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NO PROFIT WITHOUT ACCOUNTABILITY: FOR PEOPLE AND THE PLANET

Environmental Analysis of the Updated UN Draft Treaty on Transnational Corporations and Human Rights

CIEL · ESCR-Net · Franciscans International · International Service for Human Rights

This publication has been prepared in view of the 11th session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights, taking place end of October 2025 in the UN Hurman Rights Council, and mandated to elaborate an international legally binding instrument (LBI) to regulate, in international human rights law, the activities of transnational corporations and other business enterprises. It examines the critical need for the explicit recognition of the right to a clean, healthy, and sustainable environment within the LBI, and provides concrete legal proposals to strengthen environmental protections against corporate abuses and violations.

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1 INTRODUCTION AND OBJECTIVE OF THE BRIEFING

The world continues to contend with and face the impacts of the triple planetary crisis of climate change, pollution, and biodiversity loss. Much of this crisis is driven by unrestrained corporate extraction and a profit-driven economic model that prioritizes short-term gains over the well-being and rights of people and the environment. Extractive industries such as mining, large-scale agriculture, and industrial forestry degrade land, water, and ecosystems, destroy biodiversity and erode communities' means of survival. These sectors, as well as other industries that pollute and produce excessive greenhouse gas emissions not only undermine the right to a clean, healthy, and sustainable environment (RtHE) but also violate interconnected human rights, including the rights to life, health, food, and water. Communities around the world, alongside environmental and human rights defenders, continue to speak out about the devastating impacts of corporate activities – particularly those carried out by transnational companies. All too often, these harms occur with little or no accountability, effective remedy, or access to justice for those affected.

This context of global corporate impunity drove states to adopt Human Rights Council (HRC) Resolution 26/9 that mandated the creation of an open-ended intergovernmental working group (OEIGWG) that is tasked to draft an international legally binding instrument (LBI) that regulates the activities of transnational corporations and other business enterprises under international human rights law. As the process continues into its eleventh year, and moves closer towards a final text, it is imperative that the LBI provides robust language to ensure the prevention of human rights abuses and violations, including the RtHE, and remedy in cases where such violations and abuses do occur. In doing so, the LBI must also explicitly recognize states' extraterritorial human rights obligations, including the duty to prevent transboundary environmental harm.

While there is no mention of the environment in HRC Resolution 26/9, environmental rights, the right to a clean, healthy and sustainable environment, and broader environmental considerations have been part of the negotiations throughout the years and have found their way into various versions of the LBI draft texts. Even prior to the recognition of the RtHE by either the UN Human Rights Council or the General Assembly, the third draft of the LBI included this right in its definition of human rights abuse.[1] However, key elements on the environment were subsequently eliminated from the Updated Draft released by the OEIGWG chair in 2023[2] despite strong support by many states for relevant language.

1 The third draft of the LBI was published in August 2021 (https://www.ohchr.org/sites/default/files/LBI3rdDRAFT.pdf) and the HRC adopted its resolution on the RtHE in October 2021 (https://digitallibrary.un.org/record/3945636/files/A_HRC_RES_48_13-EN.pdf).

2 https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session9/igwg-9th-updated-draft-lbi-clean.pdf

Since its removal, many state delegations, non-governmental organizations and representatives from communities have made regular demands for its reinsertion, highlighting the clear linkage behind the guarantee of the RtHE with an international instrument working to tackle corporate impunity. Notably, corporations in the fossil fuel industry are one of the worst contributors to climate change and human rights violations and abuses.[3] As stated by the recent Advisory Opinion of the International Court of Justice (ICJ) on the obligations of states in respect of climate change, the *"[failure] of a State to take appropriate action to protect the climate system from GHG emissions - including through fossil fuel production, fossil fuel consumption, the granting of fossil fuel exploration licenses or the provision of fossil fuel subsidies - may constitute an internationally wrongful act which is attributable to that State"*.[4] More recently, even the group of legal experts - a group formed to advise the chair and states - stated that taking into account the indicia of crystallization of interrelated obligations, states may wish to consider environmental rights as part of the material scope of the LBI, consistent with the development in multilateral and judicial fora.[5] It should be, emphasised, however, that experts on the environment, including the mandate of the right to a healthy environment, find that the RtHE is already part of customary law.[6]

Moreover, in the advisory opinion on states' obligations in respect of climate change, the ICJ has recognized the right to a clean, healthy, and sustainable environment, and emphasized that this right is interconnected with other human rights. The court also addressed how this right can be adversely impacted by business operations and activities, as also increasingly reflected in other international and regional policy spaces and UN processes.

As part of its advisory opinion, the ICJ also underscored that states are engaging in internationally wrongful acts when failing to protect against emissions, including by not regulating private actors.[7] The Framework Principles on Human Rights and the Environment, which outline states' obligations with regard to the right to a healthy environment, establish that they must regulate private actors that have the potential to harm the environment and human rights.[8] Reinforcing this, the Inter-American Court of Human Rights' landmark Advisory Opinion 32 of 2025 on state obligations in addressing the climate emergency calls on states to impose stricter duties on companies with high greenhouse gas emissions, implement the "polluter pays" principle,

3 See recent report of the Special Rapporteur on climate change, https://docs.un.org/en/A/HRC/59/42.

4 See paragraph 427, p. 122, https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf

5 *Non-paper on Articles 6 and 8 of the Updated Draft Legally Binding Instrument*, https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session11/oeigwg-non-paper-arts-6-8-2025-intersessional-thematic-consultations.pdf.

