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Corporate Accountability

October 2021

# ESCR-Net Advocacy Papers: Human Rights and Business



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*In light of the seventh session of the Open-Ended Intergovernmental Working Group to elaborate a legally Binding Instrument on Transnational Corporations and other Business Enterprises with respect to human rights (IGWG), civil society organizations and social movements call upon States to act urgently for human rights and move boldly towards a swift adoption of a legally binding instrument (LBI) that can help stop human rights violations in the context of business activities and protect people and our planet by stopping corporate impunity.*

## **CORPORATE CAPTURE IS A BARRIER TO ACCOUNTABILITY**

Corporate elites are growing their influence on government decision-making through “corporate capture”. We see this happening increasingly in the context of the United Nations (UN) and other multilateral decision-making spaces such as at the UN Food Systems Summit.[1] The process of negotiating an LBI to regulate corporate power is undermined by corporate capture of the UN.[2] Corporations have been given privileged access to this space and at the same time have captured governments nationally, particularly in the Global North, driving them to ignore the process to establish an LBI, and to push for initiatives that delay corporate accountability and promote profit-making agendas. Precedents for stopping corporate capture in UN decision-making spaces exist. We can, and we must insist, that policymaking be protected from corporate capture, so that the public interest -- the voice and human rights of the 99% -- prevails.

### **RECOMMENDATIONS TO STATES:**

- Restrict the participation of the International Organization of Employers (IOE), International Chamber of Commerce (ICC), the United States Council for International Business (USCIB) and any other representatives of corporate power in the negotiations for an LBI by adopting lessons from the Framework Convention on Tobacco Control which explicitly recognized the tobacco industry’s irreconcilable conflict of interest with public health policymaking and put measures in place to protect treaty processes and implementation from industry interference.
- Remove the IOE, ICC, USCIB and other representatives for corporate power from the classification of “civil society organisations”. These corporate-backed entities represent some of the most abusive corporations in the world—including Dow, Chevron, and Shell—which have been implicated in serious human rights violations affecting communities, human rights defenders, and civil society.[3]
- Maintain and strengthen the text of the LBI to (a) stop corporate capture, and (b) develop an independent and international court to hold corporations, particularly those that operate transnationally, accountable for committing or contributing to human rights abuses and violations.

# KEY THEMATIC FOCUS AREAS

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For the last several years, ESCR-Net members have been highlighting several key issues that must be addressed in the LBI. While we acknowledge that some of our demands have been taken into consideration in revised draft texts of the LBI, there are some fundamental issues that remain inadequately addressed in the draft text. These include:

*You will find advocacy papers on each of the above-mentioned issues below.*

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**01 — The right to self-determination**

**02 — Indigenous Peoples rights**

**03 — Conflict-affected areas**

**04 — Feminist realities**

**05 — Human rights defenders**

**06 — Climate justice**

**07 — Workers' rights**

## THE RIGHT TO SELF-DETERMINATION: ONE STEP FORWARDS -- TWO STEPS BACK

ESCR-Net is very disappointed by the continued absence of an explicit reference to the right to self-determination in the third revised draft of the LBI. Its inclusion in the Zero draft gave us a sense of optimism that the LBI would serve as a unique tool to address the gaps created by centuries of imperial expansion through colonial ventures that have separated Indigenous Peoples from their land and natural resources. Through a dynamic patchwork of corporate means and legal methods in the context of unequal bargaining positions, States have continued to insulate corporate actors from accountability in furthering their neo-colonial ambitions through exploitative means under the contemporary umbrella of international law.

There are over 476 million Indigenous Peoples living in 90 countries across the world. [4] All Indigenous Peoples have in common a history of territorial uprooting, subjugation, discrimination, many violations and abuses of power caused by business activities, particularly of transnational character. We exist, and our demands are legitimate. We want our millenary roots to unfold without oppression. In response to the grave violations against us and as a result of the struggles and lobbying of Indigenous Peoples' leadership worldwide, the Human Rights of Indigenous Peoples have emerged within the United Nations (UN). This is not a right of minorities but a right of Peoples who can and should be able to determine themselves in a free and autonomous manner.

The International Labor Organization (ILO) was the first international organization to address indigenous issues as early as 1920 and warned of the urgency for the international community to pay attention to the injustices committed against Indigenous Peoples. In 1989, the ILO drafted the Indigenous and Tribal Peoples Convention (No. 169). In 1969, the International Convention on the Elimination of All Forms of Racial Discrimination (CERD) came into force. The adoption in 2007 of the United Nations Declaration on the Rights of Indigenous Peoples marked the culmination of decades of negotiations between these peoples and many States. This declaration is the most comprehensive international instrument in favor of Indigenous Peoples' rights. It gives pre-eminence to collective rights to a degree unprecedented in international law and establishes a universal framework of minimum standards for the dignity and well-being of the world's Indigenous Peoples.

The removal of the right to self-determination in the second draft has, however, created a cause for concern that we sought to address in our [written submission](#) last year. Despite these efforts, explicit reference to the right to self-determination remains elusive, as reflected in the third revised draft. By continuing to ignore the importance of the right to self-determination in the latest draft, the UN Intergovernmental Open-ended Working Group (IGWG) sends a strong message to civil society that its.

commitment to strengthen corporate responsibility and address the root causes of injustices, which have undermined the right to self-determination, have been significantly weakened.

If this instrument is to truly serve as tool for leveling the playing field and provide a source of power to counter centuries of exploitation and put us on a path to justice in righting the wrongs of the past, it must be grounded in the fundamental and inalienable right that has been diluted over the years. The right to self-determination must be the essence of this instrument, not an afterthought. Otherwise, we will merely be contributing to the continuation of exploitation through new means and methods.

## **RECOMMENDATIONS TO STATES:**

1. Add the following paragraph in the preamble as PP9bis: “Recalling the UN Charter and one of the fundamental purposes of the United Nations being the respect for the right to self-determination of peoples, recalling also, the confirmation of the right of all peoples to self-determination according to the UN General Assembly (GA) Declaration of Friendly Relations, unanimously adopted in 1970 and considered an authoritative indication of customary international law, recalling finally that Article 1, common to the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the International Covenant on Civil and Political Rights (ICCPR), reaffirms the right of all peoples to self-determination, and lays upon State parties the obligation to promote and to respect it.”
2. Add the following paragraph in the preamble as PP9ter: “Reaffirming the principles of the Declaration on the Granting of Independence to Colonial Countries and Peoples, also known as the United Nations General Assembly Resolution 1514.”
3. Add an operative paragraph under Article 6(4) on the right to self-determination in line with the suggested text in the Preamble: Article 6(4)(d) bis: “Respecting that Peoples have a right to self-determination and, therefore, a right to refuse business activity on their land without threats of retaliation.”

