



Contribution to the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights

9th Session, October 2023

In September 2023, in a lead-up to continued negotiations at the European levels between the Commission, the Parliament and the Council of the EU on the proposal for a European Corporate Sustainability Due Diligence Directive (CSDDD), more than 200 faith leaders from different religious groups from around the world joined the call for corporate accountability. Though [this statement](#) was addressed to European decision-makers, it was led by voices from all continents. This is a reminder that the need for legally binding mechanisms to curb corporate power and protect human rights and the environment have global moral and legal implications for everyone and that decisions and choices made in one part of the world have an impact on the whole planet.

Faith leaders have spoken up in defense of the most vulnerable among us, including the Earth itself, for we must see *“the earth as more than the sum of the parts from which profit can be extracted but rather as our common home to which we all belong and share a duty of care.”*¹

In October 2023, at the opening of the Synod on Synodality, Pope Francis released his Apostolic Exhortation, [Laudate Deum](#), reminding us of our moral responsibility to take action, to be inspired by the movements of people around the world for greater justice, and shift the current unbalance and concentration of power. *“We need to rethink among other things the question of human power, its meaning and its limits.”*² *“We need lucidity and honesty in order to recognise in time that our power is turning and the progress we are producing is turning against us”*³

In view of the [9th session](#) of the United Nations Human Rights Council on a Legally Binding Instrument (LBI), CIDSE and its members submit the following comments and proposals, based on a legal analysis of the Updated Draft of the LBI on Business and Human Rights written by Prof. Dr. Markus Krajewski, Stephanie Regalia and Otgontuya Davaanyam of the School of Law of Friedrich-Alexander-Universität Erlangen-Nürnberg in Germany.

¹ CIDSE Faith Leaders’ Statement: “Together, we must care for creation”, statement, July 2023

² Apostolic Exhortation Laudate Deum (4 October 2023), 28

³ Ibid and Saint Paul VI, Address to the FAO on its 25th Anniversary (16 November 1970)

While the Updated Draft is built on previous versions of the Draft LBI, it contains some noticeable changes. Most of these changes are introduced with an aim to facilitate consensus building in the negotiation process among the States. These changes can however have consequences in the areas of human rights protection and access to remedy for rights-holders facing the impact of corporate power. While we welcome some of these changes, we must remain vigilant to prevent any erosion of such protections or responsibilities to the duty-bearers.

POSITIVE CHANGES

While most changes introduced by the Updated Draft can be described as “legal scrubbing” and streamlining of the text, some changes are welcome clarifications. Notably, we can see some effort to pay closer attention to the safeguarding of human Rights defenders, with an accent on the need for an enabling and safe environment for human rights defenders compared to previous versions.

The Updated Draft also has some explicit suggestions which can facilitate access to justice and remedy, regarding financial assistance, court fees in some cases, and granting exceptions to claimants in civil litigation from obligations.

The Updated Draft also contains improvements which should be maintained such as the possibility of group actions.

WEAKNESSES

Some textual changes make the text less ambitious. In this regard, the frequent references to domestic law and the respective qualifications of the provisions need to be mentioned.

While these changes seem to be aimed at attracting consensus among the States, it can be questioned if the lowering of the level of ambition in terms of the protection of rights of victims and providing access to remedies is worth the price.

The Updated Draft also contains a number of changes which seem problematic from the perspective of victim’s rights and the protection of human rights. These include in particular the deletions of a reference to the execution of foreign judgments, the clarification that the fulfilment of due diligence obligations would not automatically exclude legal liability, right to a safe, clean, healthy and sustainable environment and environmental and climate impact assessments, the requirement of special attention to certain human rights defenders and references to the UN Declaration on Human Rights Defenders, the UN Declaration on the Rights of Indigenous Peoples and ILO Conventions, and the requirement to assess the impact of all new and revised trade and investment agreements.

Furthermore, the Updated Draft maintains a number of provisions and approaches which have already been assessed as problematic in the context of previous drafts, in particular the Third Draft. Elements of the LBI in this regard are the lack of addressing joint or several liability and clarification of liability if the harm is caused by others or insufficient standards of meaningful and effective engagement of relevant stakeholders, in the human rights due diligence process.

