**International Commission of Jurists**

**Proposals for Elements of a legally binding instrument on Transnational Corporations and other Business Enterprises**

**ADVANCE UNEDITED DOCUMENT- PART VIII**

**7. National bodies for implementation, monitoring and promotion**

The conclusion of an international agreement, as critically important as it is, would not in and of itself, plug the existing protection gaps resulting from business impacts on human rights.[[1]](#footnote-1) Implementation is a key element for the actual effectiveness of any legal regime. The current regime with the UNGP and other non-treaty instruments is notoriously weak in international and national implementation processes and institutions. Without robust national implementation there is limited chance that the substantive provisions of the prospective treaty will have an impact on the actual situation of individuals and communities potentially impacted by business operations. A good combination of national and international processes and mechanisms will facilitate rapid and robust implementation.

Strong emphasis on national processes and institutions is justified by the need to enhance on the ground protection of human rights and to promote and monitor implementation. Besides national judiciaries there is a host of governmental or independent institutions with traditional roles in the area of human rights, but few of them have explicit mandate and budget to work in the area of business and human rights. Moreover, the nature of business impacts on human rights necessarily require the intervention of a number of bodies and institutions with mandate in the economic, financial, social and human rights fields. Coordination and coherence among national authorities and departments remains a challenge that cannot be met necessarily by creating additional or specialised institutions but need also the creation or strengthening processes and protocols of coordination and consultation in the pursuit of common objectives.

Effective implementation at the national level depends on political will, capacity and available resources. The prospective treaty may make an important contribution to enhance national action in the promotion and protection of human rights in the context of business operations. The provisions of the treaty in this regard should build on the design and good practice of existing national mechanisms such as national human rights institutions (including human rights and equality commissions, ombudsmen, people’s defender) and the promotional system of National Contact Points under the OECD Guidelines for Multinational Enterprises.

Previous sections have dealt with national judiciaries and law enforcement agencies in the context of access to remedies and justice as well as international legal and judicial cooperation. The following proposals focus on additional administrative, independent or cross-sector processes with a key role.

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| The prospective treaty may require states to establish a national authority with cross-sector and social representation (or entrust this functions to existing bodies or institutions) with, inter alia, the following functions:* Review, advise and assist with the adoption by business enterprises of a human rights policy or code of conduct that conforms with internationally recognized human rights standards (a human rights code of conduct may be included in the prospective treaty as an annex or created later by an international monitoring body for the treaty)
* Carry out in depth research, promote training and other capacity building of relevant stakeholders
* Receive information and communications regarding the human rights impact of business enterprises in the country, and carry out inquiries especially where systematic or widespread patterns of abuse are manifest
* Provide advice on accessing legal aid and other support to people who have a claim to make before the judiciary or law enforcement agencies,
* Lead in the development and establishment of national action plans on business and human rights, and on its periodic evaluation and update.
* Report periodically to relevant international bodies and mechanisms, including the supervisory system of the present treaty

The establishment of a national action plan for the implementation of the prospective treaty, taking into account other existing international obligations and commitments. |

**8. International supervisory and monitoring mechanism**

International monitoring and supervisory mechanisms fulfil the needed function of providing support to States to implement obligations under international treaties at the domestic level, identify the obstacles to this end and the potential means of overcoming them. Existing UN and regional human rights treaties provide for such monitoring or supervisory mechanisms. It is critical that the treaty on business and human rights likewise containing provision for an international supervisory mechanism.

The function of such a supervisory mechanism, in addition to monitoring the compliance of States with the provisions of an international instrument, is to also provide commentary or jurisprudence, thus facilitating consistent implementation of the treaty across jurisdictions.

In addition, there will need to be provisions for amending the treaty through a Conference of State parties. In addition to convening for the purpose of amendment, it may be desirable that the treaty provides for periodic review by the Conference of State Parties of State implementation and the taking stock of new challenges and developments.

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| The following elements should be considered:The creation of a Committee of experts (approx. 10 persons), appointed by States parties in the conference of States party, by proposals from States, NGOs with ECOSOC status.The Committee should receive periodic reports from States party about their implementation of their obligations under the treaty. The Committee may request both comprehensive and/or focussed reports on specific areas of concern.The Committee may also receive reports from business enterprises that have adhered to the Code of Conduct annexed to the present treaty and wish to have their implementation reviewed by the Committee.The Committee (or a sub set of it) can carry out country visits to evaluate the implementation of the treaty, assess the challenges and issue tailored recommendations with specific timeframes.The Committee, among other functions, should be given the competency to receive and consider communications containing information about serious abuses of human rights caused or contributed to by business enterprises and, where a particularly serious, widespread or systematic problem seems evident, it may establish an inquiry with in-country fact finding and reporting with recommendations. The Committee should be given the possibility and resources to have recourse to external expertise and advisory services to carry out this mandate.States must implement in good faith the findings and recommendations of the Committee and shall adopt the necessary measures to enforce them at the domestic level. |

1. ICJ, Needs and options, Op. cit note 3, p. 37 [↑](#footnote-ref-1)