## INDIGENOUS PEOPLES DEMAND FOR FULL RESPECT OF THEIR RIGHTS

We welcome and recognize the notable developments in the text of the LBI since the issuance of the zero draft in 2018, particularly in terms of continuing to recognize and respect Indigenous Peoples' right to Free, Prior and Informed Consent. The inclusion of the UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and ILO conventions as fundamental principles in the preambular paragraphs is significant. We especially recognize and commend the relentless efforts of Indigenous Peoples, support groups and advocates, whose determination to lobby for the full respect of Indigenous Peoples rights in the LBI resulted in these positive developments.

As we celebrate these positive developments, we are also concerned that the draft LBI remains weak or lacking in ensuring that Indigenous Peoples rights and defenders are protected. To fully implement the provisions of the UNDRIP and relevant ILO Conventions, the draft LBI needs to include provisions to safeguard the substantive rights of Indigenous Peoples, especially the right to self-determination, and to lands, territories and resources.

### RECOMMENDATIONS TO STATES:

1. Include provision under Article 6 of the LBI to protect the right of Indigenous Peoples to own, use, develop, access and control the lands, territories and resources that they traditionally possess or own.[5] These territories and resources are most often the subject of exploitation by businesses. The protection of Indigenous Peoples' ownership and control over their lands, territories and resources consequently respects their rights to their customs, traditions and land tenure systems, including their right to decision making processes at all stages,[6] in relation to matters affecting their lands, territories and resources. To this end, we recommend adding an operation paragraph under Article 6(4) on the right to self-determination in line with the suggested text in the Preamble to read under Article 6(4)(d) bis: "Respecting that Peoples have a right to self-determination and, therefore, a right to refuse business activity on their land without threats of retaliation."
2. Include provision under Article 6 of the LBI to respect the environmental governance of Indigenous Peoples over their lands, waters, territories and resources. Territories of Indigenous Peoples (along with local communities) occupy, own, manage or govern overlap with key biodiversity areas and other highly critical ecosystems in significant proportion[7]. Respecting environmental governance of Indigenous Peoples also respects their right to a safe and healthy environment. Suggest adding an operative paragraph under Article 6(4)(d)ter: "Safeguarding the rights of Indigenous Peoples to environmental governance as means to respect their right to a safe and healthy environment."



3. Include provision under Article 6 of the LBI to guarantee Indigenous Peoples' right to self-determination, including the "right to maintain and strengthen their distinct political, legal, economic, social and cultural institutions"[8]. For Indigenous Peoples, the right to self-determination means that they are "full and equal participants in the creation of the institutions of government under which they live and, further, to live within a governing institutional order in which they are perpetually in control of their own destinies"[9]. The right to self-determination may further be reflected in the LBI, for instance by recognizing indigenous customary laws under Applicable laws (Art. 11) and traditional justice systems under Access to Remedy (Art. 7) and Adjudicative Jurisdiction (Art. 9).
4. Include provision under Article 6 of the LBI to safeguard Indigenous Peoples and defenders against criminalization, violence and impunity. The UN Special Rapporteur on the Rights of Indigenous Peoples reported that "the intensified competition over natural resources led by private companies, at times with government complicity, has placed indigenous communities seeking to protect their traditional lands at the forefront as targets of persecution"[10] and violence. These attacks undermine Indigenous Peoples ability to effectively assert their rights to their lands, territories and resources and protect them from destructive business activities. The LBI needs to include provisions against laws and policies that undermine the exercise of rights by Indigenous Peoples and defenders, including prohibition of strategic litigation against political participation. The LBI should therefore also take into account both immediate and long-term consequences of human rights violations caused by businesses. The impacts of business activity including through large-scale extractives not only affect current generations of Indigenous Peoples, but they also extend to future generations. Negative impacts such as loss of control of territories and resources, including displacement, loss of biodiversity and sacred sites often also disrupt the intergenerational transmission of indigenous knowledge and practices.

As peoples who have historically lost their lands and resources, sacrificed lives and fundamental freedoms due to business activities, Indigenous Peoples support the drafting of the LBI as a measure to strengthen the accountability of States and businesses and curb rights violations. At the same time, we call on stronger textual provisions to realize the full respect of Indigenous Peoples' rights, especially to self-determination, and to their lands, territories and resources. We will not accept an LBI that falls short of these demands.

## CONFLICT-AFFECTED AREAS

The third revised draft LBI is weak in ensuring accountability and helping to prevent corporate abuses and violations in conflict-affected areas, including situations of occupation. In conflict-affected areas, corporations have been responsible for incentivizing and exacerbating violations of human rights and international law, and complicit in aiding or abetting the commission of international crimes, including war crimes and crimes against humanity. For one, corporations and business enterprises are involved in the unlawful exploitation of natural resources of local communities and indigenous peoples in such contexts of conflict and occupation, resulting in severe adverse impacts on their social, economic, cultural, civil and political rights.

For example, in Palestine, Israeli and multinational business enterprises have long been involved in the unlawful exploitation of natural resources in occupied territory, amounting to the crimes of pillage, and the appropriation and destruction of resources, alongside and the environmental degradation. Meanwhile, the European arms industry has been complicit in the ongoing war in Yemen by providing arms to Saudi Arabia and the United Arab Emirates (UAE) who have carried out indiscriminate and disproportionate attacks against civilians in Yemen.

In addition, in conflict-affected settings, avenues for accountability for corporate related abuses are often curtailed, or insufficient or simply do not exist to address the harm and ensure remedy for victims. In many instances in such contexts, the relevant authorities are unable or are unwilling to provide the necessary tools for accountability. As such, it is important to ensure that the LBI will afford the necessary protections and access to justice for victims in such contexts, against political maneuvers, and will regulate corporate conduct in situations of conflict and occupation, and ensure accountability in cases of human rights abuses, including those that rise to the level of international crimes. The LBI should recognize this accountability gap in such contexts and incorporate language and provisions to remedy it.

## RECOMMENDATIONS TO STATES:

1. Add reference to international humanitarian law, criminal law and international environmental law in scope under Article 3(3): "This (Legally Binding Instrument) shall cover all internationally recognized human rights and fundamental freedoms emanating from the Universal Declaration of Human Rights, any core international human rights treaty and fundamental ILO convention to which a State is a Party, international humanitarian law, international criminal law, international environmental law, and customary international law."



