Written contribution by FIAN International on the Third Revised Draft of the Legally Binding Instrument (LBI) on transnational corporations and other business enterprises with respect to human rights

FIAN welcomes the third revised draft. This draft is an important next step in the process towards the LBI and serves as good basis for negotiations, despite still needing some fundamental changes to comply with the objective of resolution 26/9. This document: i) explains aspects that constitute positive advancements in the current draft and must be maintained during the negotiations, and ii) provides specific text proposals for other aspects that can be further improved.

General Remarks and Preamble

FIAN considers positive and welcomes changes that ensure a strong gender perspective in key provisions of the instrument, including the explicit mention of the Gender Guidance for the Guiding Principles on Business and Human Rights in § 14 of the preamble and in access to remedy (Art 7). Nevertheless, States should avoid any use of the expression “persons in a vulnerable situation”, but rather use “marginalized or disadvantaged groups” or “groups facing discrimination” as to not victimize such groups and use the terminology applied by the UN Treaty Bodies.

Regarding the listed instruments in § 3 of the preamble, States should include the UN Declaration on the Rights of Peasants and other peoples living in rural areas (UNDROP), to ensure that the LBI is updated with the latest relevant standards in international human rights law, democratically adopted by the Human Rights Council and the UN General Assembly. Similar to the situation of indigenous people, it is well documented how peasant communities disproportionately suffer from corporate human rights abuses and violations, resulting from land grabbing, environmental destruction as well as attacks to peasant leaders and human rights defenders. The UNDROP stipulates that “States shall take all necessary measures to ensure that non-State actors that they are in a position to regulate, such as private individuals and organizations, and transnational corporations and other business enterprises, respect and strengthen the rights of peasants and other peoples living in rural areas”. Peasants should therefore be recognized in paragraph 13 of the preamble as well as throughout the LBI, as a group requiring special attention.

States should also add in the preamble the principle pursuant to article 55, 56 and 103 of the UN Charter, and already recognized in many constitutions worldwide, of the primacy of human rights. The following paragraph can be added in the preamble:

“Reaffirming the primacy of human rights obligations and obligations under the Charter of the United Nations over other international agreements”.
The inclusion of relevant ILO conventions instead of singling out only ILO Convention 190 is an important improvement in §3 of the preamble. Also positive is the inclusion of ILO Declaration on Fundamental Principles and Rights at Work in § 14, the inclusion of the right to a safe, clean and healthy environment as well of climate change in key provisions of the 3rd draft, which puts the draft in line with the latest resolution of the right to a safe, clean, healthy and sustainable environment adopted by the Human Rights Council in October 2021.

States should also include international humanitarian law standards, which are missing from the list of instruments quoted in the preamble. These would be particularly important given the documented involvement of transnational corporations in occupied territories or conflict-affected areas, an issue recognized by articles 6.4 g) and 16.3 of the present draft treaty.

Additionally, the 4th revised draft should eliminate legal ambiguities caused by the use of broad, general terms such as “adequate”, “appropriate” and “where suitable”. These terms lack legal precision, are open to interpretation and can be restricted in their scope to the detriment of affected people and communities.

**Article 1 – Definitions**

The broader definition provided to “business activities” which now incorporates activities such as manufacturing, production, transportation, distribution, commercialisation, marketing and retailing of goods and services is welcomed and States should retain this change.

The scope of the definition of ‘harm’ in Art 1.1 was considerably reduced in the new draft. The types of harm that affected communities may suffer from should be explicitly laid down in Art 1.1. Therefore, the re-insertion in Art 1.1 as follows would be appropriate:

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1.1 “Victim” shall mean any person or group of persons, irrespective of nationality or place of domicile, who individually or collectively has suffered harm, including physical or mental injury, emotional suffering, or economic loss, or substantial impairment of their human rights that constitute human rights abuse, through acts or omissions in the context of business activities.
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Also, of relevance would be the explicit mention of the term “global production chain” in the definition of “business relationship” under article 1.5, as follows:

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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 contractual relationship, including throughout their value chains, as provided under the domestic law of the States, including activities undertaken by electronic means.
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The inclusion of the global production chain aims at making explicit that business relationships in that value chain form part of the definition. According to exchanges with some trade unions, the inclusion of the global production chain is key to recognize the globalized human component behind transnational businesses.
**Article 2 – Statement of purpose**

In this article stating the purpose of the legally binding instrument, the inclusion of, “particularly those of transitional character” (same as in Art 2.1.a) in Art 2.1.b is critical, since it tackles the particular regulatory and accountability challenges arising from transnational business activities. Although the legally binding instrument can contribute to further clarifying the human rights obligations of States in the context of all business activities, the core mandate of this OEIGWG resulting from resolution 26/9 “to regulate, in international human rights law, the activities of transnational corporations and other business enterprises” cannot be left out.

