Written contribution by FIAN International on the Second Revised Draft of the Legally Binding Instrument on transnational corporations and other business enterprises with respect to human rights

FIAN welcomes the second revised draft. We consider that this draft is an important next step in the process towards the LBI and serves as good basis for negotiations. In the following document we explain some of the aspects we consider positive advancements in the current draft and those we consider could be improved, by providing specific text proposals.

Preamble

FIAN considers positive the inclusion of an additional paragraph in the preamble, which calls States to integrate a gender perspective in fulfilling their obligations resulting from this treaty. We would nevertheless recommend to **avoid any use of the expression "persons in a vulnerable situation", but rather use "marginalized groups" or "groups facing discrimination**" as to not victimize such groups and use the terminology applied by the UN Treaty Bodies.

Regarding the listed instruments in paragraph three of the preamble, FIAN strongly recommends the **inclusion of the recently adopted UN Declaration on the Rights of Peasants and other peoples living in rural areas (UNDROP)**. Together with indigenous people, it is well documented how peasant communities disproportionately suffer from corporate human rights abuses and violations, resulting from land grabbing, environmental destruction as well as attacks to peasant leaders and human rights defenders. The UNDROP stipulates that "States shall take all necessary measures to ensure that non-State actors that they are in a position to regulate, such as private individuals and organizations, and transnational corporations and other business enterprises, respect and strengthen the rights of peasants and other peoples living in rural areas". **Peasants should also therefore be recognized in paragraph 14 of the preamble as a group requiring special attention.**

We reiterate for the preamble to include the principle pursuant to articles 103, 55 and 56 of the UN Charter, and already recognized in many constitutions worldwide, of the primacy of human rights. We therefore propose adding the following paragraph in the preamble:

"Reaffirming the primacy of human rights obligations and obligations under the Charter of the United Nations over other international agreements".

Singling out ILO Convention 190 whilst excluding other important ILO Conventions for the purpose of this treaty in paragraph three of the preamble could raise concern. In this sense, we propose **including ILO 1998 Declaration on Fundamental Principles and Rights at Work,** which is binding on all ILO member States despite their ratification status and which includes international core labour standards.

We would also recommend the **inclusion of international humanitarian law standards**, which are missing from the list of instruments quoted in the preamble. These would be particularly important given the documented involvement of transnational corporations in occupied territories or conflict-affected areas, an issue recognized by articles 6.3g) and 16.3 of the present draft treaty.

Article 1 – Definitions

We welcome the replacement of the term "contractual relationship" by "business relationship", which is a crucial definition for key articles of the treaty, for example in determining the extent of human rights due diligence obligations (art. 6) and standards to determine liability of parent companies of TNCs (art. 8). "Business relationship" is a less restrictive term and corresponds with the language used by the UN Guiding Principles on Business and Human Rights and standards of the Committee on Economic, Social and Cultural Rights in General Comment No. 24 (2017).

In the definition of "business activities" under article 1.3, we propose also to include references to financial and investment institutions, as these are heavily involved in transnational business activities as per the other entities included in the list:

> *"1.3 "Business activities" means any for profit economic o other activity undertaken by a natural or legal person, including State-owned enterprises,* ***financial and investment institutions,*** *transnational corporations, other business enterprises, and joint ventures…"*

We propose the explicit mention of the term "value chain" in the definition of "business relationship" under article 1.5, as follows:

> "5. *Business relationship refers to any relationship between natural or legal persons to conduct business activities, including those activities conducted through affiliates, subsidiaries, agents, suppliers, partnerships, joint venture, beneficial proprietorship, or any other structure or contractual relationship,* ***including throughout their value chains,*** *as provided under the domestic law of the States, including activities undertaken by electronic means".*

Article 2 – Statement of purpose

In this article stating the purpose of the legally binding instrument, we regret there is no mention of the aim of tackling the particular regulatory and accountability challenges arising from *transnational* business activities. Although we accept that the legally binding instrument can contribute to further clarifying the human rights obligations of States in the context of all business activities, the core mandate of this OEIGWG from resolution 26/9 "to regulate, in international human rights law, the activities of transnational corporations and other business enterprises" cannot be left out.

