

**FOLLOW-UP OPINION
ON THE DRAFT LEGALLY
BINDING INSTRUMENT ON
TRANSNATIONAL CORPORATIONS
AND OTHER BUSINESS
ENTERPRISES AND HUMAN
RIGHTS**

15 OCTOBER 2020



*The follow-up opinion on the draft legally binding instrument on transnational corporations and other business enterprises and human rights was adopted at the plenary assembly of 15 October 2020.
(Result of the vote: 37 votes for, 5 abstentions, 0 votes against)*

SUMMARY

The CNCDH has reviewed the second revised draft of the legally binding international instrument aiming to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, published in August 2020. It emphasises the improvements made as regards its scope and articulation with international law, and commends the reinforcement of victim protection and access to remedy. However, it draws attention to continuing major shortcomings, including the watered-down definition of due diligence and the need for better coordination between civil, criminal and administrative liabilities.

INTRODUCTION

1.. The National Consultative Commission on Human Rights (CNCDH) is pleased to see the publication of a second revised draft legally binding instrument¹ on transnational corporations and other business enterprises with regard to human rights, by the Open-Ended Intergovernmental Working Group (OEIGWG), on 6 August 2020². However, it once again finds it regrettable that the second revised draft has not been translated into the United Nations' six official languages³, so hampering the instrument's accessibility, comprehension and assimilation by States and all other stakeholders likely to be concerned (including businesses, trade unions, civil society and individuals whose rights have been violated by a business)⁴. For the same reasons, it also draws attention to the importance of ensuring that all stakeholders participate in the Intergovernmental Working Group's sixth session, along with appropriate interpretation services, whatever the format adopted due to the present health crisis.

2.. The CNCDH is pleased to see that account has been taken of several of its recommendations made regarding the 2018 "zero draft" and the 2019 revised draft legally binding instrument with a view to contributing to the elaboration of a quality instrument that helps reinforce protection of human rights in the context of business activities at global level⁵. Some very welcome references have been added in the Preamble, including to the International Labour Organisation (ILO) Tripartite *Declaration of Principles concerning Multinational Enterprises and Social Policy*⁶, the *United Nations Declaration on Human Rights Defenders*⁷ or the necessary inclusion of a

1. The form of this legally binding instrument (hard law) will be specified during negotiations (covenant, convention, treaty, etc.).

2. See Appendix 2.

3. The CNCDH thanks the International Organisation of La Francophonie for having disseminated a courtesy French translation of the second revised draft of the legally binding instrument.

4. The CNCDH had already expressed this regret on three occasions: CNCDH, *Opinion on the draft international legally binding instrument on transnational corporations and other business enterprises and human rights*, Plenary Assembly of 15 October 2019, Official Journal of the French Republic (OJRF) no.0244 of 19 October 2019, text no.86; CNCDH, *Statement on the adoption of an international binding instrument on business enterprises and human rights*, Plenary Assembly of 5 October 2018, OJFR no.0238 of 14 October 2018, text no.100; and CNCDH, *Contribution to the draft binding treaty on business enterprises and human rights* adopted on 29 April 2019.

5. Ibid.

6. ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, 5th edition, March 2017.

7. General Assembly, Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, 9 March 1998 (A/RES/53/144).

gender perspective; but their selective nature remains problematic⁸. The second revised draft of the instrument also brings improvements to its scope and its articulation with international law and national laws. Similarly, the CNCDH also welcomes the reinforcement of victim protection and access to remedy. Nonetheless, the instrument's second revised draft has missed the opportunity to bring further improvements, in particular as concerns definition of the content of due diligence and the sharing of responsibilities between States and business enterprises. In some respects, it also takes steps backwards in comparison with the 2019 revised draft. Although this Opinion does not intend to present an exhaustive analysis of the second revised draft of the legally binding instrument, the Commission wishes to draw attention to the points that follow.

SIGNIFICANT IMPROVEMENTS TO THE SCOPE AND ARTICULATION WITH INTERNATIONAL LAW

3.The new version of the draft legally binding instrument confirms the widening of its scope, asserting with greater clarity that it applies to all business enterprises, including but not limited to transnational corporations and other business enterprises that undertake business activities of a transnational character (Article 3§1). This extended scope is accompanied by States being able to provide for incentives and other measures with a view to facilitating compliance with the obligations of prevention provided for in the draft instrument for small and medium-sized enterprises conducting business activities (Article 6§4)⁹.

