

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

This document features the proposed changes (in the left column) and comments (in the right column) by the Working Group on Transnational Corporations and Human Rights of the Swiss NGO Platform on Human Rights.

The most important proposals and comments are highlighted in yellow.

Preamble

<p>The States Parties to this (Legally Binding Instrument),</p>	
<p>(PP1) <i>Reaffirming</i> the principles and purposes of the Charter of the United Nations;</p>	
<p>(PP2) <i>Recalling</i> the nine core International Human Rights Instruments adopted by the United Nations, and the eight fundamental Conventions adopted by the International Labour Organization;</p>	
<p>(PP3) <i>Recalling</i> also 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, the UN Declaration on Human Rights Defenders, the UN Declaration on the Rights of Indigenous Peoples, <i>the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas</i>, relevant ILO Conventions, and recalling further the 2030 Agenda for Sustainable Development, as well as all internationally agreed human rights Declarations;</p>	
<p>(PP4) <i>Reaffirming</i> the fundamental human rights and the dignity and worth of the human person, in the equal rights of men and women and the need to promote social progress and better standards of life in larger freedom while respecting the obligations arising from treaties and other sources of international law as set out in the Charter of the United Nations;</p>	
<p>(PP5) <i>Reaffirming</i> that all human rights are universal, indivisible, interdependent, inter-related, and inalienable, and should be applied in a non-discriminatory way;</p>	

<p>(PP6) <i>Upholding</i> the right of every person to have effective and equal access to justice and remedy in case of violations of international human rights law or international humanitarian law, including the rights to non-discrimination, participation and inclusion;</p>	
<p>(PP7) <i>Stressing</i> that the primary obligation to respect, protect, fulfill and promote human rights and fundamental freedoms lie with the State, and that States must protect against human rights abuse by third parties, including business enterprises, within their territory, jurisdiction, or otherwise under their control, and ensure respect for and implementation of international human rights law;</p>	
<p>(PP8) <i>Recalling</i> the United Nations Charter 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, colour, sex, language or religion;</p>	
<p>(PP9) <i>Upholding</i> the principles of sovereign equality, peaceful settlement of disputes, and maintenance of the territorial integrity and political independence of States as set out in Article 2 of the United Nations Charter;</p>	
<p>(PP10) <i>Acknowledging</i> that all business enterprises have the capacity to foster sustainable development through an increased productivity, inclusive economic growth and job creation that respect internationally recognized human rights, labour rights, health and safety standards, the environment and climate, in accordance with relevant international standards and agreements;</p>	
<p>(PP11) <i>Underlining</i> that business enterprises, regardless of their size, sector, location, operational context, ownership and structure have the obligation to respect internationally recognized human rights, including by avoiding causing or contributing to human rights abuses through their own activities and addressing such abuses when they occur, as well as by preventing or mitigating human rights abuses that are directly linked to their operations, products or services by their business relationships;</p>	

<p>(PP12) <i>Emphasizing</i> 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 business-related human rights abuses;</p>	
<p>(PP13) <i>Recognizing</i> the distinctive and disproportionate impact of business-related human rights abuses on women and girls, children, peasants, indigenous peoples, persons with disabilities, people of African descent, older persons, migrants and refugees, and other persons in vulnerable situation, as well as the need for a business and human rights perspective that takes into account specific circumstances and vulnerabilities of different rights-holders and the structural obstacles for obtaining remedies for these persons;</p>	
<p>(PP14) <i>Emphasizing</i> the need for States and business enterprises to integrate a gender perspective in all their measures, in line with the Convention on the Elimination of All Forms of Discrimination against Women, the Beijing Declaration and Platform for Action, the ILO Convention 190 concerning the elimination of violence and harassment in the world of work, the Gender Guidance for the Guiding Principles on Business and Human Rights, and other relevant international standards;</p>	
<p>(PP15) <i>Taking</i> into account the work undertaken by the United Nations Commission on Human Rights and the Human Rights Council, including the Human Rights treaty bodies, on the question of the responsibilities of transnational corporations and other business enterprises with respect to human rights, and all relevant previous Human Rights Council resolutions, including in particular Resolution 26/9;</p>	
<p>(PP16) <i>Recognizing</i> the contribution and complementary role that the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework has played in that regard and to advancing respect for human rights in the business activities;</p>	

<p>(PP17) <i>Noting</i> the ILO Declaration on Fundamental Principles and Rights at Work and the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy;</p>	
<p>(PP18) <i>Desiring</i> to clarify and facilitate effective implementation of the obligations of States regarding business-related human rights abuses and the obligations of business enterprises in that regard;</p>	
<p>Have agreed as follows:</p>	

SECTION I

Article 1. Definitions

<p>1.1. “Affected personVictim” shall mean any person or group of persons, irrespective of nationality or place of domicile, who individually or collectively have suffered or are potentially affected by harm that constitutes a human rights abuse, through acts or omissions in the context of business activities. The term “affected personvictim” shall may also include the immediate family members or dependents of the directly affected personvictim. A person shall be considered an affected personvictim regardless of whether the perpetrator of the human rights abuse is identified, apprehended, prosecuted, or convicted.</p>	<p>The term “victim” shall be replaced by the term “affected person” in order to highlight that they are persons with rights (rights holders) and not only “victims”.</p> <p>Secondly and importantly, also potentially affected persons or groups should be included in the definition of "affected persons" so that they can benefit from the corresponding rights (Art. 4), protection (Art. 5) and access to justice and remedy (Art. 7).</p> <p>This provides the equivalent to the obligations for companies to identify "potential human rights abuses" (art. 6.3.a) and communicate regularly to "potentially affected persons" (art. 6.3.d) and to integrate “a gender perspective, in consultation with potentially impacted women (art. 6.4.b). Additionally, Art. 9.1 admits “claims [...] arising from acts or omissions that result or may result in human rights abuses”.</p> <p>In the first phrase, “in the context of business activities” can be deleted as this element is contained in the definition of “human rights abuse” (art. 1.2).</p> <p>In the second phrase, the word “may” shall be set back to “shall” as in the 2nd Rev. Draft in order to guarantee international legal equality.</p>
<p>1.x. “Marginalised and disadvantaged group” shall mean any group of persons facing heightened risks of human rights abuse or of being excluded from access to remedy. Such groups include, inter alia, women and girls, children, older persons, peasants, pastoralists, small-scale fishers, forest-dwellers, indigenous peoples, people of linguistic minorities,</p>	<p>Marginalised and disadvantaged groups shall be listed at one place. Reference can then be taken at the places where such persons are mentioned in the Draft: Articles 6.4.c, 7.1, 7.3.a, 15.7 and 16.4.</p>