Businesses active in or sourcing from conflict situations or occupied territories should be required to undertake conflict-sensitive due diligence checks. The UN Working Group on Business and Human Rights recommends that businesses conduct conflict analysis and plan to prevent and mitigate abuses, so their activities do not exacerbate tensions, create new ones, or aggravate grievances. Moreover, in situations where businesses cannot ensure compliance to enhanced due diligence because either the conditions are connected to serious violations of international law they should not operate there, or responsibly disengage from suppliers.

We regret the lack of references to international humanitarian law and international criminal law and the deletion of several provisions related to conflict-affected due diligence from Article 6 of the updated draft. Text that ensures businesses operating in conflict-affected areas conduct appropriate due diligence, respect their international humanitarian law obligations, and refer to existing international standards and guidance including the Geneva Conventions and its additional protocols should be re-introduced.

The LBI should encompass an inclusive, integrated and gender-responsive approach, which tackles underlying causes, including multiple and intersecting forms of discrimination, and unequal gender-based power relations. To strengthen the Updated Draft, we call for provisions requiring consultation with impacted women and women's organisations is re-introduced into Article 6.4b to ensure adequate integration of a gender perspective in human rights due diligence. The protection of women's rights defenders should be explicitly included in the LBI as part of a general strengthening of language around rights defenders.

SPECIFIC ARTICLES

Prevention (Article 6)

Article 6.4

Re-include reference to enhanced due diligence in conflict-affected areas, specifically in situations of occupation, with reference to respecting international humanitarian law obligations, and referring to existing international standards and guidance, including the Geneva Conventions and its additional protocols.

Article 6.4.b of the Updated Draft includes provisions to integrate a gender and age perspective, and take full and proper account of the differentiated human rights related risks and adverse human rights impacts experienced by women and girls. To strengthen this provision, we ask for the introduction of the need to consult with potentially impacted women and women's organisations in all stages of human rights due diligence processes to identify and address the differentiated risks and impacts experienced by women and girls.

Legal Liability (Article 8)

Criminal, civil, and administrative liability

The Updated Draft loses subtle references to direct human rights obligations for businesses⁴ (replacing references to "obligations" present in the former Preamble and Article 2.1 (b) of the Third Draft with the word "responsibilities" in equivalent provisions).

Due diligence and legal liability

The Updated Draft remains silent on the relationship between due diligence and legal liability for businesses. Former Article 8.7 provided that "[h]uman rights due diligence shall not automatically absolve a legal or natural person conducting business activities from liability...". This provision disappeared from the Suggested Chair Proposals and remains absent from the Updated Draft. This marks again a step back, since States Parties would be able under the terms of the Updated Draft to create a due diligence defence, whereby the fact that a business complies with specific human rights due diligence requirements prevents it from being held liable in case of human rights abuses that arise from its business activities or relationships.

⁴ Surya Deva, 'Treaty Tantrums: Past, Present and Future of a Business and Human Rights Treaty' [2022] Netherlands Quarterly of Human Rights 9.

It is suggested to include an Article 8.7 in the following way:

“When determining the liability of a natural or legal person for human rights abuses that may arise from their business activities or relationships, the competent court or authority can take into account whether the person undertook adequate human rights due diligence measures in accordance with Article 6, but compliance with applicable human rights due diligence standards shall not absolve from liability ipso jure.”

Joint liability along global value chains

By remaining silent on the relationship between due diligence and legal liability for businesses, the Updated Draft is much weaker in ensuring that domestic legal systems provide mechanisms to hold parent companies or buyers accountable for the human rights abuses in their business activities and business relationships.

Access to justice and remedy (Articles 7, 9-11)

Jurisdiction (Article 9)

The Updated Draft is arguably slightly vaguer than the Third Draft when it comes to the jurisdiction of the State Party where the act or omission which led to the harm, the causal or originating event, took place. An expansive interpretation may lead to assume that this is covered by the concept of “human rights abuse”, but the Updated Draft could provide more legal certainty by specifying that both the State where the causal event and the State where the subsequent harm occurred are competent to hear cases.

It is suggested that Article 9.1 (a) be reworded as follows:

“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;”

The new Article 9.3 no longer explicitly mentions the doctrine of *forum non conveniens*, but rather alludes to it without prescribing a clear prohibition for States Parties.

