

Projet de traité entreprises et droits de l'Homme : Déclaration pour une implication substantielle de la France et de l'Union européenne dans les négociations

*lors de l'assemblée plénière le 28 octobre 2021
Adoptée à 40 voix pour, 2 abstentions*

1. Depuis 2014, un groupe de travail intergouvernemental à composition non limitée s'est vu confier la tâche, par le Conseil des droits de l'Homme des Nations Unies, d'« élaborer un instrument international juridiquement contraignant pour réglementer, dans le cadre du droit international des droits de l'homme, les activités des sociétés transnationales et autres entreprises »¹. Ce groupe de travail est en train de tenir sa septième session de négociations, du 25 au 29 octobre 2021².

2. Un long chemin a été parcouru depuis le lancement de ce processus, dont les prémices remontent à des initiatives au sein des Nations Unies dès les années 1970 visant à responsabiliser les entreprises en matière de droits de l'Homme³. Le processus engagé par le groupe de travail intergouvernemental, piloté par l'Équateur, a rencontré de nombreuses résistances, notamment de la part de l'Union européenne (UE)⁴ et de ses États membres, y compris de la France⁵. Depuis, de nombreux facteurs ont contribué à surmonter certaines de ces résistances, grâce notamment à une forte mobilisation de différentes parties prenantes pour l'adoption d'un traité⁶, dont la société civile⁷, des élus

européens, français et du monde entier⁸, des syndicats⁹ ou des institutions nationales des droits de l'Homme (INDH)¹⁰. La multiplication de législations nationales relatives au devoir de vigilance¹¹, la France ayant été pionnière¹², couplée à l'existence de nombreux instruments internationaux et régionaux dans le domaine¹³, renforce également le besoin d'adopter un cadre commun fixé au niveau international, de même qu'est progressivement reconnue la nécessité de réguler la mondialisation¹⁴. Par ailleurs, la crise sanitaire liée à la Covid-19 a à la fois exposé les vulnérabilités dans les chaînes d'approvisionnement mondiales et révélé la plus grande résilience des entreprises responsables et respectueuses des droits de l'Homme¹⁵. En outre, les évolutions des versions du projet d'instrument juridiquement contraignant successivement publiées par le groupe de travail intergouvernemental depuis 2018¹⁶ ont également contribué à surmonter certaines

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8 Voir notamment la [pétition adressée au Président de la République en octobre 2017 par près de 250 parlementaires français](#) ; l'[appel de 22 maires français d'octobre 2020](#) ; la [liste de soutien au traité d'élus et autorités locales du monde entier](#) ; l'[appel de centaines de parlementaires du monde entier](#) ; ou l'[appel de 75 parlementaires européens de juillet 2020](#) pour que l'UE adopte un mandat de négociation.

9 Voir par exemple les [commentaires de la Confédération syndicale internationale du 8 octobre 2020 et du 25 octobre 2021](#).

10 Les déclarations adoptées par les réseaux européen, mondial et francophone des INDH depuis 2018 sont disponibles sur le [site du groupe de travail intergouvernemental](#).

11 Voir les recensements disponibles sous <https://www.business-humanrights.org/en/big-issues/mandatory-due-diligence/national-regional-developments-on-mhrdd/>.

12 Loi française n°2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre.

13 Parmi lesquels : [Conseil des droits de l'Homme, Principes directeurs relatifs aux entreprises et aux droits de l'homme, 21 mars 2011, A/HRC/17/31](#) ; [Principes directeurs de l'OCDE à l'intention des entreprises multinationales](#) ; [Déclaration de principes tripartite sur les entreprises multinationales et la politique sociale de l'OIT](#) ; Norme ISO 26 000 établissant les lignes directrices relatives à la responsabilité sociétale des entreprises ; [Pacte mondial des Nations Unies](#).

14 Voir en ce sens la [déclaration de l'UE lors de la 4^{ème} session](#) qui insiste sur la nécessité de maîtriser la mondialisation (les déclarations de l'UE lors des sessions du groupe de travail intergouvernemental sont disponibles sous <https://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Pages/IGWGOntNC.aspx>).

15 Voir en ce sens la [déclaration de l'UE lors de la 6^{ème} session](#).

16 Les différentes versions du projet d'instrument de 2018, de 2019, de 2020 et de 2021 sont disponibles sous <https://www.ohchr.org/EN/HRBodies/HRC/>

1 Conseil des droits de l'Homme, Résolution A/HRC/RES/26/9, 26 juin 2014, §1.

2 Voir : <https://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Session7/Pages/Session7.aspx>.

3 La [résolution A/RES/3202\(S-VI\) de l'Assemblée générale, « Programme d'action concernant l'instauration d'un nouvel ordre économique international »](#) invite à « formuler, adopter et appliquer un code international de conduite pour les sociétés transnationales » ; projet qui sera toutefois abandonné, de même que le projet de normes de la Sous-Commission de la promotion et de la protection des droits de l'Homme ([CNCDH, La responsabilité des entreprises en matière de droits de l'homme. Nouveaux enjeux, nouveaux rôles, Étude, Volume I, La Documentation française, Paris, 2009](#), p. 132, p. 408).

4 Les États de l'UE membres du Conseil des droits de l'Homme ont voté contre la résolution 26/9 adoptée à 20 voix contre 14, avec 13 abstentions. L'UE a longtemps réservé sa position et a été critique à l'égard de la manière dont le processus était conduit. Depuis la 5^{ème} session, elle n'a plus remis en cause le processus, mais son implication est restée limitée, notamment du fait de l'absence de mandat de négociation.

5 La France a voté contre la résolution 26/9. Depuis, sans rompre avec la position de l'UE, elle a participé aux sessions de négociation dans une démarche constructive, en essayant de mobiliser ses partenaires européens pour qu'ils s'impliquent également sur les questions substantielles et pas que procédurales.

6 Si la forme exacte de l'instrument juridiquement contraignant (pacte, convention, traité, etc.) sera déterminée au cours des négociations, il est communément désigné par le terme de « traité ».

7 Voir, parmi d'autres : <https://bindingtreaty.org/financial-times-the-call-of->

difficultés. Le projet d'instrument a ainsi évolué, tant sur la forme que sur le fond et pris en compte certaines des revendications exprimées par l'UE et par différentes parties. L'implication constructive des différentes parties prenantes lors des sessions de négociation et par le biais de consultations largement ouvertes menées par le groupe de travail a été déterminante. Si subsistent des divergences quant à la forme exacte que devrait prendre le projet d'instrument juridiquement contraignant, un consensus a progressivement émergé sur la reconnaissance de la complémentarité entre *hard* et *soft law* et sur la nécessité de combler les lacunes persistantes par l'adoption d'un tel instrument au niveau international pour renforcer la prévention des violations des droits de l'Homme commises dans le contexte des activités d'entreprises et améliorer l'accès à la justice et à la réparation.