<p>persons with disabilities, poor and otherwise marginalised people, persons in conflict-affected areas and areas under occupation, migrants, refugees and internally displaced persons, and people of African descent.</p>	
<p>1.2. “Human rights abuse” shall mean any direct or indirect harm in the context of business activities, including those of a transnational character, through acts or omissions, against any person or group of persons, that impedes the full enjoyment of internationally recognized human rights and fundamental freedoms in accordance with Art. 3.3, including the right to a safe, clean, healthy and sustainable environment.</p>	<p>The definition of human rights shall be left to Art. 3.3 (where also „the right to a safe, clean, healthy and sustainable environment“ has been moved to).</p>
<p>1.3. “Business activities” means any economic or other business activity, including but not limited to the extraction, processing, manufacturing, production, transportation, distribution, commercialization, marketing and retailing of, respectively, commodities, goods and services, investing in and financing of enterprises, projects and activities, undertaken by a natural or legal person, including State- owned enterprises, financial institutions and investment funds, transnational corporations, other business enterprises, joint ventures, and any other business relationship undertaken by a natural or legal person. This includes activities undertaken by electronic means.</p>	<p>“undertaken by a natural or legal person” is a repetition.</p>
<p>1.4. “Business activities of a transnational character” means any business activity described in Article 1.3. above, when:</p>	
<p>a. It is undertaken in more than one State or jurisdiction or State; or</p>	
<p>b. It is undertaken in one State but a significant part of its preparation, planning, direction, control, design, processing, manufacturing, storage or distribution, takes place through any business relationship in another State or jurisdiction; or</p>	<p>This list is not necessary as the respective activities are part of the definition of “Business activities” above (Art. 1.3) (and, moreover, this list differs from the above one).</p>
<p>c. It is undertaken in one State but has significant effect in another State or jurisdiction.</p>	

<p>1.5. “Business relationship” refers to any relationship between natural or legal persons, including between State and non-State entities, to conduct business activities, including those activities conducted through affiliates, subsidiaries, agents, suppliers, partnerships, joint ventures, beneficial proprietorship, or any other structure or relationship as provided under the domestic law of the State, including activities undertaken by electronic means.</p>	
<p>1.6. “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). Such organizations shall declare, in their instruments of formal confirmation or accession, their level of competence in respect of matters governed by this (Legally Binding Instrument), and they shall subsequently inform the depositary of any substantial modification to such competence. References to “States Parties” in the present (Legally Binding Instrument) shall apply to such organizations within the limits of their competence.</p>	

Article 2. Statement of Purpose

<p>2.1. The purpose of this (Legally Binding Instrument) is, in the context of business activities, particularly those of a transnational character:</p>	<p>By placing the term “in the context of business activities, particularly those of a transnational character” at this place, repetitions in the sub-paragraphs can be avoided, and the “transnational character” is very prominent here.</p>
<p>a. To clarify and facilitate effective implementation of the obligation of States to respect, protect, fulfill and promote human rights in the context of business activities, particularly those of transnational character; including the obligation to prevent human rights abuses in the context of business-related government activities;</p>	<p>The addition refers to the new article between Articles 6.7 and 6.8.</p>
<p>b. To clarify and ensure respect and fulfillment of the human rights obligations-legal duties of business enterprises with regard to human rights;</p>	<p>Business enterprises have <i>legal duties</i> that are placed on them by the States implementing their <i>human rights obligations</i>. If business enterprises were to have human rights obligations, they would be raised to the level and position of States. This would facilitate both corporate capture by business and the delegation of the States’ obligations to the private sector.</p>

<p>c. To prevent and mitigate the occurrence of human rights abuses in the context of business activities by effective mechanisms of monitoring and enforceability;</p>	<p>"Mitigate" would suggest that abuses are admissible if mitigated after occurrence.</p> <p>In the Statement of purpose, only objectives shall be named and not the means to attain them. Additionally, the means named are not comprehensive.</p>
<p>d. To ensure access to justice and effective, adequate and timely remedy for affected person victims of human rights abuses in the context of business activities;</p>	<p>"human rights abuses" is contained in the definition of "affected persons".</p>
<p>e. To facilitate and strengthen mutual legal assistance and international cooperation in order to prevent, and remedy mitigate and prosecute human rights abuses in the context of business activities, particularly those of transnational character, and to provide access to justice and effective, adequate and timely remedy to affected person victims of such abuses.</p>	<p>The vague term "mitigate" shall be replaced by the clear term "remedy".</p> <p>"prosecute" points to the inherent goal of ending impunity.</p> <p>Access to justice and remedy is already contained in d.</p>

Article 3. Scope

<p>3.1. This (Legally Binding Instrument) shall apply to all business activities, including business activities particularly those of a transnational character.</p>	
<p>3.2. Notwithstanding Article 3.1. above, when imposing prevention obligations on business enterprises under this (Legally Binding Instrument), States Parties may establish in their law, a non-discriminatory basis to differentiate how business enterprises discharge these obligations commensurate with their size, sector, operational context or the severity of impacts on human rights.</p>	
<p>3.3. This (Legally Binding Instrument) shall cover all internationally recognized human rights and fundamental freedoms binding on the State Parties of this (Legally Binding Instrument), including those recognized in the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, all core international human rights treaties and fundamental ILO Conventions to which a State is a Party, international humanitarian law and customary international law, including the right to a safe, clean, healthy and sustainable environment.</p>	<p>"binding" requires more clarity. Does that mean that it takes into account only those instruments to which a State is a party?</p> <p>"international humanitarian law" has been added in order to cover the human rights standards that apply during situations of occupation mentioned in Article 6.4.g.</p> <p>The "right to a safe, clean, healthy and sustainable environment" has been moved from article 1.2 to this place.</p>

SECTION II

Article 4. Rights of **Affected PersonVictims**

<p>4.1. Affected personsVictims of human rights abuses in the context of business activities shall enjoy all internationally recognized human rights and fundamental freedoms in accordance with Article 3.3.</p>	<p>Definitions shall not be repeated.</p>
<p>4.2. Without prejudice to Article 4.1. above, affected personvictims shall:</p>	
<p>a. be treated with humanity and respect for their dignity and human rights, ensuringand their safety, physical and psychological well-being and privacyshall be ensured and protecting them from intimidation and reprisals;</p>	<p>Moving “intimidation and reprisals” from 4.2.e. to this place allows to move the whole article 4.2.e (which is about protection, not rights) to Article 5 on Protection.</p>
<p>b. be guaranteed the right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement;</p>	
<p>c. be guaranteed the right to fair, adequate, effective, prompt, non-discriminatory, appropriate and gender-sensitive access to justice, and individual or collective, reparation and effective remedy in accordance with this (Legally Binding Instrument) and international law, such as restitution, compensation, rehabilitation, reparation, satisfaction, guarantees of non-repetition, injunction, environmental remediation, and ecological restoration including restitution of a safe, clean, healthy and sustainable environment;</p>	<p>“appropriate” corresponds with “adequate”. “reparation” is indicated as part of the remedies below. “environmental remediation, and ecological restoration” are contentious terms and shall be replaced by language already contained in the text (see art. 3.3). If the requirements for access to justice and for remedies are defined only at one (appropriate) place (see proposal for the new Article 7.x), this paragraph here could be simplified as follows: „c. be guaranteed the right to access to justice and individual or collective remedy in accordance with Article 7.x and international law;“</p>
<p>d. be guaranteed the right to submit claims, including by a representative or through class action in appropriate cases, to courts and non-judicial grievance mechanisms of the States Parties;</p>	
<p>x. be guaranteed the right to request precautionary measures (injunctions) in order to avert imminent human rights abuses;</p>	<p>Precautionary measures are an overly important (last resort) element of prevention. The counterpart to this right is the obligation for States to take such measures in the new Art. 6.z.</p>