We therefore propose the inclusion of "*in particular of a transnational character*" in the art. 2.1a, b and d, as well as to include a paragraph e. so that the article reads:

> *a. To clarify and facilitate effective implementation of the obligation of States to respect, protect and promote human rights in the context of business activities,* ***in particular of a transnational character****, as well as the responsibilities of business enterprises in this regard;*
> *b. To prevent the occurrence of human rights abuses in the context of business activities,* ***in particular of a transnational character;***
> ***[…]***

d. To facilitate and strengthen mutual legal assistance and international cooperation to prevent human rights abuses in the context of business activities, ***in particular of a transnational character****, and provide access to justice and effective remedy to victims of such abuses*
e. To close gaps in the regulation and accountability of legal persons carrying out business activities of a transnational character, including particularly transnational corporations and other business enterprises that undertake business activities of a transnational character

Article 3 – Scope

In line with our comments above regarding article 2, FIAN regrets the deletion of wording in article 3.1 emphasizing the particular focus of the legally binding instrument on business activities of transnational character. Although FIAN can accept the scope to include all business activities, we reiterate that this OEIGWG was established to focus particularly on the gaps in international human rights law regarding the business activities of transnational character, which pose different and particular regulatory and accountability challenges. These should be the focus in this legally binding instrument and therefore be reflected in this article.

We propose article 3.1 to read:

"Unless stated otherwise, this (Legally Binding Instrument) shall apply to all business enterprises, ~~included but not limited to~~ ***in particular to*** *transnational corporations and other business enterprises that undertake business activities of a transnational character"*

Article 3.1 of this revised draft now makes reference to "business enterprises, including but not limited to transnational corporations and other business enterprises" as opposed to "business activities of transnational character" used in the precedent draft. In order to ensure consistency and coherence in language throughout the treaty, and in particular with article 1 on Definitions, we recommend to stick to the wording "business activities of transnational character".

On **article 3.3, we recommend the deletion of the word "core"** when referring to international human rights treaties. As previously mentioned, reference to the ILO 1998 Declaration on Fundamental Principles and Rights at Work should be included as it is an ILO instrument binding on all Member States regardless of their Convention ratification status.

Article 4 – Rights of victims

We welcome that important elements of this article addressing the many different types of barriers, which affected individuals and communities face when attempting to access justice have been maintained in this revised draft (art. 4.2a-g).

Nonetheless, we observe that the rights included in this article are not just right of victims already defined as such but are rights of all affected communities and individuals. Therefore, we propose to **change the title of the article to "Rights of affected communities and individuals".**

FIAN reiterates that art. 4.2f on the right to access information should be further elaborated to include stronger requirements for the disclosure of information in order to facilitate legal proceedings. In particular, affected communities and individual should have access to information

regarding the different legal entities linked to the parent company as to facilitate the determination of liability.

We propose the following text proposal for article 4.2f. :

*" 4.2f. be guaranteed access to information and legal aid relevant to pursue effective remedy***;. This shall include information regarding all the different legal entities linked to the parent company in the transnational business activity which allegedly committed human rights abuses, such as property titles, contracts, communications and other relevant documents. In the absence of such information, courts shall apply a rebuttable presumption of control of the controlling or parent companies. Such information shall serve for the adjudicator to determine the joint and several liability of the involved companies, according to the findings of the civil or administrative procedure."**

The right to access such information and its corresponding obligation for business enterprises and States to disclose such information should also be reflected in article 7 on access to remedy and article 6 on prevention.

We notice with regret that some important components of the rights of victims to access justice and effective remedies have been deleted, which were in article 4.5 of the previous draft. We therefore propose to include additional components of reparation for victims under current article 4.2c, which better reflect the immediate and long-term measures which should be taken, and the importance for long-term monitoring of such remedies:

"**4.2c be guaranteed the right to fair, adequate, effective, prompt and non-discriminatory access to justice and effective remedy in accordance with this (Legally Binding Instrument) and international law, such as restitution, compensation, rehabilitation, satisfaction, guarantees of non-repetition, injunction, environmental remediation, ecological restoration,* ***including covering expenses for relocation of victims, replacement of community facilities, and emergency and long-term health assistance. Victims shall be guaranteed the right to long-term monitoring of such remedies."

