



Republic of the Philippines  
Department of Environment and Natural Resources  
Visayas Avenue, Diliman, Quezon City  
Tel Nos. 929-6626 to 29; 929-6633 to 35  
926-7041 to 43; 929-6252; 929-1669  
Website: <http://www.denr.gov.ph> / E-mail: [web@denr.gov.ph](mailto:web@denr.gov.ph)

**MEMORANDUM**

**TO :** **The Assistant Secretary for Climate Change  
and Concurrent Director, Biodiversity Management Bureau**

**The Directors**  
Environmental Management Bureau  
Mines and Geosciences Bureau  
Forest Management Bureau  
Land Management Bureau  
Ecosystems Research and Development Bureau

**The Director**  
Foreign Assisted and Special Projects Service

**FROM :** **The Undersecretary**  
Policy, Planning and International Affairs

**SUBJECT :** **REQUEST FOR COMMENTS ON THE SECOND DRAFT  
OF THE LEGALLY BINDING INSTRUMENT (LBI) ON  
TRANSNATIONAL CORPORATIONS (TNCs) AND  
OTHER BUSINESS ENTERPRISES (OBES)**

**DATE :** 23 September 2020

May we respectfully refer the letter dated 10 September 2020 signed by Executive Director Roberto G. Manalo, United Nations and International Organizations - Department of Foreign Affairs, forwarding a copy of the second draft of the legally binding instrument (LBI) on Transnational Corporations (TNCs) and other business enterprises (OBES) provided by the Permanent Mission of Ecuador to the UN in Geneva in its capacity as Chair of the Open-ended Intergovernmental Working Group on transnational corporations and other business enterprises (OEIGWG on TNCs and OBES).

The second draft LBI was based on the discussions held at the 5<sup>th</sup> Session of the OEIGWG on TNCs and OBES, the two annexes of the outcome report of the 5<sup>th</sup> Session submissions received until the end of February 2020 and various informal consultations. The second draft LBI also contains new sections, Article 5 on 'Protection of Victims' and Article 7 on 'Access to Remedy'.

The DFA notes that the position of a number of developing states including the Philippines, on the need to revert/limit the scope of the LBI strictly to the activities of TNCs and OBES, consistent with the original mandate, has not been taken into consideration. Also, the DFA reiterates its observation that Ecuador, in its capacity as Chair, wanted to ensure that the Western Group does not disengage from the negotiation process, hence the expansion of scope to 'all businesses' as pushed for by western states.

In view of this, the DFA requests for DENR's inputs and comments on the second draft LBI and onward transmittal to the Philippine Permanent Mission to the UN in Geneva. Kindly send your inputs to this email address: [oueiea.denr@gmail.com](mailto:oueiea.denr@gmail.com) on or before October 7, 2020.

For your appropriate action.

MEMO NO. 2020-476

  
ATTY. JONAS R. LEONES



Office of the Secretary &lt;osec@denr.gov.ph&gt;

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**Letter to DENR - Second draft of the Legally Binding Instrument on TNCs and OBEs**

1 message

Div6 UNIO &lt;unio.div6@dfa.gov.ph&gt;

Fri, Sep 11, 2020 at 4:25 PM

To: osec@denr.gov.ph

Cc: Office OTLA &lt;ola@dfa.gov.ph&gt;, Office OUIER &lt;ouier@dfa.gov.ph&gt;, Office UNIO &lt;unio@dfa.gov.ph&gt;

Dear Sir/Madam,

Please see attached letter on the above subject.

Kindly acknowledge receipt of this email. Thank you.

--

Sincerely,

Zsa Apolonio  
Human Rights and Humanitarian Affairs Division  
Office of the United Nations & International Organizations  
Department of Foreign Affairs  
2330 Roxas Boulevard, Pasay City  
Republic of the Philippines

Tel: (632) 834-4913, 834-3507

Fax: (632) 832 3245

**Signed UNIO-6-4971-2020 (10.09.2020) Ltr to DENR 2nd revised draft LBI on TNCs and OBEs-rev1.pdf**  
2459K



**DEPARTMENT OF FOREIGN AFFAIRS  
KAGAWARAN NG UGNAYANG PANLABAS**

**OFFICE OF UNITED NATIONS AND INTERNATIONAL ORGANIZATIONS**

10 September 2020

Sir:

With reference to the draft legally binding instrument (LBI) on transnational corporations (TNCs) and other business enterprises (OBEs), the Department forwards to the Department of Environment and Natural Resources (DENR) the attached copy of the second draft of the legally binding instrument on TNCs and OBEs provided by the Permanent Mission of Ecuador to the UN in Geneva in its capacity as Chair of the Open-ended Intergovernmental Working Group on transnational corporations and other business enterprises (OEIGWG on TNCs and OBEs).

The second draft LBI was based on the discussions held at the 5<sup>th</sup> Session of the OEIGWG on TNCs and OBEs, the two annexes of the outcome report of the 5<sup>th</sup> Session, submissions received until the end of February 2020, and various informal consultations. The second draft LBI also contains new sections, Article 5 on "Protection of Victims" and Article 7 on "Access to Remedy".