4.The CNCDH is pleased to see the express reference to State-owned enterprises¹⁰. The reference of “for profit” business activities should be deleted, however, in order to ensure their effective inclusion in the draft instrument's scope¹¹. The text would also gain by better definition of the State's responsibility as economic actor¹², in compliance with Principle 4 of the United Nations Guiding Principles on Business and Human Rights (Ruggie Principles), which has it that “*States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by*

8. One might, for example, wonder why there is only a reference to ILO Convention n°190 on Eliminating Violence and Harassment in the World of Work, adopted on 10 June 2019; see also the comments on the reference to the nine main instruments relating to human rights in the aforementioned CNCDH Opinion of 15 October 2019. Similarly, the reference to international humanitarian law might be reinforced by a reminder of Article 1 common to the Geneva Conventions of 12 August 1949, applicable in times of armed conflict and universally ratified.

9. This was already the case with the revised draft legally binding instrument in its version of 16 July 2019: CNCDH, Opinion on the draft international legally binding instrument..., op. cit., §5.

10. Article 1§3 (see Appendix 2). The 2019 revised draft had adopted wording that enabled public activities to be no longer excluded from its scope, although making no express reference to them (CNCDH, Opinion on the draft international legally binding instrument, op. cit., p.7). The second revised draft legally binding instrument also makes express reference to consortiums and joint ventures (Articles 1§3 and §5).

11. Article 1§3 (see Appendix 2).

12. The second revised draft legally binding instrument expressly mentions State-owned enterprises but then contains very few provisions on the State's role as economic actor or in its relations with enterprises.

the State”¹³.

5. The CNCDH is pleased to see that the term “*business relationship*” has replaced “*contractual relationship*” in the new version of the draft legally binding instrument, so improving its consistency with positive international law¹⁴. It recommends clarification of the wording of Article 1§5 in order to ensure inclusion of relations between parent companies and their subsidiaries¹⁵ and, more generally, between all links in global supply chains.

6. The systemic understanding of human rights adopted by the draft instrument is confirmed: all internationally recognised human rights and fundamental freedoms are covered¹⁶. The CNCDH is pleased to see the reference to customary international law¹⁷ and suggests that environmental rights¹⁸ be expressly included in Article 3§3 on the draft instrument’s scope, in order to improve the consistency of the draft instrument’s

13. Principle 4 of the Ruggie Principles also mentions enterprises that “receive substantial State support and services, such as export credit agencies and official investment insurance or guarantee agencies”: Human Rights Council, Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect, Remedy” framework, 21 March 2011, A/HRC/17/31

14. The CNCDH had included a recommendation in this regard in its 2019 Opinion (CNCDH, Opinion on the draft instrument..., 15 October 2019, op. cit., Recommendation no.3). It pointed out that the OECD Guidelines for Multinational Enterprises (2011) employs the notion of “business relationships”, as do the Ruggie Principles (Principle 17) and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (2017) (CNCDH, Opinion on the draft instrument..., 15 October 2019, op. cit., §6).

15. As it now stands, Article 1§5 defines a business relationship as “any relationship between natural or legal persons to conduct business activities” (see Appendix 2, our italics).

16. Nonetheless, it reiterates that the reference to “any core international human rights treaty” seems to exclude treaties for which there is no provision for treaty bodies as regards their monitoring (Article 3§3, our italics) (CNCDH, Opinion on the binding legal instrument..., op. cit., 15 October 2019, p.6). It also deems that the phrase “to which a State is party” is inadequate as regards the International Labour Organisation’s core conventions inasmuch as all ILO Member States accepted the “principles and rights” expressed and developed in conventions recognised as being “core” when they joined the ILO (ILO Declaration on Fundamental Principles and Rights at Work and its follow-up, adopted by the International Labour Conference at its Eighty-sixth Session, Geneva, 18 June 1998 (Appendix revised 15 June 2010).

17. Customary international law is referred to in Article 3§3 on the draft instrument’s scope and Article 8§9 on legal liability, although there is still no reference to it in Article 14 on consistency with international law. The CNCDH has recommended that the clause providing that “nothing in the [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” also include non-treaty international obligations (CNCDH, Opinion on the draft legally binding instrument..., op. cit., Recommendation no.19).

18. As developed, for example, by the CNCDH in its Opinion on development, the environment and human rights, Plenary Assembly of 16 April 2015, OJFR no.0119 of 24 May 2015, text no.50 and the Framework Principles on Human Rights and the Environment by Special Rapporteur John H. Knox (Special Rapporteur’s Report on The main human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, A/73/188, 19 July 2018). See also the report by Special Rapporteur David R. Boyd, A/74/161, 19 July 2019, and his report on best practices (A/HRC/43/53, 30 December 2019).

references¹⁹. Such addition would echo the reference to the 2030 Sustainable Development Agenda, as the notion of sustainable development characterises the interdependence between development, the environment and human rights²⁰.

