FIDH INTERNATIONAL FEDERATION FOR HUMAN RIGHTS

Analysis of the Chair-Rapporteur's proposed reformulations of selected provisions (Articles 12 to 24 and 1 to 3) of the updated draft legally binding instrument

October 2026

The International Federation for Human Rights (FIDH) welcomes the Chair-Rapporteur suggested redrafting of selected provisions of the updated draft legally binding instrument (LBI) presented during the 12th session of the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG).

FIDH thanks the Chair-Rapporteur and his team for the opportunity to provide written comments on the proposed reformulations. We particularly value the initiative, which seeks to enhance the coherence and robustness of the draft text.

Our comments analyse the proposals in an effort to obtain the strongest possible human rights protections in line with the pro-persona and effectiveness principles. This non-exhaustive contribution enriches previous analyses of the Updated Draft.

Proposal 1 on Article 12.1 – Mutual legal assistance

Chair's proposed new text:

12.1. States Parties shall afford one another the ***widest*** ~~***greatest***~~ *measure of* ***mutual legal*** *assistance in connection with criminal, civil and administrative proceedings relevant to the* ~~***enforcement***~~ ***implementation*** *of the measures referred to in Articles* ***46***~~*-8*~~*, including* ***for the purpose of effecting the service of documents and the taking of evidence or statements from persons***~~***, assistance to expedite requests from private parties for the transmission and service of documents and for the taking of evidence in civil proceedings***~~*.*

…

12.5. 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.

FIDH Comment:

We support the proposed reformulation of Article 12.1 which makes the text clearer, extends its scope, and brings the language more in line with the international instruments it is based on. We also support the new Article 12.5 based on the language of article 12.10 of the Third Revised draft. This will fill an important gap in the current draft LBI. This can be accompanied by an additional line admitting grounds for refusal based on human rights principles, which could read as follows:

Recognition or enforcement may be refused where it would be manifestly incompatible with the fundamental rights and freedoms recognized under applicable international human rights law, including fundamental principles of procedural fairness.

Proposal 2 on Article 13.2(c) – International Cooperation

Chair's proposed new text:

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:

...

(c) raising ***public*** *awareness about the rights of victims of* ~~***business-related human rights abuses***~~ ***human rights abuses in the context of business activities, including access to remedy*** *and the obligations of States under this (Legally Binding Instrument).*

FIDH Comment:

We support the suggested redrafting of Article 13.2(c), which broadens both the context and focus of awareness-raising activities. However, we regret that no proposals have been made to ensure that affected or potentially affected individuals and communities are involved in international cooperation activities, alongside "relevant international and regional organizations and civil society" (expressly mentioned in the chapeau of Article 13.2). As expressed during the intersessional meetings, the involvement of affected individuals and communities in international cooperation activities is essential for ensuring that these activities are grounded in the reality and lived experience of affected or potentially affected individuals and communities and are therefore more effective in achieving their ends.

For this reason, we would like to reiterate our earlier recommendation that Article 13.2 explicitly requires States Parties to promote and facilitate the participation of affected or potentially affected individuals and communities in deliberations, decision-making, and implementation of activities

and efforts of international cooperation, including all those listed from paragraphs (a) to (d). The chapeau of Article 13.2 could be modified as follows:

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**, and affected or potentially affected individuals and communities**. Such measures include, but are not limited to [...]

We also regret the failure to add, as part of State Parties' duty of international cooperation, an obligation to ensure that regional or multilateral institutions they are part of: 1. do not limit or undermine their ability to implement the LBI and fulfil its purposes, and; 2. enhance their ability to discharge their duties under the LBI. A new clause could draw from UNGP 10, which states:

> "when acting as members of multilateral institutions that deal with business-related issues", States should "seek to ensure that those institutions neither restrain the ability of their member States to meet their duty to protect nor hinder business enterprises from respecting human rights", and "encourage those institutions ... to promote business respect for human rights", and "help States meet their duty to protect against human rights abuse by business enterprises, including through technical assistance, capacity-building and awareness-raising".