The Department notes that the position of a number of developing states, including the Philippines, on the need to revert/limit the scope of the LBI strictly to the activities of TNCs and OBEs, consistent with the original mandate, has not been taken into consideration. It may be recalled that the Human Rights Council (HRC) resolution 26/9 of June 2014 established the OEIGWG "to elaborate an LBI to regulate in international human rights law the activities of TNCs and OBEs." The second revised draft LBI still focuses on "*all business enterprises*, including but not limited to TNCs and OBEs."

The Department also reiterates its observation that Ecuador, in its capacity as Chair, wanted to ensure that the Western group does not disengage from the negotiation process especially at this early stage, hence the expansion of scope to "all businesses" as pushed for by Western states.

The negotiations on the preparation of a third draft LBI will be at the 6<sup>th</sup> OEIWG Session on 26 – 30 October 2020.

*...//In line with this*

**HON. ROY A. CIMATU**

Secretary

Department of Environment and Natural Resources  
Visayas Ave., Diliman, Quezon City

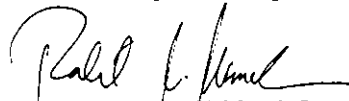
CC: **DFA – OTLA**  
**DFA – QUIER**

*(npc/cm/mra)UNIO-6-4971-2020*

In line with this, the Department requests DENR's inputs and comments, including the soft copy in word document format, on the second draft LBI through [unio.div6@dfa.gov.ph](mailto:unio.div6@dfa.gov.ph) by **Friday, 16 October 2020** for consolidation of inputs and onward transmittal to the Philippine Permanent Mission to the UN in Geneva.

Thank you and with my warmest regards.

Very truly yours,  
For the Secretary of Foreign Affairs:

A handwritten signature in black ink, appearing to read 'Roberto G. Manalo', written in a cursive style.

**ROBERTO G. MANALO**  
Acting Head of Office

**LEGALLY BINDING INSTRUMENT TO REGULATE, IN INTERNATIONAL HUMAN RIGHTS LAW, THE  
ACTIVITIES OF TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES**

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**Preamble**

*The State Parties to this (Legally Binding Instrument),*

*Reaffirming* the principles and purposes of the Charter of the United Nations;

*Recalling* the nine core International Human Rights Instruments adopted by the United Nations, and the eight fundamental Conventions adopted by the International Labour Organization;

*Recalling* also the Universal Declaration of Human Rights, as well as the Declaration on the Right to Development, the Vienna Declaration and Programme of Action, the Durban Declaration and Programme of Action, the UN Declaration on Human Rights Defenders, the UN Declaration on the Rights of Indigenous Peoples, and the ILO Convention 190 concerning the elimination of violence and harassment in the world of work, and recalling further the 2030 Agenda for Sustainable Development, as well as other internationally agreed human rights-relevant declarations;

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

*Stressing* the right of every person to be entitled to a social and international order in which their rights and freedoms can be fully realized consistent with the purposes and principles of the United Nations as stated in the Universal Declaration of Human Rights;

*Reaffirming* that all human rights are universal, indivisible, interdependent, inter-related, inalienable, equal and non-discriminatory;

*Upholding* the right of every person to have effective and equal access to justice and remedy in case of violations of international human rights law or international humanitarian law, including the rights to non-discrimination, participation and inclusion;

*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 abuse by third parties, including business enterprises, within their territory or jurisdiction, or otherwise under their control, and ensure respect for and implementation of international human rights law;

*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 race, sex, language or religion;

*Upholding* the principles of sovereign equality, peaceful settlement of disputes, and maintenance of the territorial integrity and political independence of States as set out in Article 2 of the United Nations Charter;

*Acknowledging* that all business enterprises have the capacity to foster the achievement of sustainable development through an increased productivity, inclusive economic growth and job creation that protects labour rights and environmental and health standards in accordance with relevant international standards and agreements;

*Underlining* that all business enterprises, regardless of their size, sector, location, operational context, ownership and structure have the responsibility to respect all human rights, including by avoiding causing or contributing to human rights abuses through their own activities and addressing such abuses when they occur, as well as by preventing or mitigating human rights abuses that are directly linked to their operations, products or services by their business relationships;

*Emphasizing* that civil society actors and human rights defenders have an important and legitimate role in promoting the respect of human rights by business enterprises, and in preventing, mitigating and seeking effective remedy for business-related human rights abuses;

*Recognizing* the distinctive and disproportionate impact of business-related human rights abuses on women and girls, children, indigenous peoples, persons with disabilities, migrants, refugees, and other persons in vulnerable situation, as well as the need for a business and human rights perspective that takes into account specific circumstances and vulnerabilities of different rights-holders;

*Emphasizing* the need for States and business enterprises to integrate a gender perspective in all their measures, in line with the Convention on the Elimination of All Forms of Discrimination against Women, the Beijing Declaration and Platform for Action and other relevant international standards;

