WRITTEN INPUT ON ARTICLES 1-14

Of the Third Revised Draft for a Legally Binding Instrument (LBI) to Regulate the Activities of Transnational Corporations and Other Business Enterprises in International Human Rights Law

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Introduction

The present contribution to the regional consultation of the United Nations' (UN) open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG) has been produced by CIDSE, the international family of Catholic social justice organisations, and its Corporate Power working group. In order to achieve a Legally Binding Instrument (LBI) that can truly make a difference for those in the Global South directly impacted by corporate activities, we have consulted with partner organisations in the Global South in order to mobilise their expertise and integrate their points of view.

Through our commentary and additions to the text of Articles 1 through 14 of the Third Revised Draft of the Legally Binding Instrument, we want to ensure the future Fourth Draft can effectively accomplish the double objectives of preventing human rights abuses, particularly by transnational corporations, and ensuring effective remedy and justice for those affected.

While rooted in our previous contributions to the Third Revised Draft[1], in the present text we have given prominence to proposals by States on the Third Revised Draft during the 8th and 7th sessions, while re-iterating the need for a victim-centred text through additional text when we considered States' amendments lacked important provisions. While the rest of the text examines in details changes proposed to the draft LBI, we would like to highlight here three general points that States should consider throughout the text:

1. Emphasise collective rights. While the notion of victims and affected stakeholders in the draft do include the collective aspects of the rights affected, it is important to detail and engrain in the text the role that collective rights play in non-Western legal systems. This is particularly important in the case of communities at large and peoples whose sovereignty and autonomy is recognised by international law, such as Indigenous Peoples or afro-descendant communities[2]. An emphasis on collective rights would strengthen the enjoyment of traditional and indigenous rights over land and the natural environments. Amendments in this sense are put forward on Articles 1, 4, 5, 6 and 7, but the text should generally be revised to allow for the multiplicity of collective rights enjoyed by peoples and communities.

2. Cover environmental and climate-related abuses and violations. The inclusion of environmental damage and climate-related impacts in the LBI has been an issue of discussion since the beginning of the OEIGWG work. As we have stated in previous contributions, a forward-looking LBI cannot overlook climate and the environment. The Fourth Draft should embrace the precautionary principle, and fully include the right to a clean, healthy and sustainable environment. Importantly, the European Commission's Corporate Sustainability Due Diligence Directive (CSDDD)[3] also covers environmental impacts – the LBI should follow suit and recognise that the protection of the environment and climate in the context of corporate activities are essential for the enjoyment of virtually all human rights.

3. A victim-centred text. While the prevention of human rights abuses by companies is essential, the real innovation of the LBI resides in its provisions relating to civil liability, access to justice, applicable law and choice of jurisdiction. These provisions would establish an international framework for legal accountability and allow to overcome many national and international barriers victims face when seeking justice transnationally. In the European context, it would strengthen regional frameworks like the CSDDD and complement national initiatives like the German and the French due diligence laws, providing a harmonised framework for access to justice[4].

Article 1 – Definitions

We suggest amending Art 1.1 to add "affected individuals, communities and peoples" after 'victims'. This would better reflect the collective nature of harm often experienced by rights-holders. Particularly human rights abuses in the context of corporate activities often impact groups of people, such as Indigenous People and Afro-descendant communities who enjoy collective rights under international and domestic laws. Additionally, victims of abuses in the context of business activities are often children, who may suffer specific developmental impacts – this should be reflected in the article. For this reason, we suggest amending Art 1.1 as follows:

[1] See CIDSE's contributions to the Seventh and Eight Sessions of the OEIGWG.
[2] See the International Labour Organisation's (ILO) Convention 169 on Indigenous and Tribal Peoples and the UN Declaration on the Rights of Indigenous Peoples.
[3] European Commission, Proposal for a Corporate Sustainability Due Diligence Directive.
[4] Bernaz and others, The UN Legally Binding Instrument and the EU proposal for a Corporate Sustainability Due Diligence Directive, 2022.