Effective remedies and reparation measures should take into account the differentiated impacts of human rights abuses on specific groups in order to respond adequately to these impacts and their particular needs. In order to guarantee this, it is important for the remedy process to be transparent, independent and count with the full participation of those affected. In addition, such processes should also consider harm that could appear in the future. To this end, we propose the inclusion of an additional paragraph to this article:

"4.2c bis be guaranteed full participation, transparency and independence in remedy processes, which take into account the differentiated impacts of human rights abuses on specific groups of people and respond adequately to these impacts and their particular needs, including for future harm."

On article 4.2d, we propose the insertion of the word "effective" to the reference on non-judicial grievance mechanisms:

"4.2d *[…] to courts and* ***effective*** *non-judicial grievance mechanisms of the State parties".*

We propose an **additional paragraph** in this article regarding the right for affected individuals and communities to request the State to adopt precautionary measures where human rights abuses are imminent and could lead to irreparable harm, regardless of the existence or not of a legal proceeding or of a pending legal decision on the case.

> ***"4.4. Affected individuals and communities shall have the right to request in court the adoption of precautionary measures, regarding situations that present a risk of irreparable harm. Such measures shall be taken regardless of the existence and outcome of a legal proceeding relative to the situation."***

Article 5

In order to ensure consistency in language with our comments on article 4 regarding the use of the word "victim", we propose for article 5 to be amended as follows:

> "Article 5 – Protection **of affected individuals and communities**
>
> 1. *State Parties shall protect victims,* ***affected individuals and communities [alleged victims], …***
>
> *2. a. State Parties shall take adequate and effective measures to guarantee all rights of 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 exercise their human rights free from any threat, intimidation, violence or insecurity****. This obligation requires taking into account States Parties' international obligations in the field of human rights, their constitutional principles and the basic concepts of their legal systems.***

Article 6 – Prevention

In order to ensure a fluid connection between the different articles of the legally binding instrument, we would recommend that **this article be placed prior to the articles on the rights of victims**, the protection of victims and access to remedy, given that these obligations arise before the occurrence of human rights abuses.

The obligation for States to take precautionary measures in the case of serious or urgent risks of human rights abuses leading to irreparable harm, established in the proposed article 4.4, should also be reflected in this article on prevention. We therefore propose an additional paragraph after article 6.1, which would read as follows:

> **"6.1 bis.** ***States parties shall take precautionary measures by request of affected individuals or communities, including the suspension of business activities of transnational character, regarding situations that present a risk of irreparable harm m, independently from the existence or outcome of a legal proceeding relative to the situation."***

Prevention and not mitigation should be at the core of human rights due diligence. As mitigation can result more cost-effective than prevention for certain transnational corporations and other business

enterprises, these might prefer to mitigate instead of mainly and effectively invest in prevention. Including mitigation as a component of human rights due diligence standards sends this wrong message, that harm can in a certain way be tolerated as long as it is then mitigated. Mitigation should be understood as a component of the precautionary measures which we propose of the remedy and liability processes under articles 4 and 8. We therefore propose **the deletion of references to "mitigation" in articles 6.1, 6.2b and 6.2c.**

With regard to article 6.3, including obligations regarding impact assessments as well as meaningful consultations, it currently fails to set standards on how these should be undertaken. It is also important for article 6.3 to clarify that this list of human rights diligence measures is non-exhaustive. We therefore propose the following amendments for articles 6.3 and 6.3a:

> *"6.3 States Parties shall ensure that human rights due diligence measures undertaken by business enterprises under Article 6.2 shall include**, but shall not be limited to:***
> **6.3a** *Undertaking regular **ex-ante and ex-post** environmental and human rights impact assessments throughout their operations**. Such impact assessments shall be undertaken by independent third parties with no conflicts of interests and must be conducted in consultation with, and drawing from input and knowledge of those likely to be impacted**."*