*Taking into account* all the work undertaken by the 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, and all relevant previous Human Rights Council resolutions, including in particular Resolution 26/9;

*Noting* the role that the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework has played in that regard;

*Noting also* the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy;

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

*Hereby agree as follows:*

## Section I

### Article 1. Definitions

For purposes of the present legally binding instrument:

1. "Victim" shall mean any person or group of persons who individually or collectively have suffered harm, including physical or mental injury, emotional suffering, or economic loss, or substantial impairment of their human rights, through acts or omissions in the context of business activities, that constitute human rights abuse. The term "victim" shall also include the immediate family members or dependents of the direct victim, and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization. A person shall be considered a victim regardless of whether the perpetrator of the human rights abuse is identified, apprehended, prosecuted, or convicted.
2. "Human rights abuse" shall mean any harm committed by a business enterprise, through acts or omissions in the context of business activities, against any person or group of persons, that impedes the full enjoyment of internationally recognized human rights and fundamental freedoms, including regarding environmental rights.
3. "Business activities" means any for profit economic or other activity undertaken by a natural or legal person, including State-owned enterprises, transnational corporations, other business enterprises, and joint ventures, undertaken by a natural or legal person. This will include activities undertaken by electronic means.
4. "Business activities of a transnational character" means any business activity described in paragraph 3 of this Article, when:
  - a It is undertaken in more than one jurisdiction or State; or
  - b It is undertaken in one State through any business relationship but a substantial part of its preparation, planning, direction, control, design, processing, or manufacturing, storage or distribution, takes place in another State; or
  - c It is undertaken in one State but has substantial effect in another State.
5. "Business relationship" refers to any relationship between natural or legal persons to conduct business activities, including those activities conducted through affiliates, subsidiaries, agents, suppliers, partnerships, joint venture, beneficial proprietorship, or any other structure or contractual relationship as provided under the domestic law of the State, including activities undertaken by electronic means.
6. "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.



## **Article 2. Statement of purpose**

1. The purpose of this (Legally Binding Instrument) is:
  - a. To clarify and facilitate effective implementation of the obligation of States to respect, protect and promote human rights in the context of business activities, as well as the responsibilities of business enterprises in this regard;
  - b. To prevent the occurrence of human rights abuses in the context of business activities;
  - c. To ensure access to justice and effective remedy for victims of human rights abuses in the context of such business activities;
  - d. To facilitate and strengthen mutual legal assistance and international cooperation to prevent human rights abuses in the context of business activities and provide access to justice and effective remedy to victims of such abuses.

## **Article 3. Scope**

1. Unless stated otherwise, this (Legally Binding Instrument) shall apply to all business enterprises, including but not limited to transnational corporations and other business enterprises that undertake business activities of a transnational character.
2. Notwithstanding Art 3.1 above, when imposing prevention obligations on business enterprises under this (Legally Binding Instrument), State 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 and the severity of impacts on human rights.
3. This (Legally Binding Instrument) shall cover all internationally recognized human rights and fundamental freedoms emanating from the Universal Declaration of Human Rights, any core international human rights treaty and fundamental ILO convention to which a state is a party, and customary international law.

## **Section II**

### **Article 4. Rights of Victims**

1. Victims of human rights abuses in the context of business activities shall enjoy all internationally recognized human rights and fundamental freedoms.
2. Without prejudice to the paragraph above, victims shall:

- a. be treated with humanity and respect for their dignity and human rights, and their safety, physical and psychological well-being and privacy shall be ensured;
  - b. be guaranteed the right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement;
  - c. be guaranteed the right to fair, adequate, effective, prompt and non-discriminatory access to justice and effective remedy in accordance with this (Legally Binding Instrument) and international law, such as restitution, compensation, rehabilitation, 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 State Parties;
  - e. be protected from any unlawful interference against their privacy, and from intimidation, and retaliation, before, during and after any proceedings have been instituted, as well as from re-victimization in the course of proceedings for access to effective remedy, including through appropriate protective and support services that are gender responsive;
  - f. be guaranteed access to information and legal aid relevant to pursue effective remedy; and,
  - g. be guaranteed access to appropriate diplomatic and consular means to facilitate access to effective remedy, especially in cases of business-related human rights abuses of a transnational character.
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 law or national law.

#### Article 5. Protection of Victims

1. State 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 remedy.
2. State Parties shall take adequate and effective measures to guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights and the environment, so that they are able to exercise their human rights free from any threat, intimidation, violence or insecurity.
3. State Parties shall investigate all human rights abuses covered under this (Legally Binding Instrument), effectively, promptly, thoroughly and impartially, and where appropriate, take action against those natural or legal persons found responsible, in accordance with domestic and international law.