<p>y. be guaranteed the right to be heard in all stages of proceedings;</p>	<p>Moved from Art. 7.3.b (where legal assistance is addressed)</p>
<p>e. be protected from any unlawful interference against their privacy, and from intimidation, and reprisals, before, during and after any proceedings have been instituted, as well as from re-victimization in the course of proceedings for access to effective, prompt and adequate remedy, including through appropriate protective and support services that are gender and age responsive; and,</p>	<p>As this paragraph is on protection, not on rights, it shall be merged with Art. 5.1 (which contains already some elements of this paragraph).</p>
<p>f. be guaranteed access to information, and legal aid and legal assistance in accordance with Article 7.3 relevant to pursue effective remedy, including access to all documents enabling the disclosure of all legal entities of a corporate group, including investors and lenders, involved in a case of human rights abuse.</p>	<p>The kind of information should be specified in order to make this provision useful.</p>
<p>g. be guaranteed access to appropriate diplomatic and consular means to facilitate access to effective remedy, especially in cases of business-related human rights abuses of a transnational character.</p>	<p>Restored from 2nd Rev. Draft</p>
<p>4.x States parties shall take all legal and other measures that are necessary to guarantee the rights of affected persons in accordance with Article 4.2.</p>	<p>The definition of the rights must be accompanied by a concrete obligation for States to operationalize these rights.</p>
<p>4.3. Nothing in this provision shall be construed to derogate from any higher level of recognition and protection of any human rights of affected personvictims or other individuals under international, regional or national law.</p>	

Article 5. Protection of Affected PersonVictims

<p>5.1. States Parties shall protect affected personvictims, their representatives, families and witnesses from any unlawful interference with their human rights, and fundamental freedoms and privacy, and from intimidation and reprisals including prior, during and after they have instituted any proceedings to seek access to effective, prompt and adequate remedy, as well as from re-victimization in the course of these proceedings-, including through</p>	<p>“privacy”, “intimidation” and “reprisals” have been moved here from Art. 4.2.e. Remedy shall not be defined here, but in the new Article 7.x.</p>
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<p>appropriate protective and support services that are gender and age responsive.</p>	
<p>5.2. States 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 exercise their human rights free from any threat, intimidation, violence or insecurity.</p>	
<p>5.3. States Parties shall investigate all human rights abuses covered under this (Legally Binding Instrument), effectively, promptly, thoroughly and impartially, and where appropriate, take action against those natural and/or legal persons found responsible, in accordance with domestic this (Legally Binding Instrument) and international law.</p>	<p>This paragraph may be moved to Article 7 on Access to Remedy.</p> <p>References to domestic law are to be avoided wherever possible in order not to compromise the goal of international legal equality.</p>

Article 6. Prevention

<p>6.1. States Parties shall regulate effectively the activities, including those of a transnational character, of all business enterprises within their territory, jurisdiction, or otherwise under their control, including transnational corporations and other business enterprises that undertake activities of a transnational character in order to effectively prevent human rights abuses.</p>	<p>Text deleted for simplifying.</p> <p>The goal of the regulation must be stated in order to make clear the focus of the regulation.</p>
<p>6.2. States Parties shall take appropriate legal and policy measures to ensure that business enterprises, including transnational corporations and other business enterprises that undertake activities of a transnational character, within their territory, jurisdiction, or otherwise under their control, respect internationally recognized human rights as per Article 3.3 above, and prevent and mitigate human rights abuses and mitigate human rights risks throughout their business activities and relationships.</p>	<p>Business enterprises shall not mitigate <i>abuses</i>, but <i>risks</i> for abuses.</p>
<p>6.3. For that purpose, States Parties shall require business enterprises to undertake human rights due diligence, proportionate to their size, risk of human rights abuse or the nature and context of their business activities and relationships, as follows:</p>	
<p>a. Identify, assess and publish any actual or potential human rights abuses that may arise from their own business activities, or from their business relationships, <i>whereas</i></p>	

<p>identification and assessment need the meaningful, substantial and ongoing participation of the (potentially) affected persons and their representatives;</p>	
<p>b. Take appropriate measures to avoid, prevent and mitigate terminate effectively the identified actual or potential human rights abuses which the business enterprise causes or contributes to through its own activities, or through entities or activities which it controls, or manages or supervises, and take reasonable and appropriate measures to prevent or mitigate-terminate abuses to which it is directly linked through its business relationships;</p>	<p>“terminate”: the goal shall not be to mitigate, but rather to terminate abuses that have occurred.</p> <p>“or supervises”: aligned with Art. 8.6</p> <p>“reasonable” deleted as this adjective is not contained in the first part of the sentence.</p>
<p>c. Monitor the effectiveness of their measures as per Art. 6.3.b above to prevent and mitigate human rights abuses, including in their business relationships;</p>	
<p>d. Communicate regularly and in an accessible manner to stakeholders, particularly to affected or potentially affected persons, to account for how they address through their policies and measures any actual or potential human rights abuses that may arise from their activities including in their business relationships as per Article 6.3.a. above.</p>	
<p>6.4. States Parties shall ensure that human rights due diligence measures undertaken by business enterprises shall include:</p>	
<p>a. Undertaking and publishing regular human rights, labour rights, health, socio-economic, environmental and climate change impact assessments throughout their operations, including in their business relationships, carried out on an independent and transparent basis;</p>	<p>Health is also mentioned in the analogue list in 6.4.e.</p> <p>“including in their business relationships” is also mentioned in 6.4.e.</p> <p>Impact assessments need to be carried out by bodies that are independent from the company in the interest of results that are hopefully impartial and objective (see also comment to Article 6.4.c below).</p>

<p>b. Integrating a gender perspective, in consultation with potentially impacted women and women's organizations, in all stages of human rights due diligence processes to identify and address the differentiated risks and impacts experienced by women and girls;</p>	
<p>c. Conducting meaningful consultations with individuals or communities whose human rights can potentially be affected by business activities, and with other relevant stakeholders, including trade unions, while giving special attention to those facing heightened risks of business-related human rights abuses, such as women, children, persons with disabilities, indigenous peoples, people of African descent, older persons, migrants, refugees, internally displaced persons and protected populations under occupation or conflict areas;</p>	<p>Consultations shall not be done by companies themselves due to conflicts of interest and partiality. This shall be a task of States, facilitated, e.g., by NHRIs. So this text is moved to the new Article 6.y.</p>
<p>d. Ensuring that consultations with indigenous peoples are undertaken in accordance with the internationally agreed standards of free, prior and informed consent;</p>	
<p>e. Reporting publicly and periodically on non-financial matters, including information about group structures and suppliers as well as policies, risks, outcomes and indicators concerning human rights, labour rights, health, environmental and climate protectionchange standards throughout their operations, including in their business relationships;</p>	
<p>f. Integrating human rights due diligence requirements in contracts regarding their business relationships and making provision for capacity building or financial contributions, as appropriate;</p>	
<p>g. Adopting and implementing enhanced human rights due diligence measures to prevent human rights abuses in occupied or conflict-affected areas, including situations of occupation.</p>	<p>The human rights standards that apply during such situations derive from international humanitarian law as well as international criminal law. In order to avoid a gap, international humanitarian law has been added to Article 3.3.</p>

