



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.

**Ensure standing for human rights victims and advocates
in the state dispute resolutions process**

The Centre for Health Science and Law (CHSL)¹ proposes that the Working Group add a new paragraph to Article 18 (re standing of victims and human rights defenders in the settlement of state disputes) as follows: *18(4) If a dispute arises between two state parties, the parties shall offer unrestricted access to rights holders directly affected by the dispute and large and liberal access to experts and non-governmental organizations to participate in written and oral arguments, with leave of the court or tribunal where applicable, in all negotiations, including arbitrations and proceedings of the International Court of Justice. All proceedings should be as public and transparent as possible with no more secrecy than is necessary to protect the privacy and security of victims.*

Rationale: The entitlements of natural persons to be free from physical harm are at the heart of this *Legally Binding Instrument*.² Victims and champions of human rights must be able to effectively participate in all relevant disputes to ensure that victims' interests are protected and not subverted to geo-political brinkmanship. While state parties to a dispute may often facilitate participation of affected parties, there should be opportunities for civil society organizations with ECOSOC consultative status, human rights agencies, and other organizations to intervene directly, with the with leave of the court or other intermediaries. Currently, generally, only state parties and specialized institutes of the United Nations (i.e., named intergovernmental organizations) have standing to participate in proceedings of the International Court of Justice. The *Binding Legal Instrument* could facilitate such standing.

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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](#) The preamble states, in part:

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

And Article 7 (3)(b) which states:

*“3. State Parties shall provide adequate and effective legal assistance to victims throughout the legal process, including by: ...
b. Guaranteeing the rights of victims to be heard in all stages of proceedings;”*