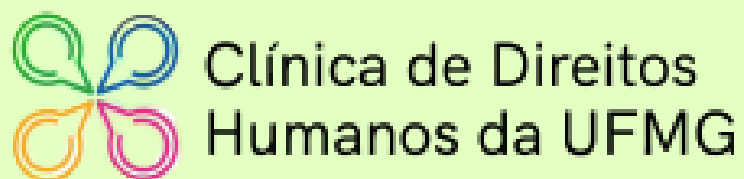


**POLICY PAPER ON THE UPDATED
DRAFT OF THE INTERNATIONAL
LEGALLY BINDING INSTRUMENT TO
REGULATE, IN INTERNATIONAL
HUMAN RIGHTS LAW, THE
ACTIVITIES OF TRANSNATIONAL
CORPORATIONS AND OTHER
BUSINESS ENTERPRISES:
PROTECTING CHILDREN'S RIGHTS
WITHIN BUSINESS ACTIVITIES**

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CLÍNICA DE
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I. Introduction

It is undeniable that business operations have the potential to greatly affect a broad range of human rights. Certain groups are especially vulnerable in this context¹, such as children, women, people living in extreme poverty and indigenous peoples, especially when the impact of such activities involves environmental harm. As recognized by the Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment, “*environmental harm interferes with the full enjoyment of a vast range of the rights of the child*”² and, “*taken as a whole, no group is more vulnerable to environmental harm than children*”³.

With the expansion and intensification of the activities of transnational corporations across the globe, reports of environmental disasters such as oil spills, deforestation, invasions of indigenous lands by mining projects, child labor in technology companies, data breaches from digital platforms, and labor exploitation in the textile industry, among others, have become increasingly frequent. For example, when addressing the issue of human rights and the extractive sector with regard to energy transition programmes, the UN Working Group on Business and Human Rights stated that “*energy transition programmes have been linked or have contributed to serious human rights abuses, such as land-grabbing, forced displacement, modern slavery, discrimination and environmental pollution, among others. For example, recent reports [as of 2023] show that more than 1 million children worldwide are being forced to work in dangerous cobalt and coltan mines*”⁴.

In this context and with the aim to prevent, counter and mitigate human rights impacts caused by companies in its own activities and throughout their value chain, several initiatives were created to regulate such operations, especially those with transnational character, and better orient States on how to fulfil their human rights obligations in those settings. For this reason, in 2011, the Human Rights Council (HRC) approved the “*Guiding Principles on Business and Human Rights*” and, in 2013, the Committee (CRC) on the Rights

¹ UN. **Guiding Principles on Business and Human Rights**, page 14. Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

² UN HRC. A/HRC/37/58 (24 January 2018). **Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment**, pp. 31, p. 9. Available at: https://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/37/58.

³ *Ibidem*, pp. 15, p. 5.

⁴ UNGA. Working Group on Business and Human Rights. A/78/155 (17 July 2023). **Report of the Working Group on the issue of human rights and transnational corporations and other business enterprises. Extractive sector, just transition and human rights**, pp. 4, p. 3. Available at: <https://docs.un.org/en/A/78/155>.

of the Child adopted General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights. Important as these instruments were and still are in providing guidance for business and States, they were not observed all the time and by all those actors that need to be engaged with such instruments to make them effective on a global scale.

Seeing the need for a legally and internationally binding instrument that establishes comprehensive and uniform human rights obligations for States in regard to business duties within their territory, civil society organizations and some States pushed for the negotiation of a treaty. Under these circumstances, since 2014, an Open-ended Intergovernmental Working Group (OEIGWG)⁵ was established "*to elaborate an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises*".

In the process of drafting the Treaty on Business and Human Rights (also known as the LBI), the reference to the human right to a clean, healthy, and sustainable environment was much discussed. However, the absence of the explicit recognition of such right in the updated version of the LBI⁶ reveals a troubling gap. As argued by many Non-Governmental Organizations (NGOs), this right cannot and should not be excluded from the scope of the instrument, as it constitutes an essential condition for the comprehensive protection of human rights, especially those guaranteed to children. For this specific reason, the CRC, in its General Comment No. 26 (2023), stressed that "*a clean, healthy and sustainable environment is both a human right itself and necessary for the full enjoyment of a broad range of children's rights*"⁷.

The interdependence of children's rights and environmental protection becomes even more clear when considering the rights guaranteed by the Convention on the Rights of the Child. Indeed, when interpreting States' obligations in Article 6, which ensures the right to life, survival and the full development of children, it is clear that environmental degradation

⁵ UN HRC. A/HRC/RES/26/9 (14 July 2014). **Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights**. Available at: <https://undocs.org/A/HRC/res/26/9>.

⁶ Available at:

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

⁷ UN Committee on the Rights of the Child. **General Comment No. 26 (2023) on Children's Rights and the Environment, with a Special Focus on Climate Change** (22 August 2023), pp. 8, p. 2. Available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/crccgc26-general-comment-no-26-2023-childrens-rights>.

directly undermines the objective of such provision. Comparably, Article 24 recognizes the right to the highest attainable standard of health, which includes access to clean drinking water, adequate food, and safe environmental conditions. Complementarily, Article 27 reinforces this logic by providing for the right to an adequate standard of living for the child's physical, mental, and social development – a reality that is unattainable in situations where the enjoyment of such rights is hindered by water pollution, deforestation and environmental disasters.