It is also noteworthy that Article 9.3 includes a domestic law qualifier (“consistent with its domestic legal and administrative systems”), meaning that a State Party which incorporates the doctrine of *forum non conveniens* in its legal system is not necessarily in breach of the requirements from Article 9.3 of the Updated Draft. That State Party will have to balance the exercise of this doctrine with the rights of the victim guaranteed under Article 4 of the LBI, which includes “the right to fair, adequate, effective, prompt, non-discriminatory, appropriate and gender-sensitive access to justice.” This is particularly useful in scenarios where companies domiciled in countries with stringent legal standards engage in business activities in countries with less protective legal regimes. Article 11.2 could however provide more legal certainty if the drafters used “shall” instead of “may” to describe the rule.

It is suggested that **Article 9.3** be reworded as follows:

“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.

Applicable law (Article 11)

The Updated Draft maintains nearly the same provisions as the Third Draft on this topic, with only minor textual adaptations. The maintenance of a provision on the applicable law to claims that fall under the scope of the LBI is a welcomed development of the Updated Draft compared to the Suggested Chair Proposals. This choice of law gives the opportunity for the victim to choose the most protective legal regime. This is particularly useful in scenarios where companies domiciled in countries with stringent legal standards engage in business activities in countries with less protective legal regimes. Article 11.2 could however provide more legal certainty if the drafters used “shall” instead of “may” to describe the rule.

It is suggested that Article 11.2 be reworded as follows:

“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: [...]”

Measures to reduce obstacles to access to remedy (Article 7.4)

The Updated Draft provides more explicit suggestions in comparison: “provision of financial assistance, waiving court fees in appropriate cases, granting exceptions to claimants in civil litigation from obligations to pay the costs of other parties”. Nonetheless, the wording uses the qualifier “for instance” indicating that this list is suggestive rather than prescriptive. States Parties therefore retain a margin of appreciation in terms of the exact measures they should adopt. It does not make the reversal of the burden of proof a necessary requirement, but rather lists it as an example of a useful measure to facilitate the production of evidence.

More specificity on the reversal of the burden of proof could also help ensure that this requirement finds application in civil matters, but not criminal cases where the presumption of innocence (or equivalent principle) is a foundational rule of law requirement.

The possibility of group actions, mentioned in Article 7.4 (f) of the Updated Draft, is a marked improvement from the Third Draft which remained silent on the matter.

Finally, Article 7, following the Suggested Chair proposals, loses any reference to the execution of foreign judgments, an issue which in tandem with the lack of obligations for businesses to provide financial security for claims against them may leave victims with little recourse to any form of effective remedy or compensation in practice.⁵

It is suggested that an Article 7.5 (d) be included as follows:

“(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.”

⁵ An example of this has been the difficulty for claimants in a class action lawsuit brought against Texaco (then acquired by Chevron) in Ecuador to enforce the a \$9.5 billion judgment against the company over a prolonged, multijurisdictional legal battle, see Business & Human Rights Resource Centre (2003) ‘Texaco/Chevron Lawsuits (Re Ecuador)’, <https://www.business-humanrights.org/en/latest-news/texacochevron-lawsuits-re-ecuador-1/>, accessed 10 September 2023.

The role and protection of human rights and environmental defenders

The Updated Draft of the LBI has placed more accentuation on the need for an enabling and safe environment for human rights defenders compared to previous versions but is still insufficient to adequately address the recognition and protection of human rights defenders.

The thirteenth preambular paragraph of the Updated Draft emphasises that States are obliged to take all appropriate measures to ensure that human rights defenders and civil society actors have an enabling and safe environment in which they can freely exercise their role. This was not explicitly mentioned in the previous drafts and the emphasis on the State's duty to ensure an enabling and safe environment for human rights defenders in the preamble is a good step forward however, the previous reference to the UN Declaration on Human Rights Defenders, together with the UN Declaration on the Rights of Indigenous Peoples and ILO Conventions, has been deleted and replaced with the phrase "other internationally agreed human rights declarations".

Certain amendments such as:

'persons, groups, and organisations that promote and defend human rights and environment regardless of the sex, age and profession' could be beneficial for recognising and bringing visibility to all relevant human rights and environmental defenders.

The wording of the section (d) to Article 6.2 could be amended as follows:

"promote the ~~active and meaningful participation~~ rights of individuals and groups, such as trade unions, civil society, non-governmental organisations, indigenous peoples, and community-based organisations, 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."

In terms of protection, the phrase "the reprisals and harassment" added to Article 5.2 of the Updated Draft could emphasise that States have an obligation to protect all persons who may be subject to reprisals. If reprisals also refer to human rights defenders who are harassed through strategic lawsuits against public participation (SLAPPs), this regulation could be further developed to clarify the obligations of States and business enterprises in relation to SLAPPs.