<p>6.5. States Parties may provide incentives and adopt other measures to facilitate compliance with requirements under this Article by micro, small and medium sized business enterprises.</p>	
<p>6.6. States Parties shall ensure that effective national procedures are in place to ensure compliance with the obligations laid down under this Article, taking into consideration the potential human rights abuses resulting from the business enterprises' size, nature, sector, location, operational context and the severity of associated risks associated with the business activities in their territory, jurisdiction, or otherwise under their control, including those of transnational character.</p>	
<p>6.7. Without prejudice to the provisions on criminal, civil and administrative liability under Article 8, State Parties shall provide for adequate penalties, including appropriate corrective action where suitable, for business enterprises failing to comply with provisions of Articles 6.3 and 6.4.</p> <p>States parties shall provide for the right of potentially affected persons to bring complaints and legal action for omitted or insufficient due diligence as per Articles 6.3 and 6.4, and for omitted or insufficient impact assessments as per Article 6.x.</p>	
<p>6.x In order to prevent human rights violations and abuses, States Parties shall regulate effectively all business-related government activities. Such activities include both legislative and executive activities with the aim to admit, facilitate or promote business activities, or to carry out public procurement, including, inter alia, granting land, mining and logging concessions, export credits and insurances, and loans, both directly or through international financial institutions, and negotiating trade and investment agreements. States shall take all appropriate legal and policy measures including, inter alia:</p> <ul style="list-style-type: none"> a. requiring the respective governmental bodies to carry out participative human rights, socio-economic, environmental and gender impact assessments both prior and during the above mentioned activities; b. developing and making available methodologies for such impact assessments, also by means of international cooperation; c. establishing liability for not or insufficiently carrying out such impact assessments. 	<p>Art. 6.1 to 6.7 request States Parties to ensure that business enterprises prevent human rights abuses. There is no word about States Parties themselves preventing human rights violations in their own activities, including in those as members of intergovernmental organisations. It is not about preventing State-owned enterprises to commit human rights abuses, as this type of enterprises is included in the definition of "business activities" (Art. 1.3).</p> <p>So there is a new paragraph needed, proposed on the left, to cover government activities where human rights violations and abuses shall be prevented by the States themselves.</p>

<p>This provision also applies to States Parties in their quality and activities as members of international organisations, including financial institutions. States Parties that transfer competences to, or participate in, an international organisation must take all reasonable steps to ensure that the relevant organisation acts consistently with this Article.</p>	
<p>6.y. States shall conduct meaningful consultations with individuals or communities whose human rights can potentially be affected by business activities, and with other relevant stakeholders, including trade unions, while giving special attention to marginalised and disadvantaged groups, ensuring that consultations with indigenous peoples are undertaken in accordance with the internationally agreed standards of free, prior and informed consent.</p>	<p>Moved here from Articles 6.4.c. and d. as consultations shall not be done by companies themselves due to conflicts of interest and partiality.</p>
<p>6.z. States shall take, when necessary, precautionary measures (injunctions) in order to avert imminent human rights abuses; on their own or on request of potentially affected persons.</p>	<p>This obligation is the counterpart to the right of potentially affected persons to require such measures in Art. 4.2.x.</p>
<p>6.8. In setting and implementing their public policies and legislation with respect to the implementation of this (Legally Binding Instrument), States Parties shall act in a transparent manner and protect these policies and legislation from the influence of commercial and other vested interests of business enterprises, including those conducting business activities of transnational character.</p>	

Article 7. Access to Justice and Remedy

<p>7.x. States Parties shall ensure that access to justice and remedies comply with the requirements as follows:</p> <ol style="list-style-type: none"> a. Access to justice for affected persons must be fair, adequate, effective, prompt, non-discriminatory and gender-sensitive. b. Remedies must be effective, prompt and adequate. Remedies include, inter alia, restitution, compensation, rehabilitation, reparation, satisfaction, guarantees of non-repetition, injunction, and restitution of a safe, clean, healthy and sustainable environment. 	<p>The requirements for access to justice and for remedies shall be defined only at one prominent place which may be here. So the “definitions” in Articles 4.2.c, 4.2.e, 5.1 and 7.1 can be deleted.</p>
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<p>7.1. States Parties shall provide their courts and State-based non-judicial mechanisms, with the necessary competence in accordance with this (Legally Binding Instrument) to enable affected personvictims’ access to justice and adequate, timely and effective remedy and access to justice in accordance with Article 7.x, and to overcome the specific obstacles which women, vulnerable and marginalized people and disadvantaged groups as per Article 1.x face in accessing such mechanisms and remedies.</p>	
<p>7.2. States Parties shall ensure that their domestic laws facilitate access to information in accordance with article 4.2.f., including through international cooperation, as set out in this (Legally Binding Instrument), and enable courts to allow proceedings in appropriate cases.</p>	<p>What is meant with “proceedings in appropriate cases”? Proceedings for accessing information? If not, why are these different matters combined in one paragraph?</p> <p>The kind of information must be defined.</p> <p>“appropriate” may be too vague.</p>
<p>7.3. States Parties shall provide adequate and effective legal assistance to affected personvictims throughout the legal process, including by:</p>	
<p>a. Making information available and accessible to affected personvictims onf their rights and the status of their claims, in relevant languages and accessible formats to adults and children alike, including those with disabilities marginalised and disadvantaged groups as per Article 1.x;</p>	
<p>b. Guaranteeing the rights of affected personvictims to be heard in all stages of proceedings;</p>	<p>Placed under Article 4.2.y., as guaranteeing a right is not a measure of legal assistance. It is a matter of enacting it once.</p>
<p>c. Avoiding unnecessary costs or delays forwhen bringing a claim and during the disposition of cases and the execution of orders or decrees granting awards; and,</p>	<p>Costs are dealt with in Article 7.4. Avoiding costs is not a measure of legal assistance, but a condition for access to remedy.</p> <p>This paragraph here shall be only on avoiding delays.</p>
<p>d. Removing legal obstacles, including the doctrine of forum non conveniens; Providing assistance to initiate and conduct proceedings in domestic courts or the courts of another State Party in appropriate cases of human rights abuses resulting from business activities of a transnational character.</p>	<p>The changes from the 2nd to the 3rd Rev. Draft have distorted the meaning of this paragraph quite a lot.</p> <p>Removing legal obstacles is an act of legislation and not of legal assistance. So this topic is moved to the new article 7.y. below.</p>

	By inserting "Providing assistance", the language and meaning of the 2nd Rev. Draft is restored.
<p>7.4. States Parties shall ensure that court fees and rules concerning allocation of legal costs do not place an unfair and unreasonable burden on affected personvictims or become a barrier to commencing proceedings in accordance with this (Legally Binding Instrument), and that there is a provision for possible waiving of certain costs in suitable cases.</p> <p>This provision applies also if the affected persons have lost the case, unless it was manifestly abusive.</p>	
<p>7.y. States Parties shall remove legal obstacles, including the doctrine of forum non conveniens, to allow proceedings initiated by claimants from abroad in accordance with Article 9.</p>	<p>The provision must be framed this way round (not "to initiate proceedings in the courts of another State Party" as it was in Article 7.3.d).</p> <p>The prohibition of the forum non conveniens was also dealt with in a paragraph of its own in the former draft (Article 7.5).</p>
<p>7.5. States Parties shall enact or amend laws allowing judges to reverse the burden of proof in appropriate cases to fulfill the affected personvictims' right to access to remedy, where consistent with international law and its domestic constitutional law.</p>	<p>"in appropriate cases" shall either be defined or deleted.</p> <p>If this provision were not consistent with international law, it already could not be included in the Treaty.</p> <p>There shall be no reservations of domestic law.</p>
<p>7.z. States Parties shall enact or amend laws allowing judges, where information is withheld despite the right to information and the corresponding disclosure obligation according to Article 7.2, to make or confirm rebuttable presumptions about a company's connections or the companies involved in a case, and the corresponding liabilities.</p>	<p>Rebuttable presumptions are an important means for facilitating access to remedy.</p>
<p>7.6. State Parties shall provide effective mechanisms for the enforcement of remedies for human rights abuses, including through prompt execution of national or foreign judgments or awards, in accordance with the present (Legally Binding Instrument), domestic law and international legal obligations.</p>	<p>There shall be no reservations of domestic law.</p>

