# Joint wording proposals (written only in red) made on behalf of

**DKA Austria, Child Rights Connect, ECPAT International, Clínica de Direitos Humanos UFMG and Clínica de Direitos Humanos PPGD/PUCPR.**

**On the following articles:**

# Articles 6-13 (in conjunction with relevant definitions in Article 1)

**Scheduled on:**

Tuesday 25.10.2022 –

* 10:00 – 13:00 : read by Prof. Danielle Pamplona (Clínica de Direitos Humanos PPGD/PUCPR)
* 15:00 – 18:00: read by Thabata Pena Pereira: (Clínica de Direitos Humanos UFMG)

Wednesday 26.10.2022 –

* 10:00 – 13:00: read by Marie Ingrid Pintaritsch (DKA Austria)
* 15:00 – 18:00: read by Sophia Bastos (Clínica de Direitos Humanos UFMG)

# Article 1. Definitions

* 1. “**Victim**” shall mean any person or group of persons, irrespective of nationality or place of domicile, who individually or collectively have suffered harm that constitute human rights abuse, through acts or omissions in the context of business activities. The term “victim” may also include the immediate family members or dependents of the direct victim. A person shall be considered a victim regardless of whether the perpetrator of the human rights abuse is identified, apprehended, prosecuted, or convicted.

**We would like to propose the following amendment to Article 1.1:**

* 1. “**Victim**” shall mean any person or group of persons, irrespective of nationality or place of domicile, who individually or collectively have suffered, **or, where relevant, have alleged to have suffered** harm that constitute human rights abuse, through acts or omissions in the context of business activities~~.~~ The term “victim” may also include the immediate family members or dependents of the direct victim~~,~~ **and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization~~,~~ as well as any child under the care of the direct victim, whether provided by law or by the local custom.** A person shall be considered a victim regardless of whether the perpetrator of the human rights abuse is identified, apprehended, prosecuted, or convicted**. When the victim is a child, harm should contemplate the impacts on their development.**

**As proposed by Namibia we also support to:**

**(Keep reference to omissions: Namibia)**

* 1. “**Human rights abuse**” shall mean any direct or indirect harm in the context of business activities, through acts or omissions, against any person or group of persons, that impedes the full enjoyment of internationally recognized human rights and fundamental freedoms, including the right to a safe, clean, healthy and sustainable environment.
* **We propose to add after abuse or violation (also supported by Palestine and South Africa) and support adding as Panama also mentioned the right to a safe, clean, healthy and sustainable environment:**
* 1.2“**Human rights abuse or violation**” shall mean any direct or indirect harm in the context of business activities, through acts or omissions, against any person or group of persons, that impedes the full enjoyment of internationally recognized human rights and fundamental freedoms, including~~.~~ the right to a safe, clean, healthy and sustainable environment.

**(Could agree to “clean, healthy and sustainable environment” formulation: Panama (though preference is to include “safe” as well))**

**(Keep reference to omissions: Palestine, Namibia)**

**(Keep reference to “group of persons”: Palestine)**

* 1. “**Human rights abuse or violation**” shall mean any direct or indirect harm in the context of business activities, through acts or omissions, against any person or group of persons, that impedes the full enjoyment of internationally recognized human rights and fundamental freedoms, including the right to a safe, clean, healthy and sustainable environment. **(Palestine, South Africa)**
* **CHAIR PROPOSAL.: “Human rights abuse” shall mean any acts or omissions that take place in connection with business activities and results in an adverse human rights impact.**
* “**Adverse human rights impact” shall mean a harm which corresponds to a reduction in or removal of a person’s ability to enjoy an internationally recognized human right.**
  1. “**Business activities**” means any economic or other activity, including but not limited to the manufacturing, production, transportation, distribution, commercialization, marketing and retailing of goods and services, undertaken by a natural or legal person, including State- owned enterprises, financial institutions and investment funds, transnational corporations, other business enterprises, joint ventures, and any other business relationship undertaken by a natural or legal person. This includes activities undertaken by electronic means.
  2. “**Business activities**” means any economic or other activit**ies~~y~~**, including but not limited to the **design, extraction,** manufacturing, production, transportation, distribution, commercialization, marketing and retailing of goods and services, undertaken by a natural or legal person, including**, but not limited to,** State-owned enterprises, financial institutions and investment funds, transnational corporations, other business enterprises, joint ventures, and any other business relationship undertaken by a natural or legal person. This includes activities undertaken by electronic means **and social media platforms**. **(Iran, Palestine)**
  3. “**Business activities of a transnational character**” means any business activity described in Article 1.3. above, when:

1. It is undertaken in more than one jurisdiction or State; or
2. It is undertaken in one State but a significant part of its preparation, planning, direction, control, design, processing, manufacturing, storage or distribution, takes place through any business relationship in another State or jurisdiction; or
3. It is undertaken in one State but has significant effect in another State or jurisdiction.
   1. “**Business relationship**” refers to any relationship between natural or legal persons, including State and non-State entities, to conduct business activities, including those activities conducted through affiliates, subsidiaries, agents, suppliers, partnerships, joint venture, beneficial proprietorship, or any other structure or relationship as provided under the domestic law of the State, including activities undertaken by electronic means.

