



SUMMARY: “Zero Draft” of the Binding Treaty on Business and Human Rights

This is an unofficial summary of the first official draft of the legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises. The so-called “Zero Draft” of the Treaty was published on 16 July by the UN Human Rights Council’s open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (OEIWG).

Purpose

The purpose of the Treaty, as stipulated in Article 2 is to “strengthen the respect, promotion, protection and fulfilment of human rights” and to “ensure effective access to justice and remedy to victims of human rights violations” in the context of transnational business activities and to “advance international cooperation in this regard.”

Scope and Jurisdiction

The Treaty applies “to human rights violations in the context of any business activities of a transnational character” (Art. 3). Jurisdiction vests in the court of the State where such acts or omissions occurred or where the alleged perpetrator is domiciled.

Rights and Definition of Victims

Victims are defined as persons who individually or collectively suffered harm, including physical or mental injury (Art. 4).

Article 8 reaffirms the right of victims to “fair, effective and prompt access to justice and remedies” in accordance with international law, including (a) restitution, compensation, rehabilitation, non-repetition as well as (b) environmental remediation and ecological restoration. State parties (hereafter States) must:

- Guarantee the right of victims to present claims to their Courts (para 2)
- Investigate all human rights violations and take action against perpetrators (para 3)
- Provide legal assistance to victims (para 5)
- Establish an International Fund for victims (para 7)
- Provide effective mechanisms for enforcement of remedies (para 8); and
- Protect victims, their representatives, families and witnesses from unlawful interference with their privacy and from intimidation, and retaliation.

Legal Liability

Article 10 stipulates States’ duties to hold perpetrators criminally, civil and administratively liable for human rights violations in the context of transnational business activities through their domestic law. Such liability is subject to both criminal and non-criminal sanctions, including monetary sanctions (para 1). The liable party must “provide reparation to the victim or compensate the State if the State has already provided reparation to the victim” (para 3). States are required to incorporate in their domestic law provisions for universal jurisdiction over human rights violations that amount to crimes (para 11).



Due Diligence

States must ensure “in their domestic legislation that all persons with business activities of transnational character” undertake due diligence obligations throughout their business activities (Art. 9 (1)) as well as effective national procedures to enforce compliance (para 3). Failure to comply with due diligence will result in liability and compensation. States may elect to exempt certain small and medium sized undertakings.

According to Art. 9 (2) due diligence includes (a) monitoring human rights impacts; (b) identifying and assessing human rights violations; (c) preventing human rights violations; (d) reporting on non-financial matters, including at a minimum environmental and human rights matters; (e) undertaking environmental and human rights impact assessments; and (g) carrying out meaningful consultations with affected groups and relevant stakeholders.

Mutual Legal Assistance

States must “cooperate in good faith to enable the implementation of commitments” under the Draft Convention and the fulfillment its purposes and must “afford one another the widest measure of mutual legal assistance” in initiating and carrying out investigations, prosecutions and judicial proceedings to this end.

Implementation and Miscellaneous

A **committee of experts** will be established to monitor and promote the implementation of the Treaty (Art. 14). Furthermore, States must take legislative and administrative **measures to ensure the effective implementation** of the Treaty and accord special attention to business activities in **conflict-affected areas** and to groups “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 and internal displaced persons” (Articles 9 and 15). There is **no statute of limitations** for violations of international human rights law which constitute crimes under international law.

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 Zero Draft](#), which is part of our [Debate the Treaty Blog](#). For a comprehensive list of (external) commentaries on the Treaty and the Zero Draft, click [here](#).