6 *Reasoning Up to Human Rights: Environmental Rights as Customary International Law*, accessible here: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3172991

7 *Obligations of States in Respect of Climate Change*, Advisory Opinion, International Court of Justice, July 23, 2025, https://www.icj-cij.org/case/187

8 https://docs.un.org/en/A/HRC/37/59

and strengthen the effectiveness of national mitigation measures.[9] Together, these developments demonstrate the momentum and legal grounding for explicitly embedding the right to a healthy environment within the LBI.

The LBI has both the opportunity and the responsibility to close the existing normative gap by explicitly recognizing the RtHE in its text and by integrating this right - along with broader environmental and climate change considerations - throughout its substantive provisions.

This paper:

- identifies elements in the current draft that represent positive advancements and should be retained or reinstated during the negotiations, and
- offers concrete textual proposals along with legal sources and references to strengthen specific articles to better secure and guarantee the RtHE.

9 https://corteidh.or.cr/tablas/OC-32-2025/index-eng.html#

ANALYSIS ARTICLE BY ARTICLE

OVERARCHING COMMENTS ON THE DRAFT LBI TEXT

We recommend that throughout the draft:

- The term "human rights abuse" be accompanied by "and violations"
- The term "victims" be accompanied by "including affected communities and individuals".
- Language which limits the strength of the LBI – and, thereby, its purpose to ensure accountability – by referring to 'provisions under domestic law', be eliminated (except where domestic laws provide better protection than the LBI).

The text of the LBI must also take a **feminist analysis** and must reflect the multiplicity of lived experiences – which means putting the experience and expertise of affected individuals and groups at the centre of the effective regulation of business activities. The protection of the environment and the realization of women's rights are inextricably linked.[10] Women, especially Indigenous and rural women, are among the first to experience the impacts of environmental degradation and climate change. Yet, they are also peasants, food system builders, knowledge and rights holders, and defenders of their communities' ecosystems and natural resources. While gender perspective and "women and girls" have been mentioned many times across the text of the LBI, it is important to note that women are not a homogenous group and can experience multiple forms of discrimination (including based on race, caste, disabilities, class, age, health status, social status, legal 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.[11]

PREAMBLE

A new paragraph in the Preamble is suggested:

> ***Recognizing*** **that businesses cause and contribute to adverse impact on the environment and** ***reaffirming*** **the recognition of the right to a clean, healthy and sustainable environment in resolutions 48/13 of 2021 of the UN Human Rights Council and 76/300 of 2022 of the UN General Assembly;**

10 The Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), the UN Declaration on the Rights of Indigenous Peoples (UNDRIP), and the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas (UNDRoP) recognize that gender equality and environmental justice must go hand in hand.

11 CEDAW General Recommendation No. 28 (2010), para 18 and 9-13, CEDAW General Recommendation No. 34 (2016) — Rural Women, para 11, CEDAW General Recommendation No. 37 (2018) — Gender-related dimensions of disaster risk reduction (para 4,14). See also, https://www.business-humanrights.org/en/blog/five-reasons-the-binding-treaty-needs-to-be-feminist/ and https://www.business-humanrights.org/en/latest-news/feminists-for-a-binding-treaty-release-position-paper-on-gender-responsive-recommendations-for-the-draft-text/.

We also suggest the addition of "the environment" in PP10, to read as follows:

> (PP10) Acknowledging that all business enterprises have the potential to foster sustainable development through an increased productivity, inclusive economic growth and job creation that promote, and respect internationally recognized human rights, **the environment**, and fundamental freedoms;

It is crucial to expressly articulate the **primacy of international human and environmental rights**[12] over trade and investment agreements in the Preamble to the LBI. The updated draft should retrieve Palestine's proposal on this[13] and should read:

> (PP11 bis) ***[Affirming]*** 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;

We suggest that in PP13, language related to the environment be included, so that it reads in part:

> (PP13) [...] preventing, mitigating and in seeking effective remedy for business-related human rights abuses, **environmental degradation, and climate change**, and that States [...];

In PP3, we suggest reinserting, as it was deleted despite the support of some states, a reference to the Declaration on Human Rights Defenders, the UN Declaration on the Rights of Indigenous Peoples and to include the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas, as follows:

> (PP3) ***Recalling*** the Universal Declaration of Human Rights, the Vienna Declaration and Programme of Action, the UN Declaration on Human Rights Defenders, the UN Declaration on the Rights of Indigenous Peoples, and the UN Declaration on the Rights of Peasants and Other People Working in Rural Areas;

ARTICLE 1 – DEFINITIONS

As aforementioned, the 3rd draft of the LBI's definition of 'human rights abuse' included the term "fundamental freedoms" and specific mention of the RtHE, as suggested by France. We propose that this language be reintroduced in Art 1.2 as follows:

12 Inter-American Court of Human Rights Case of the *Sawhoyamaxa Indigenous Community v. Paraguay* Judgment of March 29, 2006 (Merits, Reparations and Costs), available here: www.corteidh.or.cr/docs/casos/articulos/seriec_146_ing.pdf; UN Charter, Art. 103, available here: https://legal.un.org/repertory/art103.shtml.

13 See https://docs.un.org/en/A/HRC/55/59/Add.1, p. 7.

> Art. 1.2: "Adverse human rights impact" shall mean a harm which corresponds to a reduction in or removal of a person's ability to enjoy an internationally recognised human right **or fundamental freedom, including the right to a clean, healthy and sustainable environment**.

The **financial sector** (including investment funds, banks, institutional investors, pension funds and international and regional financial institutions) is central to business activities and their impact on human rights and the environment.[14] We suggest that the LBI includes this sector within its scope, as is the case in existing due diligence instruments.[15] This should be done in Art 1.4 defining "business activities", where we also suggest the inclusion of the term "extraction".[16] This article should read as follows:

> Art 1.4: "Business activities" means any economic or other activity, including but not limited to the **extraction**, manufacturing, production, transportation, distribution, commercialization, marketing and retailing of goods and services **and financing, insuring, and investing in the aforementioned processes**, undertaken by a natural or legal person […].