2. The obligation for States to take precautionary measures in the case of serious or urgent situations of imminent human rights abuses or violations 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: “State Parties shall take precautionary measures, including the halt of business activities, when such activities can cause imminent human rights abuses or violations causing irreparable harm, independently from the existence or outcome of a legal proceeding relative to the situation.”
3. For the LBI to be in line with appropriate international standards for consultations with affected communities, human rights and environmental impact assessments should be carried out throughout all phases of corporate operations by an independent party with no conflict of interest. Accordingly, Article 6(4)(a) should read: “Undertaking and publishing regular human rights, labour rights, environmental and climate change impact assessments throughout all phases of their operations –taking into account workers’ rights – such impact assessments shall be undertaken by independent third parties with no conflicts of interests.”
4. Under Article 6(4)(c), it is important to highlight that conducting consultations in conflict-affected areas may not be realistic. Accordingly, we propose the following amendment: “Conducting meaningful consultations – in line with principles of Free, Prior and Informed consent and throughout all phases of operations – with individuals or communities whose human rights can potentially be affected by business activities, and with other relevant stakeholders, while giving special attention to those facing heightened risks of business related human rights abuses, such as women, children, persons with disabilities, Indigenous Peoples, migrants, refugees, climate refugees, internally displaced persons and protected populations under occupation or conflict areas or climate vulnerable communities. Such consultations shall be undertaken by an independent public body and protected from any undue influence from commercial and other vested interests. Where it is not possible to conduct meaningful consultations such as in conflict areas, business operations should refrain from operating unless a reasonable representation of the oppressed population deems the business activity beneficial to them.”
5. In Article 6(4)(g) on conflict-affected areas, State violations, as well as the responsibility of those involved across the value chain are key to highlight in this provision. It is also important to make a distinction between the responsibility for those already conducting business in conflict-affected areas and those yet to venture into business therein. To this effect, we recommend the following amendment: “Adopting and implementing enhanced and ongoing human rights and environmental due diligence to prevent human rights abuses and violations in conflict-affected areas, including situations of occupation – the enhanced due diligence must take place prior to the commencement of business activities and throughout all phases of operations, corporations and/or State-entities must refrain from pursuing or starting operations in situations where no independent due diligence assessment can guarantee neither directly causing, contribution or being directly linked to human rights abuses or

violations of human rights and humanitarian law standards[2] arising from business activities, or from contractual business relationships across the value chain, including with respect to their products and services; entities already engaged in business activity in conflict-affected areas, including situations of occupation, shall also adopt and implement urgent and immediate measures, such as divestment and disengagement policies, to avoid corporate involvement in or contribution to human rights abuses and violations in their activities and relationships.”

6. It is important to include in Article 6 (or reinstate from the zero Draft) that States should incorporate or otherwise implement within their domestic law appropriate measures for universal jurisdiction for human rights violations and internationally recognized crimes mentioned in the preceding. This was mentioned in the zero Draft under Article 6 and should be reintroduced. Proposed text to reinstate under Article 6.7 is: “Where applicable under international law, States shall incorporate or otherwise implement within their domestic law appropriate provisions for universal jurisdiction over human rights violations that amount to international crimes.”
7. Further in regards to Article 6, we underscore that human rights due diligence should not be a one-off exercise undertaken by businesses- this is suggested in Article 6(4) (a) in regards to undertaking ‘regular’ human rights and other assessments. To underscore this, we suggest that Article 6(3) is amended to read “States Parties shall require business enterprises and other actors across the full value chain – including State entities, to undertake ongoing and frequently updated human rights due diligence.” Article 6(4)(g) would also be updated to read “Adopting and implementing enhanced and ongoing human rights due diligence measures to prevent human rights abuses in occupied or conflict-affected areas, including situations of occupation.”
8. We note and support the addition in Article 6(3)(b) for businesses to take measures to “avoid” the identified actual or potential human rights abuses. The article goes on to call for businesses to “take reasonable and appropriate measures to prevent and mitigate abuse to which it is directly linked through its business relationships.” Language in the LBI should be clearer in regard to situations where adverse impacts cannot be mitigated. We suggest that an addition is made to the end of Article 6(3)(b) to accommodate for contexts where a business must disengage from or not enter into a business activity or relationship in order to uphold its obligations. We propose amending Article 6(3)(b) to read: “Take appropriate measures to avoid, prevent and mitigate effectively the identified actual or potential human rights abuses which the business enterprise causes or contributes to through its own activities, or through entities or activities which it controls or manages, and take reasonable and appropriate measures to prevent or mitigate abuses to which it is directly linked through its business relationships and historical contributions that increase planetary warming. In cases where mitigation is impossible, businesses may be required to terminate their relationship and/or cease activities/operations in order to fulfill their obligations.

9. The issue of immitigability should be reasserted in Article 6(4)(g), with an additional emphasis in relation to compliance with international humanitarian law, so that it reads: Adopting and implementing enhanced and ongoing human rights and environmental due diligence measures to prevent human rights abuses and violations in conflict-affected areas, including situations of occupation – the enhanced due diligence must take place prior to the commencement of business activities and throughout all phases of operations, corporations and/or State-entities must refrain from pursuing or starting operations in situations where no independent due diligence assessment can guarantee neither directly causing, contribution or being directly linked to human rights abuses or violations of human rights and humanitarian law standards arising from business activities, or from contractual business relationships across the value chain, including with respect to their products and services; entities already engaged in business activity in conflict-affected areas, including situations of occupation, shall also adopt and implement urgent and immediate measures, such as divestment and disengagement policies, to avoid corporate involvement in, or contribution to human rights abuses and violations in their activities and relationships.
10. Article 16.3 notes the role of States Parties role in cases of businesses operating in conflict-affected areas. To underscore third State obligations, we suggest adding to the end of the paragraph: Actions of States Parties should be consistent with their obligations under international humanitarian law.

## FEMINIST REALITIES

ESCR-Net stands in solidarity with the group of Feminists for a Binding Treaty (F4BT), a coalition of over 30 human rights organizations, representing a large and diverse network of women's lived experiences, shared analysis and expertise from around the world - many of whom members of ESCR-Net. This thematic focus reflects a summary of key positions adopted by the F4BT. The summary highlights the key principles of feminist analysis of business and human rights issues – it also provides key recommendations on the text.

