

Contribution to the thirteen Chair-Rapporteur's suggested redrafting of selected provisions of Articles 4 to 11

Open-ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with respect to Human Rights (OEIGWG)

Submitted by CIDSE and members

This written input is submitted in response to the Chair-Rapporteur's wording proposals following the intersessional thematic consultations. It consolidates and reformulates our contribution and assessment on Articles 4 to 11 with the aim of providing constructive, technically feasible, and politically viable contributions to advance the negotiations. In doing so, this input is mindful of the need to unlock the current stalemate by focusing on approaches that are consistent with established principles of international human rights law and that are more likely to command broad support among States.

General observations

We appreciate the Chair-Rapporteur's efforts to move the process forward through textual proposals and intersessional consultations. We also welcome the opportunity for States and civil society to submit written inputs following the session. Transparency in making all such submissions publicly available would further strengthen the legitimacy and inclusiveness of the process.

Article-specific comments

Articles 4 and 5 – Rights of Victims and Access to Remedy

We welcome the strengthened recognition of victims' rights, including persons with disabilities, and support addressing the concept of victims in a cross-cutting manner. We suggest that the definition of victims encompass victims, affected persons, and affected communities, as a balanced and inclusive formulation.

In Article 4, we recommend replacing the formulation "seek access to effective, prompt and adequate remedy" with "access effective, prompt and adequate remedy," which better reflects the objective of guaranteeing outcomes rather than merely procedural efforts.

Regarding Article 5, we reiterate the importance of access to courts as a central pillar of this instrument. We therefore suggest explicitly referencing courts alongside judicial and non-judicial mechanisms.

Article 6 – Prevention and Due Diligence

We stress the importance of robust State obligations to regulate business enterprises in order to prevent involvement in human rights abuses, in line with established international human rights law. Consistent with the traditional framework of international human rights law, we support an approach that assigns obligations to States, which in turn impose appropriate duties on business enterprises through domestic

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law. States should further delineate the actions that companies are obligated to undertake to prevent and mitigate adverse impacts across the full value chain including State entities. This includes implementing corrective action plans, modifying purchasing and distribution practices, and/or not entering contexts where human rights abuses or violations cannot be prevented.

We support streamlining Article 6.2(c) to require human rights and environmental due diligence, reflecting the interdependence of human rights and environmental harm, and consistent with recent international developments recognising the right to a clean, healthy, and sustainable environment. We also support enhanced and ongoing due diligence in conflict-affected contexts.

With respect to participation, we support language ensuring the involvement of affected individuals and communities in the design and monitoring of preventive measures, including respect for free, prior and informed consent where applicable.

Article 7 – Access to Justice

We reiterate that access to justice is the backbone of the instrument. We welcome language aimed at removing legal, practical, and other obstacles to remedy. In line with concerns expressed by States, we are open to formulations that identify key measures in an illustrative rather than overly prescriptive manner, provided that they meaningfully address barriers faced by victims. For example, by adopting measures to facilitate the production of evidence by placing the burden of proof on the party best placed to provide the information and evidence necessary to substantiate or resolve a claim, or by requiring States to establish effective liability regimes that consider reversing the burden of proof within those regimes.

We also support ensuring that information and legal assistance are accessible in formats responsive to differentiated risks and impacts, while avoiding repetitive lists by embedding these considerations in general principles applicable throughout the instrument.

Article 8 – Legal Liability

We recognise that approaches requiring mandatory criminal liability of legal persons may be politically and legally challenging for some States. We support formulations that require States to establish effective liability regimes.

We also support a clear articulation of liability for acts or omissions that cause or contribute to human rights abuses, in line with the UN Guiding Principles on Business and Human Rights. Rather than highly prescriptive rules, we support the inclusion of overarching principles or criteria to guide liability within corporate groups and global supply chains, reflecting positions of control, influence, or decision-making power.

Furthermore, a provision should clearly articulate that corporate adherence to due diligence obligations does not automatically exempt companies from liability.

Article 9 – Jurisdiction

We welcome the inclusion of *forum necessitatis* as an important safeguard against denial of justice. We recognise that certain jurisdictional bases may be controversial and are open to approaches that preserve exceptional jurisdiction for cases where victims cannot reasonably access other competent courts.

We also note ongoing concerns regarding overly expansive definitions of domicile and are open to aligning definitions with widely recognised international and domestic standards, while preserving more expansive approaches under other legal regimes where applicable.

Article 10 – Statute of Limitations

We seek clarification to ensure that special rules on statutes of limitations are not unduly restricted to a narrow category of international crimes, and that serious human rights-related offences are adequately covered, in a manner consistent with international law.

Article 11 – Applicable Law

We note concerns regarding the current drafting of Article 11 and support a more contained approach that provides legal certainty. We would support formulations allowing claimants the ability to opt for:

- The law of the place where the acts or omissions that resulted/contributed to the human rights abuse took place, where claimants choose to pursue their claim in this place based on art 9.1a and this place is different from the place of the harm;
- The law of the place of domicile of the alleged perpetrator, where claimants choose to pursue their claim in this place based on art 9.1c and this place is different from the place of the harm.

Concluding remarks

We submit these comments in a spirit of constructive engagement, recognising the need for compromise in order to advance the negotiations while preserving the core objective of the instrument: strengthening access to justice and accountability for human rights abuses linked to transnational business activities.