- f. Integrating human rights due diligence requirements in contracts regarding their business relationships and making provision for capacity building or financial contributions, as appropriate;
  - g. Adopting and implementing enhanced human rights due diligence measures to prevent human rights abuses in occupied or conflict-affected areas, including situations of occupation.
- 4. States Parties may provide incentives and adopt other measures to facilitate compliance with requirements under this Article by small and medium sized business enterprises conducting business activities.
- 5. State Parties shall ensure that effective national procedures are in place to ensure compliance with the obligations laid down under this Article, taking into consideration the potential human rights abuses resulting from the business enterprises' size, nature, sector, location, operational context and the severity of associated risks associated with the business activities in their territory or jurisdiction, or otherwise under their control, including those of transnational character.
- 6. Failure to comply with the duties laid down under Articles 6.2 and 6.3 shall result in commensurate sanctions, including corrective action where applicable, without prejudice to the provisions on criminal, civil and administrative liability under Article 8.
- 7. In setting and implementing their public policies with respect to the implementation of this (Legally Binding Instrument), State Parties shall act to protect these policies from the influence of commercial and other vested interests of business enterprises, including those conducting business activities of transnational character.

#### Article 7. Access to Remedy

- 1. States Parties shall provide their courts and State-based non-judicial mechanisms, with the necessary jurisdiction in accordance with this (Legally Binding Instrument) to enable victims' access to adequate, timely and effective remedy.
- 2. State Parties shall ensure that their domestic laws facilitate access to information, including through international cooperation, as set out in this (Legally Binding Instrument), and enable courts to allow proceedings in appropriate cases.
- 3. State Parties shall provide adequate and effective legal assistance to victims throughout the legal process, including by:
  - a. Making information available to victims of their rights and the status of their claims;
  - b. Guaranteeing the rights of victims to be heard in all stages of proceedings;
  - c. Avoiding unnecessary costs or delays for bringing a claim and during the disposition of cases and the execution of orders or decrees granting awards;

- d. Providing assistance 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; and,
  - e. Ensuring that rules concerning allocation of legal costs at the conclusion of legal proceedings do not place an unfair and unreasonable burden on victims.
4. States Parties shall ensure that court fees and other related costs do not become a barrier to commencing proceedings in accordance with this (Legally Binding Instrument) and that there is a provision for possible waiving of certain costs in suitable cases.
5. State Parties shall ensure that the doctrine of *forum non conveniens* is not used by their courts to dismiss legitimate judicial proceedings brought by victims.
6. State Parties may, consistent with the rule of law requirements, enact or amend laws to reverse the burden of proof in appropriate cases to fulfil the victims' right to access to remedy.
7. State Parties shall provide effective mechanisms for the enforcement of remedies for human rights abuses, including through prompt execution of national or foreign judgements or awards, in accordance with the present (Legally Binding Instrument), domestic law and international legal obligations.

#### Article 8. Legal Liability

1. State Parties shall ensure that their domestic law provides for a comprehensive and adequate system of legal liability of legal and natural persons conducting business activities, domiciled or operating within their territory or jurisdiction, or otherwise under their control, for human rights abuses that may arise from their own business activities, including those of transnational character, or from their business relationships.
2. Liability of legal persons shall be without prejudice to the liability of natural persons.
3. Civil liability shall not be made contingent upon finding of criminal liability or its equivalent for the same acts.
4. States Parties shall adopt legal and other measures necessary to ensure that their domestic jurisdiction provides for effective, proportionate, and dissuasive criminal and/or administrative sanctions where legal or natural persons conducting business activities, have caused or contributed to criminal offences or other regulatory breaches that amount or lead to human rights abuses.
5. States Parties shall adopt measures necessary to ensure that their domestic law provides for adequate, prompt, effective, and gender responsive reparations to the victims of human rights abuses in the context of business activities, including those of a transnational character, in line with applicable international standards for reparations to the victims of human rights violations. Where a legal or natural person conducting business activities is found liable for reparation to a

victim of a human rights abuse, such person shall provide reparation to the victim or compensate the State, if that State has already provided reparation to the victim for the human rights abuse resulting from acts or omissions for which that legal or natural person conducting business activities is responsible.

6. State Parties may require legal or natural persons conducting in business activities in their territory or jurisdiction, including those of a transnational character, to establish and maintain financial security, such as insurance bonds or other financial guarantees to cover potential claims of compensation.
7. States Parties shall ensure that their domestic law provides for the liability of legal or natural or legal persons conducting business activities, including those of transnational character, for their failure to prevent another legal or natural person with whom it has a business relationship, from causing or contributing to human rights abuses, when the former legally or factually controls or supervises such person or the relevant activity that caused or contributed to the human rights abuse, 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 put adequate measures to prevent the abuse.
8. 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 8.7. The court or other competent authority will decide the liability of such entities after an examination of compliance with applicable human rights due diligence standards.
9. 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 offences under international human rights law binding on the State Party, customary international law, or their domestic law. Regardless of the nature of the liability, States Parties shall ensure that the applicable penalties are commensurate with the gravity of the offence. 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 offences.
10. The liability of legal persons under Article 8.9 shall be without prejudice to the criminal liability of the natural person who have committed the offences under the applicable domestic law.
11. State Parties shall provide measures under domestic law to establish the criminal or functionally equivalent legal liability for legal or natural persons conducting business activities, including those of a transnational character, for acts or omissions that constitute attempt, participation or complicity in a criminal offence in accordance with this Article and criminal offences as defined by their domestic law.