## RECOMMENDATIONS TO STATES:

- 1. Non-discrimination:** All the human rights of women and gender non-conforming persons, in all their diversity, must be respected in the context of business activities, without direct discrimination or indirect discrimination (e.g. where an apparently neutral law, policy or practice affects women adversely in a disproportionate way, because of biological difference and/or the ways in which women are situated or perceived in the world through socially and culturally constructed gender differences), on any ground prohibited under international human rights law. In the context of this LBI on business enterprises, it is important to recognize that Indigenous women, women from other minorities, and peasant and rural women whose rights to land may be less formal or not recognized due to gender discrimination, are particularly impacted by displacement related to large-scale development projects. Further, women are over-represented in the informal sector and in dangerous work with poor working conditions in which they can be subject to exploitation and abuse. This includes sexual abuse, particularly in extractive industry operations.
  - **Preamble:** We recommend clarifying the prohibition on discrimination on “grounds that are prohibited by international human rights law” rather than solely on “race, sex, language or religion” in PP8: “Recalling the United Nations Charter Articles 55 and 56 on international cooperation, including in particular with regard to universal respect for, and observance of, human rights and fundamental freedoms for all and stressing that there should be no discrimination on grounds that are prohibited by international human rights law.
- 2. Substantive Equality:** All women must be ensured substantive equality in the context of business activities. This requires a multifaceted approach which redresses disadvantage (based on historical and current social structures and power relations that influence women's enjoyment of human rights ); addresses stereotypes, stigma, prejudice, and violence (within business enterprises and in connection with business activities); transforms institutional structures and practices (which are often male-oriented and ignorant or dismissive of women's experiences); and facilitates inclusion and participation - in all formal and informal decision-making processes within business enterprises and concerning business activity regulation.

- **Preamble:** We recommend adding reference to the underlying causes of inequality in PP14: “Emphasizing the need for States and business enterprises to integrate an inclusive, integrated, and gender-responsive perspective in all their measures, in line with the Convention on the Elimination of All Forms of Discrimination against Women, the Beijing Declaration and Platform for Action, the ILO Convention 190 concerning the elimination of violence and harassment in the world of work, the Gender Guidance for the Guiding Principles on Business and Human Rights, and other relevant international standards; including to consider underlying causes and risk factors, eliminate all forms of discrimination, redress historical and current disadvantage, address stereotypes and violence, transform biased institutional structures and practices, and facilitate social inclusion and political participation”
  
- **Statement of Purpose (Article 2(d)):** We recommend that the purpose be grounded in gender equality: “To ensure access to gender responsive, victim-centered justice and effective, adequate and timely remedy for victims of human rights abuses and violations in the context of business activities”
  
- **Rights of Victims (Article 4.2(a) and (f)):** We recommend explicit references to help achieve substantive equality for victims - (a): “be treated with humanity and respect for their dignity and human rights, and their safety, physical and psychological well-being and privacy shall be ensured; taking into considering factors that affect the well- being of different genders and those in conflict-areas” and (f): “be guaranteed access to information and legal aid relevant to pursue effective remedy, with special focus on access by Indigenous Peoples and climate vulnerable communities, women and girls, human rights defenders, and others who face barriers to access; and information and legal aid held by businesses and others relevant to the pursuit of remedies, paying particular attention to greater barriers that at-risk groups face such as Indigenous Peoples’, as well as women and girls; the right to access information shall also extend to human rights defenders and includes information relative to all the different legal entities involved in the transnational business activity alleged to harm human rights, such as property titles, contracts, business ownership and control, communications and other relevant documents; and...”
  
- **Protection of Victims (Article 5):** We recommend that measures to guarantee a safe and enabling environment for human rights defenders be “gender-responsive.” We also recommend including specific examples of adequate and effective measures: “States Parties shall take adequate and effective and gender-responsive measures to guarantee 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. Adequate and effective measures include, but are not limited to, legislative provisions that prohibit interference,

- o including through use of public or private security forces, with the activities of any persons who seek to exercise their right to peacefully protest against and denounce abuses linked to corporate activity; refraining from restrictive laws and establishing specific measures to protect against any form of criminalization and obstruction to their work, including gender-based.”
  
- o **Access to Remedy (Article 7):** While we welcome that Article 7.1 recognizes the specific obstacles encountered by women and others in accessing remedy, we suggest using less victimizing language to clarify that individuals are not inherently vulnerable or marginalized, but rather in situations of discrimination and inequality which result in them being marginalized. We recommend clarification of the right to access information, to ensure that courts facilitate “discovery” processes where victims can obtain evidence—particularly women and girls who may have difficulty accessing the evidence needed for their cases: 7.2. States Parties shall ensure that their domestic laws and court proceedings facilitate access to information in a gender-sensitive manner, from both States and corporate entities enabling courts to allow proceedings in all cases, through: (a) international cooperation, (b) facilitating requests for disclosure of State or corporate finances or relations and other relevant information such as the legal persons constituting the respective economic group or holding, relevant business relationships along the global value chain, places in which assets of the company are located that are relevant to ensuring access to remedy for affected communities, contracts with involved states, and (c) expanding admissible evidence to include different types of evidence, such as oral and visual, in efforts to prioritize that which is more suitable for communities to remove barriers for community-led data. We also recommend reference to gender-responsive legal assistance to victims throughout the legal process: “7.3. States Parties shall provide adequate gender-responsive and effective legal assistance to victims throughout the legal process, including by”; and in 7.3(c) Ensuring that rules concerning allocation of legal costs at the conclusion of legal proceedings are adapted to allow for waiving of legal fees and costs where economic barriers exist, and that legal costs do not place an unfair and unreasonable burden on victims. Further we recommend that Article 7 adopts an emphasis on those facing heightened barriers in accessing remedy: “7.4. States Parties shall ensure that court fees and other related costs do not become a barrier to commencing proceedings in accordance with this (Legally Binding Instrument) and that there is a provision for possible waiving of certain costs in suitable cases, particularly for those facing heightened barriers in accessing remedy, such as women, children, persons with disabilities, Indigenous Peoples, migrants, refugees, internally displaced persons and protected populations in conflict- affected areas, among other groups, paying particular attention to the multiple or intersectional forms of discrimination faced by persons belonging to more than one of these groups.”



