**International Human Rights Association of American Minorities (IHRAAM)**

IGWG Transnational Corporations and OBEs A/HRC/WG.16/8/1

Eighth session 24-28 October 2022

Monday 24 General Statement

Ambassador Ronald F. Barnes

Greetings – good morning distinguished Chair and all participants,

Chair’s text and 3rd revised draft 6 to 13

RFB Nothing specific on human rights defenders in the document or peoples threatened with retaliation?

**Article 6. Prevention**

6.1. States Parties shall regulate effectively the activities of all business enterprises within their territory, jurisdiction, or otherwise under their control, including transnational corporations and other business enterprises that undertake activities of a transnational character.

RFB “otherwise under their control” , including transnational corporations and other business enterprise that is installed in violation of the international right of self-determination?

6.2. States Parties shall take appropriate legal and policy measures to ensure that business enterprises, including transnational corporations and other business enterprises that undertake activities of a transnational character, within their territory, jurisdiction, or otherwise under their control, respect internationally recognized human rights and prevent and mitigate human rights abuses throughout their business activities and relationships.

RFB United Nations studies already questioned the legitimacy of “otherwise under their control”, by NSGTs or any other limitation of sovereignty.

6.3. For that purpose, States Parties shall require business enterprises to undertake human rights due diligence, proportionate to their size, risk of human rights abuse or the nature and context of their business activities and relationships, as follows:

a. Identify, assess and publish any actual or potential human rights abuses that may arise from their own business activities, or from their business relationships; 8

b. Take appropriate measures to avoid, prevent and mitigate effectively the identified actual or potential human rights abuses which the business enterprise causes or contributes to through its own activities, or through entities or activities which it controls or manages, and take reasonable and appropriate measures to prevent or mitigate abuses to which it is directly linked through its business relationships;

c. Monitor the effectiveness of their measures to prevent and mitigate human rights abuses, including in their business relationships;

d. Communicate regularly and in an accessible manner to stakeholders, particularly to affected or potentially affected persons, to account for how they address through their policies and measures any actual or potential human rights abuses that may arise from their activities including in their business relationships.

6.4. States Parties shall ensure that human rights due diligence measures undertaken by business enterprises shall include:

a. Undertaking and publishing regular human rights, labour rights, environmental and climate change impact assessments throughout their operations;

b. Integrating a gender perspective, in consultation with potentially impacted women and women´s organizations, in all stages of human rights due diligence processes to identify and address the differentiated risks and impacts experienced by women and girls;

c. Conducting meaningful consultations with individuals or communities whose human rights can potentially be affected by business activities, and with other relevant stakeholders, including trade unions, while giving special attention to those facing heightened risks of business-related human rights abuses, such as women, children, persons with disabilities, indigenous peoples, people of African descent, older persons, migrants, refugees, internally displaced persons and protected populations under occupation or conflict areas;

d. Ensuring that consultations with indigenous peoples are undertaken in accordance with the internationally agreed standards of free, prior and informed consent;

e. Reporting publicly and periodically on non-financial matters, including information about group structures and suppliers as well as policies, risks, outcomes and indicators concerning human rights, labour rights, health, environmental and climate change standards throughout their operations, including in their business relationships;

f. Integrating human rights due diligence requirements in contracts regarding their business relationships and making provision for capacity building or financial contributions, as appropriate; 9

g. Adopting and implementing enhanced human rights due diligence measures to prevent human rights abuses in occupied or conflict-affected areas, including situations of occupation.

6.5. States Parties may provide incentives and adopt other measures to facilitate compliance with requirements under this Article by micro, small and medium sized business enterprises.

6.6. States Parties shall ensure that effective national procedures are in place to ensure compliance with the obligations laid down under this Article, taking into consideration the potential human rights abuses resulting from the business enterprises´ size, nature, sector, location, operational context and the severity of associated risks associated with the business activities in their territory, jurisdiction, or otherwise under their control, including those of transnational character.

