

DRAFT OPTIONAL PROTOCOL TO THE LEGALLY BINDING INSTRUMENT TO REGULATE, IN INTERNATIONAL HUMAN RIGHTS LAW, THE ACTIVITIES OF TRANSNATIONAL CORPORATIONS AND OTHER BUSINESS ENTERPRISES

The States Parties to the Present Protocol have agreed as follows:

Article 1

Each State Party shall, in accordance with their legal and administrative systems, designate or establish, no later than two **years** after the entry into force of the present Protocol in the Party, a National Implementation Mechanism to promote compliance with, monitor and implement the [LEGALLY BINDING INSTRUMENT].

Article 2

States Parties shall consider the Principles Relating to the Status of National Institutions for the Protection and Promotion of Human Rights (Paris Principles) when designating or establishing the National Implementation Mechanism and, in particular, they shall:

1. Guarantee the functional independence of the National Implementation Mechanism as well as the independence of its officials and personnel;
2. Ensure gender balance and the adequate legal representation for the protection of the human rights of those persons facing risks of violations of their human rights as a result of the acts or omissions of those persons conducting business activities of a transnational character;
3. Provide necessary resources for the functioning of the National Implementation Mechanism, and;
4. Ensure that the officials and personnel of the National Implementation Mechanism have the required expertise and knowledge for the fulfilment of their mandate.

Article 3

In order to promote the implementation of the [LEGALLY BINDING INSTRUMENT], National Implementation Mechanisms shall have the following functions:

1. Make the content of the [LEGALLY BINDING INSTRUMENT] known to the general public, business [enterprises] and victims and guarantee in all appropriate means and languages.
2. Cooperate with other national institutions, foreign National Implementation Mechanisms and civil society organizations, as appropriate, to raise awareness on the implementation of the [LEGALLY BINDING INSTRUMENT], including by:
 - a. Responding to enquiries by victims, business [enterprises] and the general public, as appropriate;
 - b. Submitting recommendations to relevant national authorities for improving the implementation of the [LEGALLY BINDING INSTRUMENT] and the prevention of human rights [violations] in the context of any business activities of a transnational character;
 - c. Submit proposals and observations on existing or draft legislation [on matters relating to the implementation of the (LEGALLY BINDING INSTRUMENT)]
3. Make recommendations to the competent authorities of the [State Party concerned]. These authorities shall be required to examine such recommendations and enter into dialogue on possible implementing measures, as appropriate according to their legal and administrative systems.

Article 4

1. In order to prevent human rights violations in the context of business activities of a transnational character under Article 9 of the [LEGALLY BINDING INSTRUMENT], a National Implementation Mechanism, shall, as a minimum, have competence to request all necessary information from the State Party in whose territory the National Implementation Mechanism operates concerning the implementation of the [LEGALLY BINDING INSTRUMENT] within the territory or jurisdiction of such State Party. Such request of information may include:
 - a. All reports on non-financial matters, including at a minimum environmental and human rights matters submitted by and [natural or legal persons conducting business activities of a transnational character] under their jurisdiction,
 - b. Internal policies, outcomes and indicators of environmental and human rights impact assessments provided by [natural or legal persons conducting business activities of a transnational character] under their jurisdiction in accordance with article 9 of the [LEGALLY BINDING INSTRUMENT];
2. A National Implementation Mechanism may request the National Implementation Mechanism of another State Party for the information referred to above with respect to persons conducting business activities of a transnational character in cases where such persons conduct such activities in other State Parties and are the subject of an due diligence implementation review under Article 5 or an investigation under Article 6 of this Protocol by the National Implementation Mechanism making such request for information.
3. The National Implementation Mechanism addressed shall accord full and sympathetic consideration to, and shall afford adequate opportunity for, consultations with the requesting National Implementation Mechanism, and shall cooperate through supply of publicly available non-confidential information of relevance to the matter in question and of other information available to the Member, subject to domestic law and to the conclusion of mutually satisfactory agreements concerning the safeguarding of its confidentiality by the requesting National Implementation Mechanism.

Article 5

States Parties to the present Protocol shall grant to the National Implementation Mechanism competence to conduct reviews on the implementation of due diligence obligations in accordance with Article 9 of the [LEGALLY BINDING INSTRUMENT], upon request by victims, natural or legal persons conducting business activities of a transnational character] or all other persons with a legitimate interest, or in cases in which the National Implementation Mechanism deems it necessary to act ex-officio on the basis of information available to it about acts or omissions affecting the implementation of or compliance with such due diligence obligations.