Therefore, States should include “in particular of a transnational character” in the art. 2.1, b as well as to include a paragraph e. so that the article reads:

- **b. To clarify and ensure respect and fulfilment of the human rights obligations of business enterprises, particularly those of transnational character;**

- **e. To close gaps in the regulation and accountability of legal persons carrying out business activities of a transnational character, including particularly transnational corporations and other business enterprises that undertake business activities of a transnational character.**

**Article 3 – Scope**

In line with our comments above regarding article 2, States should insert the word “in particular” in article 3.1 emphasizing the particular focus of the legally binding instrument on business activities of transnational character. Although the negotiations have led to the need to find a phrasing that includes a mention of all business activities, States shall recall that this OEIGWG was established to focus particularly on the gaps in international human rights law regarding the business activities of transnational character, which pose different and particular regulatory and accountability challenges.

We propose article 3.1 to read:

- “This (Legally Binding Instrument) shall apply to all business activities, including, in particular, business activities of a transnational character.”

In article 3.3, States should delete the word “core” when referring to international human rights treaties. It is also critical to add international humanitarian law and international criminal law treaties in Art 3.3.

**Article 4 – Rights of victims**

Important elements of this article addressing the many different types of barriers, which affected individuals and communities face when attempting to access justice have been maintained in this revised draft (art. 4.2.a-f) and we emphasize on their retention.

Nonetheless, the rights included in this article are not just right of victims already defined as such but are rights of all affected communities and individuals. Therefore, states should change the title of the article to “Rights of affected communities and individuals”.
Art. 4.2.f on the right to access information should be further elaborated to include stronger requirements for the disclosure of information in order to facilitate legal proceedings. In particular, affected communities and individual should have access to information regarding the different legal entities linked to the parent company as to facilitate the determination of liability.

The text proposal for article 4.2.f is as follows:

“4.2.f. be guaranteed legal aid and access to information concerning relationships covered under article 1.5 [businesses relationships] and relevant to pursue legal proceedings and effective remedy, including through enactment of necessary laws. In the absence of such information, courts shall apply a rebuttable presumption of control of the controlling or parent companies. Such information shall serve for the adjudicator to determine the joint and several liability of the involved companies, according to the findings of the civil or administrative procedure.”

The right to access such information and its corresponding obligation for business enterprises and States to disclose such information should also be reflected in article 7 on access to remedy and article 6 on prevention.

It is noticed with regret that some important components of the rights of victims to access justice and effective remedies, which were in article 4.5 of the first draft, have since been deleted. It is therefore proposed to include additional components of reparation for victims under current article 4.2c, which better reflect the immediate and long-term measures which should be taken, and the importance for long-term monitoring of such remedies:

“4.2.c. be guaranteed the right to fair, adequate, effective, prompt and non-discriminatory access to justice and effective remedy in accordance with this (Legally Binding Instrument) and international law, such as restitution, compensation, rehabilitation, reparation, satisfaction, guarantees of non-repetition, injunction, environmental remediation, ecological restoration, including covering expenses for relocation of victims, replacement of community facilities, and emergency and long-term health assistance. Victims shall be guaranteed the right to long-term monitoring of such remedies.”

Our analysis of the cases of Brumadinho Dam Disaster and POSCO land grabbing have concretely shown the need to have such key components specifically added to reparation.

Effective remedies and reparation measures should take into account the differentiated impacts of human rights abuses on specific groups in order to respond adequately to these impacts and their particular needs. In order to guarantee this, it is important for the remedy process to be transparent, independent and count with the full participation of those affected. In addition, such processes should also consider harm that could appear in the future. To this end, we propose the inclusion of an additional paragraph to this article:

“4.2.c bis be guaranteed full participation, transparency and independence in remedy processes, which take into account the differentiated impacts of human rights abuses on specific groups of people and respond adequately to these impacts and their particular needs, including for future harm.”
On article 4.2.d, the insertion of the word “effective” to the reference on non-judicial grievance mechanisms is crucial. The revised article should read as follows:

“4.2.d [...] to courts and effective non-judicial grievance mechanisms of the State parties”.