7. The CNCDH regrets to see that the distinction between “abuse” and “violation” of human rights committed in the context of business activities has not been clearly explained, despite a few changes made in the second revised draft²¹. It considers that the notion of violation would enable coverage of acts and omissions on the part of States and business enterprises alike. At all events, if both terms are kept, it recommends that they be systematically employed jointly throughout the treaty.

8. The clarification of the definition of “victim” is a welcome addition (Article 1§1). Victims within the meaning of the draft instrument are “any persons or group of persons who individually or collectively have suffered harm [the types of which are specified²²], through acts or omissions in the context of business activities, that constitutes human rights abuse”. The CNCDH also commends the inclusion of “persons who have suffered harm in intervening to assist victims in distress or to prevent victimization”, which includes, amongst others, human rights defenders²³, lawyers, trade union representatives and community representatives. However, it reiterates its recommendation that the notion of “relatives” is preferable to that of “immediate family members or dependents of the direct victim”²⁴.

9. The CNCDH welcomes the explicit obligation incumbent upon States Parties to interpret and implement existing and future international and regional agreements, including trade and investment agreements, in a manner “compatible with their obligations under this Legally Binding Instrument and its protocols, as well as other relevant human rights conventions and instruments” (Article 14§5)²⁵. It repeats its recommendation to extend the wording of this provision to include non-treaty international obligations²⁶. Furthermore, the CNCDH has doubts about the addition of the statement that the instrument “shall not affect the rights and obligations of

19. The second revised draft legally binding instrument makes several references to environmental rights (or standards), in particular in Article 1§2 in its definition of human rights abuse (see Appendix 2).

20. In this regard, see CNCDH, *Opinion on Development, the Environment and Human Rights*, 16 April 2015, op. cit., in particular the developments in connection with the Ruggie Principles (p.12 ff).

21. CNCDH, *Opinion on the draft legally binding instrument...*, op. cit., 15 October 2019, §5.

22. These include physical and mental injury, emotional suffering and economic loss (Article 1§1).

23. However, the role played by human rights defenders should also be recognised in the provision on prevention (Article 6) so as not to be confined to that of potential victim.

24. The CNCDH had already recommended use of the notion of “relatives” in referring to the *International Convention for the Protection of All Persons from Enforced Disappearance* of 20 December 2006 (CNCDH, *Opinion on the draft legally binding instrument...*, op. cit., 15 October 2019, §9).

25. CNCDH, *Opinion on the draft legally binding instrument...*, op. cit., 15 October 2019, Recommendation no.20.

26. A similar extension is also recommended for the clause providing that “nothing in the [Instrument] shall affect any provisions [...] 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” (new Article 14§3) (ibid, §21, Recommendation no.19).

the State Parties under the rules of general international law with respect to State immunity” (Article 14§4) in terms of access to justice for victims of human rights violations in the context of business activities.

PARTIAL MODIFICATIONS OF DUE DILIGENCE AND LEGAL LIABILITY

10. The second revised draft instrument provides a few more details on States’ obligations as regards prevention: “*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 [...] 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*” (Article 6§1)²⁷. The CNCDH nonetheless regrets the weakened definition of due diligence, in particular the reference to “mitigation” of human rights abuses. It recommends that a clearer distinction be made, in all the draft instrument’s provisions²⁸, between due diligence measures that States must impose on business enterprises in order to identify risks and those aiming to prevent human rights violations²⁹.

11. Similarly, the draft instrument would gain by better coordination of Paragraphs 2 and 3 of Article 6 in order to make it clearer exactly what States have to impose on business enterprises as regards due diligence. The CNCDH also recommends that the definition of what constitutes due diligence include all aspects of the Ruggie Principles. Article 6§2 c), for example, should be complemented by a provision that States must require enterprises to monitor the impact their activities have on human rights, including those in the context of their business relationships, in addition to monitoring the effectiveness of prevention and mitigation measures taken to remedy “abuses”.

27. Article 6§1, our italics. See the recommendation below on the terms prevention and mitigation.

28. See subparagraphs 13 and 14 of the Preamble and Article 6§1 and §2 b) and c) of the second revised draft instrument (Appendix 2).