1. In conducting such reviews, the National Implementation Mechanism shall comply with the minimum requirements of due process of law under the legal and administrative system of the State party concerned.
2. The National Implementation Mechanism shall have the competence to conduct visits and inspections to the business [enterprise's] facilities, and conduct joint visits [and inspections] with other National Implementation Mechanisms and relevant authorities of the concerned State Party to monitor the implementation and follow up of due diligence plans or policies.

3. In cases where the National Implementation Mechanism identifies non-compliance by a natural or legal persons conducting business activities of a transnational character] of its due diligence obligations, National Implementation Mechanisms shall provide recommendations to such natural or legal persons conducting business activities of a transnational character to bring its operation into compliance, [or] inform the competent authorities about such conduct or omission if those recommendations were not considered in order to ensure their effective implementation.
4. When conducting such reviews, the National Implementation Mechanisms shall cooperate among each other in order to comply with the present provision, particularly by making available all necessary information to conduct such reviews.

Article 6

1. States Parties may recognize the competence of National Implementation Mechanisms to receive and consider complaints of human rights violations alleged to have been committed by natural or legal persons conducting business activities of a transnational character brought by victims or a group of victims, their representatives or other interested parties.
2. The National Implementation Mechanism shall investigate the complaint received under the requirements of due process of law [recognized] under the legal and administrative system of the State Party concerned.
3. The National Implementation Mechanisms shall bring any complaint under the present [Protocol] to the attention of the natural or legal persons conducting business activities of a transnational character and the State party concerned as soon as possible, and shall, among others, have the competence to:
 - a. Request and receive all necessary information from States Party concerning the grounds of the complaint;
 - b. Request and receive additional information from States Parties, intergovernmental or non-governmental organizations, or other reliable sources it deems appropriate, and receive written or oral testimony from victims, the concerned business [enterprise], experts, witnesses, victims associations and others;
 - c. Conduct visits or inspections to the place where the violation occurred or it is taking place and conduct joint inquiries with other National Implementation Mechanisms and relevant authorities of the State Party concerned;
 - d. Transmit to the State Party concerned, for its urgent consideration, a request to relevant authorities to take interim measures as it might be necessary to avoid possible irreparable damage to the victim or victims of the alleged violations.
4. After all documentation has been submitted, the National Implementation Mechanism shall make available its good offices to the parties concerned with a view to reaching an amicable settlement of the matter, consistent with the legal and administrative system of the State party concerned. When an agreement on an amicable settlement is reached under the auspices of the National Implementation Mechanism, it shall discontinue the complaint proceedings at the National Implementation Mechanism under the present Protocol.
5. The National Implementation Mechanism will monitor ex-officio the compliance by the parties of the agreement reached through an amicable settlement under the preceding paragraph.
6. In case of non-compliance with the agreement on an amicable settlement, the National Implementation Mechanisms shall communicate it to the Committee established in the

present Protocol, without prejudice to the right to institute appropriate judicial or administrative procedures against the non-complying party.

Article 7

The competences granted to the National Implementation Mechanism shall not exclude or, limit the right of victims of to seek any judicial or non-judicial remedies under the legal system of a State Party before, during or after an amicable settlement has been reached. Nonetheless, the National Implementation Mechanism shall discontinue its good offices in case judicial or non-judicial remedies were sought.

Article 8

1. A State party to the present [Protocol] recognizes the competence of the Committee established under Article 9 of the LEGALLY BINDING INSTRUMENT (hereafter referred to as the Committee) to receive and consider communications from or on behalf of individuals or group of individuals, and those under Article 6.5 of the present Protocol, with regards to human rights violations in the context of business activities of transnational character under the jurisdiction of a State Party to the present Protocol.
2. Where a communication is submitted on behalf on an individual or group of individuals this shall be with their consent unless the author can justify acting on their behalf without such consent.

Article 9

The Committee shall consider a communication inadmissible when:

1. The communication is anonymous;
2. The communication is manifestly ill-founded or not sufficiently substantiated;
3. The facts that are the subject of the communication occurred prior to the entry into force of the present Protocol for the State party concerned, unless those facts continued after that date; and
4. All available domestic remedies have not been exhausted, unless the application of the domestic remedies is unreasonably prolonged or unable to bring effective relief.