Proposal 3 on Article 14.3 – Consistency with international law

Chair's proposed new text:

Suggest moving this provision under article 16 (preliminarily identified as article 16.7), and revise it as follows:

~~14.3~~ Article 16.7. *Nothing in the present (Legally Binding Instrument) shall affect* ***~~any provisions in~~*** *the domestic* ***law ~~legislation~~*** *of a State Party or* ***~~in~~*** *any* ***applicable*** *regional or international treaty* ***~~or agreement~~*** *that is more conducive to the respect, protection,* ***and*** *fulfillment* ***~~and promotion~~*** *of human rights in the context of business activities and* ***~~to~~ the*** *guarantee****~~ing the~~ of*** *access to justice****, ~~and~~*** *effective remedy* ***and reparations*** *to victims of human rights abuses* ***and violations*** *in the context of business activities, including those of transnational character.*

FIDH Comment:

We support the suggestion to move Article 14.3 to Article 16 on Implementation as well as the proposed textual amendments which safeguard the principle of non-regression in international human rights law. However, to be in keeping with international human rights instruments, including those that the Chair explicitly cites in his proposal, we would recommend referring not only to

"domestic law" and "applicable regional or international treaty", but also "regulations or custom". A revised text could read as follows:

~~14.3~~ Article 16.7. *Nothing in the present (Legally Binding Instrument) shall affect* ***~~any provisions in~~*** *the domestic* ***law~~legislation~~*** *of a State Party or* ***~~in~~*** *any* ***applicable*** *regional or international treaty****, regulations or custom,*** ***~~or agreement~~*** *that is more conducive to the respect, protection,* ***and*** *fulfilment* ***~~and promotion~~*** *of human rights in the context of business activities and* ***~~to~~ the*** *guarantee****~~ing the~~ of*** *access to justice****~~, and~~*** *effective remedy* ***and reparations*** *to victims of human rights abuses* ***and violations*** *in the context of business activities, including those of transnational character.*

Proposal 4 on Article 14.5 – Consistency with international law

Chair's proposed new text:

14.5. ***~~All~~ States Parties shall ensure that all ~~existing~~*** *bilateral* ***and ~~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~~ are*** *interpreted and implemented in a manner* ***compatible with States Parties' obligations under this (Legally Binding Instrument) and relevant human rights instruments and*** *that does not undermine or restrict the****~~ir~~*** *capacity* ***of States Parties to this (Legally Binding Instrument)*** *to fulfill* ***~~their~~ these*** *obligations* ***~~under this (Legally Binding Instrument) and its protocols, if any, as well as other relevant human rights conventions and instruments~~****.*

FIDH Comment:

We welcome the elimination of the reference to "existing" bilateral and multilateral agreements, as this term was restricting the application of this article only to agreements already in place, while both existing and new or future agreements should be interpreted in a manner that is compatible with States Parties' obligations under the LBI. However, the proposed reformulation still does not fully address all potential challenges.

Existing agreements that are incompatible with State Parties' obligations under the LBI may need reviewing, as an interpretation that is in line with States Parties' obligations under the LBI may not be possible, especially when certain principles or clauses are clear and leave no room for interpretation.

Regarding new or future agreements, it is much more effective and logical to design and conclude them from the outset in a manner that takes into account States Parties' obligations under the LBI and does not make compliance more difficult, rather than seeking to ensure compatibility through interpretation after agreements have been signed. For these reasons, we would like to suggest the following adjustments to the proposed new article:

*14.5. **~~All~~ States Parties shall ensure that all ~~existing~~** bilateral **and ~~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~~ are, as appropriate, designed, reviewed and/or** interpreted and implemented in a manner **compatible with States Parties' obligations under this (Legally Binding Instrument) and relevant human rights instruments and** that does not undermine or restrict the**~~ir~~** capacity **of States Parties to this (Legally Binding Instrument)** to fulfill **~~their~~ these** obligations **~~under this (Legally Binding Instrument) and its protocols, if any, as well as other relevant human rights conventions and instruments~~.**

We would like to reflect, based on declarations made during the 12th session, that the existing rules of interpretation under the Vienna Convention have unfortunately not prevented trade and investment agreements trumping States' human rights obligations and that in practice there is a hierarchy, but this is of trade and investment agreements over human rights. This clause is necessary to re-balance that hierarchy and ensure that States' capacity to implement human rights is not undermined by detrimental provisions in trade and investment agreements.