- **Statute of Limitations (Article 10):** We recommend adding that domestic statute of limitations applicable to civil claims or to violations that do not constitute the most serious crimes of concern to the international community as a whole shall allow a reasonable and gender-responsive period of time for the investigation and commencement of prosecution or other legal proceedings. This should also apply where the victim is delayed in commencing a proceeding in respect of the claim because of their age, physical, mental or psychological state (to support, in particular, justice for victims of sexual and gender-based violence, as well as children and persons with disability): “10.2. The States Parties to the present (Legally Binding Instrument) shall adopt any legislative or other measures necessary to ensure that statutory or other limitations applicable to civil claims or violations that do not constitute the most serious crimes of concern to the international community as a whole allow a reasonable gender-responsive period of time for the commencement of legal proceedings in relation to human rights abuses, particularly in cases where the abuses occurred in another State or when the harm may be identifiable only after a long period of time, or where the victim is delayed in commencing a proceeding in respect of the claim because of their age, physical, mental or psychological condition.”

**3. Gender analysis:** Is key to help recognize, understand and make visible the gendered nature of abuses committed by businesses, including their specific and differential impact on women, men and people across the gender spectrum, as well as human rights abuses based on gender that specifically target lesbian, gay, bisexual, transgender, intersex and queer (LGBTIQ+) persons. It can help to identify differences in the enjoyment of all human rights and fundamental freedoms in all spheres of life. It also seeks to analyze power relations within the larger sociocultural, economic, political and environmental contexts to understand the root causes of discrimination and inequality.[2] Gender analysis in the context of business activities should be carried out through gender-responsive human rights due diligence and gender human rights impact assessments, meaningful consultations with affected women and independent gender experts, and the collection of gender disaggregated data. Any regulation of corporate activities with regard to human rights including the LBI should also address the protection of women human rights defenders, the particular barriers that women face in accessing remedies and gender responsive reparations.

- **Prevention (Article 6.4(b)):** We recommend adding a requirement to collect disaggregated data: “Integrating a gender perspective, with the leadership of and in meaningful consultation with potentially impacted women and women's rights organizations, in all stages of human rights due diligence processes to identify and address the differentiated and intersectional risks and impacts experienced by women and girls, including through the collection of data disaggregated by gender and other major variables relevant to the communities potentially affected by their operations.”

**Institutional Arrangements (Article 15.1):** We recommend that Committee members be required to have gender expertise: “a. The Committee shall consist of, at the time of entry into force of the present (Legally Binding Instrument), (12) experts—no more than half of them men. 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 (18) members. The members of the Committee shall serve in their personal capacity and shall be of high moral standing, gender expertise, and recognized competence in the field of human rights, public international law or other relevant fields.”

**4. Leadership, meaningful participation at all stages, intersectionality, and diversity of perspectives:** Women and other individuals and groups affected by business human rights abuses — recognizing their diverse experiences and intersectional identities — must be central to all stages of developing, implementing and monitoring the effective regulation of business activities, rather than being positioned retrospectively as passive victims of adverse business-related human rights impacts. In addition, women are not a homogenous group and can experience multiple forms of discrimination (including based on race, caste, class, age, health status, social status, sexual orientation and gender identity, health status, etc.), which combine, overlap, or intersect especially in the experiences of individuals or groups in situations of marginalization. Finally, beyond an emphasis on the experiences of women specifically, feminist analysis of corporate abuse seeks to highlight and promote the multiplicity of lived experiences, particularly the perspectives of those individuals and communities facing the most significant and widespread business-related human rights abuses. Taking a feminist analysis means putting the experience and expertise of affected individuals and groups at the center of the effective regulation of business activities. It also means analyzing and tackling structural barriers to accountability of businesses.

- **Prevention (Article 6.4(b)):** We recommend adding a requirement to collect disaggregated data: “Integrating a gender perspective, with the leadership of and in meaningful consultation with potentially impacted women and women's rights organizations, in all stages of human rights due diligence processes to identify and address the differentiated and intersectional risks and impacts experienced by women and girls, including through the collection of data disaggregated by gender and other major variables relevant to the communities potentially affected by their operations”
- **Implementation (Article 16):** We recommend that the language be strengthened to emphasize participation, gender-transformative engagement and different forms of impact or discrimination: “16.4. In implementing this (Legally Binding Instrument), States Parties shall address the specific impacts of business activities on all relevant stakeholders, while giving special attention and facilitating participatory, gender-transformative engagement in all stages of implementation, development of national laws, policies and procedures, and prevention, monitoring and remedial processes to those facing heightened specific or cumulative risks of human rights abuse or violation within the context of business

activities, such as, but not limited to, women, children, persons with disabilities, Indigenous Peoples, people of African descent, older persons, migrants, refugees and internal displaced person, among other groups, paying particular attention to the multiple or intersectional forms of discrimination and impacts faced by persons belonging to more than one of these groups.”

#### 5. **Human activities in alignment with human rights and ecological boundaries:**

Situations of discrimination or marginalization experienced by individuals and communities around the world are not inevitable or due to inherent characteristics, but rather due to social, economic, political, geographical and other circumstances. The laws, policies and practices put in place by States, and the specific and cumulative actions taken by non-State actors including business enterprises can cause or aggravate such discrimination and marginalization. Adverse impacts of current systems, including in the context of business activities, have been exacerbated by the COVID19 pandemic, escalating climate and ecological crises and decades of deregulation and neoliberal economic policies, which have undermined labor rights and social safety nets. Our feminist analysis supports a vision of socio-economic justice for all and concrete steps towards the long-delayed regulation of business activities in line with human rights and the protection of the environment.

- **Preamble:** We recommend adding references to the environment and climate in PP12: “Emphasizing that civil society actors including human rights defenders have an important and legitimate role in promoting and protecting human rights, the environment, and the climate affected by business activities, and that States have the obligation to take all appropriate measures to ensure an enabling and safe environment for the exercise of such role.”
- **Criminal liability (Article 8):** We recommend reintroducing the list of violations recognized as crimes under international law and for which international law requires the imposition of criminal sanctions and we suggest they should trigger corporate criminal liability. We recommend adding to this list long-term damage to the environment which endangers peace or prevents the population from enjoying a healthy environment - accordingly propose, under Article 8.10 quater, adding: “State Parties shall ensure that their domestic law provides for the criminal liability of legal or natural persons for acts that directly or indirectly contribute, cause or are linked to human rights abuses or violations. At a minimum, States shall ensure criminal liability of legal persons for the following abuses that may arise from business activities, including those of transnational character, or from their business relationships: a. War crimes, crimes against humanity and genocide, b. Torture, c. Enforced disappearance, d. Extrajudicial execution, e. Sexual and gender based violence in all its forms, f. Slavery and forced labor, in particular of children under 18 years, g. Forced displacement and evictions, h. Attacks on human rights and environmental defenders, i. Long term damage to the environment, which endangers peace or prevents the population from enjoying a healthy environment.”