Article 8. Legal Liability

<p>8.1. States Parties shall ensure that their domestic law provides for a comprehensive and adequate system of legal liability of legal and natural persons conducting business activities, within their territory, jurisdiction, or otherwise under their control, for human rights abuses that may arise from their own business activities, including those of transnational character, or from their business relationships.</p>	
<p>8.2. State Parties shall ensure that their domestic liability regime provides for liability of legal persons without prejudice to the liability of natural persons, and does not make civil liability contingent upon finding of criminal liability or its equivalent for the same acts.</p>	
<p>8.3 States Parties shall adopt legal and other measures necessary to ensure that their domestic jurisdiction provides for effective, proportionate, and dissuasive criminal, civil and/or administrative sanctions where legal or natural persons conducting business activities, including those of a transnational character, have caused or contributed to human rights abuses. Regardless of the nature of the liability, States Parties shall ensure that the applicable penalties are proportionate with the gravity of the offense.</p>	<p>“proportionate” is deleted due to the last sentence which has been moved here from Article 8.8.</p>
<p>8.4. States Parties shall adopt measures necessary to ensure that their domestic law provides for adequate, prompt, effective, gender and age responsive reparations to the affected person victims of human rights abuses in the context of business activities, including those of a transnational character, in line with applicable international standards for reparations to the affected person victims of human rights abuses violations.</p> <p>Where a legal or natural person conducting business activities is found liable for reparation to an affected person victim of a human rights abuse, such person shall provide reparation to the affected person victim or compensate the State, if that State has already provided reparation to the affected person victim for the human rights abuse resulting from acts or omissions for which that legal or natural person conducting business activities is responsible.</p>	

<p>8.5. States Parties shall require legal or natural persons conducting business activities in their territory or jurisdiction or otherwise under their control, including those of a transnational character, to establish and maintain financial security, such as insurance bonds or other financial guarantees, to cover potential claims of compensation.</p>	
<p>8.6. States Parties shall ensure that their domestic law provides for the liability of legal and/or natural persons conducting business activities, including those of transnational character, for their failure to prevent another legal or natural person with whom they have or had a business relationship, from causing or contributing to human rights abuses, when the former</p> <ul style="list-style-type: none"> a. controls, manages or supervises such person or the relevant activity that caused or contributed to the human rights abuse, or b. should have foreseen risks of human rights abuses in the conduct of their business activities, including those of transnational character, or in their business relationships, but failed to take adequate measures to prevent the abuse. 	<p>The insertion of “or” is important to include both present and past relationships.</p> <p>Structured in sub-paragraphs a. and b. in order to clarify the two different conditions for liability.</p>
<p>8.7. Human rights due diligence shall not automatically absolve a legal or natural person conducting business activities from liability for causing or contributing to human rights abuses or failing to prevent such abuses by a natural or legal person as laid down in Article 8.6. The court or other competent authority will decide the liability of such legal or natural persons after an examination of compliance with applicable human rights due diligence standards.</p>	
<p>8.8. 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 abuses that amount to criminal offenses under international human rights law binding on the State Party or customary international law, or their domestic law. Regardless of the nature of the liability, States Parties shall ensure that the applicable penalties are proportionate with the gravity of the offense. This Article shall apply without prejudice to any other international instrument which requires or establishes the criminal or administrative liability of legal persons for other offenses.</p>	<p>There shall be no reservations of domestic law.</p> <p>The provision on penalties has been moved to Article 8.3 where it fits better.</p>

<p>8.9. The liability of legal persons under Article 8.98. shall be without prejudice to the criminal liability of the natural persons who have committed the offenses under the applicable domestic law.</p>	
<p>8.10. States Parties shall provide measures under domestic law to establish in their domestic law the criminal or functionally equivalent legal liability for legal or and natural persons conducting business activities, including those of a transnational character, for acts or omissions that constitute attempt, participation or complicity in human rights abuses that amount to a criminal offenses in accordance with this Article 8.8 and criminal offenses as defined by their domestic law.</p>	
<p>8.x. States Parties shall establish the joint and several liability for human rights abuses of all entities within a corporate group, and strict liability for activities in risky or dangerous contexts.</p>	

Article 9. Adjudicative Jurisdiction

<p>9.1. Jurisdiction with respect to claims brought by affected person victims, irrespectively of their nationality or place of domicile, arising from acts or omissions that result or may result in human rights abuses covered under this (Legally Binding Instrument), shall vest in the courts of the State where:</p>	
<p>a. the human rights abuse occurred and/or produced effects; or</p>	
<p>b. an act or omission contributing to the human rights abuse occurred;</p>	
<p>c. the legal or natural persons alleged to have committed an act or omission causing or contributing to the such human rights abuse in the context of business activities, including those of a transnational character, are domiciled; or</p>	<p>“in the context of business activities, including those of a transnational character,” can be deleted as “human rights abuses” are included in the first phrase of Article 9.1 and “including those of a transnational character” is included in the definition of “human rights abuses” as per Article 1.2.</p>
<p>d. the affected person victim is a national of or is domiciled.</p>	

<p>This provision does not exclude the exercise of civil jurisdiction on additional grounds provided for by international treaties or domestic laws.</p>	
<p>9.2. Without prejudice to any broader definition of domicile provided for in any international instrument or domestic law, a legal person conducting business activities of a transnational character, including through their business relationships, is considered domiciled at the place where it has its:</p>	
<p>a. it has its place of incorporation or registration; or</p>	
<p>b. place where the principal assets or operations are located; or</p>	
<p>c. the central administration or management is located; or</p>	
<p>d. it has its principal place of business or activity on a regular basis.</p>	
<p>9.3. Courts vested with jurisdiction on the basis of Article 9.1 and 9.2 shall avoid imposing any legal obstacles, including the doctrine of <i>forum non conveniens</i>, to initiate proceedings in line with Article 7.5 of this (legally binding instrument).</p>	<p>Article 7.3.d rather than 7.5?</p>
<p>9.4. Courts shall have jurisdiction over claims against legal or natural persons not domiciled in the territory of the forum State, if the claim is connected with a claim against a legal or natural person domiciled in the territory of the forum State.</p>	
<p>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 judicial process is available and there is a connection to the State Party concerned as follows:</p>	
<p>a. the presence of the claimant on the territory of the forum; or</p>	
<p>b. the presence of assets of the defendant; or</p>	

c. a substantial activity of the defendant	
9.x. Where applicable under international law, States shall incorporate or otherwise implement within their domestic law appropriate provisions for universal jurisdiction over human rights abuses that amount to crimes.	restored from Zero Draft

Article 10. Statute of limitations

10.1. The States Parties to the present (Legally Binding Instrument) shall adopt any legislative or other measures necessary to ensure that statutory or other limitations shall not apply for the commencement of legal proceedings in relation to human rights abuses resulting in violations of international law which constitute the most serious crimes of concern to the international community as a whole.	Shall “the commencement of” be omitted, so that legal proceedings are not affected by statutory limitations over their whole duration?
10.2. The States Parties to the present (Legally Binding Instrument) shall adopt any legislative or other measures necessary to ensure that statutory or other limitations applicable to civil claims or violations that do not constitute the most serious crimes of concern to the international community as a whole allow a reasonable period of time for the commencement of legal proceedings in relation to human rights abuses, particularly in cases where the abuses occurred in another State or when the harm may be identifiable only after a long period of time. Limitation periods should only start to run when the affected persons or the prosecutor have discovered the damage, its cause and the polluter.	