3. La CNCDH, qui suit les négociations de près, a eu l'occasion de souligner les améliorations progressives et les lacunes persistantes¹⁷ de ces différentes versions du projet de traité. Elle salue la publication du troisième projet révisé d'instrument juridiquement contraignant le 17 août 2021 qui, dans l'ensemble, apporte peu de modifications par rapport au second projet révisé de 2020, illustrant que le projet de texte semble se stabiliser¹⁸. La CNCDH souhaite ainsi formuler les brèves observations suivantes à propos du contenu du projet de traité.

4. S'agissant, dans un premier temps, du champ d'application du traité et de son articulation avec les instruments internationaux existants, la CNCDH a salué les modifications apportées au projet de traité contribuant à une plus grande cohérence et à une meilleure articulation avec le droit international positif¹⁹. Elle accueille également à nouveau avec satisfaction l'élargissement à toutes les entreprises, et plus uniquement aux activités des entreprises transnationales, et l'inclusion expresse des entreprises publiques. De nombreuses parties prenantes, dont l'Union européenne, appelaient également cet élargissement de leurs vœux, afin de couvrir toutes les entreprises de manière non discriminatoire – tout en prévoyant une adaptation pour les petites et moyennes entreprises²⁰ – et être à même d'assurer une concurrence plus loyale. Cet élargissement est confirmé dans le troisième projet révisé, qui apporte des précisions permettant une meilleure inclusion des entreprises publiques²¹. La CNCDH réitère

toutefois sa recommandation de définir plus précisément la responsabilité de l'État en tant qu'acteur économique, notamment dans ses activités touchant à la commande publique²².

5. Les droits de l'Homme couverts par le projet de traité ont également été mieux définis pour inclure tous les droits de l'Homme et libertés fondamentales internationalement reconnus²³, y compris par le droit international coutumier et viser notamment le droit à un environnement sûr, propre, sain et durable, alors que la résolution 48/13 du Conseil des droits de l'Homme vient de consacrer sa reconnaissance internationale²⁴. De plus, tout en rappelant l'universalité et l'indivisibilité des droits de l'Homme, le projet de traité renforce la reconnaissance de l'impact différencié des activités des entreprises à l'égard de certains groupes de personnes, souvent affectés de manière disproportionnée²⁵, et intègre une perspective de genre²⁶, visant ainsi à contribuer à une égalité matérielle et non uniquement formelle²⁷.

6. S'agissant dans un second temps du contenu de l'obligation de vigilance et du régime de responsabilité qui y est associé en cas de non-respect, la CNCDH a accueilli avec satisfaction le rôle central accordé à l'obligation de vigilance, dont les contours ont petit à petit été précisés, quoique certaines modifications aient dû être accueillies avec réserve²⁸. À cet égard, la CNCDH réitère ses préoccupations quant à la terminologie employée par endroits pour définir le contenu de l'obligation de vigilance. En particulier, elle regrette les références à l'« *atténuation des violations* »²⁹

expressément les entités étatiques et non étatiques (article 1§5).

22 Conformément au principe 4 des Principes directeurs (CNCDH, *Avis de suivi...*, *op. cit.*, 2020, reco. n°2). De même, l'UE indique souhaiter des clarifications supplémentaires sur l'alignement du projet de traité avec ces Principes s'agissant du nexus État-entreprises (déclaration de l'UE, 6^{ème} session, *op. cit.*).

23 Elle réitère toutefois ses observations relatives à la référence sélective à « *tout traité fondamental relatif aux droits de l'Homme* », à la mention inutile « *auxquels un État est partie* » s'agissant des conventions fondamentales de l'OIT ainsi qu'à l'absence de référence au droit international coutumier à l'article 14 (CNCDH, *Avis de suivi...*, *op. cit.*, 2020, notes 16 et 17).

24 Conseil des droits de l'Homme, Résolution 48/13 du 8 octobre 2021, *Droit à un environnement propre, sain et durable*, A/HRC/RES/48/13. Le troisième projet révisé vient ainsi préciser ce qui était entendu par « *droits environnementaux* » dans le second projet révisé, répondant à une demande de clarification exprimée notamment par l'UE lors de la sixième session de négociation. De même, les enjeux climatiques et de santé sont mieux intégrés (préambule al. 10 ; article 6§4 a) et e)). Sur ces questions, voir : [CNCDH, Avis « Urgence climatique et droits de l'Homme », Assemblée plénière du 27 mai 2021, JORF n°0130 du 6 juin 2021, texte n°46](#). Le troisième projet révisé inclut également la santé (voir à ce propos, [CNCDH, Avis sur la santé publique et la coopération internationale dans le contexte de la Covid-19, Assemblée plénière du 15 octobre 2020, JORF n°0260 du 25 octobre 2020, texte n°66](#)).

25 Le troisième projet révisé ajoute les personnes d'ascendance africaine et les personnes âgées aux groupes déjà mentionnés dans le second projet révisé (préambule al. 13, article 6§4 c), article 16§4). L'inclusion de telles dispositions faisait partie des propositions exprimées par l'Union européenne lors de la 4^{ème} session.

26 Les références à la perspective de genre, déjà soulignées par l'UE comme faisant partie des améliorations dans la précédente version (déclaration de l'UE, 5^{ème} session, *op. cit.*) ont été renforcées dans le troisième projet révisé, avec notamment la mention du cadre pour la prise en compte des questions de genre applicable aux Principes directeurs (préambule al. 14). Voir également les articles 4§2 c) et e), 6§4 b), 8§4, 15§1 b) et 16§3.

27 La reconnaissance de cet impact différencié et l'intégration d'une perspective de genre faisaient partie des améliorations soulignées par la CNCDH (CNCDH, *Avis de suivi...*, *op. cit.*, 2020, §12).

28 La CNCDH invitait à apporter des précisions supplémentaires quant au contenu du devoir de vigilance, afin de reprendre toutes les dimensions développées par les Principes directeurs et d'améliorer sa définition (CNCDH, *Avis de suivi...*, *op. cit.*, 2020, §§10 et s., reco. n°8).

29 La CNCDH rappelle qu'elle recommande de n'employer que le terme de « *violation* » et non également celui d'« *atteinte* » (CNCDH, *Avis de suivi...*, *op. cit.*, 2020, §7, reco. n°5).

[WGTTransCorp/Pages/IGWGOntNC.aspx](#).