In providing further guidance for States on how to fulfil the obligations set out in the Convention, the Committee on the Rights of the Child reinforced the need to protect children's rights from business impacts on the environment. In fact, General Comment No. 16 had already warned that business activities may disproportionately affect children and that operations which result in environmental degradation and contamination “*can compromise children's rights to health, food security and access to safe drinking water and sanitation*”⁸, so States should strengthen “*regulatory agencies responsible for the oversight of standards relevant to children's rights such as health and safety, consumer rights, education, environment, labour and advertising and marketing so that they have sufficient powers and resources to monitor and to investigate complaints and to provide and enforce remedies for abuses of children's rights*”⁹. Later, General Comment No. 26 (2023) deepened this perspective by expressly emphasizing that “*businesses have the responsibility to respect children's rights in relation to the environment*”¹⁰.

Against this backdrop, it is unquestionable that the recognition of the human right to a clean, healthy and sustainable environment is an imperative within the UN Business and Human Rights Treaty process. In line with the General Comments from the Committee on the Rights of the Child and the positions already affirmed by both the UN General Assembly and the Human Rights Council on the matter, the Updated Draft should reinstate the mention of the right to a clean, healthy and sustainable environment in Article 1.2, as previously recognized by the Third Revised Draft. It must also embed clear provisions on corporate environmental due diligence, as well as child rights impact assessments, meaningful child

⁸ UN Committee on the Rights of the Child. **General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights** (17 April 2013), pp. 19, p. 6. Available at: <https://www2.ohchr.org/english/bodies/crc/docs/crc.c.gc.16.pdf>.

⁹ *Ibidem* pp. 61, p. 17.

¹⁰ UN Committee on the Rights of the Child (n. 7), pp. 78, p. 13.

participation and specific safeguards for children's rights with regard to access to remedy in the sense of a holistic approach to sustainability.

With the clear aim to provide States with concrete recommendations to the current draft of the LBI that would help to achieve the aforementioned standards of protection of human rights in general, and child rights in particular, DKA Austria, the Human Rights Clinic of the Federal University of Minas Gerais (CdH/UFGM), the Human Rights Clinic of the Pontifical Catholic University of Paraná (PUCPR) and ECPAT International as part of the Down to Zero Alliance, present this *policy brief*.

II. Article-by-Article Review through a Child Rights–Based Approach to Environmental Protection

The following section presents textual suggestions to Articles 1, 3, 4, 5, 6, 7, 8, 9, and 10 of the updated draft of the Legally Binding Instrument, examined through a child rights–based approach. Furthermore, as a natural consequence of the interdependence of children's rights with environmental protection, the recommended amendments to the treaty are grounded in the understanding that sustainability encompasses environmental, social and economic issues and there is no holistic sustainability if only one aspect is addressed.

In this context, the recommendations address a range of substantive and procedural State obligations with implications for a wide spectrum of children's rights. Most of the proposed amendments were previously presented by this group of organizations during States-led negotiations in the previous OEIGWG sessions. They are here consolidated and further explained to justify the need for their inclusion in the revised draft.

1. Definitions (Article 1)

In its entirety, Article 1 establishes the definitions of terms such as “*victims*”, “*business activities*” and “*remedy*”, that are the foundation for the interpretation and application of the entire instrument and, therefore, must be as exact, as protective and as aligned with a child-rights based approach as possible. This article will be key in defining the scope of application of the LBI and in determining whether the treaty will indeed serve as the

expected instrument to enable human rights defenders, victims, and other stakeholders to effectively and concretely demand that States adopt, implement, and enforce measures to prevent, mitigate, and remedy human rights abuses and violations.

*1.1. “Victim” shall mean any person or group of persons, who suffered a human rights abuse **or violation, through acts or omissions**, in the context of business activities, irrespective of the nationality or domicile of the victim. The term “victim” may also include the immediate family members or dependents of the direct victim **and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization**. A person shall be considered a victim regardless of whether the perpetrator of the human rights abuse **or violation** is identified, apprehended, prosecuted, or convicted.*

In such provision, the addition of “*through acts or omissions*” would be a step further in recognizing patterns of human rights abuses or violations that are notoriously perpetrated within complex hierarchies and corporate structures. With this type of safeguard, in situations where a state authority or a company's representative or employee had the duty to prevent harm to a determined community, but did not act in accordance with said obligation, would also fall within the scope of this article.

Furthermore, Article 1.1 establishes two categories of victims: those negatively affected by corporate operations, and the immediate relatives or dependents of those directly affected. This recognition is particularly important for children, since harms suffered by parents or caregivers inevitably impact the enjoyment of their rights. In this sense, it would be equally important to expressly recognize as victims those “*persons who have suffered harm in intervening to assist victims in distress or to prevent victimization*”, especially if this situation arose from an intervention to guarantee the protection of a child’s rights.

