

Updated draft legally binding instrument (clean version) to regulate, in international human rights law, the activities of transnational corporations and other business enterprises

The text is submitted in accordance with paragraph 25 (g) of A/HRC/52/41, and in line with para paragraph 25 (i), will form the basis for State-led direct substantive intergovernmental negotiations during the ninth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights.

July 2023

Background

Paragraph 25, literals (f), (g) and (i), of the report on the eighth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (A/HRC/52/41) stated:

“25. Following the discussions held during the eighth session, and acknowledging the comments and concrete textual suggestions expressed therein on the third revised draft legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, and also acknowledging the comments and concrete textual suggestions on the informal suggested Chair proposals for select articles of the legally binding instrument, the Chair-Rapporteur makes the following recommendations:

... (f) That the Chair-Rapporteur note the concrete textual proposals submitted by intergovernmental organizations, national human rights institutions, civil society, business organizations, trade unions and all other relevant stakeholders during the eighth session, for the appropriate consideration in the work on the draft legally binding instrument during the intersessional period. Those stakeholders will be consulted by the friends of the Chair and invited to submit written inputs;

(g) That the Chair-Rapporteur update the draft legally binding instrument taking into consideration the concrete textual proposals and comments submitted by States during the eighth session and the outcomes of the consultations as reported by the friends of the Chair, and circulate it in a version in track changes, including by publishing it on the working group’s website, by no later than the end of July 2023;

... (i) That the Chair-Rapporteur promote State-led direct substantive intergovernmental negotiations during the working group’s ninth session, on the basis of the updated draft legally binding instrument”.

In this context, this document contains an updated draft legally binding instrument, which has been elaborated during the intersessional period taking into consideration the following materials:

1. The concrete textual proposals and comments submitted by States during the eighth session, which refer to comments and concrete textual suggestions expressed therein on the third revised draft legally binding instrument ([A/HRC/52/41/Add.1](#)), and to the comments and concrete textual suggestions on the informal suggested Chair proposals for select articles of the legally binding instrument ([A/HRC/WG.16/8/CRP.2](#)).
2. The concrete textual proposals submitted by all other relevant stakeholders during the eighth session (which can be found [here](#)).
3. The [compilation](#) of written inputs by stakeholders entitled to speak at the public sessions of the working group ([note verbale of 2 March 2023](#)).
4. The [outcomes of the consultations as reported by the friends of the Chair](#).

More information on the process: <https://www.ohchr.org/en/hr-bodies/hrc/wg-trans-corp/igwg-on-tnc>

Preamble

The States Parties to this (Legally Binding Instrument),

(PP1) *Reaffirming* all the principles and purposes set out in the Charter of the United Nations;

(PP2) *Recalling* the nine core international human rights treaties adopted by the United Nations, and the eight fundamental conventions adopted by the International Labour Organization, as well as other relevant international human rights treaties and conventions adopted by the United Nations and by the International Labour Organization;

(PP3) *Recalling also* the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, and all other internationally agreed human rights Declarations, as well as the 2030 Agenda for Sustainable Development;

(PP4) *Reaffirming* the fundamental human rights and the dignity and worth of the human person, in the equal rights of men and women and the need to promote social progress and better standards of life in larger freedom while respecting the obligations arising from treaties and other sources of international law, as set out in the Charter of the United Nations;

(PP5) *Reaffirming* that all human rights are universal, indivisible, interdependent, inter-related, and inalienable, and should be applied in a non-discriminatory way;

(PP6) *Reaffirming* the right of every person to be equal before the law, to equal protection of the law, and to have effective access to justice and remedy in case of violations of international human rights law;

(PP7) *Stressing* 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 abuses by third parties, including business enterprises, and to ensure respect for and implementation of international human rights law, and to respect and ensure respect for international humanitarian law in all circumstances;

(PP8) *Recalling* 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 any kind:

(PP9) *Recognizing* that, in all actions concerning children, including in the context of business activities, the best interests of the child shall be a primary consideration, and shall be respected in pursuing remedies for violations of the rights of the child;

(PP10) *Acknowledging* that all business enterprises have the potential to foster sustainable development through an increased productivity, inclusive economic growth and job creation that promote and respect internationally recognized human rights and fundamental freedoms;