6.7. Without prejudice to the provisions on criminal, civil and administrative liability under Article 8, State Parties shall provide for adequate penalties, including appropriate corrective action where suitable, for business enterprises failing to comply with provisions of Articles 6.3 and 6.4.

6.8. In setting and implementing their public policies and legislation with respect to the implementation of this (Legally Binding Instrument), States Parties shall act in a transparent manner and protect these policies from the influence of commercial and other vested interests of business enterprises, including those conducting business activities of transnational character.

**Article 7. Access to Remedy**

7.1. States Parties shall provide their courts and State-based non-judicial mechanisms, with the necessary competence in accordance with this (Legally Binding Instrument) to enable victims´ access to adequate, timely and effective remedy and access to justice, and to overcome the specific obstacles which women, vulnerable and marginalized people and groups face in accessing such mechanisms and remedies.

7.2. States Parties shall ensure that their domestic laws facilitate access to information, including through international cooperation, as set out in this (Legally Binding Instrument), and enable courts to allow proceedings in appropriate cases.

7.3. States Parties shall provide adequate and effective legal assistance to victims throughout the legal process, including by:

a. Making information available and accessible to victims of their rights and the status of their claims, in relevant languages and accessible formats to adults and children alike, including those with disabilities; b.

b. Guaranteeing the rights of victims to be heard in all stages of proceedings; 10

c. Avoiding unnecessary costs or delays for bringing a claim and during the disposition of cases and the execution of orders or decrees granting awards; and,

d. Removing legal obstacles, including the doctrine of forum non conveniens, to initiate proceedings in the courts of another State Party in appropriate cases of human rights abuses resulting from business activities of a transnational character.

7.4. States Parties shall ensure that court fees and rules concerning allocation of legal costs do not place an unfair and unreasonable burden on victims or become a barrier to commencing proceedings in accordance with this (Legally Binding Instrument) and that there is a provision for possible waiving of certain costs in suitable cases.

7.5. States Parties shall enact or amend laws allowing judges to reverse the burden of proof in appropriate cases to fulfill the victims´ right to access to remedy, where consistent with international law and its domestic constitutional law.

7.6. State Parties shall provide effective mechanisms for the enforcement of remedies for human rights abuses, including through prompt execution of national or foreign judgments or awards, in accordance with the present (Legally Binding Instrument), domestic law and international legal obligations.

# Article 8. Legal Liability

 **(Has reservations regarding criminal liability of legal persons: Panama, Russia)**

RFB Reference to Article 8 – legal liability - All Indigenous Peoples currently sit outside the sphere of domestic jurisdiction since the Constitution of the United States of America does not allow for unilateral annexation of territory, as admitted by President Thomas Jefferson in response to the Louisiana Purchase of 1803. UN studies call for proof, stating the burden of proof is on States, that they legitimately acquired territory belonging to Indigenous Peoples or other peoples. What is domestic law and how does it apply when States violates its own Constitution in annexation of foreign territory? The USA and its political sub-divisions already admit that Alaska and Hawaii and other territories are not properly annexed into the United States of America.

8.1. States Parties shall ensure that their domestic law provides for a comprehensive and adequate system of legal liability of legal and natural persons conducting business activities, within their territory, jurisdiction, **or otherwise under their control**, for human rights abuses that may arise from their own business activities, including those of transnational character, or from their business relationships.

8.1. States Parties shall ensure that their domestic law provides for a comprehensive and adequate system of legal liability of legal and natural persons conducting business activities **of a transnational character**, within their territory, jurisdiction, or otherwise under their control, for human rights abuses **and violations** that may arise from their own **said** business activities**~~, including those of transnational character,~~** or from their business relationships. **(Egypt, Pakistan)**

8.1. States Parties shall ensure that their domestic law provides for a comprehensive and adequate system of legal liability of legal and natural persons conducting business activities, within their territory, jurisdiction, or otherwise under their control, for human rights abuses **and violations** that may arise from their own business activities, including those of transnational character, or from their business relationships. **(Palestine)**

IHRAAM RFB Article 8.1

Does **or otherwise under their control** assume this applies to peoples or other States under colonial domination or foreign occupation. If that is the case then the Geneva Conventions must apply, that include such circumstance whether by armed or other forms of forceful control? Article 8 needs its own paragraph for the duty of States administering Non-Self-Governing Territories or for peoples under colonial domination or foreign occupation that the sacred trust obligations apply under the Geneva Conventions and international human rights and humanitarian law, including for all peoples under colonial domination or foreign occupation.