> ***Art 1.1*** *– "Victims"* ***or "affected individuals, communities or peoples****" 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.* ***When the victim is a child, harm should contemplate the impacts on their development.***

With regard to the definition of human rights abuses in Art 1.2, we suggest keeping the original text as formulated in the Third Revised Draft. We strongly suggest keeping the reference to a clean, healthy and sustainable environment[5]. As recognised by the Human Rights Council and the UN General Assembly, a clean, healthy and sustainable environment is a crucial condition to enjoy most human rights. Additionally, in this formulation, the article reflects the principle recognised in the United Nations' Guiding Principles on Business and Human Rights (UNGPs) and the OECD Guidelines on Multinational Enterprises (OECD Guidelines) that corporate activities can affect virtually any human rights. We also suggest amending Art 1.2 in line with our comments on Art 1.1. Additionally, it is important to recognise that State actors can also violate human rights in the context of business activities. In line with the practice in international human rights law, we suggest refering the definitions to both breaches of companies' obligation to respect (abuses) and of States' obligation to protect and fulfil human rights (violations). For this reason, we suggest adding "violations" to the definition of human rights abuses.

The amended Art 1.2 would read as follows:

> ***Art 1.2*** *– "Human rights abuse* ***and 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* ***or people****, that impedes the full enjoyment of internationally recognised human rights and fundamental freedoms, including the right to a safe, clean, healthy and sustainable environment.* ***"When the "rights-holder" is a child, harm should contemplate the impacts on their development.***

Article 2 – Statement of Purpose

With regards to Article 2, setting out the Statement of Purpose of the LBI, we suggest enshrining in the text the need for person-centred, gender-sensitive access to remedy and justice – taking into account the differentiated impacts of human rights violations on different groups of at-risk persons. For this reason, and as suggested by numerous States during the 7th and 8th sessions, we suggest amending Art 2.1d as follows:

> *Art 2.1d – To ensure access to* ***gender-responsive, child-sensitive and victim-centered*** *justice and effective, adequate and timely remedy for victims of human rights abuses in the context of business activities;*

In Art 2.1e, we suggest replacing "prevent and mitigate human rights abuses" by "prevent and remedy human rights abuses and mitigate risks of abuse." While risks of human rights abuses in the context of business activities should be mitigated when prevention is not possible (because, for instance, a company is contributing to a human rights abuse but it is not directly causing it), when those risks concretise in abuses keeping individuals from enjoying their rights, the activities causing the abuse must be terminated. In accordance with the OECD Guidelines on Multinational Enterprises and the United Nations' Guiding Principles on Business and Human Rights (UNGPs), the text should also make it clear that when companies do cause harm, they have an obligation to remedy it.

[5] A position supported in the 7th and 8th session by South Africa, Mexico, Palestine, Costa Rica, Panama.

Both the obligation to cease harm and to remedy it are also principles established in the European Commission's CSDDD proposal.

Article 3 – Scope

All businesses must respect human rights, and the way in which they may do so should depend on their size, context of operation, turnover, governance structure[6]. We agree that the LBI should set out this principle, which is recognised in the UNGPs and OECD Guidelines, but that it should also set out specific provisions for preventing and addressing risks in the operations and value chains of companies operating transnationally, due to the larger risks that they pose to human rights and the environment globally and to the legal challenges they pose to victims when they try to access justice[7]. For these reasons, Art 3.1 should be reworded as suggested by Palestine and Namibia during the 7th session. This amendment would be aligned with Art 3.2, which calls on Member States to take account of the different types of business enterprises that exist domestically when implementing domestically the obligations set out in the LBI.

> ***Art 3.1*** *– This (LBI) shall apply to all business activities,* ***with particular focus on transnational corporations and businesses with a transnational character in their operations and their value chains.***

With regards to material scope, it is of crucial importance that businesses act responsibly in the context of occupation or conflict. For this reason, we support the specific mention of international humanitarian law, international criminal law and international environmental law in Art 3.3[8]. With regard to the last point, we wish to draw attention to proposed legislation in the European Union, the Corporate Sustainability Due Diligence directive, which covers environmental and climate standards as well. Activities of the extractive industries often put at risk vital ecosystems that are necessary for the enjoyment of the rights of local communities and population, and for the planet and humanity as a whole. Mining operations in protected areas, for example, contribute to climate change both through direct emissions and through deforestation, soil erosion and other environmental impacts. The resurgence in mining that is accompanying the transition to an economy centred on renewable energies in the Global North could exacerbate these impacts[9]. It would be a missed opportunity for the future LBI not to address such important risks.

