



**Comments of the NGO Centre for Health Science and Law by Zoom
Seventh session of the open-ended intergovernmental working group on
transnational corporations and other business enterprises with respect to human rights
of the United Nations Human Rights Council
October 25-29, 2021
concerning Article 15
(conflicts of interest, comprehensiveness of reports, and corporate-abuser-pay-principle)**

The Centre for Health Science and Law supports the proposal by Panama to include a reference to the best interests of the child in the preamble.

The Centre for Health Science and Law (CHSL) proposes that the Working Group:

I. Add the following to the end of Article 15(1)(a) (conflicts of interest):

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 6.8. 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 15 Committee. Also, disclosing conflicts of interest is typically required by authors before publishing in scientific journals.

II. Amend Article 15(2) (comprehensiveness of reports) as follows:

Article 15 2. **States** 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 **States** 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 than 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. Arguably this amendment would promote an important change to member state reporting and a recurring incentive to implement LBI provisions in domestic law.

III. Amend Articles 13(2(e) and 15(7) as follows (Victim Fund) as follows:

International Advocacy Fund for Victims of Human Rights Abuses or Violations Concerning Businesses (also referenced in article 13.2(e))

Rationale: The longer name more accurately characterizes the fund's purpose—especially to a general audience—and distinguishes it from a compensation fund.

Amend to Article 15(7) re “International Fund for Victims” and establish a corporate-abuser-pay principle as follows:

States Parties shall establish an International **Advocacy** Fund for Victims **of Human Rights Abuses by Businesses** 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 **one year** [~~DELETE: (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 States Parties annually 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) if so-ordered 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 LBI is relied upon 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-income 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. This would help establish a Corporate-Abuser-Pay-Principle to 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 public interest litigation and law reform technical assistance in low- and middle-income countries where corporate accountability laws and regulations could better implement the Legally Binding Instrument, such as national regulations governing child, health and environmental rights impact assessments, class action rules of procedure, and transparency mechanisms.

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