



### ***Article 16: Implementation***

The changes to article 16.3 are welcome to mention: “the use of child soldiers and the worst forms of child labour, including forced and hazardous child labour.” However, this whole provision seems to address business enterprises human rights due diligence processes (identify, prevent and mitigate risks) and as such it would be better located under article 6 (prevention), which focuses on business’s management of human rights risks.

Article 16.5 calls for the application and interpretation of the proposed treaty in a manner consistent with international human rights and humanitarian law. This is important, but since Article 14 already addresses consistency with international law and interpretation issues, it would make more sense to move this part of the provision to that article and leave the rest, on non-discrimination, in article 16.

Likewise, it is important that the treaty contains a general provision providing for the application and interpretation of the treaty in a manner that does not derogate from higher levels of protection recognized in international law or domestic law. This provision will expand the scope or replace current Article 4.3:

“Nothing in the present [LBI] shall affect any provisions which are more conducive to the realization and protection of human rights in the context of business activities, and which may be contained in the law of a State Party or international law in force for that State. There shall be no restriction upon or derogation from any of the human rights and fundamental freedoms recognized or existing in any State Party to the present Convention pursuant to law, conventions, regulation or custom on the pretext that the present Convention does not recognize such rights or freedoms or that it recognizes them to a lesser extent.”

I refer to the ICJ’s full comments and recommendations to the Third Revised draft for further details <https://www.icj.org/wp-content/uploads/2021/10/ICJ-Comments-Third-Revised-LBI-2021final.pdf>