States should also include an additional paragraph in this article regarding the right for affected individuals and communities to request the State party to adopt precautionary measures where human rights abuses are imminent and could lead to irreparable harm, regardless of the existence or not of a legal proceeding or of a pending legal decision on the case.

“4.4. Affected individuals and communities shall have the right to request in court the adoption of precautionary measures, regarding situations that present a risk of irreparable harm. Such measures shall be taken regardless of the existence and outcome of a legal proceeding relative to the situation.”

Article 5

In order to ensure consistency in language with our comments on article 4 regarding the use of the word “victim”, it is proposed that article 5 be amended as follows:

“Article 5 – Protection of affected individuals and communities

1. State Parties shall protect victims, affected individuals and communities [alleged victims], ...”

2. a. State Parties shall take adequate and effective measures to guarantee all rights of a safe and enabling environment for persons, groups and organizations 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 or insecurity. This obligation requires taking into account States Parties’ international obligations in the field of human rights, their constitutional principles and the basic concepts of their legal systems.

Article 6 – Prevention

In order to ensure a fluid connection between the different articles of the legally binding instrument, it is recommended that this article be placed prior to the articles on the rights of victims, the protection of victims and access to remedy, given that these obligations arise before the occurrence of human rights abuses.

The obligation for States to take precautionary measures in the case of serious or urgent risks of human rights abuses leading to irreparable harm, established in the proposed article 4.4, should also be reflected in this article on prevention. We therefore propose an additional paragraph after article 6.1, which would read as follows:

“6.1 bis. States parties shall take precautionary measures by request of affected individuals or communities, including the suspension and complete cessation of business activities of transnational character, regarding situations that present a risk of irreparable harm.”
Prevention and not mitigation should be at the core of human rights due diligence. As mitigation can result more cost-effective than prevention for certain transnational corporations and other business enterprises, they might prefer to mitigate instead of mainly and effectively invest in prevention. Including mitigation as a component of human rights due diligence standards sends this wrong message, that harm can in a certain way be tolerated as long as it is then mitigated. Mitigation should be understood as a component of the precautionary measures, which we propose of the remedy and liability processes under articles 4 and 8. It is therefore proposed that references to “mitigation” in articles 6.2, 6.3b and 6.3c be deleted.

With regard to article 6.4, including obligations regarding impact assessments as well as meaningful consultations, it currently fails to set clear standards on how these should be undertaken and who should undertake them. It is also important for article 6.3 to clarify that this list of human rights diligence measures is non-exhaustive. We therefore propose the following amendments for articles 6.4 and 6.4a:

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6.4 States Parties shall ensure that human rights due diligence measures undertaken by business enterprises shall include, but shall not be limited to:

6.4. a Undertaking and publishing regular ex ante and ex post human rights, labour rights, environmental, socio-economic and climate change impact assessments throughout their operations;

Such impact assessments shall be undertaken by independent third parties with no conflicts of interests and must be conducted in consultation with, and drawing from input and knowledge of those likely to be impacted.
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On article 6.4.c. regarding meaningful consultations, these should be conducted in a continuous manner, both prior as well as during the business activities (similar to assessments). The treaty should also set standards for meaningful consultations. This shall respect the principles of transparency, independency and participation, meaning that these shall be undertaken by an independent third party and protected from any undue influence from the business enterprises concerned by the prospective business activities. We also propose the inclusion of peasants as a group requiring special attention. We therefore propose the following amendment to article 6.3.c:

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6.3c. Conducting ex-ante and ex-post meaningful consultations […] such as women, children, persons with disabilities, indigenous peoples, peasants, […] or conflict areas. Such consultations shall be undertaken by an independent third party, be conducted in a transparent and participatory manner and protected from any undue influence from commercial and other vested interests.
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The correlative obligation for business enterprises to disclose information from our proposed article 4.2.f. on the rights of victims to access information should be included in this article on prevention. Article 6.4e. should therefore be modified as follows:
Concerning human rights due diligence requirements in occupied or conflict-affected areas, it is recommended that article 6.4g is strengthened as follows:

"6.4g Adopting and implementing enhanced human rights due diligence measures to prevent human rights abuses and humanitarian law violations or abuses in occupied or conflict-affected areas, including situations of occupation. Such prevention includes disengaging from business operations and relationships to prevent human rights abuses in these areas"
We therefore propose the inclusion of two additional paragraphs under this article regarding the specific prevention obligations of States:

“6.7. For the purposes or article 6.1, State parties shall conduct human rights, environment and gender impact assessments of all their policies, projects, activities and decisions involving business activities of a transnational character likely to impact public interest. This obligation shall apply to all branches and bodies of the State. Such assessments shall be conducted in consultation with and drawing from input and knowledge of those likely to be impacted.