17 CNCDH, *Déclaration sur l'adoption d'un instrument international contraignant sur les entreprises et les droits de l'Homme, Assemblée plénière du 5 octobre 2018, JORF n°0238 du 14 octobre 2018, texte n°100* ; CNCDH, *Avis sur le projet d'instrument international juridiquement contraignant sur les sociétés transnationales et autres entreprises et les droits de l'Homme, Assemblée plénière du 15 octobre 2019, JORF n°0244 du 19 octobre 2019, texte n°86* ; CNCDH, *Avis de suivi sur le projet d'instrument juridiquement contraignant sur les sociétés transnationales et autres entreprises et les droits de l'Homme, Assemblée plénière du 15 octobre 2020, JORF n°0260 du 25 octobre 2020, texte n°64*.

18 Une comparaison, non officielle, entre le second et le troisième projet révisé est disponible sous <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTTransCorp/Session6/igwg-comparing-third-and-second-revised-drafts.pdf>.

19 Meilleure intégration des Principes directeurs des Nations Unies, mention des accords de commerce et d'investissement, références plus nombreuses au droit international coutumier, aux conventions de l'OIT pertinentes, à la déclaration de l'OIT relative aux principes et droits fondamentaux au travail, etc.

20 Voir en particulier l'article 6§5 du troisième projet révisé.

21 La mention des activités des entreprises « à but lucratif » (for profit) a ainsi été supprimée à l'article 1§3, comme le recommandait la CNCDH (CNCDH, *Avis de suivi...*, *op. cit.*, 2020, recommandation (ci-après reco.) n°2). De même, la définition des « *relations d'affaires* » (*business relationship*) mentionne

des droits de l'Homme », encore plus nombreuses dans le troisième projet révisé³⁰. La CNCDH recommande à nouveau que les obligations de vigilance comprennent tant les mesures propres à identifier et atténuer les risques³¹ que celles visant à prévenir les violations des droits de l'Homme, conformément à l'Observation générale n°24 du Comité des droits économiques, sociaux et culturels³².

7. Par ailleurs, des efforts ont été faits pour renforcer les règles de transparence³³. Le troisième projet révisé précise notamment que les États doivent imposer aux entreprises non seulement d'identifier, d'évaluer les violations des droits de l'Homme, réelles ou potentielles, qui peuvent résulter de leurs activités ou relations d'affaires, mais aussi de rendre cette identification et cette évaluation publiques ; de même, elles doivent être tenues de publier les évaluations d'impact auxquelles elles procèdent³⁴. La CNCDH recommande toutefois à nouveau que l'accès à l'information³⁵, fondamental pour la prévention et l'accès aux voies de recours et à la réparation, soit renforcé, notamment en prévoyant qu'il doit être assuré par l'État et les entreprises à toutes les étapes du lancement d'un projet économique et que dans le cadre d'une procédure, les documents internes à même de faire la lumière sur les causes d'un dommage ainsi que les processus décisionnels puissent être accessibles aux victimes et à leurs représentants³⁶. Des précisions ont cependant été apportées concernant la mise à disposition d'informations aux victimes dans les langues pertinentes³⁷ et sous formes accessibles pour les adultes et les enfants, y compris les personnes handicapées³⁸.

8. Dans un troisième temps, la CNCDH a accueilli avec satisfaction le renforcement de la protection des victimes et de l'accès aux voies de recours au cours des versions successives du projet de traité, accentuant la visibilité du troisième pilier des Principes directeurs des Nations Unies³⁹. Elle salue la référence expresse aux organisations syndicales ajoutée dans le troisième projet révisé (article 6§4 c), qui permet de mettre en exergue le rôle essentiel qu'elles jouent pour la promotion et la protection des droits de l'Homme dans le contexte des activités d'entreprises⁴⁰.

La CNCDH recommande d'élargir l'article 6 à l'ensemble des défenseurs des droits, afin de reconnaître, aux côtés de l'obligation des États d'adopter des mesures pour leur garantir un environnement sûr et propice (article 5§2), leur rôle primordial pour la prévention effective des violations des droits de l'Homme commises dans le contexte d'activités d'entreprises et de clarifier qu'ils relèvent des parties prenantes pertinentes que les entreprises doivent consulter⁴¹.

9. Le projet de traité détaille également les mesures que les États doivent prendre pour fournir une assistance juridique adéquate et efficace aux victimes tout au long de la procédure judiciaire⁴², qui favorise le respect effectif de leurs droits, notamment face aux stratégies dissuasives adoptées à l'encontre de victimes ou de leurs défenseurs⁴³. Pour favoriser l'égalité des armes, le troisième projet révisé mentionne la nécessité de lever les obstacles juridiques à l'engagement de poursuites judiciaires, tels que le *forum non conveniens*⁴⁴, et de prendre en compte les obstacles spécifiques rencontrés par des personnes ou groupes de personnes vulnérables ou marginalisées dans l'accès aux voies de recours⁴⁵. L'article 9 relatif à la compétence juridictionnelle est également élargi dans le troisième projet révisé, favorisant l'accès à la justice⁴⁶. En outre, la CNCDH accueille avec satisfaction la suppression, qu'elle recommandait, de l'exigence d'un lien « étroit » ou « suffisamment étroit » des dispositions relatives à l'exception de connexité (article 9§4) et au for de nécessité (article 9§5)⁴⁷. Des précisions sont également apportées à la notion de forum de nécessité, l'article 9§5 énonçant trois hypothèses de lien de connexion suffisant avec l'État partie concerné pouvant faire jouer le for de nécessité⁴⁸. La CNCDH recommande que cette disposition soit formulée de manière à ce que la liste de ces hypothèses ne soit pas limitative⁴⁹.

10. La CNCDH regrette, enfin, que les travaux préparatoires relatifs aux mécanismes de suivi, pourtant essentiels pour favoriser la mise en œuvre du traité, afin que celle-ci ne repose pas uniquement sur la volonté

41 CNCDH, *Avis de suivi...*, *op. cit.*, 2020, note 23.

42 Art. 7§3 du troisième projet révisé.

43 CNCDH, *Avis sur le projet d'instrument...*, *op. cit.*, 2019, §14.

44 Art. 7§3 d) et 9§3 du troisième projet révisé. La précision apportée à l'art. 9§3 selon laquelle ce sont les juridictions investies d'une compétence sur le fondement de l'art. 9§1 et §2 qui doivent éviter d'imposer de tels obstacles vient répondre à une interrogation exprimée notamment par l'UE (déclaration UE, 6^{ème} session, *op. cit.*).