* **We support the proposal of Panama Egypt and South Africa to add after … or any other structure or relationship, including throughout their values chains,…**

1.5. “**Business relationship**” refers to any relationship between natural or legal persons, including State and non-State entities, to conduct business activities, including those activities conducted through affiliates, subsidiaries, agents, suppliers, partnerships, joint venture, beneficial proprietorship, or any other structure or relationship**, including throughout their value chains,** as provided under the domestic law of the State, including activities undertaken by electronic means; **(Panama, Egypt, South Africa)**

* 1. “**Business relationship**” refers to any relationship between natural or legal persons, including State and non-State entities, to conduct business activities, including those activities conducted through affiliates, subsidiaries, agents, suppliers, partnerships, joint venture, beneficial proprietorship**~~, or any other structure or relationship as provided~~ ~~under the domestic law of the State~~**, **entities in the value and supply chain, any non- State or State entity linked to a business operation, product, or service even if the relationship is not contractual, as well as ~~including~~** activities undertaken by electronic means. **(Palestine)**
  2. “**Regional integration organization**” shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by this (Legally Binding Instrument). Such organizations shall declare, in their instruments of formal confirmation or accession, their level of competence in respect of matters governed by this (Legally Binding Instrument), and they shall subsequently inform the depositary of any substantial modification to such competence. References to “States Parties” in the present (Legally Binding Instrument) shall apply to such organizations within the limits of their competence

**CHAIR PROPOSAL**

**“Human rights due diligence”** shall mean the processes by which business enterprises identify, prevent, mitigate and account for how they address their adverse human rights impacts. While these processes will vary in complexity with the size of a business enterprise, the risk of severe adverse human rights impacts, and the nature and context of the operations of that business enterprise, these processes will in every case comprise the following elements:

1. identifying and assessing any adverse human rights impacts with which the business enterprise may be involved through its own activities or as a result of its business relationships;
2. taking appropriate measures to prevent and mitigate such adverse human rights impacts;
3. monitoring the effectiveness of its measures to address such adverse human rights impacts; and
4. communicating how the relevant business enterprise addresses such adverse human rights impacts regularly and in an accessible manner to stakeholders, particularly to affected and potentially affected persons.

“**Remedy**” shall mean the restoration of a victim of a human rights abuse to the position they would have been had the abuse not occurred, or as nearly as is possible in the circumstances. An “**effective remedy**” involves reparations that are adequate, effective and prompt; are gender and age responsive; and may draw from a range of forms of remedy such as restitution, compensation, rehabilitation, satisfaction (such as cessation of abuse, apologies, and sanctions), and guarantees of non-repetition.

* “**Relevant State agencies**” means judicial bodies, competent authorities and other agencies and related services relevant to administrative supervision and enforcement of the measures referred to in this LBI to address human rights abuse, and may include courts, law enforcement bodies, regulatory authorities, administrative supervision bodies, and other State-based non-judicial mechanisms.

# Article 6. Prevention

* 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.
  2. **bis. In order to comply with their obligations to respect, protect and fulfill the rights of this instrument, States parties shall adapt their administrative law to prevent the authorization of business activities of transnational character that would not meet the standards of human rights protection provided in this Legally Binding Instrument. States shall adopt higher standards in their own business relationships, in particular but not limited to public contracts, public-private partnership services and not enter into any type of collaboration with transnational corporations and other business enterprises of transnational character condemned for human rights violations. (Cameroon)**
  3. **ter. State Parties shall take precautionary measures, including the halt of business activities, when such activities can cause imminent human rights abuses or violations causing irreparable harm, independently from the existence or outcome of a legal proceeding relative to the situation. (Palestine)**
  4. 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.
* We would like to propose the following amendments to Article 6.2 and it would read as such:
* States Parties shall take **all** appropriate legal and policy measures to ensure **that their domestic legislation reflects their international human rights obligations and** 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 and Violations (as proposed by Palestine, Egypt and Cuba )**throughout their business activities and relationships.
* **We also propose a new Art 6.1 bis stating that:**

**New Art. 6.1.bis:States Parties shall also provide capacity-building and technical assistance opportunities to business enterprises on human rights to assist them with developing human rights statements of policies, while paying special attention to the rights of groups and individuals in situations of particular vulnerability. States Parties shall also ensure that information regarding business enterprises’ obligations with regard to human rights is easily accessible in appropriate formats by all.**