In this regard, the Updated Draft is limited with regard to the protection of vulnerable groups, as it has deleted the proposed provision calling on States to pay special attention to certain human rights defenders, including women human rights defenders and indigenous peoples, who are vulnerable in difficult circumstances, as should have been in the twelfth preambular paragraph of the Updated Draft.⁶

It can be argued that the Updated Draft is not sufficient to protect certain human rights and environmental defenders and that it needs to be modified with regard to the protection of certain human rights defenders, especially those of environmental defenders.

⁶ UN General Assembly 'Text of the third revised draft Legally Binding Instrument with textual proposals submitted by States during the seventh and the eighth sessions of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights' 27 February – 31 March 2023 Un Doc A/HRC/52/41/Add.1, PP12 bis.

Under this section (e) of Article 6.4, companies appear to have a responsibility to protect the safety of human rights defenders, journalists, workers, members of indigenous peoples and others.

Due Diligence (Article 6)

Environmental Due Diligence

The Updated Draft has fallen behind previous drafts in addressing the issues of environmental damage and climate change. This is clearly reflected in the deleted formulations of the right to a safe, clean, healthy and sustainable environment and environmental and climate impact assessment in the texts of the Updated Draft

The violation of the right to a safe, clean, healthy and sustainable environment was highlighted in the definition of human rights abuse in Article 1.2 of the Third Draft, but the Updated Draft removed the emphasis of the violation of this right from the definition of human rights abuse.

The previous statement that companies must regularly publish information on environmental and climate impact assessment, which was included in section (a) of Article 6.4 of the Third Draft, has been removed and only human rights impact assessment is included in the Updated Draft.

The precautionary principle, which was proposed in the earlier analysis of the Third Draft, has not even been included.

It is therefore crucial that the OEIGWG takes into account the inseparable nature between the environment and human rights and reflects this in the draft LBI, for if it fails to do so, it would undermine the full and effective protection of all human rights of humanity, including future generations. As noted in the previous analysis, the reference to the environment and climate change needs to be amended to highlight the right to a safe, clean, healthy and sustainable environment, as this right links human rights to the environment and signifies the environment and climate change on human rights.⁷

This means that companies and States should not single out and ignore individual human rights in their human rights policies and due diligence framework.⁸ The right to a safe, clean, healthy and sustainable environment is a standalone human right internationally endorsed and recognised by States.

As stated in Article 5.2 of the Updated Draft, if victims have the right to environmental remediation and ecological restoration, the article should also refer the victim's substantive right to a safe, clean, healthy and sustainable environment, as well as the procedural rights, including the right to access environmental information and the right to participate in environmental decision-making processes.

These arguments show that the future draft of the LBI must have a 'dual focus' to concentrate on the issues of environment and climate change in addition to human rights, taking into account the inseparability of human rights and environment in order to have 'stronger protection' of all internationally recognised human rights, including the rights of vulnerable groups, especially indigenous peoples, who are at high risk of human rights abuses due to corporate environmental damage.

Therefore, the future draft should not only reinstate the previous formulations, including the right to a safe, clean, healthy and sustainable environment, but also must elaborate on the specific obligations of the State and business in relation to the human rights impacts of the environment and climate change, including the highest attainable human rights, and clarify environmental due diligence in line with the latest international human rights standards.

⁷ Krajewski (n 7), 21

⁸ Principle 18, UNGPs Commentary.

In particular, the future draft of the LBI:

- should reinstate the previous statement in preambular paragraph 10 of the Third Draft, which includes recognition of the significant role of the private sector in mitigating climate change in times of emergency.
- should reinstate the previous recognition of [the right to a safe, clean, healthy and sustainable environment](#) within the definition of human rights abuse in Article 1.3 of the Updated Draft. In reintroducing this important right, the Updated Draft must highlight the indirect negative impact as a human rights violation, in addition to the direct impact.
- could alternatively highlight [human rights in the context of the environment and climate change](#) in Article 3.3 of the Updated Draft, which sets out the scope of the LBI.