(PP11) *Emphasizing* that business enterprises play a crucial role in the social and economic development as well as the implementation of the Agenda 2030 for Sustainable Development;

(PP12) *Underlining* that business enterprises, regardless of their size, sector, location, operational context, ownership and structure have the responsibility 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 human rights abuses or mitigating human rights risks linked to their operations, products or services by their business relationships;

(PP13) *Emphasizing* that civil society actors, including human rights defenders, have an important and legitimate role in promoting the respect of human rights by business enterprises, and in preventing, mitigating and in seeking effective remedy for business-related human rights abuses, and that States have the obligation to take all appropriate measures to ensure an enabling and safe environment for the exercise of such role;

(PP14) *Recognizing* the distinctive and disproportionate impact of business-related human rights abuses on women and girls, children, 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;

(PP15) *Emphasizing* 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;

(PP16) *Taking into account* the work undertaken by the United Nations Commission on Human Rights and the Human Rights Council on the question of the responsibilities of transnational corporations and other business enterprises with respect to human rights, in particular Resolution 26/9;

(PP17) *Recognizing* the contribution and complementary role that the United Nations Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework have played in that regard and to advancing respect for human rights in the business activities;

(PP18) *Noting* the ILO Declaration on Fundamental Principles and Rights at Work and the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy;

(PP19) *Desiring* to clarify and facilitate effective implementation of the obligations of States regarding business-related human rights abuses and the responsibilities of business enterprises in that regard;

Have agreed as follows:

Article 1. Definitions

1.1. “**Victim**” shall mean any person or group of persons who suffered a human rights abuse in the context of business activities, irrespective of the nationality or domicile of the victim. The term “victim” may also include the immediate family members or dependents of the direct victim. A person shall be considered a victim regardless of whether the perpetrator of the human rights abuse is identified, apprehended, prosecuted, or convicted.

1.2. “**Adverse human rights impact**” shall mean a harm which corresponds to a reduction in or removal of a person’s ability to enjoy an internationally recognized human right.

1.3. “**Human rights abuse**” shall mean any acts or omissions that take place in connection with business activities and results in an adverse human rights impact..

1.4. “**Business activities**” means any economic or other activity, including but not limited to the manufacturing, production, transportation, distribution, commercialization, marketing and retailing of goods and services, 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.

1.5. “**Business activities of a transnational character**” means any business activity described in Article 1.4. above, when:

(a) It is undertaken in more than one jurisdiction or State; or

(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

(c) It is undertaken in one State but has significant effect in another State or jurisdiction.

1.6. “**Business relationship**” refers to any relationship between natural or legal persons, including State and non-State entities, to conduct business activities, including those activities conducted through affiliates, subsidiaries, agents, suppliers, partnerships, joint venture, beneficial proprietorship, or any other structure or relationship, including throughout their value chains, as provided under the domestic law of the State, including activities undertaken by electronic means.

1.7. “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.

1.8. “**Human rights due diligence**” shall mean the processes by which business enterprises identify, prevent, mitigate and account for how they address their adverse human rights impacts. While these processes will vary in complexity with the size of a business enterprise, the risk of severe adverse human rights impacts, and the nature and context of the operations of that business enterprise, these processes will in every case comprise the following elements:

- (a) identifying and assessing any adverse human rights impacts with which the business enterprise may be involved through its own activities or as a result of its business relationships;
- (b) taking appropriate measures to prevent and mitigate such adverse human rights impacts;
- (c) monitoring the effectiveness of its measures to address such adverse human rights impacts; and
- (d) communicating how the relevant business enterprise addresses such adverse human rights impacts regularly and in an accessible manner to stakeholders, particularly to affected and potentially affected persons.

1.9. “**Remedy**” shall mean the restoration of a victim of a human rights abuse to the position they would have been had the abuse not occurred, or as nearly as is possible in the circumstances. An “effective remedy” involves reparations that are adequate, effective, and prompt; are gender and age responsive; and may draw from a range of forms of remedy such as restitution, compensation, rehabilitation, satisfaction, such as cessation of abuse, apologies, and sanctions), as well as and guarantees of non-repetition.

1.10. “**Relevant State agencies**” means judicial bodies, competent authorities and other agencies and related services relevant to administrative supervision and enforcement of the measures referred to in this (Legally Binding Instrument) to address human rights abuse, and may include courts, law enforcement bodies, regulatory authorities, administrative supervision bodies, and other State-based non-judicial mechanisms.