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 **and violations** throughout their business activities and relationships. **(Palestine)**

6.2. States Parties shall take appropriate legal and policy measures to ensure that **~~business~~ ~~enterprises, including~~** transnational corporations and other business enterprises **of ~~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 **and violations** throughout their business activities and relationships. **(Egypt, Cuba)**

* 1. **bis. Transnational corporations and other business enterprises of transnational character shall not take any measures that present a real risk of undermining and violating human rights. They shall identify and prevent human rights violations and risks of violations throughout their operations, including through their business relationships. (Cameroon)**
  2. 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:
* **We would like to propose the following amendments to Art. 6.3:**
* 6.3. For that purpose, States Parties shall require business enterprises to undertake human rights due diligence **including a child right impact assessment across their value chains when necessary due to imminent impact and at regular interval**, proportionate to their size, risk of human rights abuse or the nature and context of their business activities and relationships, as follows:
* **6.3. ~~For that purpose,~~** States Parties shall require business enterprises **and other actors across the full value chain including State entities,** to undertake **ongoing and frequently updated** human rights due diligence, proportionate to their size, risk of **severe** human rights **impacts ~~abuse or~~ and** the nature and context of their **operations ~~business activities and~~ ~~relationships~~**, as follows: **(Palestine)**

1. Identify, assess and publish any actual or potential human rights abuses that may arise from their own business activities, or from their business relationships;
2. 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;

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**. In cases where mitigation is impossible, businesses may be required to terminate their relationship and/or cease activities/operations to fulfill their obligations**; **(Palestine)**

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.

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

**(Secretariat note: Brazil and Egypt each made proposals for revising the entirety of Article 6.4. Their proposals are reproduced in full at the end of this article, without indications of added/deleted text)**

**6.4 ~~States Parties shall ensure that human rights due diligence measures undertaken~~ ~~by business enterprises shall include~~ States parties shall designate a competent authority with allocated responsibilities and adequate financial and human resources to monitor the effectiveness of the due diligence measures undertaken by business enterprises as well as their effective implementation. (Cameroon)**

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

**We propose the following amendments including the proposal made by Panama and Egypt (on adding prior) on the Article 6.4.a with the following wording:**

a. Undertaking and publishing regular human rights, labour rights, environmental and climate change impact assessments , **paying special attention to the rights of groups and individuals in situations of particular vulnerability, including children** **prior and** throughout their operations;

1. Undertaking and publishing regular human rights, labour rights, environmental and climate change impact assessments **prior and** throughout their operations; **(Panama)**

**a bis. Ensuring freedom of association, the right to strike, collective bargaining, non- discrimination and gender equality - elimination of workplace violence and harassment in the world of work -, occupational safety and health, prohibition of child and forced labour, and social protection, as specific issues. (Argentina)**

1. 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;

* **We propose the following amendments including the proposal made by Panama on the Article 6.4.b. with the following wording:**

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

b. Integrating a gender **and age** 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; **(Panama)**

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;

**We support the following amendment proposed by Panama, Palestine, South Africa and Egypt to the Article 6.4.c and it reads as follows:**

c. Conducting meaningful consultations **- in line with principles of free, prior and informed consent and throughout all phases of operations** with individuals or communities whose human rights can potentially be affected by business activities, and with other relevant stakeholders, including trade unions **and civil society organizations,** 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, **peasants and other people living in rural areas.(Egypt)**

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 **and civil society organizations**, 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; **(Panama, Palestine, South Africa)**

c. Conducting meaningful consultations **- in line with principles of free, prior and informed consent and throughout all phases of operations -** 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, **such consultations shall be undertaken by an independent public body and protected from any undue influence from commercial and other vested interests - where it is not possible to conduct meaningful consultations such as in conflict areas, business operations should refrain from operating unless it is for the benefit of the oppressed population; (Palestine, South Africa)**

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 **and local communities**, people of African descent, older persons, migrants, refugees, internally displaced persons and protected populations under occupation or conflict areas; **(Indonesia)**

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

**We propose the following amendment to Article 6.4.d which is also partly based on Indonesia’s proposal as such-,**

Ensuring that consultations with indigenous peoples **and local communities** are undertaken in accordance with the internationally agreed standards of free, prior and informed consent;; **and that** c**onsultations with children are undertaken in accordance with the principle of the child’s right to be heard**

1. Ensuring that consultations with indigenous peoples **and local communities** are undertaken in accordance with the internationally agreed standards of free, prior and informed consent; **(Indonesia)**
2. 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;
3. Integrating human rights due diligence requirements in contracts regarding their business relationships and making provision for capacity building or financial contributions, as appropriate;
4. Adopting and implementing enhanced human rights due diligence measures to prevent human rights abuses in occupied or conflict-affected areas, including situations of occupation.

