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Contribution to the Chair-Rapporteur's suggested redrafting of selected provisions of Articles 12 to 24 and Articles 1 to 3

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

Submitted by CIDSE and Member Organisations
November 2026

GENERAL OBSERVATIONS

This written input is submitted in response to the Chair-Rapporteur's wording proposals following the 2026 intersessional thematic consultations and the discussions held during the twelfth session of the OEIGWG. It consolidates and reformulates CIDSE's positions expressed during the session, with the aim of providing constructive, technically feasible and politically viable contributions to the further drafting of the Legally Binding Instrument (LBI).

We will provide wording recommendations for the following Articles (in ascending order): 1.3; 1.4; 1.5; 1.6; 1.8; 2; 3.1; 3.3; 14.5; 15.4; 16.3; and 16.6.

ARTICLE 1 – DEFINITIONS

Article 1.3 – Human rights abuse

We welcome the Chair-Rapporteur's formulation linking human rights abuse to adverse human rights impacts arising from acts or omissions in the context of business activities, including State and non-State entities.

However, we recommend explicitly retaining references to direct and indirect impacts. This is important to ensure that the definition captures the different ways in which business activities may cause, contribute to, or otherwise be linked to adverse human rights impacts.

We also strongly recommend reinstating an explicit reference to the right to a safe, clean, healthy and sustainable environment within the definition of human rights abuse. Environmental harm is frequently intrinsically connected to human rights impacts, particularly in contexts of extractive and other high-risk business activities. Such recognition would strengthen the coherence of the LBI's provisions on prevention, accountability and remedy.

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We recommend a drafting as follows:

> *"Human rights abuse" shall mean an adverse human rights impact,* ***whether direct or indirect,*** *that results from acts or omissions by transnational corporations and other business enterprises, including State and non-State entities, that take place in the context of business activities,* ***and that violates or adversely affects internationally recognized human rights, including the right to a safe, clean, healthy and sustainable environment.***

Article 1.4 – Business activities

We welcome the broad definition of business activities proposed by the Chair-Rapporteur, including its coverage of, financial institutions, investment funds, and digital and artificial intelligence activities.

We recommend adding "direct and indirect" before "business relationships" to ensure that the definition adequately captures the full value chain. The broad approach should be retained and remain coherent with the definitions of business relationships and transnational business activities elsewhere in the LBI, so as to avoid gaps in protection.

We recommend the following wording:

> *"Business activities" means any economic, commercial or other relevant activity, undertaken by by business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure. This includes both their direct and indirect business relationships, including but not limited to the exploration, extraction, processing, manufacturing, production, transportation, distribution, commercialization, financing, investing, insuring, marketing and retailing of goods and services. This includes artificial intelligence and activities undertaken by electronic or digital means.*

Article 1.5 – Business activities of a transnational character

We support the approach of defining transnational business activities through the nature and cross-border effects of the activity. We encourage further examination of paragraph (b) to ensure that it adequately captures relevant cross-border business relationships, including direct and indirect relationships and their impacts, without creating gaps in protection.

It is important to emphasize that this provision should be read together with Articles 1.4 and 1.6 and Article 3.1, which together need to establish a sufficiently comprehensive basis for defining the scope of the LBI.

We recommend the following drafting:

> *"Business activities of a transnational character" means any business activity described in Article 1.4, when:*
>
> *a) It is undertaken in more than one jurisdiction or State; or*

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b) It is undertaken in one State but involves preparation, procurement, planning, direction, control, design, processing, manufacturing, storage or distribution, or other decisions or actions related to another State or jurisdiction, ***including through direct or indirect business relationships****; or*

c) It is undertaken in one State but has significant effects in another State or jurisdiction, including through direct or indirect business relationships.

Article 1.6 – Business relationships

We welcome the explicit inclusion of affiliates, subsidiaries, suppliers, joint ventures, financial institutions, investment funds and transnational corporate groups, as well as the reference to value chains.