8.2. State Parties shall ensure that their domestic liability regime provides for liability of legal persons without prejudice to the liability of natural persons, and does not make civil liability contingent upon finding of criminal liability or its equivalent for the same acts.

8.3. States Parties shall adopt legal and other measures necessary to ensure that their domestic jurisdiction provides for effective, proportionate, and dissuasive criminal, civil and/or administrative sanctions where legal or natural persons conducting business activities have caused or contributed to human rights abuses.

8.3. States Parties shall adopt legal and other measures necessary to ensure that their domestic jurisdiction provides for effective, proportionate, and dissuasive criminal, civil and/or administrative sanctions where legal or natural persons conducting business activities have caused or contributed to human rights abuses **and violations - such as withdrawal of licenses, termination of contracts for company projects, or inclusion on a prohibited list of companies for business**. **(Palestine)**

8.3. States Parties shall adopt legal and other measures necessary to ensure that their domestic jurisdiction provides for effective, proportionate, and dissuasive criminal, civil **~~and/~~**or administrative sanctions where legal or natural persons conducting business activities have caused or contributed to human rights abuses. **(Brazil)**

8.3. States Parties shall adopt legal and other measures necessary to ensure that their domestic jurisdiction provides for effective, proportionate, and dissuasive criminal, civil **~~and/~~**or administrative sanctions where legal or natural persons conducting business activities **of a transnational character** have caused or contributed to human rights abuses **or violations**. **(Egypt)**

8.4. States Parties shall adopt measures necessary to ensure that their domestic law provides for adequate, prompt, effective, gender and age responsive reparations to the victims of human rights abuses in the context of business activities, including those of a transnational character, in line with applicable international standards for reparations to the victims of human rights violations.

Where a legal or natural person conducting business activities is found liable for reparation to a victim of a human rights abuse, such person shall provide reparation to the victim or compensate the State, if that State has already provided reparation to the victim for the human rights abuse resulting from acts or omissions for which that legal or natural person conducting business activities is responsible.

 **(Paragraph 1 should be part of article 7: Mexico, Brazil, Panama, Egypt)**

 **(Delete paragraph 1: China)**

 **(Opposes deletion of paragraph 1: Palestine)**

 **(Has reservations regarding paragraph 2: Mexico, Panama)**

 **(Delete paragraph 2: Brazil, China)**

 **(Opposes deletion of paragraph 2: Palestine)**

8.4. States Parties shall adopt measures necessary to ensure that their domestic law provides for adequate, prompt, effective, gender and age responsive reparations to the victims of human rights abuses **and violations** in the context of business activities**~~, including those~~** of a transnational character, in line with applicable international standards for reparations to the victims of human rights violations.

Where a legal or natural person conducting business activities **of a transnational character** is found liable for reparation to a victim of a human rights abuse **or violation**, such person shall provide reparation to the victim or compensate the State, if that State has already provided reparation to the victim for the human rights abuse **or violation** resulting from acts or omissions for which that legal or natural person conducting **said** business activities is responsible. **(Egypt)**

8.4. States Parties shall adopt measures necessary to ensure that their domestic law provides for adequate, prompt, effective, gender and age responsive reparations to the victims of human rights abuses **and violations** in the context of business activities, including those of a transnational character, in line with applicable international standards for reparations to the victims of human rights violations.