Proposal 5 on Article 15.4 – Institutional Arrangements

Chair's proposed new text:

15.4. The Committee shall have the following functions:

*(a) Make general comments **~~and normative recommendations~~** on the understanding and implementation of the (Legally Binding Instrument) based on the examination of reports and information received from the States Parties **~~and other stakeholders~~**;*

*(b) Consider and provide **comments, ~~concluding~~** observations **~~and~~ or** recommendations on reports submitted by States Parties as it may consider appropriate**,** and forward these to the State Party concerned**, which ~~that~~** may respond **~~with any observations it chooses to the Committee to them, on its own initiative or at the request of the Committee~~**. The Committee may**~~, at its discretion,~~** decide to include these suggestions and general recommendations in the report of the Committee together with comments, if any, from States Parties;*

(c) Provide support to the States Parties in the compilation and communication of information required for the implementation of the provisions of the (Legally Binding Instrument);

(d) Submit an annual report on its activities under this (Legally Binding Instrument) to the States Parties and to the General Assembly of the United Nations;

(e) The Committee may recommend to the General Assembly to request the Secretary-General to undertake on its behalf studies on specific issues relating to the present (Legally Binding Instrument).

FIDH Comment:

FIDH generally welcomes the proposed amendments to the current text, with the exception of the deletion of the reference to "other stakeholders" under Article 15.4(a), which should be reinstated. Though we agree with the Chair that considering information from non-state parties is now widespread practice among treaty bodies, we still believe that mentioning this expressly is important and necessary to guarantee that reports and other information from stakeholders will be effectively sought, received, and considered as part of the Committee's monitoring function.

Additionally, we believe that a few further functions should be expressly listed:

- *Follow-up function*

A follow up function should be explicitly added. We note the Chair's observation that a number of UN human rights treaty bodies have adopted the practice of following up on the implementation of recommendations issued to States Parties, even though this function is not expressly included in the relevant conventions. However, we believe that this function should be explicitly listed – to ensure it is actually exercised, rather than defer to a discretionary practice which the Committee will hopefully adopt based on the experience of other treaty bodies. We recommend that the following functions are explicitly listed:

- ***Request supplementary reports or information from States Parties, and follow up on such requests, and;***
- ***Follow up on the implementation of recommendations to States Parties and on the commitments by States Parties articulated in Concluding Observations.***

- *Complaint mechanisms*

While we note the reference in the Chair's proposal to the possibility of establishing a communications system through an optional protocol, we would like to insist that both an Individual Complaints mechanism and a State-to-State Complaints mechanism be explicitly listed as functions of the Committee in the LBI. Their functioning and procedures can be defined by the Committee itself through its rules of procedure.

This would help ensure the Chair's stated objective to align the LBI to "the practice of other UN human rights treaty bodies". State-to-State complaints mechanisms are provided for in the main body of the CAT, Convention on Migrant Workers, CERD, ICCPR, and the Convention for the Protection of all Persons from Enforced Disappearance (CED), while Individual Complaints mechanisms are explicitly mentioned in the main body of the CERD, CAT, Convention on Migrant Workers, and CED. Their inclusion as explicit functions of the Committee in the LBI does not mean that States Parties automatically accept their jurisdiction, as this can still be subject to an express declaration.

Proposal 7 on Article 16.3 – Implementation

Chair's proposed new text:

16.3. ~~***Special attention shall be undertaken in the***~~ ***States Parties shall undertake special measures in*** *cases of business activities* ***and business relationships*** *in conflict-affected areas****,*** ~~***including taking action***~~ *to* ***ensure that business enterprises*** *identify, prevent and mitigate the* ***heightened*** *human rights-related risks of* ~~***these***~~ ***those*** *activities and* ~~***business***~~ *relationships* ~~***and to assess and address the heightened risks of abuses***~~*, paying special attention to both gender-based and sexual violence, the* ***recruitment and*** *use of child****ren*** ~~***soldiers,***~~ *and the worst forms of child labour, including forced and hazardous child labour.* ***States Parties shall also ensure that business enterprises terminate their business activities and business relationships in such areas when human rights abuses cannot be prevented or mitigated.***

FIDH Comment:

The suggested new text improves on the previous text in several respects. It clarifies who is responsible for taking action and specifies the action required, and it extends the scope of the obligation to business relationships, rather than limiting it to business activities. However, the provision remains limited in scope and inadequate to effectively address the risk of serious human rights abuses in conflict-affected areas. In particular:

Ø The "special measures" States Parties are expected to take appear to be limited to requiring human rights due diligence. There is little that is "special" about this measure as it amounts to no more than what States Parties are already required to put in place across the board under Article 6. States can take a range of other measures to prevent serious human rights abuses in conflict-affected areas, such as banning certain activities or relationships outright, or prohibiting the export or import of certain products or services. A broader formulation capable of capturing the full range of preventive measures that States may take in these contexts should therefore be adopted.