*1.4. “Business activities” means any economic or other activity, including but not limited to the manufacturing, production, transportation, distribution, commercialization, marketing and retailing of goods and services, **recycling, release and waste disposal as well as restoration and repair** undertaken by a natural or legal person, including State-owned enterprises, financial institutions and investment funds, transnational corporations, other business enterprises, joint ventures, and any other business relationship undertaken by a natural or legal person. This includes activities undertaken by electronic means.*

*1.5. “Business activities of a transnational character” means any business activity described in Article 1.4. above, when: (...) b. It is undertaken in one State but a significant part of its preparation, planning, direction, control, design, processing, manufacturing, storage or distribution, **recycling, release and disposal**, takes place through any business relationship in another State or jurisdiction; or (...)*

On Article 1.4, we suggest adding the terms “*recycling, release and waste disposal as well as restoration and repair*” since these are business activities that could also severely impact victims, especially children and future generations¹¹. The disproportionate exposure of children to environmental harms illustrates the importance of refining these definitions. Air pollution, toxic waste, water contamination threaten their health¹², survival and development¹³, and even their right to play¹⁴.

1.9. “**Remedy**” shall mean the restoration of a victim of a human rights abuse *or violation* to the position they would have been had the abuse *or violation* not occurred, or as nearly as is possible in the circumstances. An “effective remedy” involves reparations that are adequate, effective, and prompt; are gender responsive, ~~age-responsive~~ *child-sensitive and disability-inclusive*; and may draw from a range of forms of remedy such as restitution, compensation, rehabilitation, satisfaction, such as cessation of abuse *or violation*, apologies, and sanctions), as well as and guarantees of non-repetition.

In conclusion, the changes proposed ensure:

- On Article 1.1, the recognition of solidarity actors and indirect protection of children by means of broadening the definition of victim by including those harmed while assisting or preventing victimization.
- On Article 1.3 to reinstate the right to a clean, healthy and sustainable environment and distinguish between business abuses and State violations, clarifying each actor's responsibility when it comes to human rights.
- On Article 1.4 and 1.5 (b), to address harmful end-of-chain practices such as illegal waste exports that impact children and future generations.
- The expansion of Article 1.8 on due diligence to explicitly include environmental and climate impacts along value chains, requiring consultation with all stakeholders, particularly groups often overlooked, such as children;
- The obligation under Article 1.8(c) for businesses to take immediate action when imminent damages are identified; and

¹¹ UN Committee on the Rights of the Child (n. 7). In the words of the Committee: “79. **Business activity is a source of significant environmental damage, contributing to child rights abuses. Such damage results, for example, from the production, use, release and disposal of hazardous and toxic substances, the extraction and burning of fossil fuels, industrial air and water pollution and unsustainable agriculture and fishing practices**”.

¹² Convention on the Rights of the Child, Article 24.

¹³ *Ibidem*, Article 6.

¹⁴ *Ibidem*, Article 31.

- The refinement of Article 1.9 on remedies to include the terms *child-sensitive* and *disability-inclusive*, ensuring reparations address both immediate harm and long-term intergenerational impacts.

By including these recommendations, Article 1 becomes not merely a technical glossary but a normative anchor that integrates environmental protection and child rights into the core of business and human rights regulation, providing coherence, legal certainty, and stronger safeguards for those most vulnerable.

2. Scope of the Legally Binding Treaty (Article 3)

Article 3 is a critical provision given that it defines the scope of application of the treaty, making clear both its breadth and its limits. Exceptionally significant is the urgent need of recognition that the scope of the instrument extends to environmental harm.

Notoriously, environmental degradation is one of the most pressing sources of human rights impacts in the context of business, from pollution and deforestation to climate change¹⁵. Children, especially, are at disproportionate risk from environmental harms, such as air and water pollution, toxic waste exposure, and the long-term effects of climate change¹⁶. By making environmental protection part of the scope, the article ensures that such harms are not treated as peripheral but as integral to the protection of human rights.

3.3. *This (Legally Binding Instrument) shall cover all internationally recognized human rights and fundamental freedoms binding on the State Parties of this (Legally Binding Instrument), including the right to a clean, healthy and sustainable environment.*

As recognized by the Committee on the Rights of the Child (CRC) in its General Comment No. 26 on children's rights and the environment with a special focus on climate change, *"a clean, healthy and sustainable environment is both a human right itself and*

¹⁵ United Nations. The Special Rapporteur submits a report to the UN Human Rights Council as well as to the UN General Assembly on an annual basis, as mandated by the UN Human Rights Council resolution 37/8, A/79/270, 2024, available at: <https://docs.un.org/en/A/79/270>. Paragraph 2: *"Reality also shows us the unprecedented challenge humanity faces with the triple planetary crises of climate change, biodiversity loss and environmental pollution, aggravated by systemic and increasing inequalities, humanitarian needs, increasing conflict and planetary boundaries being irreversibly crossed. Evidence shows that, despite current efforts to address these crises, positive results have yet to be seen, while negative impacts continue to increase dramatically."*

¹⁶ United Nations Human Rights Council, *Report of the Special Rapporteur on the issue of human rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*. 12 February 2022.

necessary for the full enjoyment of a broad range of children's rights"¹⁷. In light of the importance of such a right, it should be clearly mentioned in the article that defines the scope of the treaty.

