

**OEWG ON A LEGALLY BINDING INSTRUMENT ON TNCs AND OBE AND HUMAN RIGHTS**

**6TH SESSION, 2020**

**ICJ Oral intervention on Article 12, 13 and 14**

29 October, 2020

Mr Chairperson-Rapporteur,

Article 12 on mutual legal assistance is still largely focused on criminal investigations and proceedings which resemble those adopted in such treaties as the convention on transnational organized crime or against corruption. However, the Second Revised draft, like the first Revised draft maintains a strong focus on civil liability, with a too greatly reduced role for criminal liability for business enterprises. To improve the internal consistency of the proposed treaty, it would be important to amend and adapt the provisions on mutual legal assistance also to civil cases.

In Article 14(5) (b), it would be better to clarify that the impact assessments to be carried out to ensure the compatibility of other agreements with the present legally binding instrument, ***“should be conducted prior to concluding such agreements and whenever necessary during the time the agreement is in force. Such assessments should evaluate and address any foreseeable effects of such agreements on the enjoyment of human rights and be undertaken through full and public consultation with all stakeholders.”***

The OEWG should seriously consider the option of including a new sub-paragraph under art. 14 (5) (c) regarding the obligation of States to integrate binding and enforceable human rights, environment and labour clauses in their trade and investment agreements. Moreover, art. 14(5) should require the inclusion of investors’ human rights obligations in trade and investment agreements.