We recommend ensuring that the provision is sufficiently clear and comprehensive to capture the entire value chain and the range of relationships through which business activities are conducted, including investments and other services provided by financial institutions. This is essential to prevent complex corporate structures and business relationships from being used to evade accountability.

We recommend the following language:

"Business relationship" refers to any relationship between natural or legal persons, including State and non-State entities, to conduct business activities, including through affiliates, subsidiaries, agents, suppliers, partnerships, joint ventures, beneficial proprietorship, financial institutions, investment funds, transnational corporate groups, or any other structure or relationship ***throughout their value chains, including relationships involving the provision of financing, investment, insurance or other financial or business services,*** *as well as artificial intelligence and activities undertaken by electronic or digital means.*

Article 1.8 – Human rights due diligence

We welcome the effort to clarify the relationship between the definition of due diligence and the substantive obligations under Article 6.

However, we recommend explicitly recognising human rights and environmental due diligence (HREDD). Environmental and human rights impacts are frequently intrinsically connected and should therefore be addressed through a coherent due diligence framework.

We further recommend avoiding vague formulations such as "mitigating" adverse human rights impacts. Such language risks implying that a certain level of human rights abuse is acceptable. The purpose of due diligence should instead be preventing and ending abuses and recompensating damages resulting from business activities and relationships. Moreover, compliance with human

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rights and environmental due diligence requirements should not automatically exempt a business enterprise from legal liability where harm has occurred, nor should it constitute an obstacle to victims' access to justice and effective remedy.

We recommend the following wording:

> *"Human rights* ***and environmental*** *due diligence" shall mean the processes to identify, prevent,* ***account and address adverse human rights and environmental impacts*** *arising from business activities and business relationships.* ***Where a business activity has caused or contributed to harm, take appropriate measures and end the abuse*** *and, if necessary, the* ***business activity. Compliance with human rights and environmental due diligence requirements shall not, in itself, exempt a business enterprise from legal liability for harm caused or contributed to by its acts or omissions, nor shall such compliance constitute an obstacle to victims' access to justice and effective remedy.***

ARTICLE 2 – STATEMENT OF PURPOSE

We encourage States to further strengthen the purpose of the instrument by reaffirming the prevention of human rights abuses and access to effective remedy as its core pillars. The purpose should also clearly support robust State action to regulate business enterprises across global value chains. In this context, we recommend replace "mitigation" with "ending" of human rights abuses. We propose the following formulation:

> *The purpose of this (Legally Binding Instrument) is:*
>
> *a) To clarify and facilitate the effective implementation of the obligation of States to respect, protect, fulfil and promote human rights in the context of business activities, particularly those of a transnational character,* ***including through robust regulation of business enterprises across global value chains;***
>
> *b) To clarify and ensure respect for and fulfilment of the human rights responsibilities of transnational corporations and other business enterprises;*
>
> *c) To prevent* ***and end*** *human rights abuses in the context of business activities, particularly those of a transnational character, through effective mechanisms for prevention, monitoring, enforcement and accountability;*
>
> *d) To ensure access to gender- and age-responsive, child-sensitive, disability-inclusive and victim-centred justice and effective, adequate and timely remedy for victims of human rights abuses in the context of business activities;*

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> *e) To facilitate and strengthen mutual legal assistance and international cooperation to prevent and end human rights abuses in the context of business activities, particularly those of a transnational character, and to ensure access to justice and effective, adequate and timely remedy for victims.*

ARTICLE 3 – SCOPE

Article 3.1 – Personal and material scope

We appreciate the Chair-Rapporteur's efforts to establish the scope through two options. However, neither option fully reflects the legal experts' approach discussed during the intersessional consultation, which focused on the nature of business activities rather than the legal form of the enterprise. In this sense, we recommend the following wording:

> *This (Legally Binding Instrument) shall apply to all business activities with a particular focus on those of a transnational character.*

We support an approach that prevents regulatory gaps while maintaining an explicit focus on business activities of a transnational character. It is important to highlight that Article 3.1 should be read together with the definitions of business activities, transnational business activities and business relationships, as well as with the operative provisions of the LBI. These elements need to work together to ensure comprehensive coverage of complex corporate structures, global value chains and cross-border impacts.