45 Voir l'art. 15§7 ou 7§1, ainsi que l'al. 13 du préambule du troisième projet révisé qui visent notamment les femmes, les enfants, les personnes handicapées, les peuples indigènes, les migrants, les réfugiés, les déplacés internes.

46 Le troisième projet révisé réintroduit par exemple le titre de compétence des tribunaux du lieu du domicile de la victime, qui avait été supprimé dans le second projet révisé de 2020 (CNCDH, *Avis de suivi...*, *op. cit.*, 2020, §24).

47 Conformément à la recommandation n°17 de la CNCDH dans son avis de suivi précité du 15 octobre 2020. Le for (ou forum) de nécessité vise à éviter les dénis de justice en conférant, sous certaines conditions, une compétence aux juridictions de l'État du for lorsqu'aucun autre tribunal n'est disponible. Toutefois, la question d'une pluralité des défendeurs reste toujours absente du projet.

48 L'art. 9§5 énonce que les tribunaux devraient être compétents pour les plaintes contre les personnes morales ou physiques qui ne sont pas domiciliées dans l'État du for si aucun autre for effectif pouvant garantir une procédure judiciaire équitable n'est disponible et qu'il existe un lien suffisant de connexion avec l'État partie concerné, qui peut découler des trois hypothèses suivantes : la présence du plaignant sur le territoire du for (a), la présence d'actifs (b) ou d'une activité substantielle (c) du défendeur.

49 La mention « notamment » ou « en particulier » pourrait ainsi être introduite à l'art. 9§5, comme le font les [Lignes directrices de Sofia sur les meilleures pratiques en matière d'actions civiles pour violation des droits de l'homme, annexées à la résolution 2/2012, de l'Association de droit international](#) (art. 2.3), dont il semble s'inspirer.

30 En particulier, les précisions apportées à l'art. 6§3 b) quant aux mesures que les États doivent imposer aux entreprises pour qu'elles respectent leur obligation de vigilance, au lieu de clarifier son contenu, s'éloignent du droit positif et obscurcissent la distinction faite par les Principes directeurs entre les mesures que l'entreprise doit adopter s'agissant des violations des droits de l'Homme qu'elle cause de celles auxquelles elle contribue.

31 CNCDH, *Avis de suivi...*, *op. cit.*, 2020, §10, reco. n°8. L'art. 16§3 du troisième projet révisé fait pourtant référence à l'atténuation des risques (et non des violations).

32 L'Observation générale n°24 sur les obligations des États en vertu du Pacte international relatif aux droits économiques, sociaux et culturels dans le contexte des activités des entreprises vient ainsi clarifier, de même que la loi française sur le devoir de vigilance, ces deux dimensions de l'obligation de vigilance contenues dans le principe 15 des Principes directeurs des Nations Unies, en distinguant le fait de « détecter les risques de violations » et « d'atténuer ces risques » de celui de « prévenir la violation des droits garantis par le Pacte » (E/C.12/GC/24, 10 août 2017, §16).

33 Voir à ce propos le principe 21 des Principes directeurs des Nations Unies, *op. cit.*

34 Art. 6§3 a) et art. 6§4 du troisième projet révisé. Ce dernier ajoute également que l'État doit agir, « d'une manière transparente », pour s'assurer que les politiques et législations qu'il adopte ne soient pas influencées par les intérêts commerciaux ou autres intérêts particuliers des entreprises (art. 6§8).

35 Art. 4§2 f), 7§2, 7§3 a) et 12§3 du troisième projet révisé.

36 CNCDH, *Avis de suivi...*, *op. cit.*, 2020, reco. n°14.

37 La CNCDH regrette toutefois, une nouvelle fois, l'absence de traduction du troisième projet révisé dans les six langues officielles des Nations Unies (CNCDH, *Avis de suivi...*, *op. cit.*, 2020).

38 Art. 7§3 a) du troisième projet révisé.

39 CNCDH, *Avis de suivi...*, *op. cit.*, 2020, §§17 et s.

40 CNCDH, *Avis de suivi...*, *op. cit.*, 2020, §19, reco. n°13.

et/ou capacité des États, n'aient pas avancé⁵⁰. Hormis ces dispositions sur les mécanismes de suivi, le projet a beaucoup évolué depuis la version dite « zero » de 2018 et a pris en compte certaines revendications clés exprimées par l'Union européenne⁵¹ et par d'autres parties prenantes. La CNCDH considère que seule une implication substantielle et constructive dans le processus de négociation permettra de consolider les améliorations apportées au projet de traité et de combler les faiblesses qui subsistent. Ainsi, la CNCDH souhaite formuler les recommandations suivantes en vue des prochaines sessions de négociation pour l'adoption d'un instrument juridiquement contraignant qui, d'une part, réponde aux attentes légitimes des victimes de violations des droits de l'Homme dans le contexte des activités d'entreprises, en renforçant la protection et le respect des droits de l'Homme ainsi que l'accès aux voies de recours⁵² et, d'autre part, renforce la sécurité juridique et la concurrence loyale en harmonisant les obligations dans ce domaine (*level playing field*)⁵³.

11. Seul un effort collectif⁵⁴ permettra d'atteindre l'adoption d'un instrument international juridiquement contraignant remplissant ces objectifs. Une implication substantielle de l'Union européenne - et de ses États membres -, eu égard à son influence dans l'économie globale et au nombre d'États hôtes de grandes entreprises transnationales en son sein, dont la France, est fondamentale, pour contribuer à générer la force de traction nécessaire et à trouver un terrain d'entente commun. À l'heure où de nombreux travaux sont engagés par l'Union européenne sur la thématique entreprises et droits de l'Homme, en particulier sur la gouvernance d'entreprise durable, incluant un volet sur le devoir de diligence et la responsabilité des entreprises⁵⁵, la CNCDH recommande à la France de mobiliser ses partenaires européens pour créer, sans tarder, une véritable dynamique européenne au sein du processus de négociation d'un projet d'instrument international juridiquement contraignant. Les deux processus devraient en effet être menés de manière parallèle, s'enrichir mutuellement⁵⁶ et être portés avec ambition⁵⁷.

12. Plus précisément, la CNCDH encourage la France à saisir l'opportunité de sa prochaine présidence du Conseil de l'Union européenne pour continuer de jouer un rôle moteur dans le domaine⁵⁸ en mobilisant ses partenaires européens :

- pour élaborer, dès maintenant, une véritable stratégie commune pour les négociations d'un instrument international juridiquement contraignant, en consultant l'ensemble des parties prenantes ;
- et pour que le Conseil confie sans tarder un mandat ambitieux à la Commission européenne pour négocier au nom de l'ensemble des États membres de l'Union européenne lors des prochaines sessions.

