

FEMINISTS FOR A BINDING TREATY

SUGGESTED AMENDMENTS ON THE JULY 2023 DRAFT OF THE LEGALLY BINDING INSTRUMENT TO REGULATE, IN INTERNATIONAL HUMAN RIGHTS LAW, THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES

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~~ **all people** 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 **and international humanitarian 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 **and a care economy, including child care, elder care, education, healthcare, and personal social domestic services**, through an ~~increased productivity~~, inclusive economic growth **impacts** and job creation ~~that promote and respect~~ **in circumstances where their operations protects and enable the enjoyment of** internationally recognized human rights and fundamental freedoms **and the rights of nature**;

(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 and **recognizing the violence to individuals, communities, and the environment associated with the current economic system and associated business activities that are predicated on extraction and unlimited growth, adversely impacting on the enjoyment of human rights and unable to be sustained within our planetary boundaries and resources**;

(PP12) *Underlining* that business enterprises, regardless of their size, sector, location, operational context, ownership and structure have the ~~responsibility~~ **obligation** to respect internationally recognized human rights, including by avoiding causing or contributing to human rights abuses **and violations** through their own activities and addressing such abuses **and violations** when they occur, as well as by preventing human rights abuses **and violations** ~~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 **and protecting** ~~the respect of~~ human rights, **the environment, the climate, and the rights of nature affected by business activities**, ~~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;

(PP13 bis) *Deeply concerned that individuals and communities continue to face business-related human rights abuses and violations in all parts of the world, including as arising in connection with business-related environmental damage and as heightened in conflict-affected areas, including situations of occupation, and in certain operating contexts which pose risks of severe human rights violations and abuses;*

(PP14) *Recognizing* the distinctive and disproportionate impact of business-related human rights abuses **and violations** 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, **due to existing social, economic, political, geographical and other circumstances**, 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 **an inclusive, integrated, and gender responsive** 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; **including to consider underlying causes and risk factors, eliminate all forms of discrimination, redress historical and current disadvantage, address stereotypes and violence, transform biased institutional structures and practices, and facilitate social inclusion and political participation;**

(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 violations** and the ~~responsibilities~~ **obligations** of business enterprises in that regard;

(New PP20) *Recalling* the UN Charter and one of the fundamental purposes of the United Nations being the respect for the right to self-determination of peoples, recalling also, the confirmation of the right of all peoples to self-determination according to the UN General Assembly (GA) Declaration of Friendly Relations, unanimously adopted in 1970 and considered an authoritative indication of customary international law, recalling finally that Article 1, common to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), reaffirms the right of all peoples to self-determination, and lays upon state parties the obligation to promote and to respect it.

Have agreed as follows:

Article 1: Definitions

1.1. “Victim” shall mean any person or group of persons who, **individually or collectively** suffered **or are in imminent**

risk of suffering an adverse human rights impact, 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 (**including civil partners**) 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 **limitation on** ~~reduction in or removal of~~ a person’s ability to enjoy ~~an internationally recognized~~ **their human rights and fundamental freedoms**.

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, **trade**, 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 **that they cause or contribute to through their own activities or that are directly linked to their operations, products or services**. 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, **at a minimum**, the following elements:

(a) Embed responsible business conduct into policies and management systems;

(a bis) In partnership with potentially affected communities and individuals, and applying a gender perspective, identifying and assessing any actual or potential adverse human rights impacts, abuses, or violations on an ongoing basis that may arise and with which the business enterprise may be involved through its own activities or as a result of its business relationships;

(a bis bis). Ask for consent, with an understanding that peoples have a right to self-determination and, therefore, a right to refuse business activity on their land;

(b) taking appropriate measures to avoid and prevent and mitigate such the identified potential and cease actual adverse human rights impacts, taking into particular account of the needs of those who may be at heightened risks of

vulnerability or marginalization

- (c) monitoring the effectiveness of its measures to **prevent** address such adverse human rights impacts; and
- (d) communicating **and publicly publishing** how the relevant business enterprise addresses such **actual or potential** adverse human rights impacts, **abuses, or violations** regularly and in an accessible manner to stakeholders, particularly to affected and potentially affected persons.
- (e) provide for or cooperate in remediation when appropriate; and**
- (f) Refrain from operating where it is not possible to meaningfully communicate with local communities, such as in conflict-affected areas.**

1.9. “Remedy” shall mean the restoration of a victim of a human rights abuse **or violation** 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~~ **obligations** of business enterprises;
- (c) To prevent the occurrence of human rights abuses **and violations** 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 **and violations** in the context of business activities;
- (e) To facilitate and strengthen mutual legal assistance and international cooperation to prevent ~~and mitigate~~ human rights abuses **and violations** in the context of business activities, particularly those of transnational character, and provide access to justice and effective, adequate, and timely remedy for victims.
- (f) To ensure the primacy of human rights over all international agreements, including those pertaining to international trade, investment, finance, taxation, environmental and climate change protection, development cooperation, and security obligations.**

Article 3: Scope

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

character, **and the businesses that finance said activities.**

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~~ **universal** human rights and fundamental freedoms binding on the State Parties of this (Legally Binding Instrument).