Where a legal or natural person conducting business activities is found liable for reparation to a victim of a human rights abuse **or violation**, such person shall provide reparation to the victim or compensate the State, if that State has already provided reparation to the victim for the human rights abuse **or violation** resulting from acts or omissions for which that legal or natural person conducting business activities is responsible. **(Palestine)**

8.5. States Parties shall require legal or natural persons conducting business activities in their territory or jurisdiction, including those of a transnational character, to establish and maintain financial security, such as insurance bonds or other financial guarantees, to cover potential claims of compensation. **(Palestine)**

 **(Delete: Brazil)**

 **(Has reservations: China)**

8.6. States Parties shall ensure that their domestic law provides for the liability of legal and/or natural persons conducting business activities, including those of transnational character, for their failure to prevent another legal or natural person with whom they have had a business relationship, from causing or contributing to human rights abuses, when the former controls, manages or supervises such person or the relevant activity that caused or contributed to the human rights abuse, or should have foreseen risks of human rights abuses in the conduct of their business activities, including those of transnational character, or in their business relationships, but failed to take adequate measures to prevent the abuse.

 **(Has reservations: China)**

8.6. States Parties shall ensure that their domestic law provides for **civil ~~the~~** liability of legal and/or natural persons conducting business activities**~~, including those of transnational character,~~** for their failure to prevent another legal or natural person with whom they have **~~had~~** a business relationship, from causing or contributing to human rights abuses, **provided that**

**a. There is a situation of ~~when the former~~** control**~~s~~**, manage**ment~~s~~** or supervis**ion~~es~~** **over the legal or natural ~~such~~** person or the relevant activity that caused or contributed to the **~~human rights~~** abuse **at the time it happened;** **and**

**b. The human rights abuse was foreseeable ~~or should have foreseen risks of human rights abuses in the conduct of their business activities, including those of transnational character, or in their business relationships~~**, but **~~failed to take~~** adequate **preventive** measures **were not adopted ~~to prevent the abuse~~**. **(Mexico, Brazil (as a starting point))**

 **(Has reservations: Egypt)**

8.7. Human rights due diligence shall not automatically absolve a legal or natural person conducting business activities from liability for causing or contributing to human rights abuses or failing to prevent such abuses by a natural or legal person as laid down in Article 8.6. The court or other competent authority will decide the liability of such legal or natural persons after an examination of compliance with applicable human rights due diligence standards.

 **(Has reservations: China)**

8.7. Human rights due diligence shall not automatically absolve a legal or natural person conducting business activities from liability for causing or contributing to human rights abuses **or violations** or failing to prevent such abuses **and violations** by a natural or legal person as laid down in Article 8.6. **~~The court or other competent authority will decide the liability of such legal or natural persons after an examination of compliance with applicable human rights due diligence standards.~~** **(Palestine)**

8.8. Subject to their legal principles, States Parties shall ensure that their domestic law provides for the criminal or functionally equivalent liability of legal persons for human rights abuses that amount to criminal offenses under international human rights law binding on the State Party or customary international law, or their domestic law. Regardless of the nature of the liability, States Parties shall ensure that the applicable penalties are proportionate with the gravity of the offense. This Article shall apply without prejudice to any other international instrument which requires or establishes the criminal or administrative liability of legal persons for other offenses. **(Namibia)**

8.8. **~~Subject to their legal principles,~~** States Parties shall ensure that their domestic law provides for the criminal **~~or functionally equivalent~~** liability of legal persons for human rights abuses **or violations** that amount to criminal offenses under international **~~human rights~~** law **~~binding on the State Party or~~, including but not limited to** customary international law, **and humanitarian law ~~or their domestic law~~**. Regardless of the nature of the liability, States Parties shall ensure that the applicable penalties are proportionate with the gravity of the offense. This Article shall apply without prejudice to any other international instrument which requires or establishes the criminal or administrative liability of legal persons for other offenses. **(Palestine)**

8.8. Subject to their **domestic law and** legal principles, **in line with applicable international human rights law and customary international law,** States Parties shall ensure that their domestic law provides for the criminal **~~or functionally equivalent~~** liability of legal persons for human rights abuses that amount to criminal offenses **~~under international human rights law binding on the State Party or customary international law, or their domestic law~~**. Regardless of the nature of the liability, States Parties shall ensure that the applicable penalties are proportionate with the gravity of the offense. This Article shall apply without prejudice to any other international instrument which requires or establishes the criminal or administrative liability of legal persons for other offenses. **(China)**

8.9. The liability of legal persons under Article 8.9. shall be without prejudice to the criminal liability of the natural person who have committed the offenses under the applicable domestic law.