On article 6.3c. regarding meaningful consultations, these should be conducted in a continuous manner, both prior as well as during the business activities. The treaty should also set standards for **meaningful consultations**. This shall respect the principles of transparency, independency and participation, meaning that these shall be undertaken by an independent State body and protected from any undue influence from the business enterprises concerned by the prospective business activities. We also propose the inclusion of peasants as a group requiring special attention. We therefore propose the following amendment to article 6.3c:

> "6.3c. *Conducting **ex-ante and ex-post** meaningful consultations […] such as women, children, persons with disabilities, indigenous peoples, **peasants,** […] or conflict areas. **Such consultations shall be undertaken by an independent public body and protected from any undue influence from commercial and other vested interests.***

The correlative obligation for business enterprises to disclose information from our proposed article 4.2f. on the rights of victims to access information should be included in this article on prevention. Article 6.3e. should therefore be modified as follows:

> **"6.3e.** *Reporting publicly and periodically on non-financial matters, including information about group structures, suppliers **and all other legal entities it has business relationships with,** as well as policies […]*

With regards to human rights due diligence requirements in occupied or conflict-affected areas, we recommend to strengthen article 6.3g:

> *"6.3g Adopting and implementing enhanced human rights due diligence measures to prevent human rights abuses **and humanitarian law violations or abuses** in occupied or conflict-affected areas, including situations of occupation. **Such prevention includes disengaging from business operations and relationships to prevent human rights abuses in these areas"***

The inclusion of article 6.6 is very welcomed and we strongly support its remainder in the legally binding instrument. Transnational corporations and other business enterprises that fail to comply with the due diligence obligations outlined in this article should be held liable. Article 6.6 should however stipulate even stronger the principle established in article 8.8. whereby the compliance with due diligence standards cannot absolve legal or natural persons from legal liability when they cause, contribute or fail to prevent human rights abuses. Due diligence cannot simply be a 'check-list' procedure with the potential safeguarding legal and natural persons from legal liability. In addition to being an 'obligation of conduct', due diligence should also be an 'obligation of result'. Article 6.6. could be amended as follows:

"6.6. Failure to comply with the duties laid down under Articles 6.2 and 6.3 shall result in commensurate sanctions, including correction action where applicable. ***These obligations shall not*** ~~*without*~~ ***prejudice nor serve in determining the*** ~~*to the provisions on*~~ *criminal, civil and administrative liability laid down under article 8."*

Over the sessions, civil society has brought forward numerous cases demonstrating the negative impact of undue influence and corporate capture by business actors, organisations and interests in standard-setting, monitoring and accountability processes relative to corporate human rights abuses. The undue influence of commercial and other vested interests of transnational corporations and other business enterprises goes far beyond policy spaces. We therefore propose the following additions in article 6.7.:

"*6.7. In setting and implementing their public policies with respect to the implementation of this (Legally Binding Instrument), State parties shall act to protect these* ***policy-making processes,*** *policies,* ***laws, government and other regulatory bodies, and judicial institutions*** *from the undue influence of commercial and other vested interests of business enterprises, actors, organisations and interests."*

As it currently stands, this article on prevention only focuses on the due diligence obligations for transnational corporations and other business enterprises and leaves out the prevention for States, for instance regarding concessions, policies on public procurement, development cooperation, energy or different international agreements they adhere to. Treaty Bodies have clearly stated that under their obligation to respect human rights in the context of business activities, States should not prioritize the interests of business entities over their human rights obligations or pursue policies that negatively affect human rights. The preventive measures that States take should be undertaken in a transparent manner, with the participation of those potentially impacted, which also requires disclosing information.

We therefore propose the inclusion of **two additional paragraphs** under this article regarding the specific prevention obligations of States:

"*6.8. For the purposes or article 6.1, State parties shall conduct human rights, environment and gender impact assessments of all their policies, projects, activities and decisions involving business activities of a transnational character. This obligation shall apply to all branches and bodies of the State. Such assessments shall be conducted in consultation with, and drawing from input and knowledge of those likely to be impacted.*

6.8bis. States Parties shall provide, or ensure the provision of all relevant information, including investment agreements, to individuals and communities concerning business activities and projects likely to impact their human rights in a timely, objective and accessible manner.