Article 4: Rights of Victims

4.1. **States Parties shall take all appropriate measures to ensure that victims of human rights abuses and violations** 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; **taking into considering factors that affect the well-being of different genders and those in conflict-areas;**

(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 **and violations** on specific groups of people and respond adequately to these impacts and their particular needs: **and**;

(h) be guaranteed access to appropriate diplomatic and consular means to facilitate access to effective remedy, especially in cases of business- related human rights abuses and violations of a transnational character.

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 **or violation**.

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 **and gender-responsive** 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.

Adequate and effective measures include, but are not limited to, legislative provisions that prohibit interference, including through use of public or private security forces, with the activities of any persons who seek to exercise their right to peacefully protest against and denounce abuses linked to corporate activity; refraining from restrictive laws and establishing specific measures to protect against any form of criminalization and obstruction to their work, including gender-based violence; and fully, promptly and independently investigating and punishing attacks against and intimidation of human rights defenders.

5.3. States Parties shall investigate human rights abuses **and violations** 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 **or violation**.

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 **and violations**;
- (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~~ **ensure** the active and meaningful participation of individuals and groups, such as trade unions, civil society, non-governmental organizations, indigenous peoples, and community-based organizations, **to access to information, communication, participation with private and public organisations related to** ~~in~~ the development and implementation of laws, policies and other measures to prevent the involvement of business enterprises in human rights abuse **and violations**.

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 **environmental, and climate change** impact assessments **for their value chains** prior and throughout their operations, **conducted by an independent entity**;
- (b) integrate a gender and age perspective, **with the leadership of and in meaningful consultation with women**, and takes full and proper account of the differentiated **and intersectional** human rights-related risks and adverse human rights impacts

experienced by women and girls, **including through the collection of data disaggregated by gender and other major variables relevant to the communities potentially affected by their operations;**

(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~~ **Engage in continuous, active and two-way dialogue with all relevant, potentially affected groups and other members of civil society in an equal manner.**

(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-; **and**

(g) Integrating human rights due diligence requirements in contracts regarding their business relationships and making provision for capacity building or financial contributions, as appropriate;

(h) Adopting and implementing enhanced and ongoing human rights due diligence measures, including conflict-sensitivity analysis, continuous monitoring, and suspension or termination of operations and relationships if necessary, to prevent human rights abuses and violations of international humanitarian law in conflict-affected areas, including in situations of occupation, and in other operating contexts which pose risks of severe human rights impacts.

(i) Refrain from operating or having relationships in contexts where gross human rights abuses or violations of International Human Rights or Humanitarian Law are immitigable.

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.

(6.5 **bis)**
States Parties shall take all necessary additional steps, including through human rights impact assessments and other measures, to respect and protect human rights in the context of business activities that the State Party is engaged in, supports, or shapes. This includes but is not limited to, State ownership or control in business activities, State engagement in business activities with companies or other States, including trade and investment agreements, State regulatory oversight, or political or financial support. State Parties shall refrain from adopting laws and policies that directly or indirectly result in violations of human rights protected under this (Legally Binding Instrument).

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.

6.7. Without prejudice to the provisions on criminal, civil and administrative liability under Article 8, State Parties shall provide for adequate and commensurate sanctions and penalties, including appropriate corrective action such as severing business relationships where suitable, for business enterprises failing to comply with provisions of Articles 6.3 and 6.4. States shall also provide for injunctive relief by courts to enjoin activities that could lead to immediate irreparable harm to rights holders. Injunctive relief will be available as a precautionary measure pending the resolution of a case.

6.8 States Parties shall act in a transparent manner and protect the negotiation, setting and implementing of their laws and public policies with respect to the implementation of this (Legally Binding Instrument) and where such laws and public policies are applicable to operating contexts which pose risks of severe human rights impacts, from the influence of commercial and other vested interests.

Article 7: Access to Remedy

7.1. States Parties shall provide all 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~~ **their domestic judicial, legislative, and legal** and administrative systems ~~to~~:

(a) develop and implement effective **and gender responsive** 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 **or violation**;

- (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 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) **Avoiding unnecessary costs or delays for bringing a claim and during the disposition of cases and the execution of orders or decrees granting awards and** 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 **or violations**.
- (g) **Removing legal obstacles, including the doctrine of *forum non conveniens*, to initiate proceedings in the courts of another State Party in appropriate cases of human rights abuses resulting from business activities of a transnational**

character.