8.10. States Parties shall provide measures under domestic law to establish the criminal or functionally equivalent legal liability for legal or natural persons conducting business activities, including those of a transnational character, for acts or omissions that constitute attempt, participation or complicity in a criminal offense in accordance with this Article and criminal offenses as defined by their domestic law.

**8.10 bis. All companies involved in human rights abuse or violation, whether a subsidiary, a parent company, or any other business along the value chain, shall be jointly and several responsibility for human rights abuses in which they are involved. (Palestine)**

**(Has reservations: Egypt)**

**8.10 ter. State Parties shall ensure that their domestic law provides for the criminal liability of legal or natural persons for acts that directly or indirectly contribute, cause or are linked to human rights abuses or violations. (Palestine)**

 **(Opposes: Brazil)**

**(Has reservations: Egypt)**

# Article 8 bis

**Before bringing a claim arising from acts or omissions that result in human rights abuses covered under this (legally binding instrument), the victim shall exhaust all legal instances of the domestic law where the human rights abuse occurred and/or produced effects. (Brazil)**

 **(Has reservations: Egypt, South Africa)**

 **(Opposes: Namibia, Palestine)**

# Article 9. Adjudicative Jurisdiction

9.1. Jurisdiction with respect to claims brought by victims, irrespectively of their nationality or place of domicile, arising from acts or omissions that result or may result in human rights abuses covered under this (Legally Binding Instrument), shall vest in the courts of the State where:

9.1. Jurisdiction with respect to claims brought by victims, irrespectively of their nationality or place of domicile, arising from acts or omissions that result or may result in human rights abuses **or violations**  covered under this (Legally Binding Instrument), shall **upon the victims and their family’s choice,** vest in the courts of the State where: **(Palestine, South Africa)**

9.1. Jurisdiction with respect to claims brought by victims, irrespectively of their nationality or place of domicile, arising from acts or omissions that result or may result in human rights abuses **or violations**  covered under this (Legally Binding Instrument), shallvest in the courts of the State where: **(Egypt)**

a. the human rights abuse occurred and/or produced effects; or

b. an act or omission contributing to the human rights abuse occurred;

 **(Has reservations: Brazil)**

b. an act or omission contributing to the human rights abuse **or violation** occurred; **(Palestine)**

c. the legal or natural persons alleged to have committed an act or omission causing or contributing to such human rights abuse in the context of business activities, including those of a transnational character, are domiciled; or

c. the legal or natural persons alleged to have committed **including in their business relationships and global production chain** an act or omission causing or contributing to such human rights abuse in the context of business activities, including those of a transnational character, are domiciled; or **(Palestine)**

d. the victim is a national of or is domiciled.

This provision does not exclude the exercise of civil jurisdiction on additional grounds provided for by international treaties or domestic laws.

9.2. Without prejudice to any broader definition of domicile provided for in any international instrument or domestic law, a legal person conducting business activities of a transnational character, including through their business relationships, is considered domiciled at the place where it has its:

9.2. Without prejudice to any broader definition of domicile provided for in any international instrument **~~or domestic law~~**, a legal **or natural** person conducting business activities of a transnational character**~~, including through their business relationships,~~** is considered domiciled **including through their business relationships and global production chain** at the place where it has its: **(Palestine)**

a. place of incorporation or registration; or

b. place where the principal assets or operations are located; or

c. central administration or management is located; or

d. principal place of business or activity on a regular basis.