29. In this regard, see the terminology adopted by French Act no.2017-399 of 27 March 2017 on due diligence on the part of parent companies and principals, which added Articles L. 225-102-4 and L. 225-102-5 to the Commercial Code (Article L.225-102-4-I). Among the policies and procedures that enterprises should implement in order to fulfil their responsibilities with regard to respect of human rights, the United Nations Guiding Principles make a distinction between identification of their impacts on human rights and prevention of such impacts and mitigation of their effects (see Principle 15 for example). The Committee on Economic, Social and Cultural Rights (CESR) distinguishes between “identify[ing] (...) the risks of violations of Covenant rights” and “prevent[ing their violation]” and mitigat[ing] » such risks (CESCR, General comment No.24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities, 10 August 2017, E/C.12/GC/24, §16).

The continuous character of due diligence should also be expressed more clearly³⁰.

12. There are a number of positive points worth highlighting nonetheless, including the inclusion of a gender perspective at all stages of the due diligence process (Article 6§3b), recognition of the heightened impact of business activities on “*women, children, persons with disabilities, indigenous peoples, migrants, refugees, internally displaced persons and protected populations under occupation or conflict areas*” (Article 6§3c) and the reference to free, prior and informed consent on the part of indigenous peoples (Article 6§3d). However, the CNCDH recommends specifying that indigenous peoples’ consent be requested before the start of a business project and throughout its duration³¹. It also suggests that more details should be provided on the enhanced due diligence applicable in occupied or conflict-affected areas (Article 6§3 g)³² and points out in this respect that international human rights law and international humanitarian law apply in complementary fashion during periods of armed conflict³³.

13. The second revised draft instrument specifies that the due diligence which States have to impose on business enterprises not only takes their size, nature, operational context and severity of related risks into consideration, but also their sector and location. The CNCDH suggests that thought should be given to the consequences of such addition of new criteria modifying due diligence³⁴ and, at all events, to coordinate the wording of the two paragraphs providing for it³⁵. It recommends providing for criteria that are consistent with those set out in the United Nations Guiding Principles.

14. As regards Article 8 on legal liability, the CNCDH is first of all pleased to see it clarified that due diligence with regard to human rights does 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” (Article 8§8)³⁶.

30. See Principle 17 of the Ruggie Principles; reasonable diligence with regard to human rights “should be ongoing, recognizing that the human rights risks may change over time as the business enterprise’s operations and operating context evolve”.

31. See the United Nations Declaration on the Rights of Indigenous Peoples adopted by the United Nations General Assembly on 13 September 2007 (A/RES/61/295), the American Declaration on the Rights of Indigenous Peoples, adopted by the General Assembly of the Organization of American States on 15 June 2016 (AG/RES.2888 (XLVI-O/16)) and the ILO Convention no.169 on Indigenous and Tribal Peoples of 27 June 1989 (not ratified by France). For other references, in particular on jurisprudence, see CNCDH, The situation of indigenous peoples in the French Overseas Territories, Plenary Assembly of 23 February 2017, OJFR no.0061 of 12 March 2017, text no.33.

32. See Principle 7 of the Ruggie Principles, on business respect for human rights in conflict-affected areas. See also the Commentary on Principle 12 of the Ruggie Principles, which states that “in situations of armed conflict enterprises should respect the standards of international humanitarian law” (p.14).

33. International Court of Justice, Advisory Opinion of 9 July 2004, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, §106.

34. The Ruggie Principles mention the size of the business enterprise, the risk of severe human rights impacts, and the nature and context of its operations, but not its activities’ sector or location (Guiding Principles, op. cit., Principle 17).

35. Article 6§2 and §5 of the second revised draft instrument (see Appendix 2).

36. It had made a recommendation in this regard: CNCDH, Opinion on the draft instrument..., op. cit., 15 October 2019, Recommendation n°13.

15. The CNCDH then notes that the list of criminal offences has been deleted³⁷. Article 8§9 further clarifies the nature of the liability – whether criminal or its functional equivalent – that must be provided for in States’ national legislation for human rights violations characterised as criminal offences by international human rights law, including customary law, or by national law, committed by business enterprises. In this context, explicit reference should also be made to serious breaches of international humanitarian law³⁸ and crimes defined by the Rome Statute of the International Criminal Court³⁹. In addition, the same paragraph not only goes on to make reference to criminal liability but also to administrative liability⁴⁰. Despite the clarifications provided by the second revised draft instrument, the CNCDH finds that criminal, administrative and civil liabilities are still not fully elucidated⁴¹. If it is of primary importance that these three types of liability – civil, administrative and criminal – be mentioned, in line with the Ruggie Principles, they should be better articulated.