## HUMAN RIGHTS DEFENDERS

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Human rights defenders (HRDs), including journalists, lawyers, activists, members of indigenous communities and others, are crucial actors in the context of human rights and business activities as they fulfill the task of ensuring corporate accountability and responsibility. However, their work is subject to danger and restrictions in many countries of the world. Attacks such as killings, beatings, threats, strategic lawsuits against public participation (SLAPPs), and others intended to silence or intimidate defenders focused on business-related activities are evident and increasing with each passing year. For example, in 2020 alone 604 attacks on defenders working on business-related human rights issues were documented, from which 71 were killed.[11] The vast majority of the victims were invested in the defense of land rights environmental rights and labour rights. At least one third of all attacks stemmed from lack of meaningful participation, access to information and consultation, or the failure to secure free, prior and informed consent of local and indigenous communities.[12]

The important role of human rights defenders in corporate responsibility related issues is already recognised by the UN Guiding Principles on Business and Human Rights. These state that companies can consider them as expert sources that can help them assess their human rights impacts and enable them to better understand the interests of affected stakeholders. But most importantly, these guiding principles establish a responsibility not to obstruct the work of HRDs - including women HRDs. The LBI should include the obligations of States to adopt legislative provisions that prohibit the interference by TNCs and OBEs, including through their use of public or private security forces, with the activities of any person who seeks to exercise their human right to peacefully protest against and denounce abuses linked to the activity of TNCs and OBEs, including by fully respecting their human rights to freedom of expression, association, and assembly; establish specific measures to protect human rights defenders against any form of criminalization and obstruction to their work, addressing in particular the gender-specific violence against women human rights defenders; fully, promptly and independently investigate and punish attacks and intimidation of human rights defenders, including women human rights defenders; and refrain from adopting restrictive laws or ambiguous criminal provisions, such as those relating to national security, counter-terrorism and defamation that lead to a restriction or criminalization of human rights defenders' work.

Besides, PP 13 of the Preamble, beginning with "Emphasizing that civil society actors...", notes the role of Human Rights Defenders (HRDs) in "preventing, mitigating and seeking effective remedy for business-related human rights abuses." While the role of HRDs is crucial, given the purpose of the LBI, it may be unhelpful to divert the responsibility of prevention from businesses and States. At a minimum, the wording needs to be revised so as not to give the impression that it is HRDs' role to prevent abuses and violations of human rights.[13]

## RECOMMENDATIONS TO STATES:

1. We propose the addition of the following paragraph to the Preamble - PP12bis: “Recognizing that human rights defenders are particularly targeted when challenging business activity, taking into consideration particular vulnerabilities and heightened risks for certain groups of human rights defenders including women and LGBTI+ human rights defenders, indigenous and environmental human rights defenders, human rights defenders working in isolated and rural areas and human rights defenders engaged in the protection of land, territory and natural resources, and the obligation of States to protect defenders against any harm.”
2. In Article 4(2)(f), we suggest language that would support the right of human rights defenders to access information. Frequently, defenders are targeted – arrested, assaulted and killed – for attempting to gather key information on business activities that could support victims in their claim for remedy. As such, the rights of human rights defenders must be protected and articulated accordingly as part of the right to victims to: “...be guaranteed access to legal aid and information held by businesses and others to pursue effective remedy, paying particular attention to greater barriers that at-risk groups face, such as Indigenous Peoples, as well as women and girls; the right to access information shall also extend to human rights defenders and includes information relative to all the different legal entities involved in the transnational business activity alleged to harm human rights, such as property titles, contracts, business ownership and control, communications and other relevant documents; and...”
3. With regards to the right to access information, Article is too limited, as it pertains only to remedy. It would be key to address access to information under Article 6 – the Article dedicated to prevention.[14] Most often, communities need information as a preventative measure or purposes of monitoring and enforcing compliance of companies and business activities with international law. Accordingly, we propose the added as Article 6(9)bis, highlighting that access to information must be available at all stages of corporate operation: “States and corporations shall provide individuals and communities, including human rights defenders, safe access to relevant, timely, sufficient, and quality information in connection with each stage of business activities, in order to facilitate meaningful participation in the prevention of and response to human rights and environmental impacts. Information should be made available in language and formats that are truly accessible to relevant stakeholders within the community and civil society. The choice of what information should be made available should respond to specific needs of affected communities, who are best placed to determine what information is relevant to them to make informed decisions about projects.”
4. We also propose adding language under Article 6.2bis to highlight that the protection of human rights defenders is an essential element of the prevention of corporate-related abuses or violations. Here is the suggested language: “State Parties shall prioritize the safety and protection of human rights defenders as a foundational element to the principle of prevention.”

## CLIMATE JUSTICE AND CORPORATE ACCOUNTABILITY

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The LBI process must not be developed in isolation from the reality of the global climate crisis, while at the same time, recognizing that the protection of human rights is an essential factor in addressing the climate crisis. This demands effective global leadership, and it is imperative that the United Nations Human Rights Council and State parties to the LBI or IGWG process ensure the creation of an effective mechanism for the protection of rights, the redress of grievances and the establishment of accountability as a means to protect local communities in the face of the climate crisis. This year in the seventh round of negotiations, States have the opportunity through the process of building and adopting an international human rights and business LBI to respond to the needs resulting from the systematic violations of human rights caused by transnational corporations, and to develop international law that responds to the scientific reality framing the climate crisis.

ESCR-Net members have identified environmental degradation and climate change as one of five common conditions threatening communities globally, highlighting corporate impunity, the extractive nature of our dominant economic system and the commodification of nature, all of which are driven by big polluters and corporate giants. Environmental destruction and the climate crisis threaten human survival and the enjoyment of all human rights for present and future generations, including the rights to a healthy environment, life, health, housing, food, land, water and sanitation, livelihood and non-discrimination. Thus, States must take urgent action to address environmental destruction and the climate crisis, including through regulating and holding corporate and financial actors accountable to meeting their obligations to respect, protect and fulfill human rights, domestically and extraterritorially. Climate solutions must not violate human rights.