**d bis. substantial assets are held. (Palestine)**

9.3. Courts vested with jurisdiction on the basis of Article 9.1 and 9.2 shall avoid imposing any legal obstacles, including the doctrine of *forum non conveniens,* to initiate proceedings in line with Article 7.5 of this (legally binding instrument). **(South Africa)**

9.3. Courts vested with jurisdiction on the basis of Article 9.1 and 9.2 shall avoid imposing any legal obstacles**~~, including the doctrine of~~ *~~forum non conveniens~~****,* to initiate proceedings in line with Article 7.5 of this (legally binding instrument). **(China)**

 **(Keep reference to *forum non conveniens*: Palestine, Namibia)**

9.3. Courts vested with jurisdiction on the basis of Article 9.1 and 9.2 shall avoid imposing any legal obstacles**~~, including the doctrine of~~ *~~forum non conveniens,~~***to initiate proceedings in line with Article 7.5 of this (legally binding instrument)**, including the doctrine of *forum non conveniens* unless an adequate alternative forum exists that would likely provide a timely, fair, and impartial remedy**. **(Egypt)**

9.4. Courts shall have jurisdiction over claims against legal or natural persons not domiciled in the territory of the forum State, if the claim is connected with a claim against a legal or natural person domiciled in the territory of the forum State.

9.4. Courts shall have jurisdiction over claims against legal or natural persons not domiciled in the territory of the forum State, if the claim is **directly** connected with a claim against a legal or natural person domiciled in the territory of the forum State. **(Brazil)**

9.5. Courts shall have jurisdiction over claims against legal or natural persons not domiciled in the territory of the forum State if no other effective forum guaranteeing a fair judicial process is available and there is a connection to the State Party concerned as follows: **(Palestine (regarding entire article))**

 **(Has reservations regarding entire article: Brazil, China)**

a. the presence of the claimant on the territory of the forum;

b. the presence of assets of the defendant; or

c. a substantial activity of the defendant.

# Article 10. Statute of limitations

10.1. The States Parties to the present (Legally Binding Instrument) shall adopt any legislative or other measures necessary to ensure that statutory or other limitations shall not apply for the commencement of legal proceedings in relation to human rights abuses resulting in violations of international law which constitute the most serious crimes of concern to the international community as a whole.

10.1. **~~The~~** States Parties **~~to the present (Legally Binding Instrument)~~** shall adopt any legislative or other measures **~~necessary~~** to ensure that statutory or other limitations shall not apply for the commencement of legal proceedings **regarding the ~~in relation to~~** human rights abuses **covered by the present (Legally Binding Instrument) ~~resulting in violations of international law~~** which**, in accordance with international law,** constitute the most serious crimes of concern **of ~~to~~** the international community as a whole. **(Brazil)**

10.2. The States Parties to the present (Legally Binding Instrument) shall adopt any legislative or other measures necessary to ensure that statutory or other limitations applicable to civil claims or violations that do not constitute the most serious crimes of concern to the international community as a whole allow a reasonable period of time for the commencement of legal proceedings in relation to human rights abuses, particularly in cases where the abuses occurred in another State or when the harm may be identifiable only after a long period of time.

10.2. The States Parties to the present (Legally Binding Instrument) shall adopt any legislative or other measures necessary to ensure that statutory or other limitations applicable to civil claims or violations that do not constitute the most serious crimes of concern to the international community as a whole allow a reasonable **gender-responsive** period of time for the commencement of legal proceedings in relation to human rights abuses, particularly in cases where the abuses occurred in another State or when the harm may be identifiable only after a long period of time**, or where the victim is delayed in commencing a proceeding in respect of the claim because of their age, physical, mental or psychological condition**. **(Palestine)**

10.2. The States Parties to the present (Legally Binding Instrument) shall **~~adopt any legislative or other measures necessary to ensure that statutory or other limitations applicable to civil claims or violations that do not constitute the most serious crimes of concern to the international community as a whole~~** allow a reasonable period of time for the commencement of legal proceedings in relation to human rights abuses, particularly in cases where the abuses occurred in another State or when the harm may be identifiable only after a long period of time. **(Brazil)**

# Article 11. Applicable Law

11.1. All matters of procedure regarding claims before the competent court which are not specifically regulated in the (Legally Binding Instrument) shall be governed by the law of that court seized on the matter.