(h). Providing assistance to initiate proceedings in the courts of another State Party in appropriate cases of human rights abuses and violations resulting from business activities of a transnational character.

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~~ **ensure** the ability of ~~relevant State Parties 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 Parties agencies~~ to monitor a company's implementation of remedies in cases of human rights abuse **or violation** and to take appropriate steps to rectify any non-compliance; **and**

(d) to ensure the recognition and prompt execution of national or foreign judgments or awards, in accordance with the present Legally Binding Instrument and the Rights of Victims under Article 4.

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 **and violations** 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 maybe 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.

States Parties shall ensure that their domestic law provides for the civil, criminal, and/or administrative 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 had a business relationship, from causing or contributing to human rights abuses and violations, when the former controls, manages or supervises such person or the relevant activity that caused or contributed to the human rights abuse or violation, or 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.

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.

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. This article applies to an enterprise that fails to prevent harm caused by their subsidiaries or supply chain, as well as to investors in such enterprises. Regardless of the nature of the liability, States Parties shall ensure that the applicable penalties are proportionate with the gravity of the offense. States Parties shall individually or jointly advance their criminal law to ensure that the criminal offences covered in the listed areas of international law are recognized as such under their domestic criminal legislation and that legal persons can be held criminally or administratively liable for them. 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.

At a minimum, States shall ensure criminal liability of legal persons for the following abuses that may arise from

- business activities, including those of transnational character, or from their business relationships: a. War crimes, crimes against humanity and genocide,
- b. Torture, disappearance, execution, and enforced disappearance,
- c. Enforced
- d. Extrajudicial
- e. Sexual and gender based violence in all its forms,
- f. Slavery and forced labor, in particular of children under 18 years,
- g. Forced displacement and evictions,
- h. Attacks on human rights and environmental defenders

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 **Jurisdiction with respect to claims brought by 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:**

- (a) the human rights abuse took place, in whole or in part, **including acts or omissions that led to the abuse**, 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 length of judicial proceedings and evidentiary burden placed on victims;***
- ~~(c)~~ the coordination of actions as contemplated in Article 9.4;

(d) The necessity of providing an effective forum guaranteeing a fair judicial process when no other forum is available and there is a connection to the State Party concerned as follows:

- i. the presence of the claimant on the territory of the forum;**
- ii. the presence of assets of the defendant; or**
- iii. a substantial activity of the defendant**

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.-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 **and violations** 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, **and other crimes listed in Article 8.8.**

10.2. In legal proceedings regarding human rights abuse **and violations** 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 **gender-responsive** duration that is appropriate in light of the gravity of the human rights abuse;
- (b) are **gender-responsive** and not unduly restrictive in light of the context and circumstances, including the location where the relevant human rights abuse **or violation** 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 **is gender-responsive and** 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~~, **shall**, upon the request of the victim, be governed by the law of another State where:

- the acts or omissions have occurred or produced effects; ~~or~~
- the natural or legal person alleged to have committed the acts or omissions is Domiciled; **or**
- **the victim is domiciled.**

(New) 11.3. In the event of conflict of laws resulting from obligations of States under bilateral or multilateral trade and investment agreements and their obligations under this (Legally Binding Instrument, the choice of applicable law shall be in accordance with article 14.5 of this (Legally Binding Instrument).

Article 12: Mutual Legal Assistance and International Judicial Cooperation

****No suggestions****

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 **and violations** 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.

All new bilateral or multilateral trade and investment agreements shall be compatible with the States Parties' human rights obligations under this (Legally Binding Instrument) and its protocols, 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 **-and shall have gender expertise.**

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, **and for class actions and other legal remedies**, 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 situations of occupation and other operating contexts which pose risks of severe human rights impacts**, including taking action to identify, prevent and mitigate the human rights- related risks of these activities and business relationships, **including risks of violation of international humanitarian law where applicable**, and to assess and address the heightened risks of abuses **and violations**, 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, **and to suspend or terminate operations if necessary**.

16.4. In implementing this (Legally Binding Instrument), States Parties shall address the specific impacts of business activities on **all relevant stakeholders**, while giving special attention **and facilitating participatory, gender-transformative engagement in all stages of implementation, development of national laws, policies and procedures, and prevention, monitoring and remedial processes** to those facing heightened **specific or cumulative** 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, **among other groups, paying particular attention to the multiple or intersectional forms of discrimination and impacts faced**

by persons belonging to more than one of these groups.

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 **the interference and influence of commercial and other vested interests.** ~~undue political influence by businesses.~~