Article 3.3 – Scope of human rights

We consider Option 1 useful in providing a broad foundation through its reference to treaties, customary international law, general principles of law and domestic law.

However, neither option explicitly recognises the right to a safe, clean, healthy and sustainable environment, nor does either explicitly reference key instruments such as the UN Declaration on the Rights of Indigenous Peoples. Therefore, we suggest the following formulation:

> *This (Legally Binding Instrument) shall cover* ***all human rights and fundamental freedoms****, customary international law, the general principles of law, and the domestic law of those States Parties,* ***including the right to a safe, clean, healthy and sustainable environment, the United Nations Declaration on the Rights of Indigenous Peoples and the Declaration on Human Rights Defenders.***

We encourage States to retain the broadest possible formulation of internationally recognised human rights and fundamental freedoms, while explicitly acknowledging these rights and instruments. This would ensure coherence with Article 1.3 and strengthen the LBI's capacity to address the environmental dimensions of human rights violations linked to business activities.

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ARTICLE 14 – CONSISTENCY WITH INTERNATIONAL LAW

Article 14.5 – Trade and investment agreements

We welcome proposals ensuring that trade and investment agreements, including future agreements, are consistent with States' human rights obligations and relevant human rights instruments. We also support an explicit reference to investor-State dispute settlement mechanisms.

Importantly, the provision should require States not only to interpret and implement such agreements consistently with their human rights obligations, but also to review and, where necessary, adapt existing agreements to ensure such consistency.

This is essential to prevent existing trade and investment agreements from constraining States' ability to fulfil their obligations under the LBI and other internationally recognised human rights standards. In this sense, we recommend the following formulation:

> *States Parties shall ensure that all bilateral and multilateral agreements, including regional or sub-regional agreements, on issues relevant to this (Legally Binding Instrument), including trade and investment agreements* ***and investor-State dispute settlement mechanisms****, are interpreted and implemented in a manner compatible with States Parties' obligations under this (Legally Binding Instrument) and relevant human rights instruments and that does not undermine or restrict the capacity of States Parties to fulfil these obligations.* ***States Parties shall review existing bilateral and multilateral agreements, including trade and investment agreements, and, where necessary, amend, revise or otherwise adapt them to ensure their consistency with their obligations under this (Legally Binding Instrument) and relevant human rights instruments.***

The experiences of communities affected by extractive activities demonstrate that such agreements can constrain States' ability to prevent or end abuses and can contribute to situations in which peaceful opposition to corporate activities is met with repression.

ARTICLE 15 – INSTITUTIONAL ARRANGEMENTS

Article 15.4 – Committee

We welcome the effort to streamline and clarify the functions of the Committee. However, we recommend clarification from the legal experts regarding the implications of removing the Committee's capacity to make normative recommendations.

We support authorising the Committee to receive and consider information and reports from affected or potentially affected individuals and communities and their legitimate representatives, subject to appropriate admissibility criteria.

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We further support consideration of a robust monitoring mechanism allowing the Committee to receive individual and group communications concerning alleged human rights abuses and violations in the context of business activities, as well as the capacity to order urgent provisional measures where necessary to prevent irreparable harm. Such mechanisms would strengthen the protective and accountability functions of the Committee and ensure that the experiences and concerns of those most affected can directly inform its work. We propose the following redrafting of the provision:

> *15.4. The Committee shall have the following functions:*
>
> *(a) Make general comments and, **where appropriate, normative recommendations** on the understanding and implementation of this (Legally Binding Instrument), based on the examination of reports and information received from States Parties **and from other sources, including affected or potentially affected individuals and communities and their legitimate representatives;***
>
> *(b) Consider and provide comments, observations or recommendations on reports submitted by States Parties, as it may consider appropriate, and forward these to the State Party concerned, which **shall** respond to them on its own initiative or at the request of the Committee. The Committee may decide to include these suggestions and general recommendations in the report of the Committee together with comments from States Parties.*
>
> ***(c) Receive and consider information and reports, including individual or group communications, submitted by affected or potentially affected individuals and communities and their legitimate representatives concerning alleged human rights abuses and violations in the context of business activities, subject to appropriate admissibility criteria, and, where necessary to prevent irreparable harm, request or order appropriate urgent provisional measures in accordance with procedures established by the Committee.***