The recognition of the right to a clean, healthy and sustainable environment is also ensured by the Human Rights Council, in its Resolution No. 48/13 (2021)¹⁸ and by the General Assembly, in its Resolution No. 76/300 (2022)¹⁹. Such Resolution states that *"while the human rights implications of environmental damage are felt by individuals and communities around the world, the consequences are felt most acutely by women and girls and those segments of the population that are already in vulnerable situations, including indigenous peoples, children, older persons and persons with disabilities"*²⁰.

It is worth mentioning that the formulation *"internationally recognized human rights and fundamental freedoms binding on the State Parties"* can be interpreted in a restrictively manner and, therefore, are a cause of concern if it's used to exclude situations where human rights abuses or violations arise from environmental harm. By expressly including environmental rights within this framework, the article brings the instrument into alignment with evolving international standards, such as the recognition of the right to a clean, healthy and sustainable environment. This plays a role in guaranteeing that the treaty is not only comprehensive, but also forward-looking, responding to the realities of contemporary and arising human rights challenges.

3. Rights of Victims (Article 4)

Article 4 is central to the protection of victims, as it explicitly defines the rights of those whose human rights have been abused or violated in the context of business activities. Although children can be encompassed by the reference to victims in general, it is important

¹⁷ UN Committee on the Rights of the Child (n. 7), pp. 8, p. 2.

¹⁸ United Nations Human Rights Council. (2021). **Resolution 48/13: Human rights and climate change (A/HRC/RES/48/13)**. United Nations. <https://docs.un.org/en/A/HRC/RES/48/13>. The Human Rights Council stated that: *"(...) the right to a clean, healthy and sustainable environment is related to other rights and existing international law; 3. Affirms that the promotion of the human right to a clean, healthy and sustainable environment requires the full implementation of the multilateral environmental agreements under the principles of international environmental law"*.

¹⁹ United Nations General Assembly. Resolution adopted by the General Assembly on 28 July 2022: **The human right to a clean, healthy and sustainable environment (A/RES/76/300)**. Available at: <https://digitallibrary.un.org/record/3983329>.

²⁰ *Ibidem*.

to highlight the specific safeguard for children victims, particularly given the vulnerability inherent to their stage of life. In this sense, a number of amendments are presented below.

4.2. Without prejudice to Article 4.1. above, victims shall:

(c) be guaranteed the right to fair, adequate, effective, prompt, non-discriminatory, appropriate ~~and~~ gender-sensitive **and child-friendly** access to justice, individual or collective reparation and effective remedy in accordance with this (Legally Binding Instrument) and international law, such as restitution, compensation, rehabilitation, reparation, satisfaction, guarantees of non-repetition, injunction, environmental remediation, and ecological restoration;

On Article 4.2(c), we suggest adding “*child-friendly*” after “*gender-sensitive*”. This proposal is aligned with the understanding of the Committee on the Rights of the Child that, in its calling for Commentary No. 27 on Children's Rights to Access to Justice and Effective Remedies (currently being drafted), notes with worry that “*if children do turn to the courts, the fact that legal processes are rarely child-friendly, in addition to the barriers to attaining legal standing in many States, as well as economic, social and cultural factors, create further impediments for children in pursuing remedies for breaches of their rights*”²¹. Therefore, it is fundamental that States provide “*child-friendly safeguards to the substantive and procedural rights of children to access justice and effective remedies*”²².

This is already a concern expressed even in Article 2(d) of the treaty, which stresses that one of its purposes is “*to ensure access to gender-responsive, **child-sensitive** and victim-centred **justice and effective, adequate and timely remedy** for victims of human rights abuses in the context of business activities*”.

Access to justice is fundamental to the promotion and guarantee of all human rights and is an integral part of the Sustainable Development Goals (16.3)²³. In this sense, access to justice must include the possibility of seeking, individually or collectively, through judicial and non-judicial mechanisms, and obtaining a just, equitable, and timely remedy for rights violations. When ensuring this access, it is important to consider the specific characteristics of children and that there are no barriers and restrictions to hinder the access to such rights.

²¹ UN CRC. **Concept Note: General Comment on Children’s Rights to Access to Justice and Effective Remedies**, p. 1. Available at:

<https://www.ohchr.org/sites/default/files/documents/hrbodies/crc/gcomments/gc27/gc27-concept-note.pdf>.

²² *Ibidem*, p. 3.

²³ UNGA. Transforming our world: the 2030 Agenda for Sustainable Development, A/RES/70/1 (25 September 2015), p. 25. Available at: <https://docs.un.org/en/A/RES/70/1>

4.2. (...) (d) be guaranteed the right to submit claims, including by a representative or through class action ~~in appropriate cases~~, to courts and non-judicial grievance mechanisms of the States Parties to this (Legally Binding Instrument) *and that the right to submit claims to on-judicial grievance mechanisms shall not infringe upon the right to access judicial mechanisms;*

4.2. (...) (e) be protected from any unlawful interference against their privacy, and from intimidation, and reprisals, before, during and after any proceedings have been instituted, as well as from re-victimization in the course of proceedings for access to effective, prompt and adequate remedy, including through appropriate protective and support services that are gender and ~~age~~ *responsive child-sensitive. Child victims' identity shall not be revealed publicly without their express consent or, where this is not possible, without the consent of their legal representatives who shall be guided by the principle of the best interests of the child concerned;*

Additionally, on Article 4.2(e), we propose that the expression “child-sensitive” be used instead of “age responsive”, in line with the recommendations of the Committee on the Rights of the Child. For example, in General Comment No. 26²⁴ and General Comment No. 24 on children’s rights in the child justice system (2019)²⁵. It’s worthy to mention that this is the language that is already used by some States during negotiations²⁶.

