

# C. Preamble

## Preamble; Inputs Taken into Account and Rejected

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On July 16, 2019, the Chairmanship of the Open-Ended Intergovernmental Working Group on transnational corporations and other business enterprises with respect to human rights released the *Revised Draft of the Legally Binding Instrument to Regulate, in International Human Rights Law, The Activities Corporations and Other Business Enterprises* (Draft LBI).

The Draft LBI will be subject to further substantive negotiations, to be held during the Fifth Session of the OEIGWG, scheduled from 18 to 19 October 2019, in Geneva. This document is the result of the Fourth Session of the OEIGWG, held in October 2018, and of three open informal consultations, that took place in June 2019.<sup>1</sup> No documentation has been released yet on the specific content of the inputs presented at each one of these consultations. However, the June 2019 consultations were considered “as a complement”<sup>2</sup> to the inputs provided during the Fourth Session.

This short article is based on the documentation available for the Fourth Session,<sup>3</sup> on the Zero Draft of the DLBI, and on the Revised Draft published in July 2019. Its goal is providing an example of how the informal consultations impacted the wording and content of the Draft LBI. The respective role inputs provided during the Fourth Session played *vis à vis* the June 2019 consultation is illustrated through the examination of Article 1 of the Draft LBI. Readers interested in knowing how the CPE came to its conclusions as to the effective inclusion (or exclusion) of certain inputs can consult the more than 200 files available on the OEIGWG website, documenting the Fourth Session.

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- 1 *Themes for the Intersessional Open Consultations on the Implementation of Human Rights Council Resolution 26/9*, available at <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session5/ThemesIntersessionalConsultations.pdf>
  - 2 Note 4-7-156/2019, 16 July 2019, available at [https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/NV\\_Ecuador\\_RevisedDraft\\_LBI.pdf](https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/NV_Ecuador_RevisedDraft_LBI.pdf)
  - 3 United Nations Human Rights Council, *Fourth session of the open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights*, available at <https://www.ohchr.org/EN/HRBodies/HRC/WGTransCorp/Session4/Pages/Session4.aspx>

## Article 1. Preamble

*The State Parties to this (Legally Binding Instrument),*

- 1. Recalling the principles and purposes of the Charter of the United Nations.**
- 2. Recalling also the nine core international human rights instruments adopted by the United Nations, and the eight fundamental Conventions adopted by the International Labor Organization;**
- 3. Recalling further the Universal Declaration of Human Rights, as well as the Declaration on the Right to Development, the Vienna Declaration and Programme of Action, the Durban Declaration and Programme of Action, and the UN Declaration on the Rights of Indigenous Peoples, as well as other internationally agreed human rights-relevant declarations;**
- 4. Reaffirming the fundamental human rights and the dignity and worth of the human person, in the equal rights of men and women and the need to promote social progress and better standards of life in larger freedom while respecting the obligations arising from treaties and other sources of international law as set out in the Charter of the United Nations;**
- 5. Stressing the right of every person to be entitled to a social and international order in which their rights and freedoms can be fully realized consistent with the purposes and principles of the United Nations as stated in the Universal Declaration of Human Rights;**
- 6. Reaffirming that all human rights are universal, indivisible, interdependent and inter-related;**
- 7. Upholding the right of every person to have an effective and equal access to justice and remedy in case of violations of international human rights law or international humanitarian law, including the rights to non-discrimination, participation and inclusion;**
- 8. Stressing that the primary obligation to respect, protect, fulfil and promote human rights and fundamental freedoms lie with the State, and that States must protect against human rights abuse by third parties, including business enterprises, within their territory or otherwise under their jurisdiction or control, and ensure respect for and implementation of international human rights law;**
- 9. 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 without distinction of race, sex, language or religion;

**10. Upholding the principles of sovereign equality, peaceful settlement of disputes, and maintenance of the territorial integrity and political independence of States as set out in Article 2 of the United Nations Charter;**

**11. Acknowledging that all business enterprises have the capacity to foster the achievement of sustainable development through an increased productivity, inclusive economic growth and job creation that protects labour rights and environmental and health standards in accordance with relevant international standards and agreements;**

**12. Underlining that all business enterprises, regardless of their size, sector, operational context, ownership and structure have the responsibility to respect all human rights, including by avoiding causing or contributing to adverse human rights impacts through their own activities and addressing such impacts when they occur; as well as by preventing or mitigating adverse human rights impacts that are directly linked to their operations, products or services by their business relationships;**

**13. Emphasizing that civil society actors, including human rights defenders have an important and legitimate role in promoting the respect of human rights by business enterprises, and in preventing, mitigating and seeking effective remedy for the adverse human rights impacts of business enterprises;**

**14. Recognizing the distinctive and disproportionate impact of certain business-related human rights abuses on women and girls, children, indigenous peoples, persons with disabilities, migrants and refugees, and the need for a perspective that takes into account their specific circumstances and vulnerabilities;**

**15. Taking into account all the work undertaken by the Commission on Human Rights and the Human Rights Council on the question of the responsibilities of transnational corporations and other business enterprises with respect to human rights, and all relevant previous Human Rights Council resolutions, including in particular Resolution 26/9;**

**16. Noting the role that the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework have played in that regard;**

**17. Noting also the ILO 190 Convention concerning the elimination of violence and harassment in the world of Work;**

**18. Desiring to contribute to the development of international law, international humanitarian law and international human rights law in this field;**

*Hereby agree as follows: . . .*

### **Inputs received *not included* in the LDBI:**

1. APWLP and AWID
2. Azerbaijan [3, revision of paragraph
3. FIAN
4. The Holy See
5. International Association of Democratic Lawyers [trade and investment treaties]
6. Layla Hughes, Center for International Environmental Law [reference to CEDAW]
7. Mexico [jurisdiction]
8. Peru [States' commitment to UDHR]
9. Russian Federation [delete reference to Resolution 26/9]

### **Inputs received included in the Revised Draft:**

1. Al-Haq [human rights defenders]
2. Azerbaijan [10: principles of sovereignty and territorial integrity; 18, international humanitarian law]
3. China [1, principles and purposes of the UN Charter; 11, positive role of enterprises in development; 15, Resolution 26/9]
4. ESCR-net [human rights defenders]
5. FIDH [human rights defenders]
6. Human Rights Treaties Branch, OHCHR (Bradford Smith) [Preamble should be free-standing]
7. International Association of Democratic Lawyers [Preamble should be free-standing]
8. International Organization of Employers [12, direct international obligations for businesses]
9. Justiça Global [human rights defenders]
10. Layla Hughes, Center for International Environmental Law [gender equality]
11. LHR [human rights defenders]
12. Mexico [Preamble should be free-standing]
13. Namibia [Preamble should be free-standing]
14. Peru [7, 18, international humanitarian law]
15. Russian Federation [reference to principles of non-discrimination, participation and inclusion, and self-determination deleted]
16. SOMO [human rights defenders]