We note the inherent impact of extractive activities on the environment, and emphasise the concerns of affected communities, including Indigenous Peoples, peasants, fisherfolks, rural workers and others, regarding the so-called just transition and its requirement of continued extraction.[17] This "transition" is occurring in a context of impunity for fossil fuel companies, who are also "transitioning" their operations to critical minerals. Specific mention of extractive activities in the text of the LBI acknowledges this sector's impacts on the environment and the reality of its continued power.

The concept of human rights due diligence (HRDD) is now included in the definitions clause instead of Article 6 on Prevention as in the third draft.[18] Similar to civil society concerns about HRDD in the third draft, there is still a significant focus on mitigation of adverse human rights impacts and **not enough on their prevention**. Prevention – and not mitigation – should be at the core of human rights due diligence.[19] Given

14 *The Human and Environmental Cost of Land Business the case of Matopiba, Brazil*, FIAN International, accessible at here: https://www.fian.org/files/files/The_Human_and_Environmental_Cost_of_Land_Business-The_case_of_MATOPIBA_240818.pdf. See also *The Business of Land in Matopiba*, FIAN International, accessible here: https://www.fian.org/en/campaign/the-business-of-land-in-matopiba-brazil/.

15 *Don't let the financial sector off the hook! Call for a comprehensive inclusion of the financial sector into CSDDD*, accessible here: https://www.fian.de/wp-content/uploads/2023/08/FIAN_SUeDWIND_Policy-Briefing_Financial-Sector_CSDDD_ENG_20230802.pdf

16 As suggested by Mexico, Chile, Ecuador, and Honduras. See https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session10/igwg-10th-updated-draft-lbi-with-proposals.pdf, p.7-8.

17 *„The Lords of the Land"* Report which develops on Green Grabbing: www.fian.org/files/is/htdocs/wp11102127_GNIAANVR7U/www/files/Lords_Land_Fian_20250602_fin.pdf

18 In the 3rd revised draft, there was even mention of "regular human rights, labour rights, environmental and climate change impact assessments". See https://www.ohchr.org/sites/default/files/LBI3rdDRAFT.pdf, p. 8. At the 10th session, Panama, Mexico, Honduras, Colombia and Ghana proposed to reinsert "environmental impact assessments".

19 The International Tribunal for the law of the Sea in its 2024 Advisory Opinion, has extensively discussed the nature of State due diligence obligations, particularly in the context of environmental harm. See https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf. Also, see, *Business Due Diligence and Related States' Obligations in the Context of Corporate Accountability*, FIAN International available at https://www.fian.org/en/business-due-diligence-and-related-states-obligations-in-the-context-of-corporate-accountability-2/

the wealth and power of transnational corporations, as well as the general impunity they enjoy, many may opt to continue with their operations and activities, even when adverse impacts are expected. Any pretence of mitigation may be a business option, especially when implementing "full prevention" (which may mean cessation of activities or withdrawal) may lead to less or no profit. For this reason, the LBI must place an emphasis on prevention rather than on mitigation. Only risks of an adverse human rights impact may be prevented or mitigated. Once a harm has occurred or is ongoing, it must not be mitigated but rather be provided for in remedy. It is, therefore, proposed **that references to 'mitigate' in articles 1.8, 1.8(b) must be followed by "risks of adverse human rights impacts"**.

We suggest Art. 1.8(c), in addition to monitoring the effectiveness of measures, also include adopting corrective measures in the following manner:

> Art. 1.8(c): monitoring the effectiveness of and **adopting corrective measures when needed** to address such adverse human rights impacts; and

We also strongly suggest an additional sub-paragraph as a minimum element of HRDD in Art 1.8(e) for business activities that carry risks of irreparable harm and for conflict-affected areas, including situations of occupation, as follows:

> **Art. 1.8(e): refraining and divesting from operations or activities that carry risks of irreparable harm and in conflict-affected areas, including situations of occupations.**

As suggested by Ghana, we recognize that environmental degradation and harm caused by business operations or activities often have widespread adverse impacts, and therefore suggest amending Art. 1.9 to read as follows:

> Art 1.9. ''Remedy" shall mean the restoration of **a person or group of persons of a community who have suffered a** human rights abuse [...]''

ARTICLE 3 – SCOPE

We insist on the removal of "binding on the State Parties" in Art. 3.3 and support suggested amendments made by Brazil and Honduras, thereby making it read:

> Art. 3.3: This (Legally Binding Instrument) shall cover all internationally recognized human rights and fundamental freedoms, **as well as international human rights law, international humanitarian law, customary international law, and international environmental law.**

ARTICLE 4 – RIGHTS OF VICTIMS

We propose to include additional components of reparation for victims under current article 4.2(c), which better reflect the immediate and long-term measures which should be taken, and the importance for long-term monitoring of such remedies:

> Art. 4.2(c) […] environmental remediation, and 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;**

The cases of the Brumadinho Dam Disaster[20] and the POSCO land grabbing[21] have concretely shown why such key components must be specifically added to reparations and how the lack thereof affects communities.

