ICJ statement on articles 10, 11 and 12

Mr President

The International Commission of Jurists considers articles 10 and 11 as vital for an effective legally binding instrument on business and human rights. Mutual legal assistance is critical for the ability of judicial and law enforcement officials to carry out effective investigations of cross-border abuses of human rights, and to share information that is relevant for that purpose and judicial proceedings. The ICJ suggests that special effort is made to ensure a mutually reinforcing relationship with the Hague Convention on the Recognition and enforcement of foreign judgments.

In relation to article 12, the ICJ notes that the Revised draft addresses concerns expressed by States in relation to the zero draft. A new paragraph 6 aims at ensuring compatible interpretation and application of trade and investment agreements with the present treaty on business and human rights.

This is a reasonable approach that can also be effective in practice. However, the ICJ suggest to consider strengthening article 12 by adopting additional measures that states can take to improve consistency of their trade and investment agreements with the present treaty.

For instance, consideration may be given to the idea that states should “ensure upholding human rights in the context of business activities by parties benefiting from such agreements,” by inserting provisions on responsible human rights business conduct in their respective agreements. There is an increasing number of trade and investment agreements presenting such provisions on the promotion of responsible business conduct. States may also assume the obligation to subject trade and investment agreements to specific vetting and approval procedures by specialized and independent national human rights organs, including human rights and environmental impact assessments.

Thank you