**(Egypt proposal to Article 6.4 in full)** 6.4. States Parties shall ensure that human rights due diligence measures undertaken by transnational corporations and other business enterprises of a transnational character shall include:

1. Regular, publicly available and duly conducted social, environmental, economic and human rights impact assessments prior to and throughout their operations;
2. Consultations in good faith, taking into consideration existing power imbalances between different parties and ensuring active, free, effective, meaningful and informed participation of individuals and groups in associated decision-making processes, 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, protected populations under occupation or conflict areas, peasants and other people working in rural areas, people at risk of conditions of water scarcity, water pollution, desertification, land degradation and drought.
   1. 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
   2. 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 or, jurisdiction, or otherwise under their control, including those of transnational character
   3. 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
   4. 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.

**(Recommends this is standalone article: Cameroon)**

6.8 In setting and implementing their public policies and legislation with respect to the implementation of this (Legally Binding Instrument), State Parties shall act in a transparent manner and protect these policies**, laws, policymaking processes, government and regulatory bodies, and judicial institutions** from the **undue** influence of commercial and other vested interests of **entities of the private sector including natural or legal persons ~~business enterprises, including those~~** conducting business activities of transnational character. **Moreover, transnational corporations and other business enterprises of transnational character shall be bound by their obligations under this Treaty and shall refrain from obstructing its implementation by States Parties to this instrument, whether home states, host States or States affected by the activities of TNCs. (Cameroon)**

**6.8 bis. International financial institutions shall identify and prevent human rights violations by any entity they support financially. They shall not give any form of financial support (such as loans, subsidies, guarantees) to business enterprises, including through their business relationships, if they know or should have known that the operations of those entities present risks for human rights and the environment. Any conduct of these institutions and their managers that contravenes these duties stands to be corrected by suitable disciplinary, administrative or other measures including the possibility of affected people or communities seeking compensation and reparations from the concerned International Financial Institutions. (Cameroon)**

**6.8 ter. When participating in decision-making processes or any other action as member of International Financial Institutions, States shall do so in accordance with the States Parties’ obligations established by the current (Legally Binding Instrument). They shall take all steps at their disposal to ensure that the institutions or the agreement concerned does not contribute to violations of human rights caused by transnational corporations and other business enterprises of transnational character, including in their business relationships. (Cameroon)**

# Article 7. Access to Remedy

We would like to underline that Article 7 is a very crucial Article when it comes to access to justice for children. We support the proposals to implement a child friendly justice system (for eg.age and child sensitive proceedings) however we believe that there are more crucial elements that are still missing in the LBI regarding this issue for instance of the reversal of burden of proof, of class actions, …in civil proceedings.

We propose to add to the title of Article 7: Access to remedy and **and Reparation**

* 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.

**We propose to add the term reparation after effective remedy in Article 7.1. and to add “and children after the term women” and the article reads as follows:**

* 1. 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 reparation** and access to justice and to overcome the specific obstacles which women **and children**, vulnerable and marginalized people and groups face in accessing such mechanisms and remedies.

**7.1 bis. State Parties shall ensure that reparations processes and mechanisms established to repair the harm caused by large-scale industrial disasters are designed and implemented, in consultation with, and with the full participation of affected communities, are transparent and independent from the business enterprise that caused or contributed to the harm, ensure independent technical assistance and are sufficiently resourced to offer the prospect of full reparation to all those affected. (Palestine)**

* 1. 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.
  2. States Parties shall provide adequate and effective legal assistance to victims throughout the legal process, including by:
  3. States Parties shall provide adequate and effective legal assistance to victims throughout the legal process, **according to international law,** including by: **(Panama)**

1. 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;
2. Guaranteeing the rights of victims to be heard in all stages of proceedings;

**We support the proposals made by Peru, Panama, South Africa, Palestine, Mexico and Egypt on adding gender sensitive, age sensitive and child sensitive proceedings in Article 7.3.b.**

b. Guaranteeing the rights of victims to be heard in all stages of proceedings **avoiding gender and age stereotyping**; **(Peru, Panama, South Africa, Palestine, Mexico)**

1. b. Guaranteeing the rights of victims to be heard in all stages of proceedings **in a gender- sensitive, age-sensitive, and child-sensitive manner**; **(Egypt)**
2. 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,
3. 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.