6.9. When participating in decision-making processes or actions as Members States of international organisations, State parties shall do so in accordance with their human rights obligations and obligations under the present (legally binding instrument), and shall take all necessary steps to ensure that such decisions and actions by the international organisations do not contribute to human rights abuses and violations in the context of business activities of a transnational character."

Article 7 – Access to remedy

we propose to add "powers" following the reference to "necessary jurisdiction" in Art 7.1 to ensure courts and state-based non-judicial mechanisms not only have jurisdiction but also the necessary *powers* to ensure they can offer the "adequate, timely and effective remedy" that the article makes reference to:

"7.1 States Parties shall provide their courts and State-based non-judicial mechanisms, with the necessary jurisdiction **and powers** in accordance with this (Legally Binding Instrument) to enable victims' access to adequate, timely and effective remedy".

We welcome the inclusion of article **7.5 preventing the use of the doctrine of *forum non conveniens*. We however recommend to refrain from using the term "legitimate",** which is vague and open for interpretation, and instead make reference to the grounds for jurisdiction laid down in article 9, in particular art. 9.3, which defines under which conditions *forum non conveniens* shall not be used.

We propose the following amendment:

"7.5 State parties shall ensure that the doctrine of forum non conveniens is not used by their courts to dismiss ~~legitimate~~ judicial proceedings brought by victims, in accordance with article 9.1 and 9.3 of the present."

With regards to article 7.6 on the reversal of the burden of proof, we believe that the revised paragraph as it stands has been weakened. Although we understand that this matter is subject to different legal systems, the power should be given to courts to order the reversal of the burden of proof to ensure that this does not remain on the affected individuals and communities and that the defendant is the one carrying that burden. This is a way to ensure equality of arms in the judicial process, eliminating the barriers that proof represents for victims in reaching justice. For those legal regimes where the reversal of the burden of proof is not possible, the legally binding instrument should strongly encourage the enactment of amendment of laws to allow for this provision in order to fulfil victims' right to access remedies. We therefore propose to amend paragraph 7.6 as follows:

"7.6 Courts asserting jurisdiction under this (Legally Binding Instrument) may require, where needed, reversal of the burden of proof to fulfil the victims' right to access remedies. Where the reversal of the burden of proof is not provided for in certain legal regimes, State parties shall, to the extent possible, enact and amend laws to reverse the burden of proof and ensure that it lies with the defendant.

Article 8 – Legal liability

In order to further clarify the principles of parent company liability (including due to the corporate culture, standards or products), and joint and several liability, for human rights abuses that occur throughout their business relationships, including through their value chains, we propose to amend article 8.7 as follows. The inclusion of joint and several liability is key to ensure that all companies involved in the abuse in terms of article 8.7 are liable for the harm caused by others through their business relationships, as well to guaranty integral remedies for the affected communities or individuals.

"8.7 a. States Parties shall ensure that their domestic law provides for the ***joint and several liability*** *of legal or natural persons conducting business activities,* ***~~including~~ in particular*** *those of transnational character, for their failure to prevent another legal or natural person with whom it has a business relationship,* ***including throughout its value chain****, from causing or contributing to human rights abuses, when the former legally or factually controls or supervises such person or the relevant activity that caused or contributed to the human rights abuse, or should have foreseen risks of human rights abuses in the conduct of their business activities,* ***~~including~~ in particular*** *those of transnational character, or in their business relationship, ~~but failed to put adequate measures to prevent the abuse.~~"*

Given the difficulty for victims to prove the links of control, supervision and of business relationship between different legal entities, in particular in cases where business enterprises fail to comply with their obligations to disclose information (see articles 4.2f and 6.3e), courts should be able to make a rebuttable presumption of control by the controlling or parent company. They should also have competence to reverse the burden of proof, in accordance with article 7.6.