We welcome the inclusion of **precautionary measures in article 4.4 and in article 5.4** where victims, pending the resolution of a case, shall have the right to request state parties to adopt precautionary measures. States must retain it. However, the context of "environmental harm" must be made specific. We therefore propose revising Article 4.4 as follows:

> Art. 4.4: Victims shall have the right to request State Parties, pending the resolution of a case, to adopt precautionary measures related to urgent situations that present a serious risk of or an ongoing human rights abuse, **or environmental harm.**

We want to **defend the inclusion of collective actions** – known in some countries as class actions or actiones populares – as an appropriate legal measure to defend the rights of affected communities and individuals when they have suffered similar harm from the same entity or a systemic issue, often crucial in cases of environmental harm.[22]

We also **welcome new language in Art. 4.2(f) on access to information**, where states are required to provide information in relevant languages and accessible formats to

20 *The Crimes of Vale Inc. in Brumadinho, Brazil*, FIAN International, October 2020. Accessible here: https://www.fian.org/en/the-crimes-of-vale-inc-in-brumadinho-brazil-3.

21 *The Case of the Posco-India Project*, FIAN International, February 2021. Accessible here: https://www.fian.org/en/the-case-of-the-posco-india-project-3/. See also The Price of Steel: Human Rights and Forced Evictions in the POSCO-India Project, June 2013. Accessible here https://www.escr-net.org/resources/the-price-of-steel-human-rights-and-forced-evictions-in-the-posco-india-project/ and The great land grab: *India's war on farmers*, Vandana Shiva, Aljazeera, June 2011. Accessible here https://www.aljazeera.com/opinions/2011/6/7/the-great-land-grab-indias-war-on-farmers

22 Several Latin American States such as Colombia, Ecuador and Bolivia include *actiones populares* in their constitution. See also Ana María Suarez Franco, *Die Justiziabilität wirtschaftlicher, sozialer und kultureller Menschenrechte*, Frankfurt 2010, p.236. Understood broadly as 'public interest litigation', this concept is also recognised in the Constitution of India (Art. 226 and Art. 32). The Inter-American Court of Human Rights has also addressed worker-related cases, including instances of class actions although not exactly similar to what is under stood under US or European domestic law, but within the broader framework of human rights violations, for instance the case of *Trabaja dores Cesados de Petroperú* (Dismissed Workers of Petroperú) v. *Peru Judgment* of November 23, 2017, Series C No. 344.

adults and children, including those with disabilities. This is consistent with the UN Convention on the Rights of Persons with Disabilities and we insist on its retention.[23]

Since the adoption of the UN Declaration on Human Rights Defenders, attacks against those defending human rights - especially environmental defenders - have increased.[24] Many of these attacks are reprisals against defenders for exercising their legitimate right to protect and promote human rights and fundamental freedoms. We therefore propose this inclusion, in addition to the proposal by Mexico and Panama, in Article 4.2(e) as follows:

> Art. 4.2(e): be protected from any unlawful interference against their privacy, and from intimidation, and reprisals, **including their representatives, families, and witnesses, and human rights defenders,** before, during and [...];

ARTICLE 5 – PROTECTION OF VICTIMS

In general terms, we propose to **explicitly mention human rights defenders** in this article, particularly in Article 5.2, and to retain the reference to "persons, groups and organizations" in the text. Keeping this language would be consistent with the UN Declaration on Human Rights Defenders[25] and Article 9(1) of the Escazú Agreement,[26] the Declaration +25[27] and Inter-American case law.[28] The term "human rights defenders" also includes workers, peasants, small-scale food producers, Indigenous Peoples, members of trade unions or other individuals or associations promoting human rights.

23 Article 21 of the UN Convention on the Rights of Persons with Disabilities requires States Parties to ensure that persons with disabilities can seek, receive and impart information "through all forms of communication of their choice," including in accessible formats such as sign languages, Braille, and augmentative and alternative communication. This obligation extends to both official communications and information provided by private actors and the media. Additionally, Article 9 obliges States to ensure access to information and commu nication technologies and systems, and Article 7 requires that children with disabilities can express their views freely, which presupposes that information is provided in forms they can understand.

24 See *Defending rights and realising just economies: Human rights defenders and business (2015-2024)*, Business and Human Rights Resource Centre; accessible here: https://www.business-humanrights.org/en/from-us/briefings/human-rights-defenders-and-business-10-year-analysis/defending-rights-and-realising-just-economies-human-rights-defenders-and-business-2015-2024/.

25 See *Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms*, UN Doc. A/RES/53/144, 8 March 1999. Accessible here: https://docs.un.org/en/A/RES/53/144.

26 "Each Party shall guarantee a safe and enabling environment for persons, groups and organizations that promote and defend human rights in environmental matters, so that they are able to act free from threat, restriction and insecurity". *Regional Agreement on Access to Information, Public Participation and Justice in Environmental Matters in Latin America and the Caribbean*, also known as the Escazú Agreement, was adopted in Escazú on 4 March 2018. The Escazú Agreement is a regional treaty that is legally binding for countries in Latin America and the Caribbean, establishing rights to environmental information, public participation in environmental decision-making, and access to justice in environmental matters. It is the first environmental treaty of its kind to explicitly protect the rights of environmental human rights defenders and aims to promote a healthy environment for current and future generations. Available here: https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=xxvii-18&chapter=27&clang=_en.

27 See https://ishr.ch/defenders-toolbox/resources/declaration-25/.

28 The Inter-American Court of Human Rights, Case of *Members of the José Alvear Restrepo Lawyers Collective v. Colombia* (https://corteidh.or.cr/docs/comunicados/cp_16_2024_eng.pdf); *Baraona Bray v. Chile* (https://www.corteidh.or.cr/docs/casos/articulos/seriec_481_ing.pdf), *Luna Lopez v. Honduras* (www.corteidh.or.cr/docs/casos/articulos/seriec_269_ing.pdf).