16. The CNCDH welcomes the insertion of a new paragraph stressing the nature of the reparations to victims⁴² that must be provided for by national law and specifying that it is incumbent upon natural and legal persons conducting business activities to provide reparation to the victim if they are found liable (or compensate the State if it has already provided reparation to the victim) (Article 8§5). However, it would be worth complementing this paragraph by upstream incorporation of business enterprises’ obligation to provide for reparation measures and cooperate with victims, as well as with individuals, groups, trade unions and organisations that provide them with support, in order to facilitate victims’ access to appropriate, effective avenues for reparation⁴³.

REINFORCEMENT OF VICTIM PROTECTION AND ACCESS TO REMEDY

17. The CNCDH welcomes the introduction of a new Article on protection of victims (Article 5) following the one on their rights (Article 4), as well as the inclusion of a special provision on access to remedy (Article 7). This new combination increases the

37. The CNCDH had recommended that the list be extended and not limitative: CNCDH, Opinion on the draft instrument..., op. cit., 15 October 2019, Recommendation no.12.

38. As defined by the four Geneva Conventions of 12 August 1949 and complemented by Additional Protocol I of 8 June 1977, which impose individual criminal liability of the person who has committed them or ordered them to be committed (Articles 49, 50, 51, 129, 130, 146 and 147 common to the Geneva Conventions; Articles 11§4 and Article 86 §§3 and 4 of Additional Protocol I).

39. Rome Statute of the International Criminal Court adopted on 17 July 1998 (A/CONF.183/9).

40. The same goes for Article 8§4 (see Appendix 2).

41. CNCDH, Opinion on the draft instrument..., op. cit., 15 October 2019, Recommendation no.11.

42. Such reparations must be adequate, prompt, effective and gender responsive (Article 8§5).

43. In this regard: CNCDH, Opinion on the draft instrument..., op. cit., 15 October 2019, Recommendation no.7.

visibility of the United Nations Guiding Principles' third pillar⁴⁴. The second revised draft instrument also specifies that States Parties are obliged to “*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*” (Article 7§1).

18. Article 4 lays the emphasis on various victims’ rights that business enterprises must respect in the context of their activities (including the right to life, freedom of expression, peaceful assembly and association, free movement, the right to access to justice and effective remedy and reparation and the right to privacy). The CNCDH also commends the addition of an opening paragraph to the Article which states that victims of human rights abuses covered by the draft instrument must enjoy all internationally recognised human rights and fundamental freedoms, not only those to which express reference is made. Article 4§2 d) also adds the possibility of victims introducing class actions, while leaving States room for manoeuvre⁴⁵.

19. The CNCDH is pleased to see the additions made to provisions on victim protection and that a separate Article has been devoted to the subject in order to emphasise its importance (Article 5). States Parties are obliged to “*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*” (judicial or otherwise) (Article 5§1). The second revised draft instrument also obliges them to take “*adequate and effective measures to guarantee a safe enabling environment for persons, groups and organisations 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*” (Article 5§2). The CNCDH recommends that this provision also expressly refer to members of trade unions. In this regard, it finds it regrettable that the second revised draft does not explicitly emphasise the essential role that trade unions play in promoting and protecting human rights in the context of business activities.

20. The CNCDH also recommends that access to information⁴⁶, which is of fundamental importance to prevention and access to remedy and reparation, be reinforced by a provision that it must be ensured by States and business enterprises, in consultation with trade unions, at every stage of a project’s implementation. Better access to information must be achieved via rules on transparency⁴⁷. When legal proceedings are instituted, internal documents shedding light on the causes of harm done and decision-making procedures should be accessible to victims and their

44. The Ruggie Principles' third pillar bears on greater access by victims to effective remedy, both judicial and non-judicial (Directing Principles, op. cit.).

45. Victims are “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” (Article 4§2 d).

46. See Articles 4§2 f), 7§2, 7§3 a) and 12 of the second revised draft instrument (see Appendix 2).

47. In this regard, see Principle 21 of the Ruggie Principles.

representatives.

21. The CNCDH notes the improvements made to the provision on possible reversal of the burden of proof to ensure the victim's access to justice and remedy in civil claims (Article 7§6), in particular the deletion of the phrase "subject to domestic law"⁴⁸. However, the new version includes a somewhat unclear reference to "*rule of law requirements*" and continues to provide States with major discretionary powers, stating that national laws "may" provide for such reversal of the burden of proof "*in appropriate cases*". It is also to be regretted that the possibility of courts reversing the burden of proof if circumstances so require is no longer envisaged⁴⁹. The CNCDH recommends that this provision be reinforced by specifying the conditions in which the burden of proof can be reversed⁵⁰.