In conclusion, the changes we proposed in Article 4 are:

- On the whole article, that the access to justice is provided in a manner that is mindful of the characteristics of child victims and their stage of physical and psychological development;
- On Article 4.2 (d), the exclusion of the term "in appropriate cases", which is justified by the possibility of restricting or preventing access to justice for victims, especially children, and the addition that access to judicial mechanisms cannot be impeded by the parallel use of non-judicial mechanisms;
- On Article 4.2 (e) the assurance that children's privacy will be protected by design and that disclosure of their identity will occur with, preferably, their consent, and when not possible, that of their legal representative.

²⁴ UN Committee on the Rights of the Child (n. 7), pp. 27, p. 5. In the Committee words: “(...) access to **child-sensitive complaint procedures and remedies** when their right to be heard in the environmental context is disregarded”.

²⁵ UN Committee on the Rights of the Child. General Comment No. 24 (2019) on children’s rights in the child justice system, pp. 34, p. 8. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GC/24&Lang=en

²⁶ For example, in the ninth session of the OEIGWG, Panama proposed to add “and that such remedies should take into account the need for **child-sensitive** procedures at all levels” at the end of PP9, which was supported by Mexico, Chile, Uruguay, Brazil, Peru, South Africa and Ghana.

4. Protection of Victims (Article 5)

Article 5 of the LBI addresses the protection of victims, their representatives, family members and witnesses from any unlawful interference with their human rights, which is fundamental to ensure effective accountability for those responsible for human rights abuses and violations. In order to ensure that the provision encompasses any situation in which the human rights and fundamental freedoms of victims, their representatives, families, and witnesses are threatened or there is reasonable ground to believe that such harms are going to take place, it is recommended that the expression "potential or actual" be included on Article 5.1. Also, to highlight the need to address the specific obstacles faced by children within the context of legal proceedings, an explicit mention of this group should be added on Article 5.1 and 5.2.

*5.1. States Parties shall protect victims, their representatives, families, and witnesses from any unlawful interference, **potential or actual**, with their human rights and fundamental freedoms, including prior, during and after they have instituted any proceedings to seek access to effective, prompt, and adequate remedy, as well as from re-victimization in the course of these proceedings, **particularly towards children**.*

*5.2. States Parties shall take adequate and effective measures to guarantee a safe and enabling environment, **including in the digital spaces**, for persons, **particularly children**, groups and organizations that promote and defend human rights and the environment, so that they are able to exercise their human rights free from any threat, intimidation, violence, insecurity, harassment, or reprisals.*

In regards to digital spaces, CRC General Comment no. 25 (2021) on children's rights in relation to the digital environment stresses that businesses can negatively affect children's rights²⁷. Thus, States must take measures "*to ensure compliance by businesses with their obligations to prevent their networks or online services from being used in ways that cause or contribute to violations or abuses of children's rights, including their rights to privacy and protection, and to provide children, parents and caregivers with prompt and effective*

²⁷ UN Committee on the Rights of the Child. **General comment No. 25 (2021) on children's rights in relation to the digital environment** (2 March 2021), pp, 35, p. 6. Available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/general-comment-no-25-2021-childrens-rights-relation>.

remedies”²⁸. This is particularly important when noticing children are one third of the online population²⁹.

*5.3. States Parties shall investigate human rights abuses **or violations** covered under this (Legally Binding Instrument), effectively, promptly, thoroughly, **transparently** and impartially, and where appropriate **and within reasonable time**, take action against those natural or legal persons responsible, in accordance with domestic and international law.*

Transparency in investigations of human rights abuses or violations is essential to upholding victims' rights, as it ensures their right to the truth is protected and acknowledged, especially when uncovering the circumstances surrounding the violations and the identities of those legal and natural persons responsible. It can also help prevent impunity by ensuring investigations are thorough, objective, and free from unlawful interference, thereby strengthening companies legal accountability.

Furthermore, the text of the LBI must guarantee the right to effective and adequate remedy also in situations where the victim is delayed in commencing a proceeding in respect of the claim because of their age, physical, mental or psychological condition and to support in particular justice for victims of violence based on SOGIESC³⁰ as well as children and persons with disabilities.

*5.4. States Parties, pending the resolution of a case, shall adopt, either ex officio or on request by the victim, precautionary measures related to urgent situations that present a serious risk of or an ongoing human rights abuse **or violation, ensuring that such measures are appropriately tailored to the needs and the best interest of the child.***

Lastly, the obligations set out in Article 5 must be interpreted through and fulfilled in accordance with the principle of the best interests of the child, by which, in all situations where their interests and rights are concerned and in all decisions that will affect children, their best interests must be prioritized. This super-principle, established by the Convention on the Rights of the Child in its Article 3, justified the aforementioned addition on Article 5.4. The application of precautionary measures by States is of particular relevance in this context, given that the time lapse inherent in the implementation of definitive judicial or non-judicial measures has the potential to exacerbate ongoing violations. In the context of children, time

²⁸ *Ibidem*, pp. 36, p. 7.