11.2. All matters of substance which are not specifically regulated under this [international legally binding instrument] may, upon the request of the victim, be governed by the law of another State where:

 **(Has reservations: Brazil (particularly regarding “upon the request of the victim”))**

a. the acts or omissions have occurred or produced effects; or

b. the natural or legal person alleged to have committed the acts or omissions is domiciled.

# Article 12. Mutual Legal Assistance and International Judicial Cooperation

12.1. States Parties shall carry out their obligations under this Article in conformity with any treaties or other arrangements on mutual legal assistance or international judicial cooperation that may exist between them. In the absence of such treaties or arrangements, States Parties shall make available to one another, mutual legal assistance and international judicial cooperation to the fullest extent possible under domestic and international law.

12.2. States Parties may invite any State not party to this (Legally Binding Instrument) to provide mutual legal assistance and international judicial cooperation under this Article on the basis of an *ad hoc* arrangement, an agreement with such State or any other appropriate basis.

12.3. States Parties shall make available to one another the widest measure of mutual legal assistance and international judicial cooperation in initiating and carrying out effective, prompt, thorough and impartial investigations, prosecutions, judicial and other criminal, civil or administrative proceedings in relation to all claims covered by this (Legally Binding Instrument), including access to information and supply of all evidence at their disposal that is relevant for the proceedings.

12.4. The requested State Party shall inform the requesting State Party, as soon as possible, of any additional information or documents needed to support the request for assistance and, where requested, of the status and outcome of the request for assistance. The requesting State Party may require that the requested State Party keep confidential the fact and substance of the request, except to the extent necessary to execute the request.

12.5. Mutual legal assistance and international judicial cooperation under this (Legally Binding Instrument) will be determined by the concerned Parties on a case-by-case basis.

a. Mutual legal assistance under this (Legally Binding Instrument) is understood to include, *inter alia*:

i. Taking evidence or statements from persons;

ii. Executing searches and seizures;

iii. Examining objects and sites;

iv. Providing information, evidentiary items and expert evaluations;

v. Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;

vi. Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;

vii. Facilitating the voluntary appearance of persons in the requesting State Party;

viii. Facilitating the freezing and recovery of assets;

ix. Assisting and protecting victims, their families, representatives and witnesses, consistent with international human rights legal standards and subject to international legal requirements, including those relating to the prohibition of torture and other forms of cruel, inhuman or degrading treatment or punishment;

x. Assisting in regard to the application of domestic law;

xi. Any other type of assistance that is not contrary to the domestic law of the requested State Party.

b. International judicial cooperation under this (Legally Binding Instrument) is understood to include, *inter alia*: effective service of judicial documents; and, provision of judicial comity consistent with domestic law.

12.6. In criminal cases covered under this (Legally Binding Instrument), and without prejudice to the domestic law of the involved States Parties,

a. With respect to criminal offenses covered under this (Legally Binding Instrument), mutual legal assistance shall be provided to the fullest extent possible, in a manner consistent with the law of the requested Party and its commitments under treaties on mutual assistance in criminal matters to which it is Party;

b. In cases where such mutual assistance is related to the question of extradition, Parties agree to cooperate in accordance with this (Legally Binding Instrument), their national law and any treaties that exist between the concerned State Parties.

12.7. The competent authorities of a State Party may, without prior request, transmit and exchange information relating to criminal offenses covered under this (Legally Binding Instrument) to a competent authority in another State Party where they believe that such information could assist the authority in undertaking or successfully concluding inquiries and criminal proceedings or could result in a request formulated by the latter State Party pursuant to this (Legally Binding Instrument). The transmission and exchange of information shall be without prejudice to inquiries and criminal proceedings in the State of the competent authorities providing the information, to guarantee the widest protection of human rights.

12.8. States Parties may consider concluding bilateral or multilateral agreements or arrangements whereby, in relation to matters that are subject of investigations, prosecutions or judicial proceedings under this (Legally Binding Instrument), the competent authorities concerned may establish joint investigative bodies. In the absence of such agreements or arrangements, joint investigations may be undertaken by agreement on a case-by-case basis. The States Parties involved shall ensure that the sovereignty of the State Party in whose territory such investigation is to take place, is fully respected.