Article 11. Applicable Law

11.1. All matters of 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 seized on the matter.	
11.2. All matters of substance which are not specifically regulated under this [international legally binding instrument] may, upon the request of the affected person victim , be governed by the law of another State where:	
a. the acts or omissions have occurred or produced effects; or	Shall this list not be the same as in Article 9.1?

<p>b. the natural or legal person alleged to have committed the acts or omissions is domiciled.</p>	
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Article 12. Mutual Legal Assistance and International Judicial Cooperation

	<p>See also the proposal of an International Legal Assistance Mechanism in Article 15.x</p> <p>Articles 12.1 and 12.2 moved after Art. 12.3 which is the general principle worth beginning with and which was at the beginning in the 2nd Rev. Draft.</p>
<p>12.3. States Parties shall make available to one another the widest measure of mutual legal assistance and international judicial cooperation in initiating and carrying out effective, prompt, thorough and impartial investigations, prosecutions, judicial and other criminal, civil or administrative proceedings in relation to all claims covered by this (Legally Binding Instrument), including access to information and supply of all evidence at their disposal that is relevant for the proceedings.</p>	
<p>12.1. States Parties shall carry out their obligations under this Article in conformity with any treaties or other arrangements on mutual legal assistance or international judicial cooperation that may exist between them. In the absence of such treaties or arrangements, States Parties shall make available to one another, mutual legal assistance and international judicial cooperation to the fullest extent possible under domestic and international law. In the case that States Parties are bound by treaties or other arrangements on mutual legal assistance or international judicial cooperation that contain provisions diverging from Article 12, they undertake to amend these provisions in due time so as to comply with this Article.</p>	<p>Acting “in conformity with any treaties or other arrangements” bears the danger of international legal inequality and of obstruction of legal assistance and judicial cooperation. That’s why the addition is proposed.</p> <p>The case of “absence of such treaties or arrangements” is already covered by Art. 12.3.</p>
<p>12.2. States Parties may invite any State not party to this (Legally Binding Instrument) to provide mutual legal assistance and international judicial cooperation under this Article on the basis of an <i>ad hoc</i> arrangement, an agreement with such State or any other appropriate basis.</p>	

<p>12.4. The requested State Party shall inform the requesting State Party, as soon as possible, of any additional information or documents needed to support the request for assistance and, where requested, of the status and outcome of the request for assistance. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request.</p>	<p>This quite specific article shall be moved after the more general Art. 12.5 which includes the full range of measures. Then it makes sense to speak of “additional information or documents”.</p>
<p>12.5. The scope of Mmutual legal assistance and international judicial cooperation under this (Legally Binding Instrument) will be determined by the concerned Parties on a case-by-case basis.</p>	<p>It shall be clear that this Article is not about procedures, but about substance.</p>
<p>a. Mutual legal assistance under this (Legally Binding Instrument) is understood to include, <i>inter alia</i>:</p>	
<p>i. Taking evidence or statements from persons;</p>	
<p>ii. Executing searches and seizures;</p>	
<p>iii. Examining objects and sites;</p>	
<p>iv. Providing information, evidentiary items and expert evaluations;</p>	
<p>v. Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;</p>	
<p>vi. Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;</p>	
<p>vii. Facilitating the voluntary appearance of persons in the requesting State Party;</p>	
<p>viii. Facilitating the freezing and recovery of assets;</p>	

<p>ix. Assisting and protecting affected person^{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;</p>	
<p>x. Assisting in regard to the application of domestic law;</p>	
<p>xi. Any other type of assistance that is not contrary to the domestic law of the requested State Party.</p>	
<p>b. International judicial cooperation under this (Legally Binding Instrument) is understood to include, <i>inter alia</i>: effective service of judicial documents; and, provision of judicial comity consistent with domestic law.</p>	<p>Is that all that belongs to judicial cooperation? No other measures imaginable?</p>
<p>12.6. In criminal cases covered under this (Legally Binding Instrument), and without prejudice to the domestic law of the involved States Parties,</p>	<p>Domestic law is addressed in paragraphs a. and b.</p>
<p>a. With respect to criminal offenses covered under this (Legally Binding Instrument), mutual legal assistance shall be provided to the fullest extent possible, in a manner consistent with the law of the requested Party and its commitments under treaties on mutual assistance in criminal matters to which it is Party;</p>	<p>repetition from first phrase of this article</p>
<p>b. Parties agree, in cases where such mutual assistance is related to the question of extradition, Parties agree to cooperate in accordance with this (Legally Binding Instrument), their national law and any treaties that exist between the concerned State Parties.</p>	<p>textual improvement</p>

<p>12.7. The competent authorities of a State Party may, without prior request, transmit and exchange information relating to criminal offenses covered under this (Legally Binding Instrument) to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this (Legally Binding Instrument). The transmission and exchange of information shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information, to guarantee the widest possible protection of human rights.</p>	
<p>12.8. In relation to matters that are subject of investigations, prosecutions or judicial proceedings under this (Legally Binding Instrument), States Parties may consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are subject of investigations, prosecutions or judicial proceedings under this (Legally Binding Instrument), the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place, is fully respected.</p>	<p>textual improvement</p>
<p>12.9. States Parties shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution, in accordance with their domestic laws.</p>	<p>This hint to domestic law does not seem to be necessary.</p>
<p>12.10. Any judgment of a court having jurisdiction in accordance with this (Legally Binding Instrument) which is enforceable in the State of origin of the judgment and is not subject to any appeal or review shall be recognized and enforced in any State Party as soon as the formalities required in that State Party have been completed, provided that whereby such formalities shall are not be more onerous and fees and charges are not higher than those required for the enforcement of domestic judgments. and shall not permit †The re-opening of the merits of the case shall not be permitted. The enforcement of criminal judgments in the requested State of criminal</p>	<p>The switch from "whereby" to "provided that" already between the Revised Draft and the Second Revised Draft is a clear change of meaning. "provided that" puts a condition on the recognition and execution, "whereby" limits the costs. This may have been a simple mistake or an intentional weakening.</p>