Ø As regards the specific human rights due diligence requirement, this should be framed as *enhanced* due diligence. Enhanced due diligence is a well-established concept in business and human rights literature and practice and would better reflect the nature and scope of measures that are necessary to effectively identify and address the heightened risks associated with operating in conflict-affected areas.

Ø The proposed new text does not refer to international humanitarian law, despite its relevance as an international normative framework applicable to business conduct in situations of armed conflict and occupation. It is both appropriate and necessary, for the effective prevention of gross human rights abuses in these contexts, such as gender-based and sexual violence and the recruitment and use of children by armed forces or armed

groups, for States Parties to expressly require business enterprises to respect the applicable rules of international humanitarian law.

Ø Finally, while we welcome the addition of a final sentence addressing instances in which business activities or relationships should be terminated, we recommend reformulating it slightly to make clear that termination is expected whenever abuses cannot be prevented, and not also mitigated. Referring to mitigation of abuses suggests that business enterprises may continue operating despite ongoing or foreseeable serious harm, provided that they can demonstrate that the severity or likelihood of the abuses has been reduced to some extent. In a context in which abuses are highly likely to occur or to be severe, any remaining abuses are still likely to be very serious. The elimination of the phrase "abuses … cannot be mitigated" could be balanced out by introducing a "responsible exit" standard, requiring businesses to consider and address the potential adverse human rights impacts that their withdrawal may cause or contribute to.

With these considerations in mind, a possible broader formulation that still captures all forms of violence and risks facing vulnerable individuals and populations living in conflict-affected areas, could read as follows:

> ***16.3 States Parties shall take all appropriate measures to prevent or mitigate the risk of serious human rights abuses in the context of business activities and relationships in conflict-affected areas, paying particular attention to the risk of serious human rights abuses facing vulnerable individuals and populations.***
>
> ***Such measures shall include [but not be limited to] requiring business enterprises to undertake enhanced environmental and human rights due diligence and to respect international humanitarian law as applicable.***
>
> ***States Parties shall also ensure that business enterprises [are required to] terminate their business activities and relationships where human rights abuses cannot be prevented or ended, or when risks are too serious and potential harms irreparable, by undertaking a responsible exit that takes into account the potential adverse impact of termination on other human rights.***

Proposal 11 on Article 1.3 – Definitions

Chair's proposed new text:

1.3. "Human rights abuse" shall mean ***an adverse human rights impact that results from*** ~~***any***~~ *acts or omissions* ***from transnational corporations and other business enterprises, including State and non-State entities,*** *that take place in* ~~***connection with***~~ ***the context of*** *business activities* ~~***and results in an adverse human rights impact***~~*.*

FIDH Comment:

The proposed new definition has the effect of clearly demarcating and restricting the scope of the LBI to abuses or harms caused or contributed to by businesses – clearly leaving out violations by the state, even in the context of business activities. The Chair's explanatory note indicates that State violations are still sufficiently covered by treaties and other sources of States' obligations under international human rights law. Nevertheless, it must be clear that State-owned enterprises or the activities of states acting in a private commercial or economic capacity are clearly included.

In addition, we would like to raise a concern regarding the understanding of the phrase "other business enterprises" (OBEs) if the meaning of this is "other business enterprises that undertake activities of a transnational character" (as indicated by the footnote of HRC resolution 26/9). While we agree that the LBI should pay particular attention to TNC and OBE that undertake activities of a transnational character and prioritise them for purposes of regulation and accountability, we do not believe that the concept of "human rights abuse" itself should be restricted to abuses or harms involving only such enterprises. All business enterprises of all sizes, natures, organisational structures, and other characteristics are capable of causing or participating in human rights abuses. A domestic company with no activities of a transnational character may commit a human rights abuse – even though it may fall outside of the scope of the LBI. The fact that the LBI focuses on TNCs and OBE that undertake activities of a transnational character should not be understood as implying that other business enterprises are incapable of committing or contributing to human rights abuses.