* **We support the wording proposal of the 3rd Draft on Removing obstacles, including the doctrine of forum non conveniens and propose to add the following at the end of Article7.3.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 **and providing, where needed, free legal aid to child victims;**
  1. 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.
* **We propose to add the following at end of Article 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, **such as cases concerning child victims**.
  1. 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.
* **We propose to either delete “in appropriate cases” in Article 7.5 or to provide more legal certainty on the term “in appropriate case” and when they shall apply. :**
* 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.
  1. 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.
* **As proposed by Egypt and Palestine, we support adding “and Violation after human rights abuse in Article 7.6:**

7.6. State Parties shall provide effective mechanisms for the enforcement of remedies for human rights abuses **and violations**, 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. **(Egypt)**

# Article 7. Access to Remedy

* 1. Each State Party shall, consistent with its domestic legal and administrative systems:

**We propose the following amendment to the Article 7.1 of the Chair proposal:**

**7.1 Each State Party shall, in order to ensure/guarantee access to adequate, timely and effective remedy:**

1. develop and implement effective policies to promote the accessibility of its relevant State agencies to victims and their representatives, taking into account the particular needs and interests of those victims who may be at risk of vulnerability or marginalisation;

**We propose the following amendment to the Article 7.1.a of the Chair proposal:**

(a) develop and implement, in consultation with, and with the full participation of affected communities, effective policies to promote the accessibility of reparations processes and mechanisms to victims and their representatives, taking into account the particular needs and interests of those victims who may be at risk of vulnerability or marginalization, especially children and women;

1. progressively reduce the legal, practical and other relevant obstacles that, individually or in combination, hinder the ability of a victim from accessing such State agencies for the purposes of seeking an effective remedy; and

**We propose the following amendment to the Article 7.1.b of the Chair proposal:**

to replace ~~progressively reduce the~~  by the term **remove** legal, practical and other relevant obstacles that, individually or in combination, hinder the ability of ~~a~~ victims or their representatives from accessing to replace ~~such State agencies~~ by courts and State-based non-judicial mechanisms for the purposes of seeking an adequate, timely and effective remedy; and

and it reads as follows:

**(b) remove** legal, practical and other relevant obstacles that, individually or in combination, hinder the ability of ~~a~~ victims or their representatives from accessing courts and State-based non-judicial mechanisms for the purposes of seeking an adequate, timely and effective remedy; and

1. ensure that relevant State agencies can either deliver, or contribute to the delivery of, effective remedies.
   1. The policies referred to in Article 7.1(a) shall address, to the extent applicable to the State agency in question:

We propose to delete the wording after the comma in the Article 7.2 and it reads as such:

**The policies referred to in Article 7.1(a) shall ensure, ~~to the extent applicable to the State agency in question~~:**

1. the need to ensure that procedures and facilities for accessing and interacting with such agencies are responsive to the needs of the people for whose use they are intended;

**we propose to replace in a (a) such agencies by Courts and State-based non-judicial mechanism and it reads as follows:**

that procedures and facilities for accessing and interacting with ~~such agencies~~ courts and State-based non-judicial mechanisms are responsive to the needs of the people for whose use they are intended;

1. the need to ensure that victims have ready access to reliable sources of information about their human rights, the role and capacity of relevant State agencies in relation to helping victims obtain an effective remedy, and appropriate support to enable them to participate effectively in all relevant processes;

* **we propose the following amendments to the Article 7.2.b and it reads as follows:**

(b) that victims and their representatives have ready access to reliable sources of information about their human rights, in relevant languages and in a gender and child sensitive manner from both States and corporate entities; the role and capacity of relevant State agencies in relation to helping victims obtain an adequate, timely and effective remedy, and appropriate support to enable them to participate effectively in all relevant processes;

1. the implications in terms of access to remedy of imbalances of power as between victims and business enterprises; and

* **we propose the following changes to Article 7.2.c:**

**(c) that** imbalances of power as between victims **and business enterprises do not affect the fairness of the proceedings; and**

1. risks of reprisals against victims and others.

* **we propose the following changes to Article 7.2.d:**

**(d) that appropriate protection is in place against the** risks of reprisalsagainst victims **and their representatives.**

* 1. The measures to achieve the aims set out in Article 7.1(b) shall include, to the extent applicable to the State agency in question and necessary to address the obstacle in question:
* **We propose to delete the second part of the sentence after the comma in Article 7.3 and it reads as follows:**

7.3 The measures to achieve the aims set out in Article 7.1(b) shall include, ~~to the extent applicable to the State agency in question and necessary to address the obstacle in question~~:

1. reducing the financial burden on victims associated with seeking a remedy, for instance through the provision of financial assistance, waiving court fees in appropriate cases, and/or granting exceptions to claimants in civil litigation from obligations to pay the costs of other parties at the conclusion of proceedings in recognition of the public interest involved;
2. providing support to relevant State agencies responsible for the enforcement of the measures referred to in Article 6;
3. ensuring that there is effective deterrence from conduct that may

amount to reprisals against victims and others;

1. reversing or reducing evidential burdens of proof for establishing liability, such as through the application of presumptions as to the existence of certain facts and the imposition of strict or absolute liability in appropriate cases;
2. ensuring fair and timely disclosure of evidence relevant to litigation or enforcement proceedings; and
3. ensuring that rules of civil procedure provide for the possibility of

group actions in cases arising from allegations of human rights abuse.