#### Article 6. Prevention

1. State Parties shall regulate effectively the activities of all business enterprises domiciled within their territory or jurisdiction, including those of a transnational character. For this purpose States shall take all necessary legal and policy measures to ensure that business enterprises, including but not limited to transnational corporations and other business enterprises that undertake business activities of a transnational character, within their territory or jurisdiction, or otherwise under their control, respect all internationally recognized human rights and prevent and mitigate human rights abuses throughout their operations.
2. For the purpose of Article 6.1, State Parties shall require business enterprises, to undertake human rights due diligence proportionate to their size, risk of severe human rights impacts and the nature and context of their operations, as follows:
  - a. Identify and assess any actual or potential human rights abuses that may arise from their own business activities, or from their business relationships;
  - b. Take appropriate measures to prevent and mitigate effectively the identified actual or potential human rights abuses, including in their business relationships;
  - c. Monitor the effectiveness of their measures to prevent and mitigate human rights abuses, including in their business relationships;
  - d. Communicate regularly and in an accessible manner to stakeholders, particularly to affected or potentially affected persons, to account for how they address through their policies and measures any actual or potential human rights abuses that may arise from their activities including in their business relationships.
3. State Parties shall ensure that human rights due diligence measures undertaken by business enterprises under Article 6.2 shall include:
  - a. Undertaking regular environmental and human rights impact assessments throughout their operations;
  - b. Integrating a gender perspective, in consultation with potentially impacted women and women's organizations, in all stages of human rights due diligence processes to identify and address the differentiated risks and impacts experience by women and girls;
  - c. Conducting meaningful consultations with individuals or communities whose human rights can potentially be affected by business activities, and with other relevant stakeholders, while giving special attention to those facing heightened risks of business-related human rights abuses, such as women, children, persons with disabilities, indigenous peoples, migrants, refugees, internally displaced persons and protected populations under occupation or conflict areas;
  - d. Ensuring that consultations with indigenous peoples are undertaken in accordance with the internationally agreed standards of free, prior and informed consent;
  - e. Reporting publicly and periodically on non-financial matters, including information about group structures and suppliers as well as policies, risks, outcomes and indicators on concerning human rights, labour rights and environmental standards throughout their operations, including in their business relationships;

#### Article 9. Adjudicative Jurisdiction

1. Jurisdiction with respect to claims brought by victims, Irrespective 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 occurred;
- b. an act or omission contributing to the human rights abuse occurred; or
- c. the legal or natural persons alleged to have committed an act or omission causing or contributing to such human rights abuse in the context of business activities, including those of a transnational character, are domiciled.

The above provision does not exclude the exercise of civil jurisdiction on additional grounds provided for by international treaties or national law.

2. Without prejudice to any broader definition of domicile provided for in any international instrument or domestic law, a legal person conducting business activities of a transnational character, including through their business relationships, is considered domiciled at the place where it has its:

- a. place of incorporation; or
- b. statutory seat; or
- c. central administration; or
- d. principal place of business; or

3. Where victims choose to bring a claim in a court as per Article 9.1, jurisdiction shall be obligatory and therefore that courts shall not decline it on the basis of *forum non conveniens*.

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 closely connected with a claim against a legal or natural person domiciled in the territory of the forum State.

5. Courts shall have jurisdiction over claims against legal or natural persons not domiciled in the territory of the forum State if no other effective forum guaranteeing a fair trial is available and there is a sufficiently close connection to the State Party concerned.

#### Article 10. Statute of limitations

1. The State Parties to the present (Legally Binding Instrument) undertake to adopt any legislative or other measures necessary to ensure that statutory or other limitations shall not apply to the prosecution and punishment of all violations of international law which constitute the most serious crimes of concern to the international community as a whole.

2. Domestic statutes of limitations applicable to civil claims or to violations that do not constitute the most serious crimes of concern to the international community as a whole shall allow a reasonable period of time for the investigation and commencement of prosecution or other legal proceedings, particularly in cases where the violations occurred in another State or when the harm may be identifiable only after a long period of time.

#### **Article 11. Applicable law**

1. Subject to the following paragraph, all matters of substance or 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, including any rules of such law relating to conflict of laws.

2. Notwithstanding Art. 9.1, all matters of substance regarding human rights law relevant to claims before the competent court may, upon the request of the victim of a business-related human rights abuse or its representatives, be governed by the law of another State where:

- a) the acts or omissions that result in violations of human rights covered under this (Legally Binding Instrument) have occurred; or
- b) the natural or legal person alleged to have committed the acts or omissions that result in violations of human rights covered under this (Legally Binding Instrument) is domiciled.

#### **Article 12. Mutual Legal Assistance and International Judicial Cooperation**

1. States Parties shall make available to one another the widest measure of mutual legal assistance and international judicial cooperation in initiating and carrying out effective, prompt, thorough and impartial investigations, prosecutions, judicial and other criminal, civil or administrative proceedings in relation to all claims covered by this (Legally Binding Instrument), including access to information and supply of all evidence at their disposal that is relevant for the proceedings.