> ***Art 3.3*** *– This (Legally Binding Instrument) shall cover all internationally recognised human rights and fundamental freedoms binding on the State Parties of this (Legally Binding Instrument), including those recognised in the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, all core international human rights treaties and fundamental ILO Conventions to which a State is a Party, customary international law,* ***international humanitarian law, international criminal law and international environmental law****.*

Article 4 – Rights of Victims

It is important to recognise that States can violate human rights in the context of business activities and for these reasons Art 4.1 should refer to human rights abuses 'and violations', as suggested by Ecuador and Namibia during the 7th session.

We suggest strengthening Art 4.2c by adding that reparation must not only be gender-sensitive, but also child friendly, as raised by Panama and South Africa in past sessions.

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[6] See UNGPs, Pillar II, 14.

[7] See for example the study commissioned by the European Parliament by Axel Max and others, Access to legal remedies for victims of corporate human rights abuses in third countries; the study by European Fundamental Rights Agency's (FRA) Business and Human Rights – Access to Remedy.

[8] As proposed by Palestine during the 7th and 8th sessions..

[9] See SOMO, The Big Battery Boom.

It is positive that Art 4.2d recognizes the rights of victims to seek reparation through both judicial and non-judicial mechanisms. However, the text must clarify that recourse to the latter should not deprive victims of the rights to seek remedy through the State's judicial system. Therefore, we suggest amending Art 4.2d as follows:

> ***Art 4.2d*** *– "be guaranteed the right to submit claims, including by a representative or through class action in appropriate cases, to courts and non-judicial grievance mechanisms of the States Parties* ***and that the right to submit claims to non-judicial grievance mechanisms shall not infringe upon the right to access judicial mechanisms.****"*

Art 4.3f deals with the issue of legal aid and access to information, which are key in transnational cases in the context of business activities, yet the article is worryingly limited. The paragraph should clarify that when access to information necessary to pursue remedy is granted, and that this is done in a way that is accessible to particular at-risk groups such as Indigenous People or rural communities, in terms of format and language. Given the importance of access to information, we suggest limiting Art 4.3f to the issue of legal aid and dedicating a new Art 4.3g to the right to information. If States' suggestions[10] from the 7th and 8th sessions are combined, the two new paragraphs would read as follows:

> ***Art 4.3f*** *– "be guaranteed access to legal aid relevant to pursue effective remedy."*

> ***NEW Art 4.3g*** *– "be guaranteed access to information relevant to pursue effective remedy in their own language or other relevant languages and in a format accessible to children and adults, including women, peasants, Indigenous Peoples and other at-risk groups. This should include information relative to the businesses involved and their business relationships throughout the value chain, including but not limited to information and documents on business ownership and control, contractual relationships and communications."*

Article 5 – Protection of Victims

In Art 5.1, we suggest adding 'communities and peoples' to the list of those protected under the LBI.

In Art 5.2, it is crucial to address the particular risks faced by those defending human rights and the environment by ongoing or potential future corporate harm. The text of the Third Revised Draft does recognise the role of human rights and environmental defenders and their particular protection needs but should be further strengthened by highlighting the role that public and private security forces play in putting them at risk. It is also important to recognise the common tactics used to threaten the life and security of human rights and environmental defenders, including threats and harassment (including legal forms of harassment such as Strategic Lawsuits Against Public Participation (SLAPPs)). In this light, States should take proactive measures to prevent and investigate threats and harassment.

> ***Art 5.2*** *– "States Parties shall guarantee a safe and enabling environment for persons, groups and organisations that promote and defend human rights and the environment, so that they are able to exercise their human rights free from any threat, intimidation, violence, insecurity, harassment and reprisal."*

> ***NEW Art 5.3*** *– "States Parties shall take appropriate, effective and timely measures to prevent, investigate impartially and timely, and punish those* ***materially and intellectually*** *responsible for attacks, threats or intimidations of persons, groups and organisations that promote and defend human rights and the environment."*

[10] See contribution from Cameroon, Namibia, Ecuador, Palestine, South Africa and others to the 7th and 8th sessions.