**We propose to add the Article 7.3.g and it reads as follows:**

(g) removing legal obstacles, including the doctrine of *forum non conveniens,* to initiate proceedings in the courts of another State Party in all appropriate cases of human rights abuses and violations resulting from business activities in particular those of a transnational character.

* 1. For the purposes of achieving the aims set out in Article 7.1(c), States shall adopt such legislative and other measures as may be necessary:

1. to enhance the ability of relevant State agencies to deliver, or to contribute to the delivery of, effective remedies;

* **We propose that 7.4 a adopts a wording in line with the 3rd Draft and it reads as follows:**

(a) to 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.

1. to ensure that victims are meaningfully consulted by relevant State agencies with respect to the design and delivery of remedies; and

to enable relevant State agencies to monitor a company’s implementation of remedies in cases of human rights abuse and to take appropriate steps to rectify any non-compliance.

# Article 8. Legal Liability

* 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.

**We support adding violation after human rights abuses in Article 8.1. as proposed by Egypt, Pakistan and Palestine.**

* 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)**
  2. 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)**
  3. 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.

**We propose a** **New Art. 8.2.bis:** **Neither the use or availability of company operational grievance mechanisms and similar non-judicial mechanisms can forfeit the right to access to courts and the potential legal liability of business enterprises.**

* 1. 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.
* **We support adding violation after human rights abuses in Article 8.3. as proposed by Egypt and Palestine**
  1. 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)**
  2. 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)**
  3. 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.

* **We support adding violation after human rights abuses in Article 8.4. as proposed by Egypt and 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)**

* 1. 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)**

* 1. 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)**
* **We propose to add amend Article 8.5 as such:**
* 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 **and availability of assets**, such as insurance bonds or other financial guarantees, to cover potential claims of compensation.
  1. 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.
  2. 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.

* 1. 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)**
  2. **~~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)**
  3. 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.
  4. 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)**

**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)**

# CHAIR PROPOSAL Article 8. Legal Liability

* 1. Each State Party shall adopt such measures as may be necessary, and consistent with its domestic legal and administrative systems, to establish the liability of legal and natural persons for non-compliance with its legally enforceable measures established pursuant to Article 6.
  2. Subject to the legal principles of the State Party, the liability of legal and natural persons referred to in this Article shall be criminal, civil or administrative, as appropriate to the circumstances. Each State Party shall ensure, consistent with its domestic legal and administrative systems, that the type of liability established under this article shall be:

1. responsive to the needs of victims as regards remedy; and
2. commensurate to the gravity of the human rights abuse.
   1. Subject to the legal principles of the State Party, the liability of legal and natural persons shall be established for:
3. conspiring to commit human rights abuse; and
4. aiding, abetting, facilitating and counselling the commission of

human rights abuse.

* 1. Each State Party shall adopt such measures as may be necessary, and consistent with its domestic legal and administrative systems, to ensure that, in cases concerning the liability of legal or natural persons in accordance with this article:

1. the liability of a legal person is not contingent upon the establishment of liability of a natural person;
2. the criminal liability (or its functional equivalent) of a legal or natural person is not contingent upon the establishment of the civil liability of that person, and vice versa; and
3. the liability of a legal or natural person on the basis of Article 8.3 is not contingent upon the establishment of the liability of the main perpetrator for that unlawful act.
   1. Each State Party shall ensure, consistent with its domestic legal and administrative systems, an appropriate allocation of evidential burdens of proof in judicial and administrative proceedings that takes account of differences between parties in terms of access to information and resources, including through the measures referred to in Article 7.3(d), as appropriate to the circumstances.
   2. Each State Party shall ensure that legal and natural persons held liable in accordance with this Article shall be subject to effective, proportionate and dissuasive penalties or other sanctions.

# Article 9. Adjudicative Jurisdiction

* 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:
* **We propose to amend the Article 9.1 as follows:**
* 9.1.Jurisdiction with respect to claims brought by **or on behalf of** 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 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), shall vest in the courts of the State where: **(Egypt)**

1. the human rights abuse occurred and/or produced effects; or
2. an act or omission contributing to the human rights abuse occurred;

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

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.

* 1. 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:

1. place of incorporation or registration; or
2. place where the principal assets or operations are located; or
3. central administration or management is located; or
4. principal place of business or activity on a regular basis.

