**United States’ Interventions on the Suggested Chair’s Proposals**

**Definitions**

**Remedy:** We recognize the importance of access to remedy in this text as there is still much work to be done in implementing the UNGPs, particularly pilar three. Therefore, precise definitions are particularly important. The United States believes that there is tension between the proposed definitions of “remedy” and “effective remedy” that needs to be reconciled. According to the definition, any remedy provided is expected to return a victim to the position “they would have been [in] had the abuse not occurred, or as nearly as is possible in the circumstances.” Yet, the definition of “effective remedy” includes a range of options that, while consistent with the forms of remedies contemplated under the UNGPs, may or may not “restore” a victim to their prior position. Moreover, the definition of “effective remedy” too narrowly characterizes remedy as “reparations,” which suggests that all remedies must be monetary in nature. The United States proposes that the definition of remedy be aligned more closely with the commentary of UNGPs principle 25, and thus the first sentence would be replaced with: **“Remedy” shall mean redress to counteract or make good for any human rights abuses that have occurred.**  The second sentence also should be revised, both to address the “reparations” concern and to eliminate redundancies. We suggest the following: **An “effective remedy” involves redress that is adequate and prompt; is gender and age responsive; and may draw from a range of remedies such as restitution, compensation, rehabilitation, cessation of abuse, apologies, sanctions, and guarantees of non-repetition.”**

**Relevant State Agencies:** The definition of “relevant State agencies” seems overly broad to the United States, as at least under the U.S. system, judicial functions are generally independent, and not under the control of, the State and therefore are not agents of the state. We suggest instead that rather than using “relevant State agencies” as the operative term in, e.g., Article 7, the term “state-based judicial and non-judicial grievance mechanism” should be used and therefore defined, based on the UNGP definition. Thus, we would revise this definition by **replacing “relevant State agencies” with “state-based judicial and non-judicial grievance mechanisms.”** This term could include, for example, a non-judiciary grievance mechanism at a bilateral development finance agency as well as a judiciary grievance mechanism through a court. If instead the definition is intended to focus on the functions within the administrative bodies of a State, the definition should be clarified to exclude judicial bodies and non-administrative courts.

**United States’ Interventions on the 3rd Draft Rev. Text**

**Preamble**

Starting with PP4. As PP4 does not directly track the Charter of the United Nations, the United States proposes **striking “as set out in the Charter of the United Nations” and inserting “the Charter of the United Nations" after “treaties,”.**

On PP6, The United States recognizes the importance of access to remedy, as the third pillar of the UNGPs, in this process. We suggest revising PP6 to be consistent with the framing of human rights under international human rights law. Furthermore, we have questions about the reference to international humanitarian law as it is used here, where it is intermingled with references to international human rights law, and absent further clarity about how international humanitarian law fits within this provision and the scope of this agreement as a whole we would recommend replacing the reference to international humanitarian law with “including as applicable during armed conflict.”

The United States proposes editing PP6 to read: **Reaffirming the rights of every person to be equal before the law, to equal protection of the law, and to have an effective remedy in case of violations of international human rights law, including as applicable during armed conflict, including rights related to non-discrimination, participation and inclusion.**

On PP9, The United States opposes adding the language proposed by Iran and proposes reverting to language that has been agreed in other UN contexts for this paragraph as follows: **Upholding the principles of sovereign equality among Members of the UN, peaceful settlements and territorial integrity as set out in Article 2 of the United Nations Charter**

On PP11, as has been noted, the United States understands the desire of the drafters to increase corporate accountability through this process. However, we would not be able to accept the suggestion that an agreement among states can itself directly impose legal obligations on businesses. PP 11 misstates international human rights law by asserting that business enterprises have “obligations” to respect internationally recognized human rights, when businesses do not have the capacity to take on obligations as a matter of international law. The United States proposes replacing PP11 with the following, which would be consistent with principle 13 of the UNGPs by replacing “obligation” with “responsibility,” and replacing “human rights abuses” with “adverse human rights impacts,” : **Underlining that business enterprises, regardless of their size, sector, location, operational context, ownership and structure have the responsibility to respect internationally recognized human rights, including by avoiding causing or contributing to adverse human rights impacts through their own activities, and address such impacts when they occur; and by seeking to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships.**

On PP14bis, while protection of the environment is an important global concept, the inclusion of these environmental treaties in PP14bis suggests that their key goals relate to the protection of human rights; as that is not the case, we believe their inclusion is beyond the scope of the LBI, and we recommend **deletion of PP14bis**.

Lastly, on PP18, The United States again notes that business enterprises do not have obligations under international human rights law to be clarified through the LBI, and thus proposes that **“obligations” be replaced with “responsibilities,”** consistent with the UNGPs. I thank you.

**Article 1 Definitions**

The United States notes that the draft definition of victim is somewhat confusing in light of the use of the term throughout the draft treaty. Specifically, as a victim is defined as a person or group of persons that “have suffered harm that constitutes human rights abuse,” a factual determination would need to be made that harm has been suffered in order for the term “victim” to apply. Thus, for example, it might not make sense to discuss in Article 7 reducing barriers to access to grievance mechanisms for “victims” as such provisions could only apply to individuals who have already been determined to be victims as part of the grievance process, and thus the protections the LBI is intended to put in place for individuals seeking remedy would not apply from the beginning of any grievance process. Therefore, while we take no issue with the term “victim” or its definition, we think it could lead to an unintended, narrow interpretation of Article 7. As per the UNGPs, we suggest that “rights holder” be used in place of “victims” throughout the LBI.

In 1.3, the definition of business activities, the phrase “other activity” presents vagueness issues. In order to improve predictability as to the scope to be covered, **we recommend deleting “and other activity”** in the beginning of the paragraph.

In 1.4, business activities of transnational character The United States would like to note a general concern that limiting application of provisions of the LBI to business activities of a transnational character would, in some cases, be unduly narrow and inconsistent with the UNGPs.

**Article 2 Purpose**

The US believes it is important to ensure that any additional instrument on BHR builds upon and is aligned with the UN Guiding Principles and international law. We would welcome input from experts on the UNGPs as to how best to ensure alignment of this provision with the UNGPs. As we stated before, only states, not businesses, have human rights "obligations" to fulfill, therefore we prefer the use of “responsibilities” in b) as proposed by Brazil and the EU.