We also support the explicit reference to environmental human rights defenders (EHRDs), as proposed by Mexico and Panama in previous sessions. This would also be consistent with the HRC Resolution 40/11 and the UN General Assembly Resolution 78/216, both adopted by consensus, as well as the most recent Inter-American Court of Human Rights Advisory Opinion on "Climate Emergency and Human Rights",[29] which states that EHRDs play a fundamental role but are the most at risks for the work they conduct. Art. 5.2 should read as follows:

> Art. 5.2: States Parties shall take adequate and effective measures to guarantee a safe and enabling environment for **human rights defenders, particularly environmental human rights defenders, including** persons, groups and organizations, so that they are able to exercise their human rights free from any threat, intimidation, violence, insecurity, harassment, or reprisals.

ARTICLE 6 – PREVENTION

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 (as proposed by Cameroon and Palestine). This is particularly relevant in cases of environmental harm. We therefore propose an additional paragraph after article 6.1, which would read as follows:

> **Art. 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, independently from the existence or outcome of a legal proceeding relative to the situation.**

In 6.2(c), we suggest adding "environmental due diligence" to "human rights due diligence", consistent with state practice that requires companies to address both areas within an integrated due diligence process, as reflected for instance in the French Duty of Vigilance Law, the EU Corporate Sustainability Due Diligence Directive, and the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct.

Given the importance of human rights defenders, including EHRDs, in preventing human rights abuses and violations, their safe and meaningful participation and consultation is fundamental. We would therefore support the addition of "human rights defenders" in Article 6.2(d) as follows:

29 See https://corteidh.or.cr/tablas/OC-32-2025/index-eng.html#.

> Art. 6.2(d): **ensure** the active and meaningful participation of individuals, **including human rights defenders**, and groups, such as trade unions, [...];

Article 6 of the updated draft has seen a significant amount of shortening and streamlining of the text. Key provisions included in this article mention human rights impact assessments[30] and meaningful consultations but fail to set **clear standards on how assessments should be undertaken and who should undertake them**. It is also important for Article 6.4 to clarify that this list of human rights due diligence measures **is non-exhaustive**. We therefore propose the following amendments for Articles 6.4 and 6.4(a):

> Art. 6.4: Measures to achieve the ends referred to in Article 6.2 shall include, **but shall not be limited to**, legally enforceable requirements [...]:
>
> 6.4(a) undertake and publish on a regular basis ex-ante and **ex-post human rights, labour rights, socio-economic, environmental, and climate change** impact assessments throughout their operations. **States shall guarantee that such impact assessments be undertaken by independent third parties with no conflicts of interest and must be conducted in consultation with and drawing from input and knowledge of those likely to be impacted.**

This is also in line with UNDRIP and UNDRoP.[31]

If separate impact assessments for all the elements are not carried out, at the minimum, a "human rights impact assessment" must include assessment of all the elements within it.

Additionally, in Art 6.4(b), "environment" must be explicitly mentioned in the following way:

> Art. 6.4(b): integrate a gender and age perspective, and takes full and proper account of the differentiated human rights- **and environment**-related risks and adverse human rights impacts experienced by women and girls;

30 See Advisory Opinion of the ICJ on *Obligations of States in Respect of Climate Change*, 23 July 2025, §§ 295-298, 353, 444.

31 Article 32(2) of UN Declaration on the Rights of Indigenous Peoples (UNDRIP) and Art 2(3) and Art 10 of the UN Declaration on the Rights of Peasants (UNDRoP) enshrine these obligations.

On article 6.4(d) regarding **meaningful consultations**, these should be conducted in a continuous manner, both prior as well as during the business activities (like assessments) and must include and respect communities' **right to say "no"**.[32] The LBI 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.[33] We therefore propose the following amendment to article 6.4(d):

> Art. 6.4(d): **Conduct ex-ante and ex-post safe and** meaningful **consultations** with potentially affected groups and other relevant stakeholders. **Such consultations shall be undertaken by an independent third party, include communities right to say no and be conducted in a transparent and participatory manner and protected from any influence from commercial and other vested interests.**

Another very significant requirement, although it is the **minimum**, previously Article 6.4(g), has been deleted in the updated draft. We strongly recommend that Article 6.4(g) of the third draft concerning human rights due diligence requirements in occupied and conflict-affected areas, be re-inserted and strengthened and followed by another sub para as follows:

> **Art. 6.4(g): Adopt and implement enhanced human rights due diligence measures on an ongoing basis to prevent human rights abuses and humanitarian law violations 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.**
>
> **6.4(h)bis Refrain from operating or having relationships in contexts where irreparable harm can be caused and human rights abuses or violations of International Human Rights or Humanitarian Law are not preventable.**

32 This should include the right of communities at risk of human rights and environmental harm to realize 'popular consultations' and the duty of authorities to respect the results. The relevance of popular consultations has been recognized through judicial decisions pro tecting popular consultations in the cases of Cajamarca *(Decision in first instance of the second administrative court of Ibagué - 1 November 2023. Plaintif Guillermo Francisco Reyes vs Municipality of Cajamarca)* in Colombia and Quimsacocha *(Judicial decision of the Constitutional Court of Ecuador: Sentencia 13-20-IA/24. Judge Alejandra Cárdenas, 21 November 2024)* in Ecuador. The Constitutional Court in the case of Cajamarca later made popular consultations not applicable in cases of extractive projects which showcases the need for the LBI to include a provision protecting them at the international level.

33 The transfer of people's land to JSW Utkal Steel Ltd (JUSL) in the Indian state of Odisha, required public consultation of the villages' assembly according to the provisions of the Indian 2006 Forest Rights Act. Public consultations were held in 2019 in Gadakujang, but relevant information regarding the project, including the environmental impact assessment, was not made publicly available. Many villagers were also reportedly deterred from attending due to a large police presence at the site, while some alleged being threatened with arrest by the police before the hearings, or being barred from expressing their concerns. See: BankTrack – JSW Utkal Steel plant and captive coal power station.