*Assemblée plénière du 28 octobre 2021
Adoption à l'unanimité (avec deux abstentions)*

⁵⁸ Ce rôle moteur s'illustre par la mobilisation de la France sur la thématique « entreprises et droits de l'Homme » aux niveaux national, européen et international (voir les exemples mentionnés dans la déclaration de la CNCDH de 2018, *op. cit.*), ainsi que par son engagement auprès de ses partenaires européens pour une implication plus substantielle dans le processus de négociation (comme elle l'a fait par exemple en s'adressant, avec plusieurs États européens affinitaires, au COHOM (groupe droits de l'Homme du Conseil de l'UE) pour demander à ce que soit confié un mandat de négociation à l'UE

⁵⁰ Voir les préoccupations exprimées à propos de l'articulation entre le projet d'instrument et de Protocole optionnel par la CNCDH dans sa déclaration du 2 octobre 2018, réitérées dans son avis du 15 octobre 2019, précités.

⁵¹ En particulier, ont été prises en compte les préoccupations principales de l'UE relative au champ d'application du traité et à sa cohérence et complémentarité avec les Principes directeurs des Nations Unies (le troisième projet révisé reconnaît d'ailleurs expressément leur contribution et rôle complémentaire (préambule, al. 16).

⁵² Le rapport du Groupe de travail sur la question des droits de l'homme et des sociétés transnationales et autres entreprises publié à l'occasion du dixième anniversaire des Principes directeurs constate ainsi que « *bon nombre des obstacles à l'accès aux mécanismes judiciaires et non judiciaires (...), sinon la plupart, sont encore présents* » (A/HRC/47/39, 22 avril 2021, §93). Dans le même sens, voir la [contribution d'ENNHR](#) publiée dans ce cadre.

⁵³ Ces éléments sont mentionnés comme faisant partie de la valeur ajoutée d'un traité dans les déclarations de l'UE lors des sessions de négociation, *op. cit.*

⁵⁴ Voir en ce sens la déclaration de l'UE lors de la 4^{ème} session, *op. cit.*

⁵⁵ Voir la résolution du Parlement européen du 10 mars 2021 contenant des recommandations à la Commission sur le devoir de vigilance et la responsabilité des entreprises ([2020/2129\(INL\)](#));

⁵⁶ Voir en ce sens l'[avis de la Plateforme Responsabilité sociétale des entreprises \(RSE\), La RSE, un enjeu européen. Contribution aux travaux de la présidence française du Conseil de l'Union européenne, octobre 2021](#), qui mentionne le fait d'œuvrer pour la poursuite des négociations sur le traité comme un des moyens de promouvoir une vision européenne, équilibrée et exigeante de la RSE (reco. n°3).

⁵⁷ Voir l'annonce d'une directive de l'UE par Didier Reynders, commissaire européen à la justice, le 30 avril 2020, disponible sous <https://responsiblebusinessconduct.eu/wp/2020/04/30/speech-by-commissioner-reynders-in-rbc-webinar-on-due-diligence/>.

Annexe 1:**Liste des personnes ayant participé à une réunion informelle organisée par la CNCDH en vue de la prochaine session de négociations du projet de traité**

Nayla Ajaltouni, coordinatrice, déléguée générale, Collectif Éthique sur l'étiquette

Swann Bommier, chargé de plaidoyer pour la régulation des entreprises multinationales, CCFD – Terre Solidaire

Benoît Chamouard, sous-directeur des droits de l'Homme, Direction des affaires juridiques, Ministère de l'Europe et des Affaires étrangères

François Gave, représentant spécial pour la responsabilité sociétale des entreprises et la dimension sociale de la mondialisation, Direction générale de la mondialisation, ministère de l'Europe et des Affaires étrangères

Catherine Kessedjian, professeure émérite ; présidente du comité d'organisation ADI/ILA 2023

Anna Kiefer, juriste chargée de plaidoyer et de contentieux, Sherpa

Camille Loyer, stagiaire chargée de plaidoyer pour la régulation des entreprises multinationales, CCFD – Terre Solidaire

Anselme Mialon, adjoint au chef de bureau, Finance durable, droit des sociétés, comptabilité et gouvernance des entreprises, Direction générale du Trésor, ministère de l'Économie et des Finances

Romane Minereau, stagiaire, Sous-direction des droits de l'Homme et des affaires humanitaires, Direction des Nations Unies, des organisations internationales, des droits de l'Homme et de la francophonie, ministère de l'Europe et des Affaires étrangères

Maelys Orellana, chargée de campagne Dignité au travail & Régulation des multinationales, ActionAid France – Peuples Solidaires

Juliette Renaud, responsable de campagne, Régulation des multinationales, Amis de la Terre

Dimitri Touren, conseiller, Sous-direction des droits de l'Homme et des affaires humanitaires, Direction des Nations Unies, des organisations internationales, des droits de l'Homme et de la francophonie, Ministère de l'Europe et des Affaires étrangères

Annexe 2:**Legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, OEIGWG Chairmanship third revised draft 17.08.2021**

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Preamble

The States Parties to this (Legally Binding Instrument),

(PP1) Reaffirming the principles and purposes of the Charter of the United Nations;

(PP2) Recalling the nine core International Human Rights Instruments adopted by the United Nations, and the eight fundamental Conventions adopted by the International Labour Organization;

(PP3) 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, relevant ILO Conventions, and recalling further the 2030 Agenda for Sustainable Development, as well as all internationally agreed human rights Declarations;

(PP4) 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;

(PP5) Reaffirming that all human rights are universal, indivisible, interdependent, interrelated, and inalienable, and should be applied in a non-discriminatory way;

(PP6) 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;

(PP7) Stressing that the primary obligation to respect, protect, fulfill and promote human rights and fundamental freedoms lie with the State, and that States must protect against human rights abuse by third parties, including business enterprises, within their territory jurisdiction, or otherwise under their control, and ensure respect for and implementation of international human rights law;

(PP8) 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, colour, sex, language or religion;

(PP9) 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;

(PP10) Acknowledging that all business enterprises have the capacity to foster sustainable development through an increased productivity, inclusive economic growth and job creation that respect internationally recognized human rights, labour rights, health and safety standards, the environment and climate, in accordance with relevant international standards and agreements;

(PP11) Underlining that business enterprises, regardless of

their size, sector, location, operational context, ownership and structure have the obligation to respect internationally recognized 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;

(PP12) Emphasizing that civil society actors including 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;

(PP13) Recognizing the distinctive and disproportionate impact of business related human rights abuses on women and girls, children, indigenous peoples, persons with disabilities, people of African descent, older persons, migrants and 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 and the structural obstacles for obtaining remedies for these persons;