ARTICLE 16 – IMPLEMENTATION

Article 16.3 – Heightened risks in conflict-affected areas

We welcome the strengthening of provisions addressing heightened risks in conflict-affected areas, including gender-based and sexual violence, recruitment and use of children, and the worst forms of child labour. We also welcome the requirement to terminate business activities and relationships where abuses cannot be prevented and support an explicit reference to respect for international humanitarian law.

However, we recommend replacing references to human rights abuses being "mitigated" with language requiring such abuses to be "ended". Mitigation should not become an alternative to prevention or to addressing the root causes of abuses.

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We further support a cross-cutting principle requiring States to address the heightened and differentiated risks faced by individuals and communities in vulnerable or high-risk situations throughout implementation of the LBI. This protection should not be limited to conflict-affected areas or to a closed list of specific risks.

We propose the following redrafting of this provision:

> *States Parties shall undertake special measures in cases of business activities and business relationships in conflict-affected areas, to ensure that business enterprises identify, prevent,* ***cease, remedy and end*** *heightened human rights-related risks arising from those activities and relationships, paying special attention to both gender-based and sexual violence, the recruitment and use of children, and the worst forms of child labour, including forced and hazardous child labour, and shall ensure respect for applicable international humanitarian law. States Parties shall also ensure that business enterprises terminate their business activities and business relationships in such areas when human rights abuses cannot be prevented* ***or ended****.*
>
> ***States Parties shall ensure that heightened and differentiated human rights-related risks faced by individuals and communities in vulnerable or high-risk situations are addressed throughout the implementation of this (Legally Binding Instrument), including beyond conflict-affected areas and irrespective of the specific risks identified in this paragraph.***

Article 16.6 – Undue influence

We welcome the proposal to protect public policies and decision-making spaces, including judicial, regulatory and governmental bodies, from undue political influence by businesses.

We recommend strengthening this provision by explicitly referring to interference and influence by commercial and other vested interests, as well as conflicts of interest.

Given the significant economic and political power of many transnational corporations, these safeguards are necessary to protect the integrity and independence of public decision-making and ensure that decisions affecting human rights and the environment are taken in the public interest.

> *16.6. In implementing this (Legally Binding Instrument), States Parties shall protect public policies and decision-making spaces, such as their judicial systems and regulatory and governmental bodies, from undue political influence,* ***interference or other forms of influence*** *by businesses* ***and their commercial or other vested interests. States Parties shall take measures to prevent and address conflicts of interest.*** *To give effect to this provision, States Parties* ***shall*** *adopt such measures as necessary, including those of a legislative, administrative and institutional character,* ***to safeguard the independence, integrity and impartiality of public decision-making.***

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CONCLUDING REMARKS

We submit these comments in a spirit of constructive engagement and with the objective of contributing to a strong, effective and implementable LBI.

The experiences shared during the twelfth session by Indigenous Peoples and communities affected by extractive industries and other business activities underline the importance of ensuring that the instrument is capable of addressing real-world accountability gaps. Communities have repeatedly experienced situations in which corporate activities have caused serious environmental and human rights impacts, while complex corporate structures, cross-border operations and gaps between jurisdictions have made access to justice difficult.

The future LBI should therefore establish clear and enforceable obligations across global value chains, prioritise human rights over economic interests, recognise the rights of Indigenous Peoples and protect human rights and environmental defenders. It should also address environmental and climate impacts from a human rights perspective.

As the process moves towards the next draft, we reiterate the importance of a methodology that provides sufficient time for consultation with States and civil society before the draft is finalised.