Also, the current provisions on human rights due diligence in the Updated Draft, mainly contained in Articles 6.3 and 6.4, cannot fully cover both human rights or environmental due diligence, as environmental and climate due diligence requires companies to take different specific measures than human rights due diligence. For example, climate change due diligence includes both mitigation and integration measures. Both require companies to commit to reducing greenhouse gas emissions as part of their corporate activities and to integrate these commitments into their policies and activities.⁹

The future provisions of the LBI should incorporate the standards of international frameworks such as the OECD Guidelines and the UN Guiding Principles on Business and Human Rights, and specify companies' human rights and environmental due diligence (HREDD) obligations, including how to establish and manage a due diligence system that is compatible with both human rights and the environment. Specifically, the future draft of the LBI must not only reinstate corporate responsibility for reporting on environmental and climate impact assessments, but it must also contain precise provisions that strengthen corporate responsibility for the environment and climate change.

It is suggested that:

- Article 1.8 of the Updated Draft, which defines human rights due diligence (HRDD), be reworded as [human rights and environmental due diligence \(HREDD\)](#).
- section (a) of Article 18, which sets out companies' responsibility to identify and assess the company's human rights impacts, be amended to include [environmental risk assessments](#) to be consistent with the precautionary approaches set out in the Rio Declarations.
- the other sections of Article 18 of the Updated Draft, which includes the specific measures such as taking action, conducting monitoring and communicating on human rights impacts, include [environmental impacts alongside human rights](#).
- Alternatively, the future draft of the LBI also include separate provisions that essentially address [climate change and environmental impact assessment, including precautionary principles and contingency plans](#) that are consistent with the principles of international environmental law.¹⁰

⁹ Julia Dehm 'Beyond Climate Due Diligence: Fossil Fuels, 'Red Lines' and Reparations' (2023) 8(2) Business and Human Rights Journal, 156.

¹⁰ The OECD Guidelines, Chapter 6, for example, explicitly emphasise the responsibility of companies to carry out environmental and climate assessments in accordance with international environmental regulation, including the Rio Declarations.

Participation of stakeholders

The Updated Draft also requires companies to "meaningfully consult" with stakeholders under Article 6.4, section (d). The word "meaningful" could have been clarified in the context of the LBI to save companies from a mere tick box exercise and allow for more effective engagement.

The provisions of the Updated Draft are still insufficient to ensure meaningful and effective engagement of relevant stakeholders, including workers, trade unions and other stakeholders, in the human rights due diligence process.

According to the commentary on the Guidelines, meaningful stakeholder engagement is the key component of the due diligence process and refers to a two-way, continuous engagement that should be done with accurate consideration of stakeholders' perspectives.¹¹

In light of the above, section (d) of Article 6.4 of the Updated Draft, which sets out the responsibility of companies to meaningfully engage relevant stakeholders in the human rights due diligence process, needs to be explicitly worded as follows:

"~~meaningful consult~~ engage in continuous, active and two-way dialogue with all relevant, potentially affected groups and other relevant stakeholders in an equal manner, paying particular attention to the stakeholder perspective".

In particular, the phrase "***all relevant stakeholders***" should also be emphasised in meaningful stakeholder engagement.

Trade and Investment Policies

Interpretation and dispute settlements of existing trade and investment instruments

The text of Article 14.5 does not specify how State parties should ensure that trade and investment agreements are interpreted and implemented in accordance with human rights. In particular it does not contain any obligations of States concerning dispute settlement under trade and investment agreements. Such specific obligations could include the requirement to select arbitrators or members of a trade and investment dispute settlement body which are (also) experts of human rights, the explicit rights of States to raise counterclaims based on the failure of an investor to adhere to its human rights responsibilities or the possibility to grant affected stakeholders the right to intervene in such proceedings.

Revision of existing and drafting of new trade and investment instruments

As a consequence of the deletion of Article 14.5 b), there is currently no obligation of States to revise provisions in trade and investment policies that effectively limit the protection of human rights and the environment.

It is not clear why the Chair-Rapporteur decided to delete this provision. In the version of the Updated Draft which includes track changes, the Chair-Rapporteur only writes that former Article 14.5.b) was "set aside after due consideration." However, neither State parties nor other stakeholders have suggested such a deletion.

¹¹ Ibid, Commentary of the Chapter II, General Policies, para 28.

For these reasons it would seem recommendable to:

reintroduce the clause of Art. 14.5 b) or a similar provision which ensures that States also have obligations when drafting new trade and investment agreements. It might even be an option to include an obligation of States to revise and if necessary to redraft any existing trade and investment agreements which could potentially limit the ability of States to fulfil their human rights obligations.