Article 6 – Prevention

The inclusion of the precautionary principle is key to ensuring the right to a clean, healthy and sustainable environment. This is in line with Principle 15 of the Rio Declaration, and should be seen as conducting to fulfilling the right to a safe, clean, healthy and sustainable environment. This principle requires taking measures that reduce the possibility of suffering environmental damage even if the precise probability of it occurring is not known. The inclusion of this principle would give greater weight, in terms of the right to the environment, to the material content of the binding instrument.

The language of Art 6.3b underlines the importance of avoidance and prevention, aligned with a precautionary approach. We must restate here that when business activities are causing human rights abuses, companies should have an obligation to terminate them. Companies should only be required to mitigate human rights abuses when they are not materially able to terminate them – this is typically the case when they are contributing to abuses by another party in their supply chains. When a company is capable of ceasing abuse they should do so. We suggest restricting the preventative duty by clarifying that human rights abuses should always be ceased.

As per our comment under Article 2, we recommend that any reference in the LBI to "prevent and mitigate human rights abuses" should be replaced by "prevent, mitigate or cease human rights abuses and avoid risks of abuse."[11] We recommend that Art 6.2 should be rephrased as follows:

> ***Art 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 recognised human rights,* ~~***and***~~ ***prevent human rights abuses and avoid human rights risks*** *throughout their business activities and relationships."*

Companies should also be responsible for ceasing and redressing adverse impacts when they have caused or contributed to them. We therefore recommend to rephrase Art 6.3.b as follows:

> ***Art 6.3.b*** *– "****Take appropriate measures to avoid, prevent and mitigate potential human rights abuses and to cease and redress effectively the identified actual human rights abuses****."*

We believe a more precise framework is needed under Art 6.4. Art 6.4a should be amended to include reference to conduct impact assessments "prior and throughout their operations, including the corresponding measures taken in response to any identified risks." Moreover, States shall ensure that when conducting human rights, labour rights, environmental and climate change impact assessments, this is done independently and in a way that is public and transparent. As affected stakeholders are often the ones who bear the information relevant to effective identification of risks, they should be consulted throughout the process.

> ***Art 6.4a*** *– "Undertaking and publishing regular human rights, labour rights, environmental and climate change impact assessments* ***prior and*** *throughout their operations,* ***including the corresponding measures taken in response to any identified risks. States shall ensure that impact assessments are carried out by an independent party in a transparent and public manner and in consultation with affected stakeholders."***

We also support the amendments made by various States to ensure 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.

[11] In line with suggestions by Panama and Mexico.

With reference to amendments made by Panama, Palestine and South Africa at the 8th session, Art 6.4c should be amended to:

> ***Art 6.4c*** *– "Conducting meaningful consultations -* ***in line with principles of free, prior and informed consent*** *- 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 organisations****, 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."*

These amendments would enhance the likelihood of inclusive, transparent and meaningful stakeholder consultations, which are essential.

Art 6.4 remains overall vague on the issue of communities' consent to the presence of business activities that might affect them. While free, prior and informed consent (FPIC) is mentioned for indigenous communities, it is not clear whether a denial of consent from the same communities would be enough to actually prevent business activities from taking place or cease ongoing activities. And while FPIC is an internationally recognised right for indigenous communities, there is a lack of a similar requirement for communities impacted by business activities that do not fall under the 'indigenous' umbrella. We therefore recommend that Art 6.4d is amended to:

> ***Art 64.d*** *– "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 denial of such consent constitutes sufficient grounds for preventing or ceasing business activities****."*

We also recommend that all references to *"Free, prior and informed consent"* are followed by the sentence ***"and that denial of such consent constitutes sufficient grounds for preventing or ceasing business activities."***

Security forces, whether public or private, are often the ones materially responsible for abusing the rights of those impacted by business activities. Companies may act through private or public security forces to shield their responsibilities for human rights violations. This is often the case when communities oppose large industrial projects, and even more so in situations of occupation and conflict. For this reason, we recommend the addition of a new letter, Art 6.4x:

> *"Reporting on the provision of security for their operations, regardless or whether they are enforced by security forces directly employed by the company, hired, or through other arrangement."*

Art 6 of the LBI should be amended through an additional paragraph, building on amendments made by Uruguay, Panama, Palestine, Mexico and Brazil:

> ***Art 6.X*** *– "States Parties shall enact legislation, regulations and enable effective adjudication to ensure that business enterprises respect the rights of human rights defenders."*

Article 7 – Access to Remedy

On Art 7.3, we want to stress that differences in different jurisdictions would create inequality and gaps for those seeking remedy and justice. Addressing such differences and ensuring access to justice for all victims, regardless of what jurisdiction they reside in, should be a key objective of this instrument.

We support the formulation of Art 7.3a and Art 7.3b. We suggest rephrasing Art 7.3c so as to highlight the need for a gender and child-sensitive approach. We reiterate the need to explicitly mandate States to remove gender-specific barriers to justice, and we support suggestions by Peru, Panama, South Africa, Palestine and Mexico on Art 7.3.b to "avoid gender and age stereotyping". Egypt's suggestion on this point might provide for a better wording:

> ***Art 7.3b*** – "Guaranteeing the rights of victims to be heard in all stages of proceedings in a gender-sensitive, age-sensitive, and child-sensitive manner;"

On Art 7.4, the reference to "rules concerning allocation of costs" may be too narrow. In some cases, it may not be the rules themselves that become a barrier but their application or practice. We, therefore, suggest deleting the words "rules concerning". The article which would then read:

> ***Art 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 (…)."*

We welcome the explicit obligation for State Parties in Art 7.5 to enact legislation to enable a reversal of the burden of proof regarding the establishment of the liability of companies. Given the significant imbalance in power, resources, and access to information that right-holders experience when suing corporations, the LBI should explicitly mandate for reversing the burden of proof, moving away from judges' discretion. We therefore suggest removing the mention "allowing judges", so that the article reads as follows:

> ***Art 7.5*** *– "States Parties shall enact or amend laws to reverse the burden of proof in appropriate cases or enabling courts to reverse the burden of proof to fulfil the victims' right to access to remedy where consistent with international law and its domestic constitutional law."*

Article 8 – Civil Liability

The LBI lacks an explicit recognition of joint or several liability of the corporation causing or contributing to the human rights abuse (e.g., the local subsidiary) and the corporation controlling the former but not preventing it from causing or contributing to the violation (e.g., the parent company). The text of the LBI should explicitly recognise the possibility for joint and several liability, as this is crucial in court cases to determine responsibility for the damage caused, as follows:

> ***Art 8.1*** *– "States Parties shall ensure that their domestic law provides for a comprehensive and adequate system of legal liability* ***including joint and several 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* ***actions or omissions in the context*** *of their own business activities, including those of transnational character, or from their business relationships."*

It is welcome that the draft reflects companies' liability for historical damages; however, the current language could confuse and lead to interpreting the provision as uniquely referring to past business relationships. The first part of Art 8.6 should be amended replacing 'have had' with "have or have had" as follows:

> ***Art 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 or have had*** *a business relationship (…)."*

The notion of control in Art. 8.6 is also problematic. As the draft lacks provisions establishing a clear rebuttable presumption of control, it can be assumed that "*to establish legal liability, it*

must be proven in each individual case that a company effectively exercised control over their business relationships."

This can be difficult because corporate relations between different companies (percentage of shares, appointment of directors, voting rights such as "golden shares") are often not apparent to third parties. Similarly, if control is exercised through contractual relations (right to unilaterally determine price, quality and quantity of products), it may be challenging to prove control without access to these contracts.