²⁹ UNICEF. The State of the World's Children 2017: Children in a digital world. 2017, p. 9. Available at: https://www.unicef.org/media/48581/file/SOWC_2017_ENG.pdf.

³⁰ Sexual Orientation, Gender Identity and Expression, and Sex Characteristics (SOGIESC).

management is particularly important, and the reasonable time for their protection must be interpreted in light of the principle of the child's best interests.

In summary, the proposed amendments to Article 5 include the following:

- On article 5.1, a broader scope of protection by including the terms "*potential or actual*";
- On Article 5.2, the inclusion of "the digital space," to ensure children's safety in those spaces;
- On Article 5.1, 5.2 and 5.4, express mentions of children, to highlight the need to pay special attention to obstacles faced by this group;
- Article 5.3, provisions to address the importance of transparent and timely investigations.

5. Prevention (Article 6)

Article 6 is one of the core provisions of the LBI as it establishes States' obligations to formulate and implement legislations and legal policies to regulate companies' operations and, by means of such regulatory frameworks, guarantee that businesses uphold human rights within their value chains. By putting forth thresholds that should be met to effectively prevent, reduce, and remedy business-related harms, this provision is a step further in outlining binding and specific duties set out in the UN Guiding Principles on Business and Human Rights. In this context, given that children are uniquely vulnerable to environmental harms, which can compromise their health³¹, development³², and education³³, special attention is required to ensure that it is in light with a child-rights based approach.

6.2. State Parties shall adopt appropriate legislative, regulatory, and other measures to ensure that their domestic legislation reflects their international human rights obligations and to:

In Article 6.2, it's important to reinforce the duties of States to internalize international human rights standards, including the obligations set forth in the Convention on the Rights of the Child, and to put into effect measures that reflect business duties in relation

³¹ UN Committee on the Rights of the Child (n. 7), pp. 38, p. 7.

³² *Ibidem*, pp. 23, p. 4.

³³ *Ibidem*, pp. 51, p. 9.

to human rights protection. As stressed by the CRC, States “*must ensure that all business enterprises, including transnational corporations operating within their borders, are adequately regulated within a legal and institutional framework that ensures that they do not adversely impact on the rights of the child and/or aid and abet violations in foreign jurisdictions*”³⁴.

(d) promote the active, *informed* and meaningful *engagement participant* of individuals and groups, such as trade unions, civil society, *children*, non-governmental organizations, indigenous peoples, and community-based organizations, in the development and implementation of laws, policies and other measures to prevent the involvement of business enterprises in human rights abuse and violation.

In accordance with Article 12 of the Convention on the Rights of the Child, children must be heard in any decision making process that affects their rights and their views must be given due weight in accordance with their age and maturity. To this end, it's fundamental to guarantee their participation in a child-friendly environment and a non-discriminatory manner³⁵, following “*a procedure that ensures that the best interests of the child are a primary consideration*”³⁶.

Furthermore, both during consultations and child-rights impacts assessment, States and business should provide information³⁷, including those relating to environmental issues³⁸, in a child-accessible language³⁹.

6.4. Measures to achieve the ends referred to in Article 6.2 shall include legally enforceable requirements for business enterprises to undertake human rights due diligence as well as such supporting or ancillary measures as may be needed to ensure that business enterprises while carrying out human rights due diligence:

(a) undertake and publish on a regular basis human rights impact assessments, *including a child rights impact assessment across their supply and value chains when necessary due to imminent impact and at regular interval, prior and throughout their operations;*

(...) (c) take particular account of the needs of those who may be at heightened risks of vulnerability or marginalization, *such as children;*

³⁴ *Ibidem*, pp. 42, p. 12-13.

³⁵ *Ibidem*, pp. 23, p. 8.

³⁶ *Ibidem*, pp. 18, p. 4.

³⁷ UN Committee on the Rights of the Child (n. 27), pp. 13, p. 3.

³⁸ UN Committee on the Rights of the Child (n. 7), pp. 23, p. 8.

³⁹ *Ibidem*, pp. 27, p. 5.

(d) *conduct meaningful ~~consult~~ engagement, throughout all phases of operations, with potentially affected groups and other relevant stakeholders, including children;*

(e) *protect the safety of human rights defenders, including children environmental human rights defenders, journalists, workers, members of indigenous peoples, among others, as well as those who may be subject to retaliation;*

All the above recommendations are based on the principle of the best interest of the child, the understanding of children as key child actors and the fundamental role that environmental and human rights impact assessments, especially those integrating child-specific concerns, play in prevention of environmental impacts and human rights abuses.

In accordance with General Comment No. 26, the aforementioned assessments must be conducted “(...) ***both before and after implementation, of the possible direct and indirect impact on the environment and climate, including the transboundary, cumulative, and both production and consumption effects, on the enjoyment of children’s rights***”⁴⁰.