22. The CNCDH finds the new wording on legal costs (Article 7§3 e) regrettable, constituting a step backwards compared with the previous version, whereas it had suggested reinforcing it. Article 7§3 e) only obliges State to ensure that "*rules concerning allocation of legal costs at the conclusion of legal proceedings do not place an unfair and unreasonable burden on victims*", while the previous Article 4§12 e) provided that alleged victims who had not obtained reparation should not be required to reimburse any legal expenses of the other party to the claim if "*such reimbursement cannot be made due to lack or insufficiency of economic resources*". In contrast and in compliance with the CESCR's General Comment no.24, the Commission recommends providing that, as long as the action is not vexatious or abusive (notion of "arguable claim"), the court should not require unsuccessful plaintiffs to bear the costs of the proceedings⁵¹.

23. The CNCDH is also pleased to note several essential additions on adjudicative jurisdiction, which help remedy denials of justice. First, the second revised draft instrument provides for prohibition of *forum non conveniens*⁵². Secondly, the Commission welcomes the introduction of the related actions exception (Article 9§4)⁵³.

48. The CNCDH had already stressed the importance of the possibility of reversing the burden of proof in civil proceedings, in particular in cases of particularly unequal power relations between perpetrators and victims of human rights violations (CNCDH, Opinion on the draft instrument..., op. cit., 15 October 2019, §15).

49. Article 4§16 of the revised draft legally binding instrument (2019 version).

50. CNCDH, Opinion on the draft instrument..., op. cit., 15 October 2019, Recommendation no.10.

51. CNCDH, Opinion on the draft instrument..., op. cit., 15 October 2019, §14 and Recommendation no.9; CESCR General Comment no.24..., op. cit., 10 August 2017, E/C.12/GC/24, §44.

52. See Recommendation no.16 in the CNCDH's Opinion of 15 October 2019, op. cit. Article 9§3 provides that "*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*". Article 7§5 stresses this point, providing that States Parties must "*ensure that the doctrine of forum non conveniens is not used by their courts to dismiss legitimate judicial proceedings brought by victims*" (see Appendix 2).

53. "*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*". (Article 9§4).

However, it recommends deletion of the requirement of a “clos[e]” connection⁵⁴. It also finds it regrettable that the question of a plurality of defendants is not covered in the draft, although such configuration is common enough in practice⁵⁵. The inclusion of the forum of necessity is to be welcomed, however (Article 9§5)⁵⁶. Nonetheless, the CNC DH recommends deleting the requirement of a “sufficiently close” connection; a simple “connection” should be enough to allow for a *forum necessitatis*⁵⁷.

24. Other modifications have been made to the provisions on adjudicative jurisdiction and applicable law. Article 9§1 confers jurisdiction in respect of “claims brought by victims, irrespectively of their nationality or place of domicile, arising from acts or omissions that result or may result in human rights abuses [...] on the courts of the State where: the human rights abuse occurred; an act or omission contributing to the human rights abuse occurred; or 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 [...] are domiciled”. Hence, a new jurisdiction has been added, covering courts in the State where “an act or omission contributing to the human rights abuse occurred” (Article 9§1b). However, the CNC DH takes note of the deletion of the jurisdiction of courts in the victim’s place of domicile, although it participates in combating impunity for human rights violations⁵⁸. Nevertheless, it commends the new definition of “domicile” adopted, which refers in particular to a business enterprise’s “principal place of business”, making it more consistent with existing international law, rather than where it has “substantial business interests”⁵⁹. The CNC DH also recommends that the second revised draft instrument provides for the choice of applicable law being up to the victim or their representatives, under the modalities it sets out (Article 11§2)⁶⁰.

54. The CNC DH refers to the following definition of “related actions”: International Law Association, *Sofia Guidelines on Best Practices for International Civil Litigation for Human Rights Violations*, appended to Resolution 2/2012, article 2.2. See exchanges with Juliette Renaud (8 October 2020).

55. CNC DH, *Opinion on the draft instrument...*, *op. cit.*, 15 October 2019, Recommendation no.14.

56. Such competence should also be provided for 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 9§5).

57. Consultation of Catherine Kessedjan, 8 October 2020. For a definition of forum necessitatis, see the *Sofia Guidelines...*, *op. cit.*, Article 2.3.

58. CNC DH, *Opinion on the draft instrument...*, *op. cit.*, 15 October 2019, §17.

59. Article 9§2 replaces the notion of “substantial business interests” with that of “principal place of business”, which is the same as that adopted by the European Union’s Brussels Regulation I bis (Regulation (EU) no.1215/2012 of the European Parliament and Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (revised), Article 63 c) and by the Committee on the Rights of the Child’s General Comment No.16 (2013) on State obligations regarding the impact of the business sector on children’s rights (CRC/C/GC/16, 17 April 2013): see. CNC DH, *Opinion on the draft instrument...*, *op. cit.*, 15 October 2019, §17.