In light of the variety of control situations and the differences between legal systems, the text should require States to ensure that their domestic systems provide for a presumption of control in the meaning of Art 8.6. A sentence should be added to Art 8.6, worded as follows:

> ***Art 8.6*** *– "States Parties shall determine in their domestic law that control over one legal person by another legal person* ***is presumed*** *with reference to corporate, contractual and other business relations between the former and the latter into account."*

Corporations should not be exempted from liability for harm in reason of their compliance with due diligence obligations. It is essential that this is as unambiguous as possible.
Art 8.7 establishes this clearly in the first part, except for the use of 'automatically', and the ambiguity in the second part. Art 8.7 should be strengthened and simplified by reformulating it as follows:

> ***Art 8.7*** *– "When determining the liability of a natural or legal person for causing or contributing to human rights abuses or failing to prevent such abuses as laid down in Article 8.6, the competent court or authority can take into account if the person undertook adequate human rights due diligence measures, but compliance with applicable human rights due diligence standards shall not absolve from liability ipso iure."*

Article 10 – Statute of Limitations

Any provisions on statutes of limitations should ensure that child victims are not in a situation where justice is denied. This is also crucial for those who, because of their age, physical, mental or psychological condition, need additional time and resources to seek redress. For this reason, we support the amendment from Palestine last year on Art 10.2.

Article 14 – Consistency with International Law Principles and Instruments

We welcome that Art 14 recognises the primacy of human rights over trade and investments. Yet, in its current wording the article remains too vague, insofar as it does not specify how States should practically ensure that existing agreements do not violate human rights. We suggest introducing a human rights-based approach in the whole article and outlining that human rights experts should have a central role in Investor-State Dispute Settlement Tribunals.

Civil society and people affected by corporate abuse have been denouncing for years the negative impact of some mechanisms of bilateral and multilateral agreements, such as Investor-State Dispute Settlement Tribunals, known as ISDS. ISDS are unfairly biased towards corporate actors and are used as a means by which corporations exercise undue influence on governments' policies. They have for too long provided avenues for powerful companies to undermine crucial measures to protect people and the planet.

Three changes to Article 14 may help address the problem:

- First, language should be added at the end of the article to ensure that all existing bilateral or multilateral agreements, including trade and investment agreements, shall be

interpreted and implemented in a manner that does not undermine or restrict States capacities to fulfill their obligations under this LBI and other existing obligations in international human rights law.

- Second, we advise the addition of an additional letter to Art 14.5 that would allow States to revise and amend trade and investment agreements that can negatively impact human rights.
- Third, prior to concluding any new trade or investment agreements by State Parties, States Parties should be required to carry out comprehensive environmental and human rights impact assessments.

The new Art 14.5 would read as follows:

14.5 State Parties shall ensure that:

a) All existing bilateral or multilateral agreements, including regional or sub-regional agreements, on issues relevant to this (Legally Binding Instrument) and its protocols, including trade and investment agreements, shall be interpreted and implemented in a manner that does not undermine or restrict their capacity to fulfill their obligations under this (Legally Binding Instrument) and its protocols, if any, as well as other relevant human rights conventions and instruments, inter alia by ensuring that members of a dispute settlement entity charged with interpreting and implementing these agreements have specialised knowledge in human rights law and by referring to the obligations under this LBI as well as other relevant human rights conventions and instruments in their submissions to such a dispute settlement entity.

b) All new bilateral or multilateral trade and investment agreements shall be compatible with the States Parties' human rights obligations under this (Legally Binding Instrument) and its protocols, as well as other relevant human rights conventions and instruments. To ensure the compatibility of these agreements with States Parties' human rights obligations, States Parties shall:

• Conduct impact assessments based on the UN Guiding Principles on Business and Human Rights' impact assessments of trade and investment agreements before and during the negotiations, before the ratification and periodically after the entry into force of such agreements;

• Include specific exception clauses in all new trade and investment agreements to allow States Parties to fulfil their obligations under this (Legally Binding Instrument) and its protocols, if any, as well as other relevant human rights conventions and instruments with measures which would otherwise violate their obligations under the respective trade and investment agreement;

c) All existing bilateral or multilateral agreements, including regional or sub-regional agreements, on issues relevant to this (Legally Binding Instrument) and its protocols, including trade and investment agreements, shall be revised in light of their impact on States Parties' obligations under this (Legally Binding Instrument) and its protocols, if any, as well as other relevant human rights conventions and instruments, and shall be revised if necessary.

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