2. The requested State Party shall inform the requesting State Party, as soon as possible, of any additional information or documents needed to support the request for assistance and, where requested, of the status and outcome of the request for assistance. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request.

3. Mutual legal assistance and international judicial cooperation under this (Legally Binding Instrument) will be determined by the concerned Parties on a case by case basis.

a. Mutual legal assistance under this (Legally Binding Instrument) is understood to include, inter alia:

- i. Taking evidence or statements from persons;



- ii Executing searches and seizures;
- iii Examining objects and sites;
- iv Providing information, evidentiary items and expert evaluations;
- v Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- vi Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- vii Facilitating the voluntary appearance of persons in the requesting State Party;
- viii Facilitating the freezing and recovery of assets;
- ix Assisting and protecting victims, their families, representatives and witnesses, consistent with international human rights legal standards and subject to international legal requirements, including those relating to the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment;
- x Assisting in regard to the application of domestic law;
- xi Any other type of assistance that is not contrary to the domestic law of the requested State Party.

b. International judicial cooperation under this (Legally Binding Instrument) is understood to include, inter alia: effective service of judicial documents; and provision of judicial comity consistent with domestic law.

4. In criminal cases covered under this (Legally Binding Instrument), and without prejudice to the domestic law of the involved State Parties,

- a. With respect to criminal offences covered under this (Legally Binding Instrument), mutual legal assistance shall be provided to the fullest extent possible, in a manner consistent with the law of the requested Party and its commitments under treaties on mutual assistance in criminal matters to which it is Party.
- b. In cases where such mutual assistance is related to the question of extradition, Parties agree to cooperate in accordance with this (Legally Binding Instrument), their national law and any treaties that exist between the concerned State Parties.

5. The competent authorities of a State Party may, without prior request, transmit and exchange information relating to criminal offences covered under this (Legally Binding Instrument) to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this (Legally Binding Instrument). The transmission and exchange of information shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information, to guarantee the widest protection of human rights.

6. States Parties may consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are subject of investigations, prosecutions or judicial proceedings under this (Legally Binding Instrument), the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place, is fully respected.
7. State Parties shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution, in accordance with their domestic laws.
8. Any judgement of a court having jurisdiction in accordance with this (Legally Binding Instrument) which is enforceable in the State of origin of the judgement and is not subject to any appeal or review shall be recognized and enforced in any State Party as soon as the formalities required in that State Party have been completed, provided that such formalities are not more onerous and fees and charges are not higher than those required for the enforcement of domestic judgments and shall not permit the re-opening of the merits of the case. The enforcement in the requested State of criminal judgements shall be to the extent permitted by the law of that State.
9. Recognition and enforcement may be refused, only where:
  - a. -the defendant furnishes to the competent authority or court where the recognition and enforcement is sought, proof that the defendant was not given reasonable notice and a fair opportunity to present his or her case; or
  - b. where the judgement is irreconcilable with an earlier judgement validly pronounced in the Party where its recognition is sought with regard to the same cause of action and the same parties; or
  - c. where the judgement is manifestly contrary to the *ordre public* of the Party in which its recognition is sought.
10. Mutual legal assistance or international legal cooperation under this article may be refused by a State Party:
  - a. if the human rights abuse in the context of business activities, including those of a transnational character, to which the request relates is not covered by this (Legally Binding Instrument); or
  - b. if it is contrary to the legal system of the requested State Party.
11. A State Party shall not decline to render mutual legal assistance or international judicial cooperation in a claim involving liability for harms or criminal offences, falling within the scope of this (Legally Binding Instrument) on the sole ground that the request is considered to involve fiscal matters or bank secrecy.
12. States Parties shall carry out their obligations under this Article in conformity with any treaties or other arrangements on mutual legal assistance or international judicial cooperation that may exist

between them. In the absence of such treaties or arrangements, States Parties shall make available to one another, mutual legal assistance and international judicial cooperation to the fullest extent possible under domestic and international law.

#### **Article 13. International Cooperation**

1. States Parties shall cooperate in good faith to enable the implementation of their obligations recognized under this (Legally Binding Instrument) and the fulfilment of the purposes of this (Legally Binding Instrument).
2. State Parties recognize the importance of international cooperation, including financial and technical assistance and capacity building, for the realization of the purpose of the present (Legally Binding Instrument) and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society. Such measures include, but are not limited to:
  - a. Promoting effective technical cooperation and capacity-building among policy makers, national human rights institutions, and operators, as well as users of domestic, regional and international grievance mechanisms;
  - b. Sharing experiences, good practices, challenges, information and training programs on the implementation of the present (Legally Binding Instrument);
  - c. Raising awareness about the rights of victims of business-related human rights abuses and the obligations of States under this (Legally Binding Instrument);
  - d. Facilitating cooperation in research and studies on the challenges, good practices and experiences in preventing human rights abuses in the context of business activities, including those of a transnational character;
  - e. Contribute, within their available resources, to the International Fund for Victims referred to in Article 15.7 of this (Legally Binding Instrument).