Article 2. Statement of Purpose

The purpose of this (Legally Binding Instrument) is:

- (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;
- (b) To clarify and ensure respect and fulfillment of the human rights responsibilities of business enterprises;

- (c) To prevent the occurrence of human rights abuses in the context of business activities by effective mechanisms for monitoring, enforceability and accountability;
- (d) To ensure access to gender-responsive, child-sensitive and victim-centred justice and effective, adequate and timely remedy for victims of human rights abuses in the context of business activities;
- (e) To facilitate and strengthen mutual legal assistance and international cooperation to prevent and mitigate human rights abuses in the context of business activities, particularly those of transnational character, and provide access to justice and effective, adequate, and timely remedy for victims.

Article 3. Scope

3.1. This (Legally Binding Instrument) shall apply to all business activities, including business activities of a transnational character.

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.

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).

Article 4. Rights of Victims

4.1. Victims of human rights abuses in the context of business activities shall enjoy all internationally recognized human rights and fundamental freedoms.

4.2. Without prejudice to Article 4.1. above, victims shall:

- (a) be treated with humanity and respect for their dignity and human rights, and their safety, physical and psychological well-being and privacy shall be ensured;
- (b) be guaranteed the right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement;
- (c) be guaranteed the right to fair, adequate, effective, prompt, non-discriminatory, appropriate and gender-sensitive access to justice, 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;
- (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 to this (Legally Binding Instrument);

(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;

(f) be guaranteed access to information, provided in relevant languages and accessible formats to adults and children alike, including those with disabilities, held by business enterprises or relevant State agencies, and legal aid relevant to pursue effective remedy; and

(g) be guaranteed full participation, transparency, and independence in reparation processes, which take into account the differentiated impacts of human rights abuses on specific groups of people and respond adequately to these impacts and their particular needs.

4.3. Nothing in this provision shall be construed to derogate from any higher level of recognition and protection of any human rights of victims or other individuals under international, regional, or national law.

4.4. Victims shall have the right to request State Parties, pending the resolution of a case, to adopt precautionary measures related to urgent situations that present a serious risk of or an ongoing human rights abuse.

Article 5. Protection of Victims

5.1. States Parties shall protect victims, their representatives, families, and witnesses from any unlawful interference with their human rights and fundamental freedoms, 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.

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, insecurity, harassment, or reprisals.

5.3. States Parties shall investigate human rights abuses covered under this (Legally Binding Instrument), effectively, promptly, thoroughly, and impartially, and where appropriate, take action against those natural or legal persons responsible, in accordance with domestic and international law.

5.4. States Parties, pending the resolution of a case, shall adopt, either ex officio or on request by the victim, precautionary measures related to urgent situations that present a serious risk of or an ongoing human rights abuse.

Article 6. Prevention

6.1. States Parties shall regulate effectively the activities 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.

6.2. State Parties shall adopt appropriate legislative, regulatory, and other measures to:

- (a) prevent the involvement of business enterprises in human rights abuse;
- (b) ensure respect by business enterprises for internationally recognized human rights and fundamental freedoms;
- (c) ensure the practice of human rights due diligence by business enterprises; and,
- (d) promote the active and meaningful participation of individuals and groups, such as trade unions, civil society, non-governmental organizations, indigenous peoples, and community-based organizations, in the development and implementation of laws, policies and other measures to prevent the involvement of business enterprises in human rights abuse.

6.3. State Parties shall ensure that competent authorities relevant to the implementation of Article 6.2 have the necessary independence, in accordance with its legal system, to enable such authorities to carry out their functions effectively and free from any undue influence.

6.4. Measures to achieve the ends referred to in Article 6.2 shall include legally enforceable requirements for business enterprises to undertake human rights due diligence as well as such supporting or ancillary measures as may be needed to ensure that business enterprises while carrying out human rights due diligence:

- (a) undertake and publish on a regular basis human rights impact assessments prior and throughout their operations;
- (b) integrate a gender and age perspective, and takes full and proper account of the differentiated human rights-related risks and adverse human rights impacts experienced by women and girls;
- (c) take particular account of the needs of those who may be at heightened risks of vulnerability or marginalization;
- (d) meaningful consult with potentially affected groups and other relevant stakeholders;
- (e) protect the safety of human rights defenders, journalists, workers, members of indigenous peoples, among others, as well as those who may be subject to retaliation; and
- (f) insofar as engagement with indigenous peoples takes place, undertake such process in accordance with the internationally recognized standards of free, prior, and informed consent.