<p>judgments shall be to the extent permitted by the law of that State.</p>	
<p>12.11. Recognition and enforcement of judgments may be refused, only where:</p>	
<p>a. the defendant furnishes to the competent authority or court where the recognition and enforcement is sought, proof that the defendant was not given reasonable notice and a fair opportunity to present his or her case; or</p>	
<p>b. where the judgment is irreconcilable with an earlier judgment validly pronounced in the State Party where its recognition is sought with regard to the same cause of action and the same parties; or</p>	
<p>c. where the judgment is manifestly contrary to the <i>ordre public</i> of the State Party in which its recognition is sought.</p>	
<p>12.12. Mutual legal assistance or international legal judicial cooperation under this article may only be refused by a State Party if it is contrary to the applicable laws of the requested State Party international public law, including human rights law.</p>	<p>A State Party shall not be allowed to refuse on the basis of any law that may also be enacted ad hoc in order to prevent collaboration in a particular case. Note that in the former draft it read "contrary to the legal system" which can't be changed as swiftly as a law.</p>
<p>12.13. States Parties shall not decline to render mutual legal assistance or international judicial cooperation in a claim involving liability for harms or criminal offenses, falling within the scope of this (Legally Binding Instrument) on the sole ground that the request is considered to involve fiscal matters or bank secrecy.</p>	

Article 13. International Cooperation

<p>13.1. States Parties shall cooperate in good faith to enable the implementation of their obligations recognized under this (Legally Binding Instrument) and the fulfillment of the purposes of this (Legally Binding Instrument).</p>	
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<p>13.2. States Parties recognize the importance of international cooperation, including financial and technical assistance and capacity building, for the realization of the purpose of the present (Legally Binding Instrument) and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society. Such measures include, but are not limited to:</p>	
<p>a. Promoting effective technical cooperation and capacity-building among policy makers, parliaments, judiciary, national human rights institutions, business enterprises and operators, as well as users of domestic, regional and international grievance mechanisms;</p>	
<p>b. Sharing experiences, good practices, challenges, information and training programs on the implementation of the present (Legally Binding Instrument);</p>	
<p>c. Raising awareness about the rights of affected person affected person victims of business-related human rights abuses and the obligations of States under this (Legally Binding Instrument);</p>	
<p>d. Facilitating cooperation in research and studies on the challenges, good practices and experiences in preventing human rights abuses in the context of business activities, including those of a transnational character;</p>	
<p>e. Contribute, within their available resources, to the International Fund for Affected person Victims referred to in Article 15.7 of this (Legally Binding Instrument).</p>	

Article 14. Consistency with International Law principles and instruments

<p>14.1. States Parties shall carry out their obligations under this (Legally Binding Instrument) in a manner consistent with, and fully respecting, the principles of sovereign equality and territorial integrity of States.</p>	
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<p>14.2. Notwithstanding Article 9, nothing in this (Legally Binding Instrument) entitles a State Party to undertake in the territory of another State the exercise of jurisdiction and performance of functions that are reserved exclusively for the authorities of that other State's jurisdiction.</p>	
<p>14.3. Nothing in the present (Legally Binding Instrument) shall affect any provisions in the domestic legislation of a State Party or in any regional or international treaty or agreement that is more conducive to the respect, protection, fulfillment and promotion of human rights in the context of business activities and to guaranteeing the access to justice and effective remedy to affected person victims of human rights abuses in the context of business activities, including those of a transnational character.</p>	
<p>14.4. This (Legally Binding Instrument) shall not affect the rights and obligations of the States Parties under the rules of general international law with respect to State immunity and the international responsibility of States. Earlier treaties relating to the same subject matter as this (Legally Binding Instrument) shall apply only to the extent that their provisions are compatible with this (Legally Binding Instrument), in accordance with Article 30 of the Vienna Convention on the Law of Treaties.</p>	
<p>14.5. States Parties shall ensure that:</p>	
<p>a. All existing bilateral or multilateral agreements, including regional or sub-regional agreements, on issues relevant to this (Legally Binding Instrument) and its protocols, including trade and investment agreements, shall be interpreted and implemented in a manner that does not undermine or restrict their capacity to fulfill their obligations under this (Legally Binding Instrument) and its protocols, if any, as well as any other relevant human rights conventions and instruments.</p>	

<p>b. All new bilateral or multilateral agreements, including regional or sub-regional agreements, on issues relevant to this (Legally Binding Instrument) and its protocols, including trade and investment agreements, shall be compatible with and subject to the States Parties' human rights obligations under this (Legally Binding Instrument) and its protocols, as well as any other relevant human rights conventions and instruments. States Parties engage to apply, in accordance with Article 6.x, participative human rights, socio-economic, environmental and gender impact assessments prior to concluding and during the implementation of such agreements.</p>	
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SECTION III

Article 15. Institutional Arrangements

<p><i>Committee</i></p>	<p>The provisions on the Committee are much too detailed; a considerable part of it could be addressed in a protocol.</p> <p>The Committee shall comprise members of minorities (as indigenous peoples) and of civil society, which should be allowed to nominate its members.</p> <p>The Committee should be competent to deal with individual complaints and to judge them, investigate allegations, cases and the business behaviour of companies, visit countries and provide technical assistance to States. It should be possible to consult it on draft legislation and should be able to participate in dispute settlement between States.</p> <p>Shall the relationship between the Committee and the Conference of States Parties not be defined more in detail, apart from the fact that the Conference of States Parties elects the members of the Committee?</p>
<p>15.1. There shall be a Committee established by the Conference of States Parties in accordance with the following procedures:</p>	

<p>a. The Committee shall consist of, at the time of entry into force of the present (Legally Binding Instrument), (12) experts. After an additional sixty ratifications or accessions to the (Legally Binding Instrument), the membership of the Committee shall increase by six members, attaining a maximum number of (18) 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.</p>	
<p>b. The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution, the differences among legal systems, gender and age 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).</p>	
<p>c. The members of the Committee shall be elected by secret ballot from a list of persons nominated by States Parties. 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.</p> <p>Elections of the members of the Committee shall be held at the Conference of States 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 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 State Party which has nominated them, and shall submit it to the States Parties.</p>	

<p>d. The initial election shall be held no later than six months after the date of the entry into force of this (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.</p>	
<p>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.</p>	
<p>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.</p>	
<p>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 (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.</p>	
<p>h. With the approval of the General Assembly, the members of the Committee established under the present (Legally Binding Instrument) shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide through the established procedures.</p>	
<p>15.2. States 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 (Legally Binding Instrument), within one year after the entry into force of the (Legally Binding Instrument) for the State Party concerned. Thereafter the States Parties shall submit supplementary reports every four years</p>	

on any new measures taken and such other reports as the Committee may request.	
15.3. The Secretary-General of the United Nations shall transmit the reports to all States Parties.	
15.4. The Committee shall have the following functions:	
a. Make general comments and normative recommendations on the understanding and implementation of the (Legally Binding Instrument) based on the examination of reports and information received from the States Parties and other stakeholders;	
b. Consider and provide concluding observations and recommendations on reports submitted by States 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 these suggestions and general recommendations in the report of the Committee together with comments, if any, from States Parties;	
c. Provide support to the States Parties in the compilation and communication of information required for the implementation of the provisions of the (Legally Binding Instrument);	
d. Submit an annual report on its activities under this (Legally Binding Instrument) to the States 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 (Legally Binding Instrument)].	
<i>Conference of States Parties</i>	