We therefore propose the inclusion of an additional paragraph:

"8.7 bis States Parties shall ensure that their domestic law provides for a rebuttable presumption of control of the controlling or parent company in order to determine the joint and several liability of the involved natural or legal persons when business enterprises fail to disclose information, in accordance with their obligations under article 4.2f and 6.3e."

Article 8.8 is the corollary to article 6.6 regarding the link between the human rights due diligence obligations and the determination of liability. These two articles are very important in order to avoid due diligence requirements becoming procedural 'check-list' exercise and a tool for transnational corporations and other business enterprises to escape liability. We therefore recommend the deletion of the second phrase in this paragraph, which may result in contradicting the purpose of the paragraph and suggest that liability depends on the compliance with human rights due diligence standards. The aim of this deletion is to ensure that the adjudicator does not focus on the implementation or not of a due diligence procedure, but on the harm caused, according to the principles as the duty of care or the principles of extracontractual civil liability.

We therefore propose the deletion in article 8.8 of the following sentence:

"Ar. 8.8 Human rights due diligence shall not automatically….~~The court or other competent authority will decide the liability of such entities after an examination of compliance with applicable human rights due diligence standards."~~

On article 8.9 on criminal liability, we recommend the following amendment and also propose for the legally binding instrument to include a non-exhaustive list of crimes in an annex that were outlined in article 6.7 of the previous version of the revised draft of the legally binding instrument. The COP should have the competence to update this non-exhaustive list:

"8.9 Subject to their legal principles, States parties shall ensure that their domestic law provides for the criminal or functionally equivalent liability of legal persons for human rights abuse that ***~~amount to~~ constitute*** *crimes under international criminal law,* ***and those connected to violations of human rights law, international labour law, international humanitarian law and international environmental law*** *binding on the State party, customary international law or their domestic law. […] See annex with list of crimes".*

Liability standards should be different and stricter for business activities, which are inherently dangerous and where risk is foreseeable. In such cases, transnational corporations and other business enterprises should be held liable even when they have not acted negligently. Strict liability is appropriate in cases where business enterprises are engaged in hazardous or inherently dangerous industries. We therefore propose to include a clause on strict liability, which is a form of liability that already exists in different domestic legal systems:

"6.12. In business activities that are hazardous or inherently dangerous, States Parties shall provide measures under domestic law to establish strict liability, without regard to the negligence of the business enterprise. This shall apply without prejudice to already existing provisions on strict liability in domestic law."

Article 9 – Adjudicative jurisdiction

We propose that the domicile of the affected individual and communities be included under article 9.1 in the definition of jurisdiction, which was present in the previous first revised draft under art. 7.1b. This is can result particularly important, for instance for migrant workers, in order to reduce barriers relative to resources, mobility and language in access to justice by providing affected individuals and communities with the option to file a complaint where they are domiciled. We propose the following amendment:

"9.1d. The domicile of the affected individuals and communities.

In order to ensure consistency in language used in article 9.1c, we propose the inclusion of the word "natural persons" under article 9.2, as follows:

"9.2 *Without prejudice to any broader definition of domicile provided for in any international instrument or domestic law, the legal* ***or natural person*** *conducting business activities of a transnational character, including through their business relationships, is considered domiciled at the place where it has its: […]."*

We regret the deletion of "substantial business interests" in the definition of domicile under article 9.2 (previously article 7.2b) as it would have opened further possibilities for affected individuals and communities to access justice, which is the principal aim of this legally binding instrument. We therefore propose to include an additional point under article 9.2:

"**9.2e. Substantial business interests**".

Article 9.3: deletion "as per article 9.1".

The inclusion of article 9.5 is a positive development as it attempts to establish the principle of *forum necessitatis*, which provides affected individuals and communities with a forum when no other forum is available nor guarantees them a fair trial. In order to use less restrictive language and language used in other regulations, we propose the deletion of the word "sufficiently" as follows:

"9.5 Courts shall have jurisdiction over claims against legal or natural persons not domiciled in the territory of the forum State if no other effective forum guaranteeing a fair trial is available and there is a ~~**sufficiently**~~ close connection to the State Party concerned."