The latest report of the Intergovernmental Panel on Climate Change, published in August of this year, makes it clear that time is running out: we must act now or it will be too late to avoid irreversible global warming and avoid the impacts of a global temperature above 1.5 C. Under the current trajectory, the impacts will be disproportionate especially on local communities that have historically suffered the impacts of extractive activities, have been impoverished and dispossessed by the economic system and have been confronted by structural violence. The climate crisis will generate increasingly adverse living conditions for these communities and will potentially become a factor of constant violation of fundamental rights.

The responsibility that transnational corporations, especially fossil fuel companies, have in creating and exacerbating the climate crisis is directly related to the systematic violation of the human rights of the communities directly impacted by their extractive practices, as well as to the destruction of the natural ecosystems that enable life on the planet.



## RECOMMENDATIONS TO STATES:

1. Amend PP10 so that it reads: Acknowledging that all business enterprises have the capacity to foster sustainable development through an increased productivity, inclusive economic growth and job creation that respect internationally recognized human rights, labour rights, health and safety standards, the environment and climate justice, in accordance with relevant international standards and agreements.
2. Adding paragraph in the preamble (PP11bis) that will read: “To affirm the primacy of human rights obligations in relation to any conflicting provision contained in international trade, investment, finance, taxation, environmental and climate change, development cooperation and security agreements.[15]”
3. Amend PP13 so that it reads: Recognizing the distinctive and disproportionate impact of business-related human rights abuses on women and girls, children, Indigenous Peoples, persons with disabilities, people of African descent, older persons, migrants and refugees, climate vulnerable communities most affected by the impacts of climate change, and other persons in vulnerable situation, as well as the need for a business and human rights perspective that takes into account specific circumstances and vulnerabilities of different rights-holders and the structural obstacles for obtaining remedies for these persons
4. Adding paragraph in the preamble that will read as PP13bis: Acknowledging the climate emergency and the short time window available to protect human rights affected by climate change, and the urgent need of limiting global warming to 1.5 degrees C by 2030, in order to avoid the worst impacts of climate warming, and that developed countries and multinational corporations must take the lead in combating climate change as recognized by Article 3 of the United Nations Framework Convention on Climate Change.
5. Add paragraph in the preamble that will read as PP13ter: Recognizing that the climate emergency is multifaceted and approaches to mitigate warming are also approaches to environmental justice and human rights in line with the Bali Principles of Climate Justice, improvements in labour rights, Indigenous rights, and economic equity.
6. Amend Article 6(4)(e) to read: Reporting publicly and periodically on non-financial matters, including information about group structures and suppliers as well as policies, risks, outcomes and indicators concerning human rights, labour rights, health, environmental impacts and climate change impacts standardsthroughout their operations, including in their business relationships, using accountability metrics as recognized by the United Nation.
7. Add Article 6(9)bis to read: States and corporations shall provide individuals and communities, including human rights defenders, safe access to relevant, timely, sufficient, and quality information in connection with each stage of business activities, including accurate emissions reporting, in order to facilitate meaningful participation in the prevention of and response to human rights and environmental impacts. Information should be made available in language and formats that are truly accessible to relevant stakeholders within the community and civil society. The choice of what information should be made available should respond to specific needs of affected communities, who are best placed to determine what information is relevant to them to make informed decisions about projects;

8. Add Article 6(10)bis: State Parties shall take all necessary steps, particularly through human rights and environmental impact assessments, to respect and protect human rights in the context of business activities that the State Party is engaged in, supports, or shapes. This includes but is not limited to, State ownership or control in business activities, State engagement in business activities with companies or other States, State regulatory oversight, or political or financial support;
9. Add Article 6(11)bis to read: State Parties shall ensure that reparations processes and mechanisms established to repair the harm caused by large-scale industrial disasters are designed and implemented in consultation with, and with the full participation of those affected, [including women...] are transparent and independent from the business enterprise that caused or contributed to the harm, ensure independent technical assistance and are sufficiently resourced to offer the prospect of full reparation to all those affected, and include accountability metrics as identified by third-party reporting and analysis;
10. Add Article 7.1 bis to read: State Parties shall ensure that reparations processes and mechanisms established to repair the harm caused by large-scale industrial disasters are designed and implemented in consultation with, and with the full participation of Indigenous Peoples and affected communities are transparent and independent from the business enterprise that caused or contributed to the harm, ensure independent technical assistance and are sufficiently resourced to offer the prospect of full reparation to all those affected.
11. Add paragraph in Article 7.2.ter that would read: State Parties shall ensure that reparations processes and mechanisms established to repair the harm caused by large-scale industrial disasters are designed and implemented in consultation with, and with the full participation of Indigenous Peoples and affected communities are transparent and independent from the business enterprise that caused or contributed to the harm, ensure independent technical assistance and are sufficiently resourced to offer the prospect of full reparation to all those affected, and include accountability
12. Add Article 16(4)bis to read: Special attention shall also be undertaken in climate-vulnerable communities that are facing current and future environmental and climate related threats that cause, among other impacts, mass migration and other climate-related conflicts from droughts, heatwaves, and resource extraction, or pose severe health risks.

## WORKERS' RIGHTS – PARTICULARLY PEASANTS AND WORKERS IN RURAL AREAS

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Workers around the world continue to be impacted by the COVID-19 crisis. The International Labour Organisation (ILO) estimates a loss of 400 million jobs worldwide. The forthcoming estimates from the ILO are likely to see these figures rise, with more severe impacts on workers in the informal economy – who are disproportionately women. For women, COVID-19 has intensified the double and, often, triple burden women confront. On top of the loss of paid work, the amount of time women need to dedicate to unpaid care work has increased because of the closure of schools and day care centres, cuts in services for the elderly and people with disabilities, and the need to look after dependents suffering from COVID-19. Women's employment is also at greater risk than men's, as they are over-represented in the informal and service sectors, which have been particularly badly impacted by the economic disruption. In addition, women dominate in front-line occupations – including healthcare – making them more directly at-risk.

In this context, workers' rights, particularly those in the informal sector and the rights of peasants and other people working in rural areas, must be the object of increased protection in the LBI. Stated simply, workers' rights are human rights, and this is not sufficiently expressed in the second revised draft. There's an absolute obligation on States to regulate corporations in a manner that will ensure worker rights are protected. [16] This includes the protection of care workers, frontline workers, workers in informal economies, and workers in the extractive sectors, to name a few. Amidst the COVID-19 pandemic, we have seen that care workers, a majority of whom are women, are exposed to higher levels of risk and increased vulnerability. This LBI must ensure that in carrying out human rights and environmental due diligence, workers' rights are prioritised, encompassing international standards of protection and enhanced consultation and participation as part of the due diligence process, e.g. ensuring safe conditions of work. In so doing, it should be clearer that a failure to respect workers' rights, whether in an informal economy or a formal one, would give rise to criminal, civil or administrative liability.