There are two possible ways of addressing this:

- The definition could clarify that it is intended to operate within the context and for the purposes of the LBI, and is without prejudice to broader definitions or understandings of human rights abuse under other legal regimes and normative standards; or,
- The definition itself could be reformulated so as to make clear that all businesses enterprises are capable of causing or being involved in human rights abuses. The definition could read as follows:

1.3. "Human rights abuse" shall mean an adverse human rights impact that results from acts or omissions ~~***from transnational corporations and other***~~ ***of*** *business enterprises, including State and non-State entities, that take place in the context of business activities, without prejudice to the responsibility of States for human rights violations under international law.*

This should not affect the scope of the LBI obligations, which could still remain predominantly focused on TNC and OBE undertaking activities of a transnational character.

As a separate point, we would also like to highlight that the proposed new definition does not work well with other parts of the text. For example, Jurisdiction under Article 9.1(a) is established where

the "human rights abuse took place". The shift from acts and omissions to adverse impact under the proposed new definition of "human rights abuse" would re-direct the focus of this article from the place where the acts or omissions occurred, to the place of the harm - which is already addressed by Article 9.1(b). At the same time, it would leave the place where the acts or omissions that led to or resulted in the harm, in certain circumstances, without jurisdiction. Article 10.2(b) presents similar challenges.

These are just two examples to illustrate the repercussions of the change in this definition on other parts of the text and the need to undertake a holistic analysis to determine whether the new definition works well across the entire text and whether there might be a need for changes in other articles to make it work.

Proposal 12 on Article 1.4 – Definitions

Chair's proposed new text:

*1.4. "Business activities" means any economic, **commercial** or other activity, **undertaken by a natural or legal person, or through their business relationships,** including but not limited to the **exploration, extraction, processing,** manufacturing, production, transportation, distribution, commercialization, **financing, investing, insuring,** 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 **artificial intelligence and** activities undertaken by electronic **or digital** means.*

FIDH Comment:

The addition of "commercial activity" is welcome. However, the text retains the phrase "other activity" without further qualifications. This makes the scope of "business activities" potentially extremely broad. We recommend delimiting the scope of "other activity" by qualifying it with the use of terms such as ancillary, related or supportive activities. This would help circumscribe the term while at the same time being capable of capturing activities that may not be strictly "economic or commercial" in nature, but that business enterprises nevertheless undertake in support of these activities. This would include, for example, lobbying and political engagement activities, participation in policy-making or multi-stakeholder initiatives, government advisory roles, philanthropic or CSR work, etc. The revised article could read as follows:

*1.4. "Business activities" means any economic, **commercial** or other **ancillary, related or supportive** activit**ies**, **undertaken by a natural or legal person,** [...]*

The use of terms such as ancillary, related or supportive activities within the meaning of business activities would also help clarify the current definition of "business relationship" under Article 1.6. Under this article, the purpose "to conduct business activities" is built into the definition itself. This

makes the scope of business relationship too narrow as it can leave out relationships that are formed to support, facilitate or advance business activities but not to conduct business activities as such. For example, the relationship between business enterprises and professional experts such as auditors, lawyers, or engineers might be commercial in nature, but it does not have as its purpose conducting business activities.

The same is true of an arrangement between a business enterprise and state authorities to provide security services or between a business enterprise and a professional lobbyist to advance the business' interests in a given context. Including activities that are supportive of economic or commercial activities within the meaning of business activities would ensure that relationships that are formed to support business activities (and not to conduct business activities as such) are also comprised within the meaning of business relationship for the purposes of the LBI.