4.7 bis. State Parties shall provide all relevant information, including investment agreements, to individuals and communities concerning business activities and projects likely to impact their human rights in a timely, objective and accessible manner.

6.10. When participating in decision-making processes or actions as Members States of international organisations, State parties shall do so in accordance with their human rights obligations and obligations under the present (legally binding instrument), and shall take all necessary steps to ensure that such decisions and actions by the international organisations do not contribute to human rights abuses and violations in the context of business activities of a transnational character.”

Article 7 – Access to remedy

We welcome the inclusion of specific obstacles that women, vulnerable and marginalised people and groups face in accessing remedy in Art 7.1. We also welcome article 7.3 d) which requires States to remove legal barriers including the doctrine of forum non conveniens and would strongly recommend retaining Art 7.4 which ensures that court fees, and other legal costs do not place an unfair and unreasonable burden to victims.

With regard to article 7.5, the newly phrased provision is welcomed, to the extent that it incorporates our recommendation to give courts the power to order the reversal of the burden of proof in appropriate cases to fulfil the victim’s right to access to remedy. In legal regimes where the reversal of the burden of proof is not provided for, the legally binding instrument should strongly encourage the enactment or amendment of laws to allow for this provision in order to fulfil victims’ right to access remedies. We understand that this matter is subject to different legal systems, but the power should vest with courts to order the reversal of the burden of proof to ensure that this does not remain on the affected individuals and communities and that the defendant is the one carrying that burden. This is a way to ensure equality of arms in the judicial process, eliminating the barriers that proof represents for victims in reaching justice. The addition of consistency with both international law and domestic constitutional law has, however, narrowed the scope of this provision and made it ambiguous in application. We would therefore suggest deletion of “and its domestic constitutional law”. Paragraph 7.5 should therefore be amended as follows:

“7.5 States Parties shall enact or amend laws allowing judges to reverse the burden of proof in appropriate cases to fulfill the victims’ right to access to remedy, where consistent with international law. Where the reversal of the burden of proof is not provided for in certain
legal regimes, State parties shall, to the extent possible, enact and amend laws to provide for reversal of burden of proof and ensure that it lies with the defendant”.

Article 8 – Legal liability

Whereas, the inclusion of “age” as criteria regarding the responsive reparations to the victims of human rights abuses under Article 8.4 is welcomed, States should explicitly insert victim participation in the definition of such responsive reparations, also in line with the provisions under Article 4.2.c and our corresponding suggestions above. In this sense, Article 8.4 should read:

“8.4 States Parties shall adopt measures necessary to ensure that their domestic law provides for adequate, prompt, effective, participatory, and gender and age responsive reparations to the victims of communities and individuals affected by 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. When defining the remedies, States Parties should apply the standards set under Article 4.2.c bis.”

Based on the lessons learned from our case analysis regarding the Brumadinho Dam Disaster, while agreeing with the requirement of guarantees, we suggest the following addition in Article 8.5 to guarantee a better protection of the livelihoods of affected communities and individuals:

“Article 8.5. States Parties shall require legal or natural persons conducting business activities in their territory or jurisdiction, including those of a transnational character, to establish and maintain financial security, such as insurance bonds or other financial guarantees, to cover potential claims of compensation by affected communities and their municipalities.”

Article 8.6 as it stands now, is very text heavy and not very precise. Additionally, in order to further clarify the principles of parent company liability (including due to the corporate culture, standards or products), and joint and several liability, for human rights abuses that occur throughout their business relationships, including through their value chains, we propose to amend article 8.6 as below. The explicit inclusion of joint and several liability is key to ensure that all companies involved in the abuse in terms of article 8.6 are liable for the harm caused by others through their business relationships, as well to guaranty integral remedies for the affected communities or individuals.
States Parties shall ensure that their domestic law provides for the joint and several liability of one business enterprise, for harm to a third person caused or contributed to by another legal or natural person, when:

a. the business enterprise has controlled, taken over, supervised, advised, intervened with or otherwise sufficiently influenced the other person’s activity that caused the harm and failed to prevent this person from causing or contributing to the harm; or
b. the business enterprise (legally or factually) controls such other person, unless the business enterprise demonstrates that the harm was caused notwithstanding the reasonable and necessary measures it had taken to prevent it; or
c. the business enterprise should have reasonably foreseen the risk of harm in the activity (within its business relationships) that caused the human rights abuse and that is linked to its operations, products or services, unless the business enterprise demonstrates that the harm resulted notwithstanding the reasonable and necessary measures it had taken to prevent it.