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

* 1. 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)**

**We support keeping the doctrine of forum non conveniens in Article 9.3 as supported by South Africa, Palestine and Namibia.**

**And propose a new Article 9.3:**

**New Art. 9.3. on a Provision regarding jurisdiction with respect to criminal claims, including the provision for universal jurisdiction for certain crimes.**

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

* 1. 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.

**We propose to add a New Art. 9.4. on a Provision regarding jurisdiction with respect to administrative claims**

9.4. 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))**

1. the presence of the claimant on the territory of the forum;
2. the presence of assets of the defendant; or
3. a substantial activity of the defendant.

# CHAIR Proposal Article 9. Jurisdiction

* 1. Each State Party shall take such measures as may be necessary, and consistent with its domestic legal and administrative systems, to establish its jurisdiction in respect of human rights abuse in cases where:

1. the human rights abuse took place, in whole or in part, within the territory or jurisdiction of that State Party;
2. the relevant harm was sustained, in whole or in part, within the territory or jurisdiction of that State Party;
3. the human rights abuse was carried out by either
   1. a legal person domiciled in the territory or jurisdiction of that State party; or
   2. a natural person who is a national of, or who has his or her habitual residence in the territory or jurisdiction of, that State Party; and
4. a victim seeking remedy through civil law proceedings is a national of, or has his or her habitual residence in the territory or jurisdiction of, that State Party.
   1. For the purposes of Article 9.1, a legal person is considered

domiciled in any territory or jurisdiction in which it has its:

1. place of incorporation or registration;
2. principal assets or operations;
3. central administration or management; or
4. principal place of business or activity.
   1. Each State Party shall take such measures as may be necessary, and consistent with its domestic legal and administrative systems, to ensure that decisions by relevant State agencies relating to the exercise of jurisdiction in the cases referred to in Article 9.1 shall respect the rights of victims in accordance with Article 4, including with respect to:the discontinuation of legal proceedings on the grounds that there is another, more convenient or more appropriate forum with jurisdiction over the matter; or the coordination of actions as contemplated in Article 9.4.
   2. If a State Party exercising its jurisdiction under this Article has been notified, or has otherwise learned, of judicial proceedings taking place in another State Party relating to the same human rights abuse (or any aspect of such human rights abuse), the relevant State agencies of each State shall consult one another with a view to coordinating their action

# Article 10. Statute of limitations

* 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.
* **We propose the deletion of “the most serious ” and “of concern to the international community as a whole” to the Article 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~~ under international law.
  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 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.
* **We propose the following amendments to the article 10.2 and it reads as such:**
* 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 applicable to civil claims or violations that do not constitute **~~the most serious~~** crimes **~~of concern to the international community as a whole~~ under international law shall not run for such a period as no effective remedy is available and shall not apply to civil or administrative actions sought by victims seeking reparation for their injuries. In all cases they must** 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.
  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 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 10. Limitation Periods

* 1. Each State Party shall adopt such measures as may be necessary, and consistent with its domestic legal and administrative systems, to ensure that no limitation period shall apply in judicial proceedings in relation to human rights abuse constituting a war crime, a crime against humanity or the crime of genocide.
  2. In judicial proceedings regarding human rights abuse not falling within the scope of Article 10.1, each State Party shall adopt such measures as may be necessary, and consistent with its domestic legal and administrative systems, to ensure that limitation periods for such proceedings:

1. are of a duration that is appropriate in light of the gravity of the human rights abuse;
2. are not unduly restrictive in light of the context and circumstances, including the location where the relevant human rights abuse took place or where the relevant harm was sustained, and the length of time needed for relevant harms to be identified; and
3. are determined in a way that respects the rights of victims in

accordance with Article 4.

# Article 11. Applicable Law

* 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.
  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”))**

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

* **We propose to add to Article 11.2.a ter the following**

**a) *ter* the victim is domiciled; or**

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

# CHAIR PROPOSAL Article 11. Applicable Law (removed)

# Article 12. Mutual Legal Assistance and International Judicial Cooperation

* 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.
  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.
  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.
  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.
  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.

1. Mutual legal assistance under this (Legally Binding Instrument) is understood to include,

*inter alia*:

* 1. Taking evidence or statements from persons;
  2. Executing searches and seizures;
  3. Examining objects and sites;
  4. Providing information, evidentiary items and expert evaluations;
  5. Providing originals or certified copies of relevant documents and records, including government, bank, financial, corporate or business records;
  6. Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes;
  7. Facilitating the voluntary appearance of persons in the requesting State Party;
  8. Facilitating the freezing and recovery of assets;
  9. 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;
  10. Assisting in regard to the application of domestic law;
  11. Any other type of assistance that is not contrary to the domestic law of the requested State Party.