Finally, we would recommend reformulating the last sentence so that it reads as follows:

*This includes **activities linked to artificial intelligence and** activities undertaken by electronic **or digital** means.*

Proposal 20 on Article 3.1 – Scope

Chair's proposed new text:

Option 1

*3.1. This (Legally Binding Instrument) shall apply to all business activities~~, including business activities~~ of a transnational character **and other business activities**.*

Option 2

*3.1. This (Legally Binding Instrument) shall apply to all business activities~~, including business activities~~ of ~~a transnational character~~ **transnational corporations and other business enterprises**.*

FIDH Comment:

FIDH supports a broad personal scope for the LBI, which nevertheless places the focus on business activities of a transnational character and prioritises these activities for State regulatory and enforcement action. While still requiring some work, this approach is already reflected in the draft LBI. Many of its key operative clauses apply in the context of transnational business activities or deal with challenges and gaps that arise specifically in these contexts, while other principles and provisions apply more broadly to all business activities.

We believe that Option 1 best reflects this approach. However, we would recommend reversing the proposed wording as follows:

3.1 This (Legally Binding Instrument) ***shall apply to all business activities, with a particular focus on business activities of a transnational character.***

Concerns for small and medium-sized domestic companies can be managed by States Parties through the flexibility provided by Article 3.2 (now being proposed as future Article 6.7) which introduces the principle of proportionality or differentiation, and allows States Parties to tailor the due diligence obligations imposed on business enterprises based on considerations of size, among others.

Proposal 22 on Article 3.3 – Scope

Chair's proposed new text:

Option 1

3.3. This (Legally Binding Instrument) shall cover all ~~***internationally recognized***~~ *human rights* ~~***and fundamental freedoms***~~ *binding on the State****s*** *Parties of this (Legally Binding Instrument)* ***as reflected in treaties to which those States are Parties, in customary international law, in the general principles of law, and in the domestic law of those States Parties****.*

Option 2

3.3. This (Legally Binding Instrument) shall cover all ~~***internationally recognized***~~ *human rights* ~~***and fundamental freedoms***~~ ***binding on the States Parties of this (Legally Binding Instrument) under international human rights law****.*

FIDH Comment:

We believe that the suggested reformulation under Option 1 is more adequate than Option 2, because Option 2 would leave out human rights recognised under domestic law. However, the domestic law the text refers to should be in line with or more protective of human rights than international human rights law. A new reformulation that captures this qualification could read as follows:

3.3. *This (Legally Binding Instrument) shall cover all* ~~***internationally recognized***~~ *human rights* ~~***and fundamental freedoms***~~ *binding on the State****s*** *Parties of this (Legally Binding Instrument)* ***as reflected in treaties to which those States are Parties, in customary international law, in the general principles of law, and in the domestic law of those States Parties****.*~~***.***~~ ***that is in line with, or more protective than, international human rights law.***

We also fully agree with the recommendation from Costa Rica made during the session to expressly include State obligations emerging from international jurisprudence, including the Advisory Opinions of international Courts.

Additionally, we would like to insist on the importance of expressly adding a reference to at least certain UN Declarations and Resolutions which are particularly relevant in the context of business and human rights, such as the UN Declaration on the Rights of Indigenous Peoples, the UN Declaration on Human Rights Defenders, and UN Resolution on the right to a clean, healthy and sustainable environment, or at least avoiding a definition of the material scope that could be read as excluding them.

A potential way of including these instruments is by way of a broad reference to "applicable internationally agreed human rights Declarations and other instruments" (mirroring a similar phrase in PP3). Alternatively, these references could be considered in the context of Art 6, when defining the rights business enterprises are required to respect in the context of their due diligence duties, along the lines proposed by legal expert Humberto Cantú Rivera during the session.

As far as the right to a healthy environment is concerned, we agree with suggestions made by colleagues throughout the week that a way of making sure this right is included might be by adding "including the right to a healthy environment" at the end of the text of article 1.2. However, the express inclusion of international jurisprudence, including Advisory Opinions of International Courts as suggested by Costa Rica, would also ensure that the right to a healthy environment forms part of the material scope of the LBI through the relevant Advisory Opinions of both the International Court of Justice and the Inter-American Court of Human Rights.

Conclusion

We thank the Chair-Rapporteur for his consideration and reiterate our full commitment and availability to engage constructively throughout the upcoming negotiations process.

As we move towards a new draft, we hope that States will seize this opportunity to establish robust norms and enforcement mechanisms that will fill in existing gaps in international human rights law and contribute towards rebalancing the disparity of arms between business enterprises and affected individuals and communities.

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