“(b). 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.”

SUMMARY OF RECOMMENDATIONS

Preamble	The future LBI should reinstate the previous statement in preambular paragraph 10 of the Third Draft, which includes recognition of the significant role of the private sector in mitigating climate change in times of emergency.
Article 1. Definitions	<p>The future LBI should reinstate the previous recognition of the right to a safe, clean, healthy and sustainable environment within the definition of human rights abuse in Article 1.3 of the Updated Draft.</p> <p>It is suggested that Article 1.8 of the Updated Draft, which defines human rights due diligence (HRDD), be reworded as human rights and environmental due diligence (HREDD).</p>
Article 3. Scope	The future LBI could highlight human rights in the context of the environment and climate change in Article 3.3 of the Updated Draft, which sets out the scope of the LBI.
Article 5. Protection of victims	<p>Article 5.2: Certain amendments such as <i>'persons, groups, and organisations that promote and defend human rights and environment regardless of the sex, age and profession'</i> could be beneficial for recognising and bringing visibility to all relevant human rights and environmental defenders.</p>
Article 6. Prevention	<p>It is suggested that section (d) to Article 6.2 be reworded as follows: <i>"promote the active and meaningful participation rights 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 the development and implementation of laws, policies and other measures to prevent the involvement of business enterprises in human rights abuse."</i></p> <p>Section (d) of Article 6.4, which sets out the responsibility of companies to meaningfully engage relevant stakeholders in the human rights due diligence process, needs to be explicitly worded as follows: <i>"meaningful consult engage in continuous, active and two-way dialogue with all relevant, potentially affected groups and other relevant-stakeholders in an equal manner, paying particular attention to the stakeholder perspective".</i></p> <p>In particular, the phrase "all relevant stakeholders" should also be emphasised in meaningful stakeholder engagement.</p> <p>Article 6.4: It is suggested to reintroduce the reference to enhanced due diligence in conflict-affected areas, specifically in situations of occupation, with reference to respecting international humanitarian law obligations, and referring to existing international standards and guidance, including the Geneva Conventions and its additional protocols.</p> <p>Article 6.4.b: it is suggested to introduce the need to consult with potentially impacted women and women's organisations in all stages of human rights due diligence processes to identify and address the differentiated risks and impacts experienced by women and girls.</p>
Article 7. Access to remedy	<p>It is suggested that an Article 7.5 (d) be included as follows: <i>"(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."</i></p>

Article 8. Legal liability	<p>It is suggested that an Article 8.7 be included as follows:</p> <p><i>“When determining the liability of a natural or legal person for human rights abuses that may arise from their business activities or relationships, the competent court or authority can take into account whether the person undertook adequate human rights due diligence measures in accordance with Article 6, but compliance with applicable human rights due diligence standards shall not absolve from liability ipso jure.”</i></p>
Article 9. Jurisdiction	<p>It is suggested that Article 9.1 (a) be reworded as follows:</p> <p><i>“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;”</i></p> <p>It is suggested that Article 9.3 be reworded as follows:</p> <p><i>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:</i></p> <ul style="list-style-type: none"> (a) <i>the discontinuation of legal proceedings on the grounds that there is another, more convenient or more appropriate forum with jurisdiction over the matter; or</i> (b) <i>the length of judicial proceedings and evidentiary burden placed on victims;</i> (c) <i>the coordination of actions as contemplated in Article 9.4.</i>
Article 11. Applicable law	<p>It is suggested that Article 11.2 be reworded as follows:</p> <p><i>“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: [...]”</i></p>
Article 14. Consistency with international law	<p>It would seem recommendable to reintroduce the clause of Art. 14.5 b) below or a similar provision which ensures that states also have obligations when drafting new trade and investment agreements. It might even be an option to include an obligation of states to revise and if necessary to redraft any existing trade and investment agreements which could potentially limit the ability of states to fulfil their human rights obligations.</p> <p><i>(b). 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.</i></p>
Article 18. Settlement of Disputes	<p>It is suggested that:</p> <ul style="list-style-type: none"> • section (a) of Article 18, which sets out companies' responsibility to identify and assess the company's human rights impacts, be amended to include environmental risk assessments to be consistent with the precautionary approaches set out in the Rio Declarations. • the other sections of Article 18 of the Updated Draft, which includes the specific measures such as taking action, conducting monitoring and communicating on human rights impacts, include environmental impacts alongside human rights.



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