By including such child-specific recommendations, Article 6 ensures that risks disproportionately affecting children are effectively managed through:

- On Article 6.2, the need of domestic legislation to reflect States international human rights obligations;
- On Article 6.2(d) and Article 6.4, the inclusion of explicit references to child right impact assessment and the right to access to child sensitive information.
- Throughout the whole provision by recognizing children’s special vulnerability to environmental harms and their agency as environmental actors and human rights defenders;
- Child participation in consultations, consistent with their evolving capacities and GC No. 26 standards.

⁴⁰ UN Committee on the Rights of the Child (n. 7), pp. 75, p. 13.

6. Access to Remedy (Article 7)

Article 7 is central to ensuring the effectiveness of the LBI, as it translates the right to access to remedy into concrete legal obligations. It not only enshrines the formal right of access to justice, but also defines the substantive conditions under which remedies become truly effective for victims, especially children.

*7.1. States Parties shall **ensure** ~~provide~~ their relevant State agencies, ~~with~~ **have** the necessary competence in accordance with this (Legally Binding Instrument) to enable victims' access to adequate, timely and effective remedy and access to justice, and to **remove** ~~overcome~~ the specific **barriers faced by** ~~obstacles which~~ women, **children** and groups in vulnerable or marginalized situations face in accessing such mechanisms and remedies.*

Through the interpretation of such provision in light of the principle of the best interests of the child, this article strengthens the treaty's capacity to address corporate-related violations in an intergenerational perspective, safeguarding children's rights both in the present and for the future. In order to facilitate such interpretation, it is necessary to effect a number of changes to the language used in the provisions. This is required in order to guarantee greater effectiveness of the obligations therein established. The specific mention of children as a particular group that faced specific challenges when seeking remedy for the human rights abuses or violations suffered has the same objective.

7.5. For the purposes of achieving the aims set out in Article 7.2 (c), States shall adopt such legislative and other measures as may be necessary:
*(b) to ensure that victims are meaningfully **and actively** consulted by relevant State agencies with respect to the design and delivery of remedies, **including the perspectives of children in matters that affect them**; and*
*(c) to enable relevant State agencies to monitor a company's implementation of remedies in cases of human rights abuse and to take **effective measures** ~~appropriate steps~~ to rectify any non-compliance.*

In Article 7.5(b), we propose the addition of “actively” emphasizes not only the depth of consultation that need to be conducted with the participation of children⁴¹, but also the proactive involvement of victims in those processes.

On the other hand, the use of the language “effective measures” seeks to reinforce the need for State Parties' actions to transcend mere procedural obligations and be implemented in a concrete manner to guarantee children's rights to remedy.

⁴¹ For more on this topic, see considerations for Article 6 on the same matter.

7. Legal Liability (Article 8)

The cluster of Articles 8, 9, and 10 constitutes a fundamental pillar of the LBI, as it defines the scope of corporate accountability: specifying which companies may be held responsible, by whom, through which legal mechanisms, and outlining the limitations applicable to the exercise of justice in this context.

8.1. Each State Party shall ~~adopt such measures as may be necessary to establish~~ *ensure that their domestic law provides for a comprehensive and adequate system of legal, including joint and several, liability of legal and natural persons conducting business activities, within their territory, jurisdiction, or otherwise under their control, for human rights abuses and its effects that may arise from their business activities or relationships, of those transnational character.*

To strengthen States Parties' obligations to establish clear corporate liability within their domestic legal frameworks, reverting to the language of the Third Draft of the LBI appears to be the most effective approach. Furthermore, incorporating the concept of *joint and several liability* would significantly enhance the provision's scope by ensuring that all companies involved in human rights abuses are held accountable. This would also prevent that corporate structure, no matter how complex, shields legal or natural persons engaged in business activities from civil, criminal, or administrative responsibility for their human rights abuses or their effects on victims.

8.2. Subject to the legal principles of the State Party, the liability of legal and natural persons referred to in this Article shall be criminal, civil, or administrative, ~~as appropriate to the circumstances.~~ Each State Party shall ensure, ~~consistent with its domestic legal and administrative systems,~~ that the type of liability established under this article shall be:

- (a) responsive to the needs of victims, *particularly children and people in vulnerable situations*, as regards *to effective, adequate and prompt* remedy; and
- (b) commensurate to the gravity of the human rights abuse *and its effects.*

8.3. Subject to the legal principles of the State Party, the liability of legal and natural persons shall be established for:

- (a) conspiring to commit human rights abuse; and
- (b) aiding, abetting, facilitating, ~~and counselling the commission of human rights abuse.~~ *counseling, attempting, financing, participating or contributing in any acts or omissions that result in a human rights abuse or violation.*

Regarding Article 8.2, we recommend the removal of the phrase “*consistent with its domestic legal and administrative systems*”. This qualifier, which also appears in other

provisions of the LBI, may enable States Parties to invoke domestic legislation that is less stringent or less protective when addressing penalties for human rights abuses or violations.

Furthermore, the removal of “*as appropriate to the circumstances*” would help prevent situations in which obstacles to the accessibility and effectiveness of remedies arise due to the imposition of undue constraints on legal liability. As previously highlighted, the inclusion of certain language in Article 8.2(a), Article 8.2(b) and article 8.3 would contribute to broadening the provision’s scope and reinforcing its comprehensiveness, covering certain situations that otherwise would fall outside of the reach of such provisions.