<p>15.5. 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 (Legally Binding Instrument), including any further development needed towards fulfilling its purposes.</p>	
<p>15.x. To this end, the Conference of States Parties shall:</p> <ul style="list-style-type: none"> a. Consider and adopt, as appropriate, protocols to this (Legally Binding Instrument) in accordance with Article 17; b. Consider and decide on amendments to this (Legally Binding Instrument) in accordance with Article 21; c. Establish such subsidiary, expert or technical bodies as it deems necessary for the implementation of this (Legally Binding Instrument). 	<p>a. and c. taken over from “Draft text for Business and Human Rights Treaty, Revised version of 14 July 2021” by Claire Methven O’Brian</p>
<p>15.y. The Conference of States Parties shall by consensus agree upon and adopt rules of procedure and financial rules for itself and for any subsidiary bodies it may establish.</p>	<p>taken over from “Draft text for Business and Human Rights Treaty, Revised version of 14 July 2021” by Claire Methven O’Brian</p>
<p>15.z. The Conference of States Parties shall establish a secretariat to perform such functions as may be determined by the Conference of States Parties.</p>	<p>taken over from “Draft text for Business and Human Rights Treaty, Revised version of 14 July 2021” by Claire Methven O’Brian</p>
<p>15.6. No later than six months after the entry into force of the present (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.</p>	
<p>International Legal Assistance Mechanism</p>	

<p>15.xx. States Parties shall establish an International Legal Assistance Mechanism. This Mechanism shall, with the consent of the respective States Parties concerned:</p> <ul style="list-style-type: none"> a. Assist States Parties in dealing with human rights abuses of a transnational character; b. Facilitate mutual legal assistance, including transnational prosecution, and international judicial cooperation in accordance with Article 12; c. Contribute to facilitating access to justice and remedy in accordance with Article 7 for affected persons in transnational cases, and to avoiding impunity in transnational cases; d. Conduct investigations at the request of a State Party or of affected persons or of their representatives. 	
<p>15.yy. This Mechanism shall be established no later than (X) years after entry into force of this (Legally Binding Instrument). The Conference of States Parties shall define and establish the relevant provisions for the functioning of the Mechanism.</p>	
<p><i>International Fund for Affected personVictims</i></p>	
<p>15.7. States Parties shall establish an International Fund for Affected personVictims covered under this (Legally Binding Instrument), to provide legal and financial aid to affected personvictims, taking into account the additional barriers faced by women, children, persons with disabilities, Indigenous peoples, migrants, refugees, internally displaced persons, and other vulnerable or marginalized persons or and disadvantaged groups as per Article 1.x. in seeking access to remedies. This Fund shall be established at most after no later than (X) years of theafter entry into force of this (Legally Binding Instrument). The Conference of States Parties shall define and establish the relevant provisions for the functioning of the Fund.</p>	

Article 16. Implementation

<p>16.1. States Parties shall take all necessary legislative, administrative or other action including the establishment of adequate monitoring mechanisms to ensure effective implementation of this (Legally Binding Instrument). To this end, States Parties shall, inter alia:</p>	<p>The implementation has so far not got sufficient significance and shall be described more in detail.</p>
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<ul style="list-style-type: none"> a. Establish necessary institutions to implement and fulfil the (Legally Binding Instrument), or expand the tasks and competencies of existing institutions accordingly; b. Establish adequate monitoring mechanisms; c. Consider and align the functions that the National Human Rights Institution, if any, may perform in implementing and fulfilling the (Legally Binding Instrument), or consider to establish such Institution if not existing; d. Adapt National Action Plans on Business and Human Rights in view of implementing and fulfilling the (Legally Binding Instrument); e. Submit reports to the Committee in accordance with Article 15.2. 	
<p>16.2. Each State Party shall furnish copies (including in electronic form or online links) of its laws and regulations that give effect to this (Legally Binding Instrument) and of any subsequent changes to such laws and regulations or a description thereof, within [6 months] of their enactment, to the Secretary-General of the United Nations, which shall be made publicly available.</p>	
<p>16.3. 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, the use of child soldiers and the worst forms of child labour, including forced and hazardous child labour.</p>	
<p>16.4. In implementing this (Legally Binding Instrument), States Parties shall address the specific impacts of business activities on, while giving special attention to, marginalised and disadvantaged groups as per Article 1.xthese facing heightened risks of human rights abuse within the context of business activities, such as, but not limited to, women, children, persons with disabilities, indigenous peoples, people of African descent, older persons, migrants, refugees and internally displaced persons.</p>	

<p>16.5. The application and interpretation of these Articles shall be consistent with international law, including international human rights law and international humanitarian law, and shall be without any discrimination of any kind or on any ground, without exception.</p>	
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Article 17. Adoption of and Relations with Protocols

<p>17.1. This (Legally Binding Instrument) may be supplemented by one or more protocols adopted by the Conference of States Parties.</p>	
<p>17.x. The text of any proposed protocol shall be communicated to the States Parties by the secretariat of the Conference of States Parties at least six months before such a meeting.</p>	<p>taken over from “Draft text for Business and Human Rights Treaty, Revised version of 14 July 2021” by Claire Methven O’Brian</p>
<p>17.2. 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).</p>	
<p>17.3. 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.</p>	
<p>17.4. Any protocol to this (Legally Binding Instrument) shall be interpreted together with this (Legally Binding Instrument), taking into account the purpose of that protocol.</p>	

Article 18. Settlement of Disputes

<p>18.1. If a dispute arises between two or more States 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.</p>	
<p>18.2. 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:</p>	

<p>a. Submission of the dispute to the International Court of Justice;</p>	
<p>b. Arbitration in accordance with the procedure and organization mutually agreed by both States Parties.</p>	
<p>18.3. If the States 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 States Parties agree otherwise.</p>	

Article 19. Signature, Ratification, Acceptance, Approval and Accession

<p>19.1. The present (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).</p>	
<p>19.2. The present (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 (Legally Binding Instrument).</p>	
<p>19.3. This (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. 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 (Legally Binding Instrument). Such right to vote shall not be exercised if any of its member States exercises its right, and vice versa.</p>	

Article 20. Entry into Force

<p>20.1. The present (Legally Binding Instrument) shall enter into force on the thirtieth day after the deposit of the [--] instrument of ratification or accession.</p>	
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20.2. For each State or regional integration organization ratifying, formally confirming or acceding to the (Legally Binding Instrument) after the deposit of the [---] such instrument, the (Legally Binding Instrument) shall enter into force on the thirtieth day after the deposit of its own such instrument.

Article 21. Amendments

21.1. Any State Party may propose an amendment to the present (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 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 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 Parties present and voting in the Conference of the States Parties shall be submitted by the Secretary-General to all States Parties for acceptance.

21.2. An amendment adopted and approved in accordance with this 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 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 Parties which have accepted it.

21.3. If so decided by the Conference of States Parties by consensus, an amendment adopted and approved in accordance with this 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 Parties on the thirtieth day after the number of instruments of acceptance deposited reaches two-thirds of the number of States Parties at the date of adoption of the amendment.

Article 22. Reservations

<p>22.1. Reservations incompatible with the object and purpose of the present (Legally Binding Instrument) shall not be permitted.</p>	
<p>22.2. Reservations may be withdrawn at any time.</p>	

Article 23. Denunciation

<p>23.1. A State Party may denounce the present (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.</p>	
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Article 24. Depositary and Languages

<p>24.1. The Secretary-General of the United Nations shall be the depositary of the present (Legally Binding Instrument).</p>	
<p>24.2. The Arabic, Chinese, English, French, Russian and Spanish texts of the present (Legally Binding Instrument) shall be equally authentic.</p>	

<p>In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present (Legally Binding Instrument).</p>	
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