60. The CNC DH had made a recommendation in this regard in its 2019 Opinion, *op. cit.*, Recommendation no.17. The wording according to which “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” is not sufficiently clear (Article 11§2).

25. Further clarifications have also been brought to statutes of limitations (Article 10). The CNCDH welcomes the deletion of the ambiguous reference to national law with regard to the non-applicability of statutory limitations provided for breaches of international law that constitute “the most serious crimes of concern to the international community as a whole”⁶¹. As regards investigations and prosecutions or other legal proceedings regarding other human rights violations for which States Parties must allow a “reasonable period of time”, the new version of Article 10 lays the emphasis on “cases where the violations occurred in another State or when the harm may be identifiable only after a long period of time”. The CNCDH points out that it previously recommended that “reasonable period of time” should be interpreted “so as to allow for a long enough period of time in proportion to the gravity of the alleged violation”⁶².

26. Finally, the CNCDH welcomes the reference to States’ role in “promoting effective technical cooperation and capacity-building among policymakers, national human rights institutions, and operators, as well as users of domestic, regional and international grievance mechanisms” for realisation of the purpose of the draft instrument (Article 13§2). It expresses its readiness to contribute to the achievement of this goal.

27. The Commission reiterates its support for negotiations on a legally binding instrument aiming at regulating the activities of transnational corporations and other business enterprises with regard to human rights. It once again encourages France to take the lead and mobilise its European partners and the European Union for constructive and inclusive negotiations during the Intergovernmental Working Group’s sixth session, which is due to take place from 26 to 30 October.

61. The CNCDH drew attention to the fact that “the instrument’s references to States’ domestic legislation must be interpreted in keeping with general international law and under no circumstances may they be taken to mean that this instrument is subject to domestic legislation” (CNCDH, Opinion on the draft instrument..., op. cit., 15 October 2019, Recommendation no.21).

62. CNCDH, Opinion on the draft instrument ..., op. cit., 15 October 2019, §19.

CNCDH RECOMMENDATIONS

Recommendation no.1: The CNCDH recommends ensuring that the next versions of the draft legally binding instrument are translated into the United Nations official languages, French in particular, so as to guarantee their accessibility, comprehension and assimilation by all stakeholders.

Recommendation no.2: The CNCDH recommends deletion of the phrase “for profit” in Article 1§3 in order to ensure effective inclusion of State-owned enterprises in the scope of the treaty. It also recommends more exact definition of the State’s responsibility as economic actor, in line with Principle 4 of the United Nations Guiding Principles on Business and Human Rights (Ruggie Principles).

Recommendation no.3: The CNCDH recommends clarification of the wording of Article 1§5 so as to ensure inclusion of relations between parent companies and their subsidiaries and, more generally, between all links in global supply chains.

Recommendation no.4: The CNCDH recommends that express reference to environmental rights be included in Article 3 on the draft instrument’s scope.

Recommendation no.5: The CNCDH recommends that only the term “violation” be employed in the draft instrument, or, failing this, systematic joint employment of the terms “abuse” and “violation” throughout the treaty.

Recommendation no.6: The CNCDH recommends that the notion of “relatives” be preferred to that of “immediate family” or “dependents of the direct victim”, in line with the Convention for the Protection of All Persons from Enforced Disappearance (Article 1§1).

Recommendation no.7: The CNCDH recommends that the clause stating that the instrument does not affect any provisions more conducive to the respect, protection, fulfilment and promotion of human rights and the clause on the obligation of compliant interpretation and implementation also include non-treaty international obligations (Article 14§3 and §5).

Recommendation no.8: The CNCDH recommends improving the definition of the content of due diligence, by clearly separating the goal of preventing human rights violations from the goal of mitigating risks. Definition of the content of due diligence should also include all the aspects developed by the United Nations Guiding Principles on Business and Human Rights and clearer expression of its continuous character.

Recommendation no.9: The CNCDH recommends making it clearer exactly what States have to impose on business enterprises, including State-owned enterprises, in terms

of reasonable due diligence measures designed to identify risks and prevent human rights violations.

Recommendation no.10: The CNCDH recommends specifying that indigenous peoples' free, prior and informed consent be requested before the start and throughout the duration of a project planned by a business enterprise (Article 6 §3d).