The concept of "enhanced due diligence", i.e. "the heightened care" in due diligence processes, has been elaborated to outline certain actions that businesses must take in certain contexts.[34] One action, reflected in the aforementioned suggestion for Art. 6.4(h)bis and the need to prevent gross human rights violations as well as grave breaches of the Geneva Conventions, was to "exercise extreme caution in all business activities and relationships zones." Businesses should not only consider their adverse human rights impacts, but also how the business may cause or contribute to "actual or potential adverse impacts on conflict."[35]

Amidst the prolonged occupation and ongoing genocide in Palestine, as well as other contexts where international crimes are rife, an instrument such as the LBI must mandate heightened human rights due diligence by corporate actors – especially in the extractive sector – before and during operations in conflict zones, including occupied territories. UN or independent experts should be able to review such due diligence with required cessation and divestment where risks or violations are identified. The recent report by the UN Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 underscores how corporate interests have historically enabled colonial domination and genocide, a pattern described as **"colonial racial capitalism"**.[36] The LBI must compel States to hold corporations accountable for their role in human rights violations and abuses, including through targeted sanctions and embargoes, which are being discussed by The Hague Group and Palestinian NGOs.[37] These mechanisms should not only apply to Palestine but also to all contexts where communities – especially Indigenous Peoples – face the ongoing impacts of colonialism and corporate exploitation.

Regarding former article 6.8, now under 6.3, it is clear that the influence of commercial and other vested interests of transnational corporations and other business enterprises goes far beyond policy spaces. This, for example, has been one of the hurdles faced in processes aiming to regulate the marketing of ultra-processed edible products, especially when trying to protect the right to food of children and to prevent non-communicable diseases such as diabetes and obesity. Article 5.3 of the WHO Framework Convention on Tobacco Control is one of the clearest treaty-level examples of a direct legal obligation to **prevent corporate capture**. We therefore propose reformulating Art. 6.3 as follows (in line with Ghana's proposal for Article 6.6. *quinquies* in the Updated Draft):

34 Working Group on the Issue of Human Rights and Transnational Corporations and other Business Enterprises, *Statement on the implications of the Guiding Principles on Business and Human Rights in the context of Israeli settlements in the Occupied Palestinian Territory*, (June 6, 2014), p.10.

35 *Heightened Human Rights Due Diligence for Business in Conflict-Affected Contexts: A Guide*, UNDP, p.14. Accessible here : https://www.undp.org/publications/heightened-human-rights-due-diligence-business-conflict-affected-contexts-guide

36 See *From Economy of Occupation to Economy of Genocide,* A/HRC/59/23, 30 June 2025. Accessible here: https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/sessions-regular/session59/advance-version/a-hrc-59-23-aev.pdf.

37 *Accountability Now: 12 Countries Take Action to Stop the Genocide in Gaza*, ESCR-Net, 22 July 2025. Accessible here: https://www.escr-net.org/news/2025/accountability-now-12-countries-take-action-to-stop-the-genocide-in-gaza/

Art. 6.3: In setting and implementing their public policies and legislation with respect to the implementation of this (Legally Binding Instrument), State parties shall act in a transparent manner and protect these policy-making processes, policies, laws, government and other regulatory bodies, and judicial institutions from the influence of commercial and other vested interests of business enterprises, including those conducting business activities of transnational character.

ARTICLE 7 – ACCESS TO REMEDY

We support Panama's amendments to Article 7.1 to ensure the removal of barriers and special consideration for specific groups. Additionally, we support the following two proposals regarding the reversal of the burden of proof[38] and the specifying of "effective remedies",[39] made by Palestine and Ghana respectively:

Art. 7.5: States Parties shall, consistent with international human rights, humanitarian, criminal and environmental laws, enact or amend domestic laws to reverse the burden of proof in order to fulfill the victims' right to access to remedy, requiring corporate and State entities involved in the case to provide sufficient evidence of acquittal.

7.5.(a) to enhance the ability of relevant State agencies to deliver, or to contribute to the delivery of, effective remedies, **such as restitution, compensation, rehabilitation, reparation, satisfaction, guarantees of non-repetition, injunction, environmental remediation, and ecological restoration;**

ARTICLE 8 – LEGAL LIABILITY

Article 8 of the updated draft has been significantly shortened, and many key elements have been removed or watered down from one of the core articles of the LBI. The new language in Art 8.3 uses the terms "conspiring", "aiding", "abetting", "facilitating" and "counselling". While Art. 8.3 may be useful to explicitly include criminal liability of all actors in the value chain who may have somehow contributed to the abuse, the text does not offer clarity on the standards needed to prove them (for instance, will intention or knowledge be needed to establish conspiracy or abetment?).

38 In ECtHR, *Öneryildiz v. Turkey* [GC], App. No. 48939/99, Judgment of 30 November 2004, the ECtHR held that States must ensure access to evidence — otherwise victims face an unfair burden of proof. Also in *López Ostra* v. Spain, App. No. 16798/90, Judgment of 9 December 1994, the ECtHR noted that once applicants show a credible link between harm and the activity, the burden shifts to the State to prove it complied with positive obligations. See also Article 8.3.e of the Escazú Agreement.

39 Remedial action under Art. 6(2) and Annex II of the EU Environmental Liability Directive (Directive 2004/35/EC) lays down the actual framework for ecological restoration of damaged natural resources.