6.5. Each Party shall take necessary measures to ensure that business enterprises take appropriate steps to prevent human rights abuse by third parties where the enterprise controls, manages or supervises the third party, including through the imposition of a legal duty to prevent such abuse in appropriate cases.

6.6. State Parties shall periodically evaluate the legislative, regulatory, and other measures referred to in Article 6.2 and with a view to determining their adequacy for meeting the aims set out in that Article and shall revise and extend such measures as appropriate.

Article 7. Access to Remedy

7.1. States Parties shall provide their relevant State agencies, with the necessary competence in accordance with this (Legally Binding Instrument) to enable victims' access to adequate, timely and effective remedy and access to justice, and to overcome the specific obstacles which women and groups in vulnerable or marginalized situations face in accessing such mechanisms and remedies.

7.2. State Parties shall, consistent with its domestic legal and administrative systems:

- (a) develop and implement effective policies to promote the accessibility of its relevant State agencies to victims and their representatives, taking into account the particular needs and interests of those victims who may be at risk of vulnerability or marginalization;
- (b) progressively reduce the legal, practical, and other relevant obstacles that, individually or in combination, hinder the ability of a victim from accessing such State agencies for the purposes of seeking an effective remedy; and
- (c) ensure that relevant State agencies can either deliver, or contribute to the delivery of, effective remedies.

7.3. The policies referred to in Article 7.2 (a) shall address, to the extent applicable to the State agency in question:

- (a) the need to ensure that procedures and facilities for accessing and interacting with such agencies are responsive to the needs of the people for whose use they are intended, including by providing appropriate, adequate, and effective legal aid throughout the legal process;
- (b) the need to ensure that victims have ready access to reliable sources of information, in relevant languages and accessible formats to adults and children alike, including those with disabilities, for victims and their representatives, about their human rights, the role and capacity of relevant State agencies in relation to helping victims obtain an effective remedy, the status of their claims, and appropriate support to enable them to participate effectively in all relevant processes, including by facilitating requests for disclosure of relevant information of business-related activities or relationships linked to a human rights abuse;

- (c) the implications in terms of access to remedy of imbalances of power as between victims and business enterprises; and
- (d) risks of reprisals against victims and others.

7.4. The measures to achieve the aims set out in Article 7.2 (b) shall include, to the extent applicable to the State agency in question and necessary to address the obstacle in question:

- (a) reducing the financial burden on victims associated with seeking a remedy, for instance through the provision of financial assistance, waiving court fees in appropriate cases, or granting exceptions to claimants in civil litigation from obligations to pay the costs of other parties at the conclusion of proceedings in recognition of the public interest involved;
- (b) providing support to relevant State agencies responsible for the enforcement of the measures referred to in Article 6;
- (c) ensuring that there is effective deterrence from conduct that may amount to reprisals against victims and others;
- (d) adopting measures to facilitate the production of evidence, when appropriate and as applicable, such as the reversal of the burden of proof and the dynamic burden of proof;
- (e) ensuring fair and timely disclosure of evidence relevant to litigation or enforcement proceedings; and
- (f) ensuring that rules of civil procedure provide for the possibility of group actions in cases arising from allegations of human rights abuse.

7.5. For the purposes of achieving the aims set out in Article 7.2 (c), States shall adopt such legislative and other measures as may be necessary:

- (a) to enhance the ability of relevant State agencies to deliver, or to contribute to the delivery of, effective remedies;
- (b) to ensure that victims are meaningfully consulted by relevant State agencies with respect to the design and delivery of remedies; and
- (c) to enable relevant State agencies to monitor a company's implementation of remedies in cases of human rights abuse and to take appropriate steps to rectify any non-compliance.

Article 8. Legal Liability

8.1. Each State Party shall adopt such measures as may be necessary to establish 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 business activities or relationships, including those of transnational character.