12.9. States Parties shall designate a central authority that shall have the responsibility and power to receive requests for mutual legal assistance and either to execute them or to transmit them to the competent authorities for execution, in accordance with their domestic laws.

12.10. Any judgment of a court having jurisdiction in accordance with this (Legally Binding Instrument) which is enforceable in the State of origin of the judgment and is not subject to any appeal or review shall be recognized and enforced in any State Party as soon as the formalities required in that State Party have been completed, provided that such formalities are not more onerous and fees and charges are not higher than those required for the enforcement of domestic judgments and shall not permit the re-opening of the merits of the case. The enforcement in the requested State of criminal judgments shall be to the extent permitted by the law of that State.

12.10. Any judgment of a court having jurisdiction in accordance with this (Legally Binding Instrument) which is enforceable in the State of origin of the judgment and is not subject to any appeal or review shall be recognized and enforced in any State Party as soon as the formalities required in that State Party have been completed**~~, provided that such formalities are not more onerous and fees and charges are not higher than those required for the enforcement of domestic judgments~~** and shall not permit the re-opening of the merits of the case. The enforcement in the requested State of criminal judgments shall be to the extent permitted by the law of that State. **(Brazil)**

12.11. Recognition and enforcement may be refused, only where:

a. the defendant furnishes to the competent authority or court where the recognition and enforcement is sought, proof that the defendant was not given reasonable notice and a fair opportunity to present his or her case; or

b. where the judgment is irreconcilable with an earlier judgment validly pronounced in the State Party where its recognition is sought with regard to the same cause of action and the same parties; or

c. where the judgment is manifestly contrary to the *ordre public* of the State Party in which its recognition is sought.

12.12. Mutual legal assistance or international legal cooperation under this article may be refused by a State Party if it is contrary to the applicable laws of the requested State Party.

 **(Delete: Palestine)**

12.12. Mutual legal assistance or international legal cooperation under this article may be refused by a State Party if it is contrary to the ***ordre public* ~~applicable laws~~** of the requested State Party. **(Brazil)**

12.13. States Parties shall not decline to render mutual legal assistance or international judicial cooperation in a claim involving liability for harms or criminal offenses, falling within the scope of this (Legally Binding Instrument) on the sole ground that the request is considered to involve fiscal matters or bank secrecy.

# Article 13. International Cooperation

13.1. States Parties shall cooperate in good faith to enable the implementation of their obligations recognized under this (Legally Binding Instrument) and the fulfillment of the purposes of this (Legally Binding Instrument).

13.2. States Parties recognize the importance of international cooperation, including financial and technical assistance and capacity building, for the realization of the purpose of the present (Legally Binding Instrument) and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society. Such measures include, but are not limited to: **(Palestine (would like to keep this paragraph))**

13.2. States Parties recognize the importance of international cooperation, including financial and technical assistance and capacity building, for the realization of the purpose of the present (Legally Binding Instrument) and will undertake appropriate and effective measures in this regard, between and among States and, as appropriate, in partnership with relevant international and regional organizations and civil society. **~~Such measures include, but are not limited to:~~ (Brazil (and delete all sub-provisions))**

a. Promoting effective technical cooperation and capacity-building among policy makers, parliaments, judiciary, national human rights institutions, business enterprises and operators, as well as users of domestic, regional and international grievance mechanisms;

b. Sharing experiences, good practices, challenges, information and training programs on the implementation of the present (Legally Binding Instrument);

c. Raising awareness about the rights of victims of business-related human rights abuses and the obligations of States under this (Legally Binding Instrument);

d. Facilitating cooperation in research and studies on the challenges, good practices and experiences in preventing human rights abuses in the context of business activities, including those of a transnational character;

e. Contribute, within their available resources, to the International Fund for Victims referred to in Article 15.7 of this (Legally Binding Instrument).