On **Art. 8.3**, we suggest that it be redrafted to make sure it includes **criminal liability** for **"causing"** human rights abuses. In addition, instead of providing a closed list of forms of complicity, the text should use the broader and more flexible term of **"contribution"**, in line with international standards and Preambular Paragraph 12, which could be followed by the phrase "any other form of participation or complicity provided for by domestic law" (with the objective of adding forms of complicity, and not limiting them).

Article 8.7 of the third draft clearly separated the requirement of conducting human rights due diligence from legal liability for causing or contributing to human rights abuses or failing to prevent such abuses by a natural or legal person. This article is critical so that due diligence requirements do not become a procedural "checklist" exercise and a tool for transnational corporations and other business enterprises to escape liability. Liability should never be only defined by compliance with due diligence.

We therefore recommend the insertion of Art 8.7 as follows, in line with the proposal made by Palestine, Ghana and South Africa:

> **Art. 8.7: Human rights due diligence shall not automatically absolve a legal or natural person conducting business activities from liability for causing or contributing to human rights abuses or failing to prevent such abuses by a natural or legal person as laid down in Article 8.6.**

Liability standards should be different and stricter for business activities, which are inherently dangerous, or which take place in contexts of conflict, including situations of occupation,[40] and where risk is foreseeable, for example the production and commercialization of nuclear or mass destruction weapons or highly hazardous toxic substances.[41] In such cases, transnational corporations and other business enterprises should be held liable even when they have not acted negligently. We therefore propose to include a clause on **strict liability**, which is a form of liability that already exists in different domestic legal systems:

> **Art. 8.8: In business activities that are hazardous or inherently dangerous or are carried out in conflict-affected areas, including situations of occupation, 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.**

40 We refer here to the international consensus on the illegality of Israeli settlements, and the impossibility mitigating adverse human rights impacts by businesses connected to them.

41 In Iraq, extensive evidence links war-related environmental contamination – primarily from heavy metals in ammunition, open-air burn pits, and explosive detritus – to a significant rise in birth defects, cancers, and miscarriages among civilian populations. This illustrates how environmental damage caused by corporate actors (e.g. military contractors using burn pits) in conflict contexts can inflict lasting harm on public health. See https://merip.org/2020/09/birth-defects-and-the-toxic-legacy-of-war-in-iraq/.

ARTICLE 9 – ADJUDICATIVE JURISDICTION

We recommend the **re-insertion of "and/or produced effects" in Article 9.1(a)** to include jurisdictions where the human rights abuse may not have taken place but produced effects, especially important in case of environmental harms.

Although some State delegations participating in the LBI negotiations have claimed there is a risk of forum shopping, this is not a real risk since usually, victims do not have the capacity to make a claim in multiple forums and have very scarce resources that barely allow reaching out to a single forum. We recommend the inclusion of an additional paragraph in Article 9, which should provide for universal jurisdiction in cases of human rights abuses and violations that amount to international crimes, given that such crimes are of concern to the international community as a whole (proposed by Palestine as Art 9.4. bis in the Updated Draft).

> **Art. 9.5: 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.**

Germany's Heidelberg Materials, formerly HeidelbergCement, has been linked to Israel's settlement enterprise via its subsidiary Hanson Israel.[42] Through its ownership of the Nahal Raba quarry and other operations, the company is alleged to have contributed to the pillaging of Palestinian natural resources and the continued unlawful appropriation of Palestinian land. Notably, in 2024, the International Court of Justice found Israel's use of natural resources, including minerals, and their diversion "to its own population, including settlers [to be] in breach of its obligation to act as administrator and usufructuary."[43]

ARTICLE 10 – STATUTE OF LIMITATIONS

In cases of environmental harm and degradation, impacts may be irreparable or permanent or ongoing, which is why the statute of limitations should not apply. Swedish company Boliden Mineral dumped toxic waste in Arica, Chile, in the early 1980s.[44] Since then, communities have continued to experience severe health impacts, including sexual and reproductive impediments, birth defects and respiratory difficulties. After almost four decades, both the Chilean and Swedish authorities have failed

42 See chapter on war crime of pillage in *Violations Set in Stone: HeidelbergCement in the Occupied Palestinian Territory*, Maha Abdallah and Lydia de Leeuw, Al-Haq and SOMO, February 2020, p.31-32. Accessible here: https://www.alhaq.org/cached_uploads/download/2020/02/04/final-report-violationsetinstone-en-1580802889.pdf.

43 *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, ICJ Advisory Opinion, 19 July 2024, para. 133. Accessible here: https://www.un.org/unispal/wp-content/uploads/2024/07/186-20240719-adv-01-00-en.pdf.

44 *Chile: Nearly 40 years on, still no remedy for victims of Swedish toxic waste*. Accessible here: https://www.ohchr.org/en/press-releases/2021/06/chile-nearly-40-years-still-no-remedy-victims-swedish-toxic-waste-un-experts.

to take adequate steps towards accountability and fulfilling the rights of victims, mainly due to procedural obstacles like statutes of limitations.

Many other countries also have specific provisions in their environmental laws addressing statutes of limitations for environmental damage claims, particularly in cases of latent damage or cross-border pollution.[45] Some examples include Germany,[46] Canada,[47] and the United States,[48] where continuous or ongoing harm is a key principle in environmental litigation.

ARTICLE 12 – MUTUAL LEGAL ASSISTANCE

It is imperative that Art. 12.2 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) be followed for the provision of mutual legal assistance and international judicial cooperation. The revised article should read as follows:

> Art. 12.2: 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 provide to each other mutual legal assistance and international judicial cooperation to the fullest extent possible under international law and in conjunction with Art. 14.3 of this instrument.**

ARTICLE 14 – CONSISTENCY WITH INTERNATIONAL LAW

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 and suggest that it specifically includes the right to a clean, healthy and sustainable environment.

45 See https://www.biicl.org/global-toolbox-2e-3-definitions-and-elements?cookiesset=1&ts=1751872097. See also Fach Gómez, Katia, *Law Applicable to Cross-Border Environmental Damage: From the European Autonomous Systems to Rome II*, 11 September 2010. Available here: https://ssrn.com/abstract=1675549.

46 *Bürgerliches Gesetzbuch* [BGB] [Civil Code], §§ 195, 199, translation available at: Gesetze im Internet, Federal Ministry of Justice, https://www.gesetze-im-internet.de/englisch_bgb/englisch_bgb.html.

47 Canadian environmental law applies the continuous harm principle. See, British Institute of International and Comparative Law, *Global Toolbox on Limitation Periods in Environmental Claims*, Canada section. Available here: https://www.biicl.org/global-toolbox-2e-5-current-applications.

48 Clean Water Act, 33 U.S.C. §§ 1251–1387. See e.g. *Friends of the Earth, Inc. v. Laidlaw Environmental Services (TOC), Inc*., 528 U.S. 167 (2000) (recognizing continuing violations theory). See also, *Christian v. Atlantic Richfield Co*., 476 P.3d 336 (Mont. 2020). Commentary: CaseMine, "Montana Supreme Court Defines 'Reasonably Abatable' in Continuing Tort Doctrine for Environmental Nuisance Cases" (2020), https://www.casemine.com/commentary/us/montana-supreme-court-defines-%27reasonably-abatable%27-in-continuing-tort-doctrine-for-environmental-nuisance-cases/view.

We also strongly support Article 14.5 that will **ensure that the human rights obligations of States arising from this LBI shall not be trumped by other international agreements, most notably trade and investment agreements.** To ensure that all existing and any future agreements are also covered in this article's scope, we strongly propose the deletion of "existing".

In situations where cases with relevant human rights dimension have been or could be sent to arbitration tribunals, the litigation should be referred to tribunals with human rights competences. A new article could include the following text:

> **Art. 14.6: All cases of litigation submitted to arbitration tribunals, whose decision may impact the ability of the State to comply with its human rights obligations, shall be referred to a tribunal that has competence to decide on human rights abuses and violations, in line with Article 9 of this (Legally Binding Instrument).**

This proposal is grounded on the economic impact that decisions of international arbitration tribunals are having in undermining states' capacity to implement their human rights obligations and to advance towards just transition. On this impact, the Special Rapporteur on the Environment and Human Rights presented a report to the UN General Assembly, explaining how foreign investors use the Investor-State Dispute Settlement (ISDS) process to seek exorbitant compensation from states that strengthen environmental protection, with the fossil fuel and mining industries already winning over $100 billion in awards. Other UN experts have highlighted the human rights issues associated with ISDS mechanisms.[49] These cases create a regulatory chilling effect.[50]

ARTICLE 16 – IMPLEMENTATION

In line with our other suggestions to integrate the corpus of international environmental law across the text, we also suggest the following:

> Art.16.5: The application and interpretation of these Articles shall be consistent with international law, including international human rights law, **international environmental law**, and international humanitarian law, and shall be without any discrimination of any kind or on any ground, without exception.

49 See *Report of the Special Rapporteur on extreme poverty and human rights: Climate change and poverty (A/HRC/41/39); Report of the Special Rapporteur on the right to development: Right to development* (A/HRC/42/38); *Report of the Special Rapporteur on human rights and climate change: The imperative of defossilizing our economies* (A/HRC/59/42).

50 UN Doc. A/78/168, available at https://documents-dds-ny.un.org/doc/UNDOC/GEN/N23/205/29/PDF/N2320529.pdf?OpenElement.

3 CONCLUSION

Going into its eleventh year, the process to elaborate the LBI stands at a critical juncture. As corporate-driven environmental harm accelerates the triple planetary crisis, and as communities worldwide face devastating and often irreversible impacts, the LBI must rise to meet the urgency of the moment. More than 80 percent of UN Member States have legally recognized the right to a clean, healthy and sustainable environment via international treaties, national legislation or their constitutions.[51] The explicit inclusion of this right is a clear acknowledgment of this reality, and the need for accountability, evolution of the human rights framework and of the lived realities of those at the frontlines of corporate-driven environmental harm and climate chaos, both for current and future generations.[52]

The final text of the LBI should have coherent and consistent language which aims to prevent human rights abuses and violations and environmental harm and ensure accountability where there are adverse impacts of business operations and activities to people or the planet. States should therefore carefully consider and integrate these recommendations in their submissions during the OEIGWG session in October 2025, in order to strengthen the LBI's language on environmental and human rights protections. Beyond the session itself, states are encouraged to continue leveraging these proposals in their ongoing advocacy in relevant national, regional and international fora and processes. This will help guarantee that the final text of an instrument such as the LBI not only reflects international legal standards and jurisprudence but also responds to the urgent, lived realities of communities affected by corporate-driven environmental degradation and human rights abuses and violations.

51 See https://www.r2heinfo.com/legal-recognition/.

52 In this regard, see *Maastricht Principles on the Human Rights of Future Generations*, adopted on 3 February 2023 by experts located in all regions of the world and include current and former members of international human rights treaty bodies, regional human rights bodies, and former and current Special Rapporteurs of the United Nations Human Rights Council. Accessible here: https://www.rightsoffuturegenerations.org/. The *Principles* are accessible here: https://www.rightsoffuturegenerations.org/the-principles. The legal *Commentary* to the *Principles* is accessible here: https://www.rightsoffuturegenerations.org/commentary.

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