1. 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.
   1. In criminal cases covered under this (Legally Binding Instrument), and without prejudice to the domestic law of the involved States Parties,
2. 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;
3. 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.
   1. 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.
   2. 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.
   3. 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.
   4. 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.
   5. Recognition and enforcement may be refused, only where:
4. 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
5. 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
6. where the judgment is manifestly contrary to the *ordre public* of the State Party in which its recognition is sought.
   1. 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)**

* 1. 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 12. Mutual Legal Assistance**

* 1. States parties shall afford one another the greatest measure of assistance in connection with criminal, civil and administrative proceedings relevant to the enforcement of the measures referred to in Articles 6-8, including assistance to expedite requests from private parties for the transmission and service of documents and for the taking of evidence in civil proceedings.
  2. States Parties shall carry out their obligations under Article 12.1 in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them.
  3. States Parties shall cooperate closely with one another, consistent with their respective domestic legal and administrative systems, to enhance the enforcement of the measures referred to in Articles 6-8. States Parties shall, in particular, take the necessary steps:

1. To establish, maintain and enhance channels of communication between their relevant State agencies and their counterparts in other States Parties in order to
   1. facilitate the secure and rapid exchange of information concerning all aspects of the enforcement of the measures referred to in Articles 6-8, including for the purposes of the early identification of breaches of such measures; and
   2. share information concerning issues, challenges, and lessons learned in the prevention of business involvement in human rights abuse, including with a view to enhancing the effectiveness of competent authorities, agencies and services; and
2. To facilitate effective coordination between their relevant State agencies and to promote the exchange of personnel and other experts, including, subject to bilateral agreements or arrangements between the States Parties concerned, the posting of liaison officers.
   1. For the purposes of meeting their obligations under this article, each

State Party shall:

* + 1. ensure that its relevant State agencies have access to the necessary information, support, training and resources to enable personnel to make effective use of the treaties and arrangements referred to in Article 12.2; and
    2. consider entering into or enhancing bilateral or multilateral agreements or arrangements aimed at improving the ease with which and speed at which
       1. requests for mutual legal assistance can be made and

responded to; and

* + - 1. information can be exchanged between relevant State Agencies for the purposes of enforcement of the measures referred to in Articles 6-8, including through information repositories that provide clarity on points of contact, core process requirements and systems for updates on outstanding requests.

# Article 13. International Cooperation

* 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).

**We propose the amendment of Article 13.1 as such:**

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) **including in the prevention and detection of any activity contrary thereto and in the rehabilitation , physical and psychological recovery, social reintegration and repatriation of victims, especially children.**

* 1. 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))**

1. 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;
2. Sharing experiences, good practices, challenges, information and training programs on the implementation of the present (Legally Binding Instrument);
3. Raising awareness about the rights of victims of business-related human rights abuses and the obligations of States under this (Legally Binding Instrument);
4. 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;
5. Contribute, within their available resources, to the International Fund for Victims referred to in Article 15.7 of this (Legally Binding Instrument).

**We support the fact that the Article 13.3. as we proposed last year has been adopted in the new draft proposal of the chair in Article 13.1 and would like to once again propose a new Art 13.3 to the third Draft or to maintain Article 13.1 of the draft proposal of the chair.**

**New Art. 13.3. States Parties shall promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.**

**(See also 13.1 of Chair Proposal below)**

**New Art. 13.4 The Committee may invite international or regional organizations and agencies and other competent bodies, as it may consider appropriate, to provide expert advice on the implementation of the (Legally Binding Instrument) in areas falling within the scope of their respective mandates. It shall further transmit, as it may consider appropriate, to international or regional organizations and agencies and other competent bodies any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with any observations and recommendations from the Committee, on these requests or indications.**

**New Art. 13.[5. The Committee may also bring to the attention of such bodies, with the consent of the State Party concerned, any matter arising out of complaints considered under the present (Legally Binding Instrument) that may assist them in deciding, each within its field of competence, on the advisability of international measures likely to contribute to assisting States parties in achieving progress in the implementation of the present (Legally Binding Instrument).**

# Article 13. International cooperation

* 1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention of business involvement in human rights abuse and for the remedy of harms arising from such abuse. States Parties shall also promote international cooperation and coordination between their relevant State agencies, national and international non- governmental organizations and international organizations.

**(See also proposal on NEW Article 13.3 above)**

* 1. States Parties shall promote international cooperation to:

1. raise public awareness about
   1. human rights in the context of business activities and how they are protected;
   2. the different ways in which business enterprises can become involved in adverse human rights impacts and their obligations under international and domestic law in such contexts and circumstances;
   3. best practices for identifying, preventing and mitigating adverse human rights impacts;
   4. how victims and potential victims can defend their rights and seek remedies for adverse human rights impacts; and
2. assist and support victims and potential victims to defend their human rights and obtain an effective remedy.

States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes for the purposes of realising the aims of this LBI