This proposed revision in Art 8.6 clearly demarcates liability for harm to others in situations where there exists: a. control over the specific activity; b. a presumption of liability in case of control over others and; c. presumption in case of foreseeability. It also embodies rebuttable presumptions of control in these three cases.

Article 8.7 is the corollary to article 6.7 regarding the link between human rights due diligence obligations and the determination of liability. These two articles are very important in order to avoid due diligence requirements becoming procedural ‘check-list’ exercise and a tool for transnational corporations and other business enterprises to escape liability. We therefore recommend the deletion of the second phrase in this paragraph, which may result in contradicting the purpose of the paragraph and suggest that liability depends on the compliance with human rights due diligence standards. The aim of this deletion is to ensure that the adjudicator does not focus on the implementation or not of a due diligence procedure, but on the harm caused, according to the principles as the duty of care or the principles of extracontractual civil liability.

We therefore propose the deletion in article 8.7 of the following sentence:

“Ar. 8.7 Human rights due diligence shall not automatically… The court or other competent authority will decide the liability of such entities after an examination of compliance with applicable human rights due diligence standards.”

On article 8.10 on criminal liability, we recommend the following amendment and also propose for the legally binding instrument to include a non-exhaustive list of crimes in an annex that were outlined in article 8.7 of the first version of the revised draft of the legally binding instrument. The COP should have the competence to update this non-exhaustive list:

“8.10 States parties shall provide measures under their domestic law to establish the criminal or functionally equivalent liability of 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 offence in accordance with this Article and criminal offences that amount to constitute crimes under international criminal law, international human rights law, international labour law, international humanitarian law and...”
Liability standards should be different and stricter for business activities, which are inherently dangerous and where risk is foreseeable. In such cases, transnational corporations and other business enterprises should be held liable even when they have not acted negligently. Strict liability is appropriate in cases where business enterprises are engaged in hazardous or inherently dangerous industries. We therefore propose to include a clause on strict liability, which is a form of liability that already exists in different domestic legal systems:

“6.11. In business activities that are hazardous or inherently dangerous, States Parties shall provide measures under domestic law to establish strict liability, without regard to the negligence of the business enterprise. This shall apply without prejudice to already existing provisions on strict liability in domestic law.”

**Article 9 – Adjudicative jurisdiction**

We welcome the inclusion of domicile of the affected individual and communities under article 9.1 in the definition of jurisdiction. This is particularly important, for instance for migrant workers, who face barriers related to resources, mobility and language in access to justice and would now have the option to file a complaint where they are domiciled or are a national of. In order to ensure consistency in language used in article 9.1.c, we propose the inclusion of the word “natural persons” under article 9.2, as follows:

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

In article 9.3, the referred article on *forum non conveniens* should be article **7.3.d and not article 7.5** which was the reference in the second draft, but now changed to include the reversal of the burden of proof.

We also see positively the elaboration of article 9.5 as it attempts to establish the principle of *forum necessitatis*, which provides affected individuals and communities with a forum when no other forum is available nor guarantees them a fair judicial process. The revised Art 9.5 uses ‘judicial process’ instead of ‘trial’ which is a broader term incorporating other aspects of a remedial process and not just the trial. The new grounds laid down in Art 9.5 defining ‘connection to the State Party’ also offer more clarity.

We recommend the inclusion of an additional paragraph in article 9, which provides for universal jurisdiction in cases of human rights abuses and violations, which amount to international crimes, as defined under article 8.9, given that such crimes are of concern to the international community as a whole.
“9.6. All courts shall have jurisdiction over claims against legal or natural persons not domiciled in the territory of the forum State for human rights abuses and violations which constitute the most serious crimes of concern to the international community as a whole.”

Article 10 on Statute limitations

It is important that there be no prescription for human rights abuses that amount to crimes under international criminal law and international humanitarian law. These crimes would be listed in an annex as proposed for article 8.10.

“10.1 The State 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, such as those listed in the annex to the present”.

Article 11- Applicable Law

It is recommended that applicable law must also be the law of the State where the victim is domiciled. It can be added as a new ground as Art 11.2.c.