Article 10

Subject to the provisions of Article 9 of the present Protocol, the Committee shall bring any communications submitted to it confidentially to the attention of the States Parties concerned and the involved person conducting business activities of a transnational character. The Committee shall invite the concerned States Parties and the involved person conducting business activities of a transnational character to co-operate in the examination of the communications received and submit within six months after the communication was received by the Committee, written explanations or statements clarifying the matter and the remedy, if any, that may have been taken in the matter.

Article 11

Taking into account any written statement or explanation which may have been submitted by the concerned States Parties and the involved person conducting business activities of a transnational character, as well as any other relevant information available to it, the Committee may, designate one or more of its members to make a confidential inquiry and to report to the Committee urgently.

1. If an inquiry is made in accordance with Article 10 of this article, the Committee shall seek the co-operation of the parties concerned and such inquiry may include a visit to the territory where the harm was committed and/or where the involved person

conducting business activities of a transnational character is incorporated or has substantial business interests, as the Committee deems appropriate.

2. After examining the findings of an inquiry made in accordance with this article, the Committee shall transmit these findings to the State party and the involved person conducting business activities of a transnational character concerned, together with any comments or suggestions which seem appropriate in view of the situation.
3. After such proceedings have been completed, the Committee may decide to include a summary of the inquiry in the annual report on its activities to the General Assembly of the United Nations, according to Article [14.4 (d) of the [LEGALLY BINDING INSTRUMENT]

Article 12

States parties shall take all appropriate steps to ensure that individuals or group of individuals under its jurisdiction are not subjected to any human rights violation, ill-treatment or intimidation as a consequence of communications or cooperation with National Implementation Mechanisms or the Committee pursuant to the present Protocol.

Article 13

The Secretary-General of the United Nations shall be the depositary of the present Protocol.

Article 14

The present Protocol shall be open for signature by signatory States and regional integration organizations of the [LEGALLY BINDING INSTRUMENT] at the United Nations Headquarters in New York as of (...). It shall be open for accession by any State or regional integration organization which has ratified, formally confirmed or acceded to the [LEGALLY BINDING INSTRUMENT] and which has not signed the present Protocol.

Article 15

“Regional integration organization” shall mean an organization constituted by sovereign States of a given region, to which its member States have transferred competence in respect of matters governed by [LEGALLY BINDING INSTRUMENT] as referred to it in Article 15.10 of [LEGALLY BINDING INSTRUMENT] and the present Protocol.

Article 16

1. Subject to the entry into force of the [LEGALLY BINDING INSTRUMENT], the present Protocol shall enter into force on the thirtieth day after the deposit of the tenth of ratification or accession.
2. For each State or regional integration organization ratifying, formally confirming or acceding to the present Protocol after the deposit of the tenth such instrument, the Protocol shall enter into force on the thirtieth after the deposit of its own such instrument.

Article 17

1. Any State Party may propose an amendment to the present Protocol and submit it to the Secretary-General of the United Nations. The Secretary-General shall communicate any proposed amendments to States Parties, with a request to be notified whether they favor a conference of States Parties as for the purpose of considering and deciding upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favor such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment

adopted by a majority of two thirds of the States Parties present and voting in the Conference of the Parties shall be submitted by the Secretary-General to all States Parties for acceptance.

2. An amendment adopted and approved in accordance with paragraph 1 of this article shall enter into force on the thirtieth day after the number of instruments of acceptance deposited reaches two thirds of the number of States Parties at the date of adoption of the amendment. Thereafter, the amendment shall enter into force for any State Party on the thirtieth day following the deposit of its own instrument of acceptance. An amendment shall be binding only on those States Parties which have accepted it.

Article 18

A State Party may denounce the present Protocol by written notification to the Secretary-General of the United Nations. The denunciation shall become effective one year after the date of receipt of the notification by the Secretary-General.

Article 19

The Arabic, Chinese, English, French, Russian and Spanish texts of the present Protocol shall be equally authentic.

Article 20

In witness thereof the undersigned plenipotentiaries, being duly authorized thereto by their respective Governments, have signed the present Protocol