

The [Revised Draft](#) was published on 16 July 2019 by the UN Human Rights Council's open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (IGWG).

Purpose

The purpose of the Treaty, as stipulated in Article 2 is to “strengthen the respect, promotion, protection and fulfillment of human rights in the context of business activities”, “prevent the occurrence of such violations”, “ensure effective access to justice and remedy for victims of human rights violations”, and to “promote and strengthen international cooperation to prevent human rights violations.”

Scope and Adjudicative Jurisdiction

The Treaty covers “all human rights” and applies to “all business activities, including but not limited to those of transnational character” except as stated otherwise (Art. 3). Jurisdiction vests in the courts of the State where the violations occurred, the victims are domiciled, or the natural or legal persons alleged to have committed the violations are domiciled (Art. 7).

Rights and Definitions of Victims

Victims are defined as “any person or group of persons who individually or collectively have suffered or have alleged to have suffered human rights violations or abuse” (Art. 1).

Article 4 reaffirms the right of victims to be treated with respect for “their dignity and human rights”; “the right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement”; and the right to “fair, effective, prompt and non-discriminatory access to justice and adequate, effective and prompt remedies”, including but not limited to, (a) restitution, compensation, rehabilitation and guarantees of non-repetition; and (b) environmental remediation and ecological restoration. State parties (hereafter States) shall:

- Protect victims, their representatives, families, and witnesses from unlawful interference with their privacy and from intimidation, and retaliation (para 3)
- Provide their domestic judicial authorities with jurisdiction to fulfill victims' right to submit claims and access remedies (para 8)
- Investigate all human rights violations and take action against perpetrators (para 10)
- Provide legal assistance to victims throughout the legal process (para 12)
- Assist victims in overcoming barriers related to administrative and other costs, and waive costs where needed (para 13)
- Provide mechanisms for the enforcement of remedies (para 14)
- Recognise, protect and promote the rights of persons, groups and organizations that promote and defend human rights and the environment (para 15)
- Require courts to reverse the burden of proof to fulfill victims' access to justice and remedy (para 16)

Prevention and Due Diligence

States shall ensure that their domestic legislation requires “all persons conducting business activities, including those of transnational character, in their territory or jurisdiction, to respect human rights and prevent violations or abuses” (Art. 5 (1)).

States shall adopt measures to ensure that all persons conducting business activities undertake human rights due diligence (Art. 5(2)). Due diligence includes: (a) identifying and assessing actual and potential violations; (b) taking appropriate actions to prevent violations; (c) monitoring the human rights impact of business activities; (d) communicating to stakeholders and accounting for the policies and measures adopted to identify, assess, prevent and monitor actual or potential human rights violations. Each due diligence obligation applies to a business’s activities and contractual relationships.

Art. 5 (3) (b) requires States to carry out “meaningful consultations with groups whose human rights cab potentially be affected (...) while giving special attention to those facing heightened risks of violations of human rights within the context of business activities, such as women, children, persons with disabilities, indigenous peoples, migrants, refugees, internally displaced persons and protected populations under occupation or conflict areas. Consultations with indigenous peoples will be undertaken in accordance with the internationally agreed standards of free, prior and informed consultations, as applicable.”

States shall adopt and implement enhanced human rights due diligence measures to prevent human rights violations or abuses in occupied or conflict-affected areas...” (Art. 5 (3) (e)).

Legal Liability

Article 6 stipulates States’ duties to “ensure that their domestic law provides for a comprehensive and adequate system of legal liability for human rights violations or abuses in the context of business activities”. States shall ensure that their domestic jurisdiction provides for sanctions and reparations where business activities have caused harm to victims (Art. 6(4)) and provide for liability of persons conducting business activities for its failure to prevent another person with whom it has a contractual relationship from causing harm to third parties when there is sufficient control over the party causing the harm, or risks of human rights violations were foreseeable (Art. 6(6)).

States shall “ensure that their domestic legislation provides for criminal, civil, or administrative liability of legal persons” for specific criminal offences enumerated in Art. 6 (7) (a – k).

Mutual Legal Assistance

States shall “afford one another the widest measure of mutual legal assistance in initiating and carrying out investigations, prosecutions and judicial and other proceedings” (Art. 10 (1)) and “provide legal assistance and other forms of cooperation in the pursuit of access to remedy for victims of human rights violations” (Art. 10(8)).

Implementation

States shall take all “necessary legislative, administrative or other action including the establishment of adequate monitoring mechanisms to ensure effective implementation” of the

Treaty and special attention shall be “undertaken in the cases of business activities in conflict-affected areas” (Art. 14).

In implementing the Treaty, States shall address the specific impacts of business activities while giving special attention to those at heightened risk of violations, “such as women, children, persons with disabilities, indigenous peoples, migrants, refugees and internal displaced persons” (Art. 14 (4)). A Committee of experts will be established to make recommendations on the implementation of the Treaty and provide concluding observations on reports submitted by States (Art. 13(4)).

For more information on the Binding Treaty on Business and Human Rights, please visit our [Binding Treaty Portal](#) and check out our new blog series [Reflections on the Revised Draft](#). For a comprehensive list of (external) commentaries on the Treaty, click [here](#).