Recommendation no.11: The CNCDH recommends that the criteria for modulation of the human rights due diligence provided for in the second revised draft instrument be harmonised with those outlined in the United Nations Guiding Principles on Business and Human Rights.

Recommendation no.12: The CNCDH stresses the need to better elucidate and articulate civil, administrative and criminal liabilities.

Recommendation no.13: The CNCDH recommends that explicit emphasis be put on the essential role that unions play in promoting and protecting human rights in the context of business activities. To this effect, it recommends that States' obligation to ensure a safe, enabling environment for performance of trade union functions be included (Article 5§2).

Recommendation no.14: The CNCDH recommends providing that access to information be ensured by the State and business enterprises, at every stage of a project's implementation, as well as in the context of proceedings initiated by victims for violations covered by the instrument.

Recommendation no.15: The CNCDH recommends reinforcement of Article 7§6 by specifying the conditions in which the burden of proof can be reversed.

Recommendation no.16: The CNCDH recommends modification of Article 7§3 e) so as to provide that, as long as the action is not vexatious or abusive, unsuccessful plaintiffs will not be required to reimburse the legal costs incurred by the other party in the proceedings.

Recommendation no.17: The CNCDH recommends modification of the wording of the provisions on the related action exception (Article 9§4) and the forum of necessity (Article 9§5) in order to delete the requirement of a "clos[e]" or "sufficiently close" connection.

Recommendation no.18: The CNCDH once again encourages all parties concerned to resume work on follow-up mechanisms and ensure that they are allocated the financial, human and legal resources necessary to their effective functioning.

APPENDIX 1: LIST OF INDIVIDUALS HEARD OR CONSULTED

Hocine BOUTATA, Chief Editing Officer at the Regulation and Fair Competition Mission. CSR – ILO – Social Regulation of Globalisation, Directorate for Economic Diplomacy, Ministry for Europe and Foreign Affairs (5 October 2020).

Catherine KESSEDJAN, Emeritus Professor of Private Law, specialist in international private law, arbitration, and business and human rights, Panthéon-Assas (Paris II) University (8 October 2020).

Arnaud de NANTEUIL, Professor, Director of the LL.M. in International Disputes Resolution, Paris-Est Créteil University (8 October 2020).

Juliette RENAUD, Campaign Manager, Regulation of Multinationals, Friends of the Earth France (8 October 2020).

Odile ROUSSEL, Special Representative for bioethics and corporate social responsibility, General Directorate for Globalisation, Ministry for Europe and Foreign Affairs (5 October 2020).

Adelin ROYER, Assistant Deputy Director, Sub-Directorate for Human Rights, United Nations and International Organisations Directorate, Ministry for Europe and Foreign Affairs (5 October 2020).

Chloé STEVENSON, Decent Work and Corporate accountability Campaigner, ActionAid France – Peoples Solidaires (8 October 2020).

Dimitri TOUREN, Advisor, Sub-Directorate for Human Rights, United Nations and International Organisations Directorate, Ministry for Europe and Foreign Affairs (5 October 2020).

APPENDIX 2 : LEGALLY BINDING INSTRUMENT TO REGULATE, IN INTERNATIONAL HUMAN RIGHTS LAW, THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES, OEIGWG CHAIRMANSHIP SECOND REVISED DRAFT 06.08.2020

Legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, OEIGWG Chairmanship second revised draft 06.08.2020

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, fulfil 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 persons 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.

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;

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 9. Adjudicative Jurisdiction

1. Jurisdiction with respect to claims brought by victims, irrespectively of their nationality or place of domicile, arising from acts or omissions that result or may result in human rights abuses covered under this (Legally Binding Instrument), shall vest in the courts of the State where:

a. the human rights abuse 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 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.

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 States 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 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).

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 (date).

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).

Created in 1947 at the instigation of René Cassin, the **National Consultative Commission on Human Rights (CNCDH)** is the French national institution responsible for promoting and protecting human rights with level 'A' accreditation from the United Nations.

The CNCDH performs a three-pronged role that involves the following:

- enlightening the public decision-making process with regards to human rights;
- monitoring the effectiveness in France of rights protected by international human rights conventions;
- overseeing France's implementation of recommendations made by international committees.

The CNCDH is independent and operates based on the principle of the pluralism of ideas. This being the case, as the only institution that maintains continuous dialogue between civil society and French experts in the field of human rights, the Committee comprises 64 qualified individuals and representatives of non-governmental organisations with their roots in civil society.

The CNCDH has been an independent National Rapporteur on the fight against all forms of racism since 1990, on the fight against the trafficking and exploitation of human beings since 2014, on the fight against homophobia since 2018.

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