#### **Article 14. Consistency with International Law principles and instruments**

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 and that of non-intervention in the domestic affairs of other States.
2. Notwithstanding Article 7.1 and 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.
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, fulfilment and promotion of human rights in the context of

business activities and to guaranteeing the access to justice and effective remedy to victims of human rights abuses in the context of business activities, including those of a transnational character.

4. This (Legally Binding Instrument) shall not affect the rights and obligations of the State 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 of the Law of the Treaties.
5. States Parties shall ensure that:
  - a. any 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 will not undermine or limit their capacity to fulfill their obligations under this (Legally Binding Instrument) and its protocols, as well as other relevant human rights conventions and instruments.
  - b. Any new bilateral or multilateral trade and investment agreements shall be compatible with the State Parties' human rights obligations under this (Legally Binding Instrument) and its protocols, as well as other relevant human rights conventions and instruments.

### Section III

#### Article 15. Institutional Arrangements

##### Committee

1. There shall be a Committee established in accordance with the following procedures:
  - a. The Committee shall consist, 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 eighteen members. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence in the field of human rights, public international law or other relevant fields.
  - b. The experts shall be elected by the State Parties, consideration being given to equitable geographical distribution, the differences among legal systems, gender balanced representation and ensuring that elected experts are not engaged, directly or indirectly, in any activity which might adversely affect the purpose of this (Legally Binding Instrument)
  - c. The members of the Committee shall be elected by secret ballot from a list of persons nominated by State Parties. They shall be elected for a term of 4 years and can be re-elected for another term. Each State Party may nominate one person from among its own nationals.

that may respond with any observations it chooses to the Committee. The Committee may, at its discretion, decide to include this suggestions and general recommendations in the report of the Committee together with comments, if any, from State Parties;

- c. Provide support to the State Parties in the compilation and communication of information required for the implementation of the provisions of the (Legally Binding Instrument);
- d. Submit an annual report on its activities under this (Legally Binding Instrument) to the State Parties and to the General Assembly of the United Nations;
- e. [The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the present (Legally Binding Instrument)].

#### **Conference of States Parties**

5. The States Parties shall meet regularly in a Conference of States Parties in order to consider any matter with regard to the implementation of the (Legally Binding Instrument), including any further development needed towards fulfilling its purposes.
6. No later than six months after the entry into force of the present (Legally Binding Instrument), the Conference of the States Parties shall be convened by the Secretary-General of the United Nations. The subsequent meetings shall be convened by the Secretary-General of the United Nations biennially or upon the decision of the Conference of States Parties.

#### **International Fund for Victims**

7. States Parties shall establish an International Fund for Victims covered under this (Legally Binding Instrument), to provide legal and financial aid to victims. This Fund shall be established at most after (X) years of the entry into force of this (Legally Binding Instrument). The Conference of Parties shall define and establish the relevant provisions for the functioning of the Fund.

#### **Article 16. Implementation**

1. State 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).

Elections of the members of the Committee shall be held at the Conference of State Parties by majority present and voting. At least four months before the date of each election, the Secretary-General of the United Nations shall address a letter to the State Parties inviting them to submit their nominations within two months. The Secretary-General shall prepare a list in alphabetical order of all persons thus nominated, indicating the State Parties which have nominated them, and shall submit it to the State Parties.

- d. The initial election shall be held no later than six months after the date of the entry into force of this (Legally Binding Instrument). The term of six of the members elected at the first election shall expire at the end of two years; immediately after the first election, the names of these six members shall be chosen by lot by the chairperson of the meeting referred to in this Article.
  - e. If a member of the Committee dies or resigns or for any other cause can no longer perform his or her Committee duties, the State Party which nominated him or her shall appoint another expert from among its nationals to serve for the remainder of his or her term, subject to the approval of the majority of the State Parties.
  - f. The Committee shall establish its own rules of procedure and elect its officers for a term of two years. They may be re-elected.
  - g. The Secretary-General of the United Nations shall provide the necessary staff and facilities for the effective performance of the functions of the Committee under this (Legally Binding Instrument). The Secretary-General of the United Nations shall convene the initial meeting of the Committee. After its initial meeting, the Committee shall meet at such times as shall be provided in its rules of procedure.
  - h. With the approval of the General Assembly, the members of the Committee established under the present (Legally Binding Instrument) shall receive emoluments from United Nations resources on such terms and conditions as the Assembly may decide through the established procedures.
2. State Parties shall submit to the Committee, through the Secretary-General of the United Nations, reports on the measures they have taken to give effect to their undertakings under this (Legally Binding Instrument), within one year after the entry into force of the (Legally Binding Instrument) for the State Party concerned. Thereafter the State Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.
  3. The Secretary-General of the United Nations shall transmit the reports to all State Parties.
  4. The Committee shall have the following functions:
    - a. Make general comments and normative recommendations on the understanding and implementation of the (Legally Binding Instrument) based on the examination of reports and information received from the State Parties and other stakeholders;
    - b. Consider and provide concluding observations and recommendations on reports submitted by State Parties as it may consider appropriate and forward these to the State Party concerned