8.2. Subject to the legal principles of the State Party, the liability of legal and natural persons referred to in this Article shall be criminal, civil, or administrative, as appropriate to the circumstances. Each State Party shall ensure, consistent with its domestic legal and administrative systems, that the type of liability established under this article shall be:

- (a) responsive to the needs of victims as regards remedy; and
- (b) commensurate to the gravity of the human rights abuse.

8.3. Subject to the legal principles of the State Party, the liability of legal and natural persons shall be established for:

- (a) conspiring to commit human rights abuse; and
- (b) aiding, abetting, facilitating, and counselling the commission of human rights abuse.

8.4. Each State Party shall adopt such measures as may be necessary, and consistent with its domestic legal and administrative systems, to ensure that, in cases concerning the liability of legal or natural persons in accordance with this article:

- (a) the liability of a legal person is not contingent upon the establishment of liability of a natural person;
- (b) the criminal liability, or its functional equivalent, of a legal or natural person is not contingent upon the establishment of the civil liability of that person, and vice versa; and
- (c) the liability of a legal or natural person on the basis of Article 8.3 is not contingent upon the establishment of the liability of the main perpetrator for that unlawful act.

8.5. Each State Party shall ensure, consistent with its domestic legal and administrative systems, an appropriate allocation of evidential burdens of proof in judicial and administrative proceedings that takes account of differences between parties in terms of access to information and resources, including through the measures referred to in Article 7.4 (d), as appropriate to the circumstances.

8.6. Each State Party shall ensure that legal and natural persons held liable in accordance with this Article shall be subject to effective, proportionate, and dissuasive penalties or other sanctions.

Article 9. Jurisdiction

9.1. State Parties shall take such measures as may be necessary to establish its jurisdiction in respect of human rights abuse in cases where:

- (a) the human rights abuse took place, in whole or in part, within the territory or jurisdiction of that State Party;
- (b) the relevant harm was sustained, in whole or in part, within the territory or jurisdiction of that State Party;
- (c) the human rights abuse was carried out by either

- i. a legal person domiciled in the territory or jurisdiction of that State Party; or
 - ii. a natural person who is a national of, or who has his or her habitual residence in the territory or jurisdiction of, that State Party; and
- (d) a victim seeking remedy through civil law proceedings is a national of, or has his or her habitual residence in the territory or jurisdiction of, that State Party.

9.2. For the purposes of Article 9.1, a legal person is considered domiciled in any territory or jurisdiction in which it has its:

- (a) place of incorporation or registration;
- (b) principal assets or operations;
- (c) central administration or management; or
- (d) principal place of business or activity.

9.3. State Parties shall take such measures as may be necessary, and consistent with its domestic legal and administrative systems, to ensure that decisions by relevant State agencies relating to the exercise of jurisdiction in the cases referred to in Article 9.1 shall respect the rights of victims in accordance with Article 4, including with respect to:

- (a) the discontinuation of legal proceedings on the grounds that there is another, more convenient or more appropriate forum with jurisdiction over the matter; or
- (b) the coordination of actions as contemplated in Article 9.4.

9.4. If a State Party exercising its jurisdiction under this Article has been notified, or has otherwise learned, of judicial proceedings taking place in another State Party relating to the same human rights abuse, or any aspect of such human rights abuse, the relevant State agencies of each State shall consult one another with a view to coordinating their actions.

Article 10. Statute of limitations

10.1. State Parties shall adopt such measures as may be necessary to ensure that no limitation period shall apply in relation to the commencement of legal proceedings in relation to human rights abuses which constitute the most serious crimes of concern to the international community as a whole, including war crimes, crimes against humanity or crimes of genocide.

10.2. In legal proceedings regarding human rights abuse not falling within the scope of Article 10.1, each State Party shall adopt such measures as may be necessary to ensure that limitation periods for such proceedings:

- (a) are of a duration that is appropriate in light of the gravity of the human rights abuse;
- (b) are not unduly restrictive in light of the context and circumstances, including the location where the relevant human rights abuse took place or where the relevant harm was sustained, and the length of time needed for relevant harms to be identified; and

(c) are determined in a way that respects the rights of victims in accordance with Article 4.

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 (Legally Binding Instrument) may, upon the request of the victim, be governed by the law of another State where:

- (a) the acts or omissions have occurred or produced effects; or
- (b) the natural or legal person alleged to have committed the acts or omissions is domiciled.