We recommend the inclusion of an additional paragraph in article 9, which provides for universal jurisdiction in cases of human rights abuses and violations, which amount to international crimes, as defined under article 8.9, given that such crimes are of concern to the international community as a whole.

"9.6. All courts shall have jurisdiction over claims against legal or natural persons not domiciled in the territory of the forum State for human rights abuses and violations which constitute the most serious crimes of concern to the international community as a whole."

Article 10 on Statute limitations

Some words seem to be missing in article 10.1. It is important that there be no prescription for human rights abuses that amount to crimes under international criminal law and international humanitarian law. These crimes would be listed in an annex as proposed for article 8.9.

"10.1 The State Parties to the present (Legally Binding Instrument) undertake to adopt 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*** *which constitute the most serious crimes of concern to the international community as a whole, such as those listed in the annex to the present".*

Taking into account that often human rights violations and abuses and environmental damage just produce the harm in the future and for future generations, and with the aim to guarantee intergenerational justice in the area of businesses and human rights, we propose an additional paragraph to ensure that when future generations are affected by harm caused in the past, but which materializes in the future they can hold the responsible corporations liable.

"10.3 The State Parties to the present (Legally Binding Instrument) undertake to adopt legislative or other measures necessary to ensure that statutory or other limitations do not

apply to the prosecution and punishment of all violations of international human rights law caused in the past but producing future harm for present and future generations. States Parties shall guarantee such affected individuals and communities with access to effective remedy."

Article 14 – Consistency with International Law principles and instruments

We welcome the provisions included in this article that enable for the maximum protection of the rights of affected individuals and communities and strengthen their access to justice and remedies. In this sense, we reiterate the importance of article 14.3 that protects any national, regional or international instruments that may provide for stronger protection of affected individuals and communities and their access to justice and remedy in the context of human rights abuses by transnational corporations and other business enterprises.

We also strongly support the inclusion of article 14.5a and b that will ensure that the human rights obligations of States arising from this legally binding instrument shall not be trumped by other international agreements, most notably trade and investment agreements. We propose for this article to also make reference to **"contracts"** in addition to "international agreements". We additionally propose for the legally binding instrument to require States to review and, where necessary, amend such agreements which contradict States Parties human rights obligations or obligations under the present. Article 14.5a. would therefore read:

"14.5a. any existing bilateral or multilateral agreements ***and contracts,*** *[…] shall be interpreted, implemented* ***and, where necessary reviewed and amended,*** *in a manner that will not undermine or limit their capacity to fulfil their obligations under this […]."*

Article 15 – Institutional arrangements – Committee

Given the existing weak enforcement of international human rights law, we strongly call for the strengthening of the functions, purposes and competencies of the Committee. This draft legally binding instrument was accompanied in previous sessions by a draft Optional Protocol providing for an individual complaint mechanism, similar to other existing Optional Protocols.

We recommend for an Optional Protocol, providing for a complaint mechanism, to be part of future negotiations and be adopted jointly with the legally binding instrument.

Article 16 – Implementation

Article 6.7 relative to the protection of preventive measures from undue influence from commercial and other vested is a crucial provision and should actually be mainstreamed throughout the legally binding instrument. The corporate capture of policy and decision-making spaces is one of the main obstacles for implementation, explaining the weakness of corporate accountability. We therefore propose for a similar provision to be included in article 16 on implementation:

"6.6. In implementing this (Legally Binding Instrument), States Parties shall act to protect legal processes, government bodies and policy and decision-making spaces from commercial and other vested interests".

We additionally require for an additional paragraph under this article that provides for the direct applicability of the present (Legally binding instrument) in cases of legislative negligence for its implementation. The direct applicability of human rights treaties already exists under some legal systems and should be made available for other legal systems in the case mentioned above of negligence by competent authorities to take the necessary legislative measures for its implementation:

"6.7. The present (Legally Binding Instrument) shall be directly applicable in cases of negligence of legislative and other competent bodies for its implementation."