(PP14) 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, the ILO Convention 190 concerning the elimination of violence and harassment in the world of work the Gender Guidance for the Guiding Principles on Business and Human Rights, and other relevant international standards;

(PP15) Taking into account the work undertaken by the United Nations 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;

(PP16) Recognizing the contribution and complementary role that the Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework has played in that regard and to advancing respect for human rights in the business activities;

(PP17) Noting the ILO Declaration on Fundamental Principles and Rights at Work and the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy;

(PP18) Desiring to clarify and facilitate effective implementation of the obligations of States regarding business related human rights abuses and the obligations of business enterprises in that regard;

Have agreed as follows:

SECTION I

Article 1. Definitions

1.1. "Victim" shall mean any person or group of persons, irrespective of nationality or place of domicile, who individually or collectively have suffered harm that constitute human rights abuse through acts or omissions in the context of business activities. The term "victim" may also include the immediate family members or dependents of the direct victim. A person shall be considered a victim regardless of whether the perpetrator of the human rights abuse is identified, apprehended, prosecuted, or convicted.

1.2. "Human rights abuse" shall mean any direct or indirect harm in the context of business activities through acts or omissions, against any person or group of persons, that impedes the full enjoyment of internationally recognized human rights and fundamental freedoms, including the right to a safe, clean, healthy and sustainable environment.

1.3. "Business activities" means any economic or other activity, including but not limited to the manufacturing, production, transportation, distribution, commercialization, marketing and retailing of goods and services, undertaken by a natural or legal person, including State owned enterprises, financial institutions and investment funds, transnational corporations, other business enterprises, joint ventures, and any other business relationship undertaken by a natural or legal person. This includes activities undertaken by electronic means.

1.4. "Business activities of a transnational character" means any business activity described in Article 1.3 above, when:

It is undertaken in more than one jurisdiction or State; or

It is undertaken in one State but a significant part of its preparation, planning, direction, control, design, processing, manufacturing, storage or distribution, takes place through any business relationship in another State or jurisdiction or

It is undertaken in one State but has significant effect in another State or jurisdiction.

1.5. "Business relationship" refers to any relationship between natural or legal persons including State and non-State entities, to conduct business activities, including those activities conducted through affiliates, subsidiaries, agents, suppliers, partnerships, joint venture, beneficial proprietorship, or any other structure or relationship as provided under the domestic law of the State, including activities undertaken by electronic means.

1.6. "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. References to "States Parties" in the

present (Legally Binding Instrument) shall apply to such organizations within the limits of their competence.

Article 2. Statement of Purpose

2.1. The purpose of this (Legally Binding Instrument) is:

To clarify and facilitate effective implementation of the obligation of States to respect, protect fulfill and promote human rights in the context of business activities, particularly those of transnational character;

To clarify and ensure respect and fulfillment of the human rights obligations of business enterprises;

To prevent and mitigate the occurrence of human rights abuses in the context of business activities by effective mechanisms of monitoring and enforceability;

To ensure access to justice and effective, adequate and timely remedy for victims of human rights abuses in the context of business activities;

To facilitate and strengthen mutual legal assistance and international cooperation to prevent and mitigate human rights abuses in the context of business activities particularly those of transnational character, and provide access to justice and effective, adequate and timely remedy to victims of such abuses.

Article 3. Scope

3.1. This (Legally Binding Instrument) shall apply to all business activities, including business activities of a transnational character.

3.2. Notwithstanding Article 3.1 above, when imposing prevention obligations on business enterprises under this (Legally Binding Instrument), States 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 or the severity of impacts on human rights.

3.3. This (Legally Binding Instrument) shall cover all internationally recognized human rights and fundamental freedoms binding on the State Parties of this (Legally Binding Instrument), including those recognized in the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, all core international human rights treaties and fundamental ILO Conventions to which a State is a Party, and customary international law.

SECTION II

Article 4. Rights of Victims

4.1. Victims of human rights abuses in the context of business activities shall enjoy all internationally recognized human rights and fundamental freedoms.

4.2. Without prejudice to Article 4.1. above, victims shall:

- 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;
- be guaranteed the right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement;
- be guaranteed the right to fair, adequate, effective, prompt, non-discriminatory, appropriate and gender sensitive access to justice, individual or collective reparation and effective remedy in accordance with this (Legally Binding Instrument) and international law, such as restitution, compensation, rehabilitation, reparation, satisfaction, guarantees of non-repetition, injunction, environmental remediation, and ecological restoration;
- 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 States Parties;
- be protected from any unlawful interference against their privacy, and from intimidation, and reprisals, before, during and after any proceedings have been instituted, as well as from re-victimization in the course of proceedings for access to effective, prompt and adequate remedy, including through appropriate protective and support services that are gender and age responsive; and,
- be guaranteed access to information and legal aid relevant to pursue effective remedy.

4.3. 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 regional or national law.

Article 5. Protection of Victims

5.1. States 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, prompt and adequate remedy as well as from re-victimization in the course of these proceedings.

5.2. States 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.

5.3. States 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 and/or legal persons found responsible, in accordance with domestic and international law.

Article 6. Prevention

6.1. States Parties shall regulate effectively the activities of all business enterprises within their territory jurisdiction, or otherwise under their control, including transnational corporations and other business enterprises that undertake activities of a transnational character.

6.2. States Parties shall take appropriate legal and policy measures to ensure that business enterprises, including transnational corporations and other business enterprises that undertake activities of a transnational character within their territory jurisdiction, or otherwise under their control, respect internationally recognized human rights and prevent and mitigate human rights abuses throughout their business activities and relationships.

6.3. For that purpose, States Parties shall require business enterprises to undertake human rights due diligence, proportionate to their size, risk of human rights abuse or the nature and context of their business activities and relationships, as follows:

- Identify, assess and publish any actual or potential human rights abuses that may arise from their own business activities, or from their business relationships;
- Take appropriate measures to avoid prevent and mitigate effectively the identified actual or potential human rights abuses which the business enterprise causes or contributes to through its own activities or through entities or activities which it controls or manages, and take reasonable and appropriate measures to prevent or mitigate abuses to which it is directly linked through its business relationships;
- Monitor the effectiveness of their measures to prevent and mitigate human rights abuses, including in their business relationships;
- 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.