Additionally, in the event of conflict of laws regarding State obligations under this LBI and other bilateral or multilateral trade or investment agreements, the applicable law should be in accordance with Art 14.5 of this LBI. This can be added as a new article 11.3 and read as follows:

“11.3 In the event of conflict of laws resulting from obligations of States under bilateral or multilateral trade and investment agreements and their obligations under this (Legally Binding Instrument, the choice of applicable law shall be in accordance with article 14.5 of this (Legally Binding Instrument).”

Article 12- Mutual Legal Assistance and International Judicial Cooperation

We recommend the deletion of Art 12.12, which reads contrary to the very aim of this Article. The provision offers no clarity on what constitutes “applicable laws” of the State Party and the grounds that may exist to assess the claim of the requested State party for refusing such mutual legal assistance or international legal cooperation. Given the nature and impact of business activities of a transnational character, legal assistance and judicial cooperation between States is crucial for affected communities to fully realise their rights under this LBI.

It is also imperative that Art 12.1 be read in conjunction with Art 14.3, so the highest standard for the respect, protection and fulfilment of human rights that is provided for (either in domestic law or international, regional law) is followed for the provision of mutual legal assistance and international judicial cooperation. The revised article should read as follows:

“12.1 States Parties shall carry out their obligations under this Article in conformity with any treaties or other arrangements on mutual legal assistance or international judicial cooperation that may exist between them. In the absence of such treaties or arrangements, States Parties shall make available to one another, mutual legal assistance and international judicial cooperation.”
Article 14 – Consistency with International Law principles and instruments

We strongly suggest the retention of provisions included in this article that enable for the maximum protection of the rights of affected individuals and communities and strengthen their access to justice and remedies. In this sense, we reiterate the importance of article 14.3 that protects any national, regional or international instruments that may provide for stronger protection of affected individuals and communities and their access to justice and remedy in the context of human rights abuses by transnational corporations and other business enterprises.

We also strongly support the inclusion of article 14.5a and b that will ensure that the human rights obligations of States arising from this legally binding instrument shall not be trumped by other international agreements, most notably trade and investment agreements. We propose for this article to also refer to “contracts” in addition to “international agreements”. We additionally propose for the legally binding instrument to require States to review and, where necessary, amend such agreements which contradict States Parties human rights obligations or obligations under the present. Article 14.5.a would therefore read:

\[14.5.a. any existing bilateral or multilateral agreements and contracts, […] shall be interpreted, implemented and, where necessary reviewed and amended, in a manner that will not undermine or limit their capacity to fulfil their obligations under this […]\].

Article 15 – Institutional arrangements – Committee

Given the existing weak enforcement of international human rights law, we strongly call for the strengthening of the functions, purposes and competencies of the Committee. This draft legally binding instrument was accompanied in previous sessions by a draft Optional Protocol providing for an individual complaint mechanism, similar to other existing Optional Protocols.

We recommend for an Optional Protocol, providing for a complaint mechanism, to be part of future negotiations and be adopted jointly with the legally binding instrument.

It is also crucial that the members of this Committee be required to have gender expertise. This should be added as follows:

\[15.1.a The Committee shall consist, at the time of entry into force of the present (Legally Binding Instrument), (12) experts. After an additional sixty ratifications or accessions to the (Legally Binding Instrument), the membership of the Committee shall increase by six members, attaining a maximum number of eighteen members. The members of the Committee shall serve in their personal capacity and shall be of high moral standing, have gender experience and recognized competence in the field of human rights, public international law or other relevant fields.\]
Article 6.7 relative to the protection of preventive measures from undue influence from commercial and other vested is a crucial provision and should actually be mainstreamed throughout the legally binding instrument. The corporate capture of policy and decision-making spaces is one of the main obstacles for implementation, explaining the weakness of corporate accountability. We therefore propose for a similar provision to be included in article 16 on implementation:

“16.6. In implementing this (Legally Binding Instrument), States Parties shall act to protect legal processes, government bodies and policy and decision-making spaces from commercial and other vested interests”.

We additionally require for an additional paragraph under this article that provides for the direct applicability of the present (Legally binding instrument) in cases of legislative negligence for its implementation. The direct applicability of human rights treaties already exists under some legal systems and should be made available for other legal systems (for example in the case of the constitutional block in a number of Latin American Countries) in the case mentioned above of negligence by competent authorities to take the necessary legislative measures for its implementation:

“16.7. The present (Legally Binding Instrument) shall be directly applicable in cases of negligence of legislative and other competent bodies for its implementation.”