Neither the use nor the availability of company operational grievance mechanisms or similar non-judicial mechanisms shall forfeit victims' rights to access courts or the potential legal liability of business enterprises.

We also propose a new article (as read above) within the topic of legal liability to guarantee that victims that participate or seek company operational grievance mechanisms or non-judicial mechanisms are still able to seek remedy from courts. Such an amendment is a way to guarantee victims, especially children, access to justice.

*8.5. States Parties shall require legal or natural persons conducting business activities in their territory or jurisdiction, including those of a transnational character, to establish and maintain financial security **and availability of assets**, such as insurance bonds or other financial guarantees, to cover potential claims of compensation.*

Another safeguard that should be reinstated is the provision previously contained in Article 8.5 of the Third Draft, with the addition of the phrase “and availability of assets” following “financial security.” By requiring insurance bonds or financial guarantees, this provision would ensure that companies maintain sufficient assets to satisfy potential claims, thereby preventing business from invoking a lack of funds when facing civil proceedings in which victims seek compensation for the harm suffered.

8.7. Human rights due diligence shall not automatically absolve a legal or natural person conducting business activities from liability for causing, contributing, through actions or omissions, to human rights abuses or violations or failing to prevent such abuses by a natural or legal person.

While human rights due diligence is essential for identifying, preventing and mitigating risks of human rights abuses, it must not serve as a legal or moral shield when

abuses indeed occur. Effective and just corporate responsibility requires not only procedural compliance with preventive measures but also that legal accountability mechanisms remain effective when prevention fails and victims need to access judicial mechanisms and seek remedy. This is in alignment with Guiding Principle 17 of the UNGPs, which clarifies that due diligence does not replace accountability for actual harm⁴².

By incorporating these provisions, Article 8 ensures that violations against children and future generations do not go unaddressed. In summary, the proposed amendments to Article 8 include the following:

- On Article 8.1 and 8.2, States Parties' obligations to establish clear corporate liability within their domestic legal frameworks and not invoking domestic legal limitations that weaken accountability or restrict remedies;
- Ensure that participation in operational grievance mechanisms or other non-judicial mechanisms does not preclude victims' right to access to judicial mechanisms;
- Guarantee that companies maintain sufficient resources to satisfy potential claims from victims;
- Throughout the whole provision, language that expands its scope, as well as strengthens its effectiveness and responsiveness to victims' needs.

8. Jurisdiction (Article 9)

The question of jurisdiction is a fundamental element in ensuring victims' access to justice, as it addresses one of the most essential aspects of legal proceedings: where can victims lay claim to justice? Recognizing procedural and practical barriers individuals may face when initiating legal action, especially children,⁴³ is crucial. In response, jurisdiction should encompass all territories where abuses or violations occurred, produced effects, or where significant contributions to such outcomes took place. In face of such challenges, a few amendments to Article 9 help close existing legal gaps on the provision.

9.1. State Parties shall take such measures as may be necessary to establish its jurisdiction in respect of human rights abuse or violations in cases where:

⁴² UN. **Guiding Principles on Business and Human Rights**, page 24. Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

⁴³ UN Committee on the Rights of the Child (n. 8), pp. 66-72, p. 18-19.

(a) the human rights abuse *or violation* took place, in whole or in part, *including acts or omissions that led or contributed to the abuse or violation*, within the territory or jurisdiction of that State Party;

(b) the relevant harm was sustained, in whole or in part, within the territory or jurisdiction of that State Party, *irrespective of when such harm was discovered or came to be known*;

(...) (d) a victim seeking remedy through civil law proceedings *or accountability in criminal proceedings* is a national of, or has his or her habitual residence in the territory or jurisdiction of, that State Party.

9.4. If a State Party exercising its jurisdiction under this Article has been notified, or has otherwise learned, of judicial proceedings taking place in another State Party relating to the same human rights abuse *or violation*, or any aspect of such human rights abuse *or violation*, the relevant State agencies of each State shall consult one another with a view to coordinating their actions.

In Article 9.1(a), the proposal to add “*including acts or omissions that led or contributed to the abuse or violation*” addresses the gap introduced by the revised wording of Article 9 on the updated draft, given that such provision is silent about establishing jurisdiction in cases where an act or omission contributing to the human rights abuse occurred, despite the fact that the final act may not necessarily be the cause of the harm.

On the same note, including “*or accountability in criminal proceedings*” after “*civil law proceedings*” aims to expand the scope of access to justice when victims, or their corresponding representative, seeks criminal accountability for crimes that happened within companies operations. This amendment acknowledges that victims may seek remedies through civil proceedings or request the opening of criminal investigations and/or proceedings in the criminal field, depending on the harm suffered.

Lastly, it would be beneficial to add a clear provision in Article 9 stating that States Parties’ courts shall not decline its jurisdiction based on the doctrine of *forum non conveniens*, as it is another layer that hampers victims’ access to justice. A particular difficulty in obtaining remedies for abuses that occur in the context of businesses’ global operations is the power and legal structure between parent company and subsidiaries. In practice, as stressed by the CRC⁴⁴ subsidiaries or other entities may lack adequate insurance coverage or operate under limited liability, while the complex structure of transnational corporations, often divided into numerous legally distinct units, makes it difficult to identify and attribute