2. Each State Party shall furnish copies 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 to the Secretary-General of the United Nations, which shall be made publicly available.
3. Special attention shall be undertaken in the cases of business activities in conflict-affected areas including taking action to identify, prevent and mitigate the human rights-related risks of these activities and business relationships and to assess and address the heightened risks of abuses, paying special attention to both gender-based and sexual violence.
4. In implementing this (Legally Binding Instrument), State Parties shall address the specific impacts of business activities on while giving special attention to those facing heightened risks of human rights abuse within the context of business activities, such as women, children, persons with disabilities, indigenous peoples, migrants, refugees and internal displaced persons.
5. The application and interpretation of these Articles shall be consistent with international human rights law and international humanitarian law and shall be without any discrimination of any kind or on any ground, without exception.

#### **Article 17. Relation with protocols**

1. This (Legally Binding Instrument) may be supplemented by one or more protocols.
2. In order to become a Party to a protocol, a State or a regional integration organization must also be a Party to this (Legally Binding Instrument).
3. A State Party to this (Legally Binding Instrument) is not bound by a protocol unless it becomes a Party to the protocol in accordance with the provisions thereof.
4. Any protocol to this (Legally Binding Instrument) shall be interpreted together with this (Legally Binding Instrument), taking into account the purpose of that protocol.

#### **Article 18. Settlement of Disputes**

1. If a dispute arises between two or more State Parties about the interpretation or application of this (Legally Binding Instrument), they shall seek a solution by negotiation or by any other means of dispute settlement acceptable to the parties to the dispute.
2. When signing, ratifying, accepting, approving or acceding to this (Legally Binding Instrument), or at any time thereafter, a State Party may declare in writing to the Depositary that, for a dispute not resolved in accordance with paragraph 1 of this article, it accepts one or both of the following means of dispute settlement as compulsory in relation to any State Party accepting the same obligation:

(a) Submission of the dispute to the International Court of Justice;

(b) Arbitration in accordance with the procedure and organization mutually agreed by both State Parties.

3. If the State Parties to the dispute have accepted both means of dispute settlement referred to in paragraph 2 of this article, the dispute may be submitted only to the International Court of Justice, unless the State Parties agree otherwise.

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

1. The present (Legally Binding Instrument) shall be open for signature by all States and by regional integration organizations at United Nations Headquarters in New York as of ~~1999~~

2. The present (Legally Binding Instrument) shall be subject to ratification, acceptance or approval by signatory States and to formal confirmation by signatory regional integration organizations. It shall be open for accession by any State or regional integration organization which has not signed the (Legally Binding Instrument).

3. This (Legally Binding Instrument) shall apply to regional integration organizations within the limits of their competence; subsequently they shall inform the depositary of any substantial modification in the extent of their competence. Such organizations may exercise their right to vote in the Conference of States Parties with a number of votes equal to the number of their member States that are Parties to this (Legally Binding Instrument). Such right to vote shall not be exercised if any of its member States exercises its right, and vice versa.

#### Article 20. Entry into force

1. The present (Legally Binding Instrument) shall enter into force on the thirtieth day after the deposit of the [---] instrument of ratification or accession.

2. For each State or regional integration organization ratifying, formally confirming or acceding to the (Legally Binding Instrument) after the deposit of the [---] such instrument, the (Legally Binding Instrument) shall enter into force on the thirtieth day after the deposit of its own such instrument.

#### Article 21. Amendments

1. Any State Party may propose an amendment to the present (Legally Binding Instrument) and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favour a conference of States Parties for the purpose of considering and deciding upon the proposals. In the



event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of two-thirds of the State Parties present and voting in the Conference of the Parties shall be submitted by the Secretary-General to all State Parties for acceptance.

2. An amendment adopted and approved in accordance with this Article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two-thirds of the number of State Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those State Parties which have accepted it.

3. If so decided by the Conference of States Parties by consensus, an amendment adopted and approved in accordance with this Article which relates exclusively to the establishment of the Committee or its functions, and the Conference of States Parties shall enter into force for all State Parties on the thirtieth day after the number of instruments of acceptance deposited reaches two-thirds of the number of State Parties at the date of adoption of the amendment.

#### **Article 22. Reservations**

1. Reservations incompatible with the object and purpose of the present (Legally Binding Instrument) shall not be permitted.
2. Reservations may be withdrawn at any time.

#### **Article 23. Denunciation**

A State Party may denounce the present (Legally Binding Instrument) by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

#### **Article 24. Depositary and Languages**

1. The Secretary-General of the United Nations shall be the depositary of the present (Legally Binding Instrument).
2. The Arabic, Chinese, English, French, Russian and Spanish texts of the present (Legally Binding Instrument) shall be equally authentic.

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