Article 12. Mutual Legal Assistance

12.1. States parties shall afford one another the greatest measure of assistance in connection with criminal, civil and administrative proceedings relevant to the enforcement of the measures referred to in Articles 6-8, including assistance to expedite requests from private parties for the transmission and service of documents and for the taking of evidence in civil proceedings.

12.2. States Parties shall carry out their obligations under Article 12.1 in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them.

12.3. States Parties shall cooperate closely with one another to enhance the enforcement of the measures referred to in Articles 6-8. States Parties shall, in particular, take the necessary steps:

- (a) to establish, maintain and enhance channels of communication between their relevant State agencies and their counterparts in other States Parties in order to
 - i. facilitate the secure and rapid exchange of information concerning all aspects of the enforcement of the measures referred to in Articles 6-8, including for the purposes of the early identification of breaches of such measures; and
 - ii. share information concerning issues, challenges, and lessons learned in the prevention of business involvement in human rights abuse, including with a view to enhancing the effectiveness of competent authorities, agencies and services; and
- (b) to facilitate effective coordination between their relevant State agencies and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers.

12.4. For the purposes of meeting their obligations under this article, each State Party shall:

- (a) ensure that its relevant State agencies have access to the necessary information, support, training and resources to enable personnel to make effective use of the treaties and arrangements referred to in Article 12.2; and
- (b) consider entering into or enhancing bilateral or multilateral agreements or arrangements aimed at improving the ease with which and speed at which
 - i. requests for mutual legal assistance can be made and responded to; and
 - ii. information can be exchanged between relevant State Agencies for the purposes of enforcement of the measures referred to in Articles 6-8, including through information repositories that provide clarity on points of contact, core process requirements and systems for updates on outstanding requests.

Article 13. International Cooperation

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).

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:

- (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;
- (b) sharing experiences, good practices, challenges, information and training programs on the implementation of the present (Legally Binding Instrument);
- (c) raising awareness about the rights of victims of business-related human rights abuses and the obligations of States under this (Legally Binding Instrument);
- (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 transnational characters;
- (e) contribute, within their available resources, to the International Fund for Victims referred to in Article 15.7 of this (Legally Binding Instrument).

Article 14. Consistency with International Law

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.

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.

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 victims of human rights abuses in the context of business activities, including those of transnational character.

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.

14.5. 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 other relevant human rights conventions and instruments.

Article 15. Institutional Arrangements

Committee

15.1. There shall be a Committee established in accordance with the following procedures:

- (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.

(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).

(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.

(d) 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.

(e) 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.

(f) 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.

(g) The Committee shall establish its own rules of procedure and elect its officers for a term of two years. They may be re-elected.

(h) 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.

(i) 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.

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 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).

Conference of States Parties

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.

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.

International Fund for Victims

15.7. States Parties shall establish an International Fund for Victims covered under this (Legally Binding Instrument), to provide legal and financial aid to victims, 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 groups in seeking access to remedies. This Fund shall be established at most after (X) years of the 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.

Article 16. Implementation

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).

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.

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.

16.4. In implementing this (Legally Binding Instrument), States Parties shall address the specific impacts of business activities on while giving special attention to those 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 internal displaced persons.

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.

16.6. In implementing this Legally Binding Instrument, State Parties shall protect public policies and decision making spaces from undue political influence by businesses.

Article 17. Relations with Protocols

17.1. This (Legally Binding Instrument) may be supplemented by one or more protocols.

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).

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.

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.

Article 18. Settlement of Disputes

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.

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:

- (a) Submission of the dispute to the International Court of Justice;
- (b) Arbitration in accordance with the procedure and organization mutually agreed by both States Parties.

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.

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

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).

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).

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.

Article 20. Entry into Force

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.

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

22.1. Reservations incompatible with the object and purpose of the present (Legally Binding Instrument) shall not be permitted.

22.2. Reservations may be withdrawn at any time.

Article 23. Denunciation

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.

Article 24. Depositary and Languages

24.1. The Secretary-General of the United Nations shall be the depositary of the present (Legally Binding Instrument).

24.2. The Arabic, Chinese, English, French, Russian and Spanish texts of the present (Legally Binding Instrument) shall be equally authentic.

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present (Legally Binding Instrument):