Given the lack of provisions dedicated to workers' rights in the second revised draft LBI on, we suggest the following key additions to the text.

## RECOMMENDATIONS TO STATES:

1. The Preamble and all those clauses referring to the groups that are most vulnerable to corporate abuses should also include the mention of peasants and other people working in rural areas. Furthermore, when recalling international human rights standards in the Preamble, the UN declaration on the Rights of Peasants and other People Working in Rural Areas (UNDROP) should be included under PP3.
2. In order to ensure that human rights abuse also refers to the infringement of workers' rights, we propose the following amendment to Article 1(2): "Human rights abuse" shall mean any harm committed by a business enterprise, through acts or omissions in the context of business activities, against any person or group of persons, that impedes the full enjoyment of internationally recognized human rights and fundamental freedoms, including the right to a safe, clean, healthy and sustainable environment and workers' rights.
3. In Article 6(3)(a), the text should be amended to specifically include a reference to workers' rights as a way to seriously consider such rights in the conduct of both human rights and environmental due diligence by corporations and/or States active in business. We recommend that the provision change accordingly: "Identify, assess and publish any actual or potential environmental risks and/or human rights abuses or violations that may arise from their own business activities, or from their business relationships - including those that infringe upon workers' rights"
4. Similarly, in Article 6(4)(a) should read: "Undertaking and publishing regular human rights, labour rights, environmental and climate change impact assessments throughout all phases of their operations – taking into account workers' rights – such impact assessments shall be undertaken by independent third parties with no conflicts of interests."

## FOOTNOTES

- [1] <https://www.fian.org/en/publication/article/comic-the-corporate-capture-of-food-systems-2846>
- [2] [https://www.escrnet.org/sites/default/files/attachments/ep.1\\_background\\_document\\_.pdf](https://www.escrnet.org/sites/default/files/attachments/ep.1_background_document_.pdf)
- [3] [https://www.corporateaccountability.org/wpcontent/uploads/2019/10/CA\\_ICCExposed\\_onepager\\_09-FINAL.pdf](https://www.corporateaccountability.org/wpcontent/uploads/2019/10/CA_ICCExposed_onepager_09-FINAL.pdf)
- [4] See: <https://www.un.org/en/observances/indigenous-day>
- [5] See UNDRIP, Article 26.
- [6] See UNDRIP, Article 18.
- [7] See WWF[1], UNEP-WCMC[2], SGP/ICCA-GSI[3], LM[4], TNC [5], CI[6], WCS[7], EP[8], ILC-S[9], CM[10], IUCN[11] The State of Indigenous Peoples' and Local Communities' Lands and Territories: A technical review of the state of Indigenous Peoples' and Local Communities' lands, their contributions to global biodiversity conservation and ecosystem services, the pressures they face, and recommendations for actions Gland, Switzerland (2021)
- [8] See UNDRIP, Article 5.
- [9] James Anaya, quoted in "The UN Declaration on the rights of Indigenous Peoples Turns 14", September 14, 2021, <https://www.culturalsurvival.org/news/un-declaration-rights-indigenous-peoples-turns-14>.
- [10] Report of the Special Rapporteur on the rights of Indigenous Peoples, A/HRC/39/17, 10 August 2018.
- [11] Business & Human Rights Resource Centre, "In the line of fire: Increased legal protection needed as attacks against business & human rights defenders mount in 2020", march 2020, available at: [https://media.business-humanrights.org/media/documents/HRD\\_2020\\_Snapshot\\_EN\\_v9.pdf](https://media.business-humanrights.org/media/documents/HRD_2020_Snapshot_EN_v9.pdf)
- [12] Ibidem.
- [13] Joint Oral Statement Sixth session of the Open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIGWG), f FI, WILPF, FIDH and FIAN, Monday, 26 October 2020, [https://www.fidh.org/IMG/pdf/fidh\\_oral\\_statements\\_6th\\_session.pdf](https://www.fidh.org/IMG/pdf/fidh_oral_statements_6th_session.pdf)
- [14] See for example this recommendation by UN independent experts on how governments must promote and protect access to and free flow of information during the COVID-19 pandemic <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=25729&LangID=E>
- [15] See: Vienna Convention on the Law of Treaties (VCLT) 30(3): "When all the parties to the earlier treaty are parties also to the later treaty . . . the earlier treaty applies only to the extent that its provisions are compatible with those of the later treaty.", and see also, United Nations' Guiding Principles on Business and Human Rights (UNGPs), Principle 9. Available at: [http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf). See also Principle 10 regarding the position of States when acting as members of multilateral institutions that deal with business-related issues. See also Principle 11, 23, and 31.
- [16] State duties to protect workers' rights are derived, inter alia, from the International Covenant on Economic, Social and Cultural Rights (Arts. 6-10), the International Covenant on Civil and Political Rights (Art. 8), the African Charter on Human and Peoples' Rights (Arts. 5, 15), the American Convention on Human Rights (Art. 6, 26), and the European Convention on Human Rights (Art. 4), and dozens of International Labour Organization (ILO) conventions, including eight that enjoy 92% of all possible ratifications and are identified as "fundamental" by the ILO: 1. [Freedom of Association and Protection of the Right to Organise Convention, 1948 \(No. 87\)](#); 2. [Right to Organise and Collective Bargaining Convention, 1949 \(No. 98\)](#); 3. [Forced Labour Convention, 1930 \(No. 29\) \(and its 2014 Protocol\)](#); 4. [Abolition of Forced Labour Convention, 1957 \(No. 105\)](#); 5. [Minimum Age Convention, 1973 \(No. 138\)](#); 6. [Worst Forms of Child Labour Convention, 1999 \(No. 182\)](#); 7. [Equal Remuneration Convention, 1951 \(No. 100\)](#); 8. [Discrimination \(Employment and Occupation\) Convention, 1958 \(No. 111\)](#). See Conventions and Recommendations, International Labour Organisation, available at: <https://www.ilo.org/global/standards/introduction-to-international-labour-standards/conventions-and-recommendations/lang--en/index.htm>.