6.4. States Parties shall ensure that human rights due diligence measures undertaken by business enterprises shall include:

- Undertaking and publishing regular human rights, labour rights, environmental and climate change impact assessments throughout their operations;
- 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 experienced by women and girls;
- Conducting meaningful consultations with individuals or communities whose human rights can potentially be affected by business activities, and with other relevant stake holders including trade unions while giving special attention to those facing heightened risks of business related human rights abuses, such as women, children, persons with disabilities, indigenous peoples, people of African descent, older persons, migrants, refugees, internally displaced persons and protected populations under occupation or conflict areas;

- Ensuring that consultations with indigenous peoples are undertaken in accordance with the internationally agreed standards of free, prior and informed consent;
- Reporting publicly and periodically on non-financial matters, including information about group structures and suppliers as well as policies, risks, outcomes and indicators concerning human rights, labour rights, health, environmental and climate change standards throughout their operations, including in their business relationships;
- Integrating human rights due diligence requirements in contracts regarding their business relationships and making provision for capacity building or financial contributions, as appropriate;
- Adopting and implementing enhanced human rights due diligence measures to prevent human rights abuses in occupied or conflict affected areas, including situations of occupation.

6.5. States Parties may provide incentives and adopt other measures to facilitate compliance with requirements under this Article by micro, small and medium sized business enterprises.

6.6. States 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, jurisdiction, or otherwise under their control, including those of transnational character.

6.7. Without prejudice to the provisions on criminal, civil and administrative liability under Article 8, State Parties shall provide for adequate penalties, including appropriate corrective action where suitable, for business enterprises failing to comply with provisions of Articles 6.3 and 6.4.

6.8. In setting and implementing their public policies and legislation with respect to the implementation of this (Legally Binding Instrument), States Parties shall act in a transparent manner and 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

7.1. States Parties shall provide their courts and State-based non-judicial mechanisms, with the necessary competence in accordance with this (Legally Binding Instrument) to enable victims' access to adequate, timely and effective remedy and access to justice, and to overcome the specific obstacles which women, vulnerable and marginalized people and groups face in accessing such mechanisms and remedies.

7.2. States 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.

7.3. States Parties shall provide adequate and effective

legal assistance to victims throughout the legal process, including by:

- Making information available and accessible to victims of their rights and the status of their claims, in relevant languages and accessible formats to adults and children alike, including those with disabilities;
- Guaranteeing the rights of victims to be heard in all stages of proceedings;
- Avoiding unnecessary costs or delays for bringing a claim and during the disposition of cases and the execution of orders or decrees granting awards; and,
- Removing legal obstacles, including the doctrine of forum non conveniens, 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.

7.4. States Parties shall ensure that court fees and rules concerning allocation of legal costs do not place an unfair and unreasonable burden on victims or 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.

7.5. States Parties shall enact or amend laws allowing judges to reverse the burden of proof in appropriate cases to fulfill the victims' right to access to remedy, where consistent with international law and its domestic constitutional law.

7.6. State Parties shall provide effective mechanisms for the enforcement of remedies for human rights abuses, including through prompt execution of national or foreign judgments or awards, in accordance with the present (Legally Binding Instrument), domestic law and international legal obligations.

Article 8. Legal Liability

8.1. States 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, within their territory, 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.

8.2. State Parties shall ensure that their domestic liability regime provides for liability of legal persons without prejudice to the liability of natural persons, and does not make civil liability contingent upon finding of criminal liability or its equivalent for the same acts.

8.3. States Parties shall adopt legal and other measures necessary to ensure that their domestic jurisdiction provides for effective, proportionate, and dissuasive criminal, civil and/or administrative sanctions where legal or natural persons conducting business activities have caused or contributed to human rights abuses.

8.4. States Parties shall adopt measures necessary to ensure that their domestic law provides for adequate, prompt, effective, gender and age 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.

8.5. States Parties shall require legal or natural persons conducting 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.

8.6. States Parties shall ensure that their domestic law provides for the liability of legal and/or natural persons conducting business activities, including those of transnational character, for their failure to prevent another legal or natural person with whom they have had a business relationship, from causing or contributing to human rights abuses, when the former controls, manages 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 take adequate measures to prevent the abuse.

8.7. 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 8.6. The court or other competent authority will decide the liability of such legal or natural persons after an examination of compliance with applicable human rights due diligence standards.

8.8. 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 offenses under international human rights law binding on the State Party or customary international law, or their domestic law. Regardless of the nature of the liability, States Parties shall ensure that the applicable penalties are proportionate with the gravity of the offense. 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 offenses.

8.9. 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 offenses under the applicable domestic law.

8.10. States 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 offense in accordance with this Article and criminal offenses as defined by their domestic law.

Article 9. Adjudicative Jurisdiction

9.1. 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:

- the human rights abuse occurred and/or produced effects; or
- an act or omission contributing to the human rights abuse occurred;
- 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; or
- the victim is a national of or is domiciled.

This provision does not exclude the exercise of civil jurisdiction on additional grounds provided for by international treaties or domestic laws.

9.2. 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:

- place of incorporation or registration; or
- place where the principal assets or operations are located; or
- central administration or management is located; or
- principal place of business or activity on a regular basis.

9.3. Courts vested with jurisdiction on the basis of Article 9.1 and 9.2 shall avoid imposing any legal obstacles, including the doctrine of forum non conveniens, to initiate proceedings in line with Article 7.5 of this (legally binding instrument).

9.4. Courts shall have jurisdiction over claims against legal or natural persons not domiciled in the territory of the forum State, if the claim is connected with a claim against a legal or natural person domiciled in the territory of the forum State.

9.5. 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 judicial process is available and there is a connection to the State Party concerned as follows:

- the presence of the claimant on the territory of the forum;
- the presence of assets of the defendant; or
- a substantial activity of the defendant

Article 10. Statute of limitations

10.1. The States Parties to the present (Legally Binding Instrument) shall adopt any legislative or other measures necessary to ensure that statutory or other limitations shall not apply for the commencement of legal proceedings in relation to human rights abuses resulting in violations of international law which constitute the most serious crimes of concern to the international community as a whole.

10.2. The States Parties to the present (Legally Binding Instrument) shall adopt any legislative or other measures necessary to ensure that statutory or other limitations applicable to civil claims or violations that do not constitute the most serious crimes of concern to the international community as a whole allow a reasonable period of time for the commencement of legal proceedings in relation to human rights abuses, particularly in cases where the abuses occurred in another State or when the harm may be identifiable only after a long period of time.

Article 11. Applicable Law

11.1. All matters of 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 seized on the matter.

11.2. All matters of substance which are not specifically regulated under this [international legally binding instrument] may, upon the request of the victim, be governed by the law of another State where:

- the acts or omissions have occurred or produced effects; or
- the natural or legal person alleged to have committed the acts or omissions is domiciled.

Article 12. Mutual Legal Assistance and International Judicial Cooperation

12.1. 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.

12.2. States Parties may invite any State not party to this (Legally Binding Instrument) to provide mutual legal assistance and international judicial cooperation under this Article on the basis of an ad hoc arrangement, an agreement with such State or any other appropriate basis.

12.3. 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.

12.4. 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.

12.5. 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.

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

- Taking evidence or statements from persons;
- Executing searches and seizures;
- Examining objects and sites;
- Providing information, evidentiary items and expert evaluations;
- Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
- Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
- Facilitating the voluntary appearance of persons in the requesting State Party; viii. Facilitating the freezing and recovery of assets;
- 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;
- Assisting in regard to the application of domestic law;
- Any other type of assistance that is not contrary to the domestic law of the requested State Party.

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.

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

With respect to criminal offenses 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;

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.

12.7. The competent authorities of a State Party may, without prior request, transmit and exchange information relating to criminal offenses 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.

12.8. 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.

12.9. States 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.

12.10. Any judgment of a court having jurisdiction in accordance with this (Legally Binding Instrument) which is enforceable in the State of origin of the judgment 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 judgments shall be to the extent permitted by the law of that State.

12.11. Recognition and enforcement may be refused, only where:

- 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
- where the judgment is irreconcilable with an earlier judgment validly pronounced in the State Party where its recognition is sought with regard to the same cause of action and the same parties; or
- where the judgment is manifestly contrary to the ordre public of the State Party in which its recognition is sought.

12.12. Mutual legal assistance or international legal cooperation under this article may be refused by a State Party if it is contrary to the applicable laws of the requested State Party.

12.13. States Parties shall not decline to render mutual legal assistance or international judicial cooperation in a claim involving liability for harms or criminal offenses, 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.

Article 13. International Cooperation

13.1. States Parties shall cooperate in good faith to enable the implementation of their obligations recognized under this (Legally Binding Instrument) and the fulfillment of the purposes of this (Legally Binding Instrument).

13.2. States 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:

- Promoting effective technical cooperation and capacity-building among policy makers, parliaments, judiciary, national human rights institutions, business enterprises and operators, as well as users of domestic, regional and international grievance mechanisms;
- Sharing experiences, good practices, challenges, information and training programs on the implementation of the present (Legally Binding Instrument);
- Raising awareness about the rights of victims of business-related human rights abuses and the obligations of States under this (Legally Binding Instrument);
- 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;
- 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

14.1. 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.

14.2. Notwithstanding 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.

14.3. 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, fulfillment 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.

14.4. This (Legally Binding Instrument) shall not affect the rights and obligations of the States 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 on the Law of Treaties.

14.5. States Parties shall ensure that:

All 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 does not undermine or restrict their capacity to fulfill their obligations under this (Legally Binding Instrument) and its protocols, if any, as well as other relevant human rights conventions and instruments.

All new bilateral or multilateral trade and investment agreements shall be compatible with the States Parties' human rights obligations under this (Legally Binding Instrument) and its protocols, as well as other relevant human rights conventions and instruments.

SECTION III

Article 15. Institutional Arrangements

Committee

15.1. There shall be a Committee established in accordance with the following procedures:

- The Committee shall consist of, 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 (18) 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.

- The experts shall be elected by the States Parties, consideration being given to equitable geographical distribution, the differences among legal systems, gender and age 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).

- The members of the Committee shall be elected by secret ballot from a list of persons nominated by States 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 States 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 States 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 Party which has nominated them, and shall submit it to the States Parties.

- 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.

- 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.

- The Committee shall establish its own rules of procedure and elect its officers for a term of two years. They may be re-elected.

- 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.

- 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.

15.2. States 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 States Parties shall submit supplementary reports every four years on any new measures taken and such other reports as the Committee may request.

15.3. The Secretary-General of the United Nations shall transmit the reports to all States Parties.

15.4. The Committee shall have the following functions:

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 States Parties and other stakeholders;

Consider and provide concluding observations and recommendations on reports submitted by States 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 these suggestions and general recommendations in the report of the Committee together with comments, if any, from States Parties;

Provide support to the States Parties in the compilation and communication of information required for the implementation of the provisions of the (Legally Binding Instrument);

Submit an annual report on its activities under this (Legally Binding Instrument) to the States Parties and to the General Assembly of the United Nations;

[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

15.5. 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.

15.6. 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 of Victims

15.7. States Parties shall establish an International Fund for Victims covered under this (Legally Binding Instrument), to provide legal and financial aid to victims, taking into account the additional barriers faced by women, children, persons with disabilities, Indigenous peoples, migrants, refugees, internally displaced persons, and other vulnerable or marginalized persons or groups in seeking access to remedies. This Fund shall be established at most after (X) years of the entry into force of this (Legally Binding Instrument). The Conference of States Parties shall define and establish the relevant provisions for the functioning of the Fund.

Article 16. Implementation

16.1. States 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).

16.2. Each State Party shall furnish copies (including in electronic form or online links) 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, within [6 months] of their enactment, to the Secretary-General of the United Nations, which shall be made publicly available.

16.3. 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, the use of child soldiers and the worst forms of child labour, including forced and hazardous child labour.

16.4. In implementing this (Legally Binding Instrument), States 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, but not limited to, women, children, persons with disabilities, indigenous peoples, people of African descent, older persons, migrants, refugees and internal displaced persons.

16.5. The application and interpretation of these Articles shall be consistent with international law, including 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. Relations with Protocols

17.1. This (Legally Binding Instrument) may be supplemented by one or more protocols.

17.2. 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).

17.3. 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.

17.4. 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

18.1. If a dispute arises between two or more States 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.

18.2. 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:

Submission of the dispute to the International Court of Justice;

Arbitration in accordance with the procedure and organization mutually agreed by both States Parties.

18.3. If the States 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 States Parties agree otherwise.

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

19.1. 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).

19.2. 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).

19.3. 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

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

20.2. 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

21.1. 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 States Parties present and voting in the Conference of the States Parties shall be submitted by the Secretary-General to all States Parties for acceptance.

21.2. 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 States 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 States Parties which have accepted it.

21.3. 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 States Parties on the thirtieth day after the number of instruments of acceptance deposited reaches two-thirds of the number of States Parties at the date of adoption of the amendment.

Article 22. Reservations

22.1. Reservations incompatible with the object and purpose of the present (Legally Binding Instrument) shall not be permitted.

22.2. Reservations may be withdrawn at any time.

Article 23. Denunciation

23.1. 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

24.1. The Secretary-General of the United Nations shall be the depositary of the present (Legally Binding Instrument).

24.2. 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).