General comments respectfully submitted in relation to the October 26-30, 2020 negotiations on the United Nations Human Rights Council's Open-ended Intergovernmental Working Group on a Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and other Business Enterprises in Geneva via Webex.

Incorporate the Corporate-Abuser-Pay principle, mandate comprehensive state party reports, and include conflict of interest declarations into the Committee appointment process

1. **The Centre for Health Science and Law (CHSL)[1] proposes that the Working Group add the following to the end of Article 15(1)(a):** *Committee expert members shall provide declarations of conflicts of interest to the Conference of State Parties or its designate in a prescribed manner and remain free of non-trivial conflicts of interest during their tenure on the Committee.*

   Rationale: Declaring conflicts of interest is consistent with the spirit of the *Legally Binding Instrument* and, specifically, Article 6.7.[2] It is appropriate for experts to self-identify as representing public interest, academic, or human rights interests on one hand, or business interests on the other, based on how those entities are financed and governed and to be characterized as such in meetings and reports. These distinctions are not always obvious. Disclosing sources of conflicts of interest was advocated by one of the Working Group's experts as a precondition for appointing experts to the Treaty's Article 13 Committee (now Article 15).[3] Also, disclosing conflicts of interest is typically required by authors before publishing in scientific journals.

2. **Proposed Amendment to 15(2) (comprehensiveness of reports):** *Article 15 2. State Parties shall submit to the Committee, through the Secretary-General of the United Nations, comprehensive reports following a prescribed format 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, time-delimited plans to achieve full implementation and such other reports as the Committee may request.*

   Rationale: If given the flexibility, national government reports can often be weakly indicative of progress by reporting on metrics selectively, rather that comprehensively which can mask implementation failures. In addition, full domestic legal implementation of political commitments to treaties can be slow-going without concrete plans, clear accountability mechanisms, and targeted technical assistance.

3. **Proposed amendment to Article 15(7) re "International Fund for Victims" and establish a corporate-abuser-pay principle as follows:** *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 one ~~(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. The fund shall be replenished by the State Parties annually on a mandatory basis and supplemented by a 2% levy from the proceeds of any fine, court-approved settlement, or tribunal-imposed financial award in any proceeding in which this (Legally Binding Instrument) is cited in the pleadings by complainants or defendants/respondents, or in any oral or written judgement, following a **Corporate-Abuser-Pay-Principle**."*

Rationale: State parties should begin to finance the International Fund for Victims on a priority basis soon after the entry into force of the *Legally Binding Instrument*. The fund could be supplemented by a small (e.g., 2%) levy on court- or tribunal-ordered financial penalties imposed on business enterprises where the *Instrument* is relied up to secure claims. This funding mechanism can be understood as the **"Corporate-Abuser-Pay-Principle"** and brought to the attention of national judiciaries, legal professions, and human rights organizations to facilitate its use. The bulk of payments would foreseeably derive from large corporations (often headquartered in high-come countries) whose global national revenues often exceed entire gross domestic products of low- and middle-income economies, posing severely unequal access to human rights advocacy resources. For instance, the annual revenue of the *smallest* of Fortune's "Global 500" companies[4]—approximately US$25 billion—exceeds the Gross National Income of the entire economies of each of 106 countries,[5] including 78 countries designated as low- and middle-income countries by the World Bank.[6]

Revenue applying the **Corporate-Abuser-Pay-Principle** could help financially support efforts to investigate, prosecute and litigate human rights claims against corporations in low- and middle-income countries and elsewhere when doing so is in the interests of justice. Funds could also be used to support law reform technical assistance in low- and middle-income countries where corporate accountability laws and regulations could better implement of the *Legally Binding Instrument*, such as:

a) ANTI-SLAPP legislation (ANTI-strategic lawsuits against public participation),
b) child impact assessments,
c) class action rules of procedure,
d) consumer protection legislation (including products liability & misrepresentation rules),
e) conflict of interest safeguards for law-making and soliciting expert advice,
f) environmental impact assessments,
g) freedom-of-information or access-to-information laws,
h) gender sensitive budgeting,
i) health impact assessments,
j) human rights codes,
k) intervenor funding arrangements, i.e., legal aid for human rights representation,
l) lobbyist registries to help make pressure on regulators and law-makers transparent,
m) public health law,
n) punitive damage awards,
o) restraints on corporate capture by government agencies, and
p) whistle-blower protections, etc.

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ENDNOTES

[1] CHSL is a small non-profit NGO based in Canada that accepts no funding from business. Its work is primarily financially supported by subscription revenue from its advertisement-free consumer magazine, *Food for Life Report*. It also advocates for public health reforms to national and international law and policy related to food, alcohol, nutrition and conflict of interest safeguards in Canada, and at the Codex Alimentarius Commission, the World Health Organization, and United Nations General Assembly. CHSL has Special Consultative Status with the United Nations Economic and Social Council (ECOSOC).

[2] Article 6.7, OEIGWG Chairmanship, Legally Binding Instrument, 2nd Revised Draft, August 6, 2020 states, in part:
"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."

[3] See paragraph 93 on page 16 of the January 9, 2020 *Report of the Fifth Session,* https://undocs.org/A/HRC/43/55.

[4] See: https://fortune.com/global500/2019/search/

[5] See: https://unstats.un.org/unsd/snaama/Downloads

[6] See: https://blogs.worldbank.org/opendata/new-country-classifications-income-level-2018-2019