention.~~

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.

3. Mutual legal assistance under this ~~Convention~~ (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 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 ~~and interpretation of human rights~~ of domestic law;
- l. Any other type of assistance that is not contrary to the domestic law of the requested State

Party.

4. Without prejudice to domestic law, the competent authorities of a State Party may, without prior request, transmit and exchange information relating to criminal ~~matters~~offences covered under this ~~Convention~~(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 ~~Convention~~(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.
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 ~~Convention~~(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.
6. States Parties shall carry out their obligations under the previous ~~Article~~paragraph in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance ~~in a way not contrary~~ to the fullest extent possible under domestic and international law.
7. ~~In accordance with domestic systems, each~~ State ~~Party~~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.
8. State Parties shall provide ~~judicial~~legal assistance and other forms of cooperation in the pursuit of access to remedy for victims of human rights violations covered under this ~~Convention~~(Legally Binding Instrument).
9. Any judgement of a court having jurisdiction in accordance with this ~~Convention~~(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.
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)~~:
  - a. the defendant was not given reasonable notice and a fair opportunity to present his or her case; ~~(b) or~~
  - b. where the 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)~~
  - c. where the judgement is ~~contrary~~likely to prejudice the sovereignty, security, ordre public ~~policy~~or other essential interests of the Party in which its recognition is sought.

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 ~~Convention~~(Legally Binding Instrument) or if it would be contrary to the legal system of the requested State Party.
12. A State Party shall not decline to render mutual legal assistance in claim involving liability for harms or criminal ~~matters~~offences, within the scope of this ~~Convention~~(Legally Binding Instrument) on the ground ~~of~~that the request is considered to involve fiscal matters or bank secrecy.

### **Article ~~12~~11. International Cooperation**

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).
2. ~~1-~~State Parties recognize the importance of international cooperation and its promotion for the realization of the purpose of the present ~~Convention~~(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. ~~promote~~promoting effective technical cooperation and capacity-building among policy makers, operators and users of domestic, regional and international ~~remedial mechanism~~,grievance mechanisms;
  - b. Sharing experiences, good practices, challenges, information and training programs on the implementation of the present ~~convention~~,(Legally Binding Instrument);
  - c. Facilitating cooperation in research and studies on the ~~best~~challenges and good practices and experiences for preventing violations of human rights in the context of business activities, including those of a transitional character.

### **Article ~~13~~12. Consistency with International Law**

1. States Parties shall carry out their obligations under this ~~Convention~~(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.
2. ~~Nothing~~Notwithstanding art 7.1, nothing in this ~~Convention~~(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.
3. ~~Nothing in these articles shall be construed as restricting or derogating from any rights or obligations arising under domestic and international law. The present articles are without prejudice to any obligation incurred by States under relevant treaties or rules of customary international law, including the obligations under any other treaty that governs or will govern, in whole or in part, mutual legal assistance.~~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.](#)
4. The provisions of this [Convention\(Legally Binding Instrument\)](#) shall be applied in conformity with agreements or arrangements on the mutual recognition and enforcement of judgements in force between [State](#) Parties.
  5. This [Convention\(Legally Binding Instrument\)](#) 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.
  6. States Parties agree that any ~~future trade and investment~~[bilateral or multilateral](#) agreements ~~they negotiate, whether amongst themselves or with third parties, shall not contain any provisions that conflict with the implementation of this Convention, including regional or sub-regional agreements, on issues relevant to this (Legally Binding Instrument) and its protocols,~~ shall ~~ensure upholding human rights in the context of business activities by parties benefiting from such agreements.~~
  - 7.~~States Parties agree that all existing and future trade and investment agreements~~[be compatible and](#) shall be interpreted in ~~a way that is least restrictive on their ability to respect and ensure~~[accordance with](#) their obligations under this [Convention, notwithstanding other conflicting rules of conflict resolution arising from customary international law or from existing trade and investment agreements\(Legally Binding Instrument\) and its protocols.](#)

### Section III

#### Article ~~14~~[13](#). Institutional Arrangements

##### Committee

1. There shall be a Committee established in accordance with the following procedures:
  - a. The Committee shall consist, at the time of entry into force of the present [Convention\(Legally Binding Instrument\)](#), (12) experts. After an additional sixty ratifications or accessions to the [Convention\(Legally Binding Instrument\)](#), the membership of the Committee shall increase by six members, attaining a maximum number of eighteen members. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence in the field of human rights, public international law or other relevant fields; ~~who shall serve in their personal capacity.~~
  - b. The experts shall be elected by the ~~States~~[State](#) Parties, consideration being given to equitable geographical distribution, the differences among legal systems, gender balanced representation; ~~and ensuring that elected experts are not engaged, directly or indirectly, in any activity which might adversely affect the purpose of this (Legally Binding Instrument)~~
  - c. The members of the Committee shall be elected by secret ballot from a list of persons nominated by ~~States~~[State](#) Parties; ~~they.~~ [They](#) shall be elected for a term of 4 years [and can be re-elected for another term](#). Each State Party may nominate one person from among its own nationals. Elections of the members of the Committee shall be held at the Conference of ~~States~~[State](#) Parties by majority present and voting. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the ~~States~~[State](#) Parties inviting them to submit their nominations within two months. The Secretary- General shall prepare a list in alphabetical order of all persons thus nominated, indicating the ~~States~~[State](#) Parties which have nominated them, and shall submit it to the



- ~~States~~State Parties.
- d. The initial election shall be held no later than six months after the date of the entry into force of this ~~Convention~~(Legally Binding Instrument). The term of six of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these six members shall be chosen by lot by the chairperson of the meeting referred to in this ~~article~~Article.
  - e. If a member of the Committee dies or resigns or for any other cause can no longer perform his or her Committee duties, the State Party which nominated him or her shall appoint another expert from among its nationals to serve for the remainder of his or her term, subject to the approval of the majority of the States Parties.
  - f. The Committee shall establish its own rules of procedure and elect its officers for a term of two years. They may be re-elected.
  - g. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this ~~Convention~~(Legally Binding Instrument). The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
  - h. With the approval of the General Assembly, the members of the Committee established under the present ~~Convention~~(Legally Binding Instrument) shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide through the established procedures.
2. ~~States~~State Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this ~~Convention~~(Legally Binding Instrument), within one year after the entry into force of the ~~Convention~~(Legally Binding Instrument) for the State Party concerned. Thereafter the ~~States~~State Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.
3. The Secretary-General of the United Nations shall transmit the reports to all ~~States~~State Parties.
4. The Committee shall have the following functions:
- a. Make general comments and normative recommendations on the understanding and implementation of the ~~Convention~~(Legally Binding Instrument) based on the examination of reports and information received from the ~~States~~State Parties and other stakeholders;
  - b. Consider and provide concluding observations and recommendations on reports submitted by State Parties as it may consider appropriate and forward these to the State Party concerned that may respond with any observations it chooses to the Committee. The Committee may, at its discretion, decide to include this suggestions and general recommendations in the report of the Committee together with comments, if any, from ~~States~~State Parties;
  - c. Provide support to the State Parties in the compilation and communication of information required for the implementation of the provisions of the ~~Convention~~(Legally Binding Instrument);
  - d. Submit an annual report on its activities under this ~~Convention~~(Legally Binding Instrument) to

the ~~States~~State Parties and to the General Assembly of the United Nations;

- e. [The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the present ~~Treaty~~(Legally Binding Instrument)].

### Conference of States Parties

5. The States Parties shall meet regularly in a Conference of States Parties in order to consider any matter with regard to the implementation of the ~~Convention~~(Legally Binding Instrument), including any further development needed towards fulfilling its purposes.
6. No later than six months after the entry into force of the present ~~Convention~~(Legally Binding Instrument), the Conference of the States Parties shall be convened by the Secretary-General of the United Nations. The subsequent meetings shall be convened by the Secretary-General of the United Nations biennially or upon the decision of the Conference of States Parties.

### International Fund for Victims

- ~~7. States Parties shall establish an International Fund for Victims covered under this (Legally Binding Instrument), to provide legal and financial aid to victims. This Fund shall be established at most after (X) years of the entry into force of this (Legally Binding Instrument). The Conference of Parties shall define and establish the relevant provisions for the functioning of the Fund.~~

### Article ~~15~~14. ~~Final Provisions~~Implementation

1. ~~States~~State Parties shall take all necessary legislative, administrative or other action including the establishment of adequate monitoring mechanisms to ensure effective implementation of this ~~Convention~~(Legally Binding Instrument).
2. Each State Party shall furnish copies of its laws and regulations that give effect to this ~~Convention~~(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
- ~~3. In policies and actions pursuant to this Convention, Parties shall act to protect these policies and actions from commercial and other vested interests of the [business sector] in accordance with national law.~~
- ~~3.~~ 4. Special attention shall be undertaken in the cases of business activities in conflict-affected areas 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.
- ~~4.~~ 5. In implementing this ~~agreement~~(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.

5. 6. The application and interpretation of these ~~articles~~ 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.

## **Depositary**

### Article 15. Relation with protocols

1. This (Legally Binding Instrument) may be supplemented by one or more protocols.
2. In order to become a Party to a protocol, a State or a regional integration organization must also be a Party to this (Legally Binding Instrument).
3. A State Party to this (Legally Binding Instrument) is not bound by a protocol unless it becomes a Party to the protocol in accordance with the provisions thereof.
4. Any protocol to this (Legally Binding Instrument) shall be interpreted together with this (Legally Binding Instrument), taking into account the purpose of that protocol.

### Article 16. Settlement of Disputes

1. If a dispute arises between two or more State Parties about the interpretation or application of this (Legally Binding Instrument), they shall seek a solution by negotiation or by any other means of dispute settlement acceptable to the parties to the dispute.

2. When signing, ratifying, accepting, approving or acceding to this (Legally Binding Instrument), or at any time thereafter, a State Party may declare in writing to the Depositary that, for a dispute not resolved in accordance with paragraph 1 of this article, it accepts one or both of the following means of dispute settlement as compulsory in relation to any State Party accepting the same obligation:

(a) Submission of the dispute to the International Court of Justice;

(b) ~~7. The Secretary-General of the United Nations shall be the depositary of the present Convention~~ Arbitration in accordance with the procedure and organization mutually agreed by both State Parties.

3. If the State Parties to the dispute have accepted both means of dispute settlement referred to in paragraph 2 of this article, the dispute may be submitted only to the International Court of Justice, unless the State Parties agree otherwise.

## Article 17. Signature, Ratification, Acceptance, Approval and Accession

1. ~~8.~~The present ~~Convention~~(Legally Binding Instrument) shall be open for signature by all States and by regional integration organizations at United Nations Headquarters in New York as of ~~(date)~~.

### **Consent to be bound**

2. ~~9.~~The present ~~Convention~~(Legally Binding Instrument) shall be subject to ratification, acceptance or approval by signatory States and to formal confirmation by signatory regional integration organizations. It shall be open for accession by any State or regional integration organization which has not signed the ~~Convention~~(Legally Binding Instrument).

### **Regional integration organizations**

~~10. "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 Convention.~~

3. ~~11.~~This ~~Convention~~(Legally Binding Instrument) shall apply to regional integration organizations within the limits of their competence; subsequently they shall inform the depositary of any substantial modification in the extent of their competence. ~~For the purposes of paragraph 17, and paragraphs 22 and 23 of this article, any instrument deposited by these organizations shall not be counted.~~Such organizations may exercise their right to vote in the Conference of States Parties with a number of votes equal to the number of their member States that are Parties to this ~~Convention~~(Legally Binding Instrument). Such right to vote shall not be ~~exercise~~exercised if any of its member States exercises its right, and vice versa.

## Article 18. Entry into force

1. ~~12.~~The present ~~Convention~~(Legally Binding Instrument) shall enter into force on the thirtieth day after the deposit of the [---] instrument of ratification or accession.

2. ~~13.~~For each State or regional integration organization ratifying, formally confirming or acceding to the ~~Convention~~(Legally Binding Instrument) after the deposit of the [---] such instrument, the ~~Convention~~(Legally Binding Instrument) shall enter into force on the thirtieth day after the deposit of its own such instrument.

### **Reservations**

~~14. Reservations incompatible with the object and purpose of the present Convention shall not be permitted.~~

~~15. Reservations may be withdrawn at any time.~~

## Article 19. Amendments

1. ~~16.~~Any State Party may propose an amendment to the present ~~Convention~~(Legally Binding Instrument) and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified

whether they ~~favor~~[favour](#) a conference of States Parties for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties ~~favor~~[favour](#) such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two-thirds of the ~~States~~[State](#) Parties present and voting in the Conference of the Parties shall be submitted by the Secretary-General to all ~~States~~[State](#) Parties for acceptance.

~~2.~~ ~~17.~~ An amendment adopted and approved in accordance with ~~paragraph 15 of this article~~[Article](#) shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two-thirds of the number of ~~States~~[State](#) Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those ~~States~~[State](#) Parties which have accepted it.

~~3.~~ ~~18.~~ If so decided by the Conference of States Parties by consensus, an amendment adopted and approved in accordance with ~~paragraph 15 of this article~~[Article](#) which relates exclusively to the establishment of the Committee or its functions, and the Conference of States Parties shall enter into force for all ~~States~~[State](#) Parties on the thirtieth day after the number of instruments of acceptance deposited reaches two-thirds of the number of ~~States~~[State](#) Parties at the date of adoption of the amendment.

## [Article 20. Reservations](#)

[1. Reservations incompatible with the object and purpose of the present \(Legally Binding Instrument\) shall not be permitted.](#)

[2. Reservations may be withdrawn at any time.](#)

## [Article 21. Denunciation](#)

~~19.~~ A State Party may denounce the present ~~Convention~~[\(Legally Binding Instrument\)](#) by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

## **Authentic texts**

## [Article 22. Depositary and Languages](#)

[1. The Secretary-General of the United Nations shall be the depositary of the present \(Legally Binding Instrument\).](#)

~~2.~~ ~~20.~~ The Arabic, Chinese, English, French, Russian and Spanish texts of the present ~~Convention~~[\(Legally Binding Instrument\)](#) shall be equally authentic.

~~21.~~ In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present ~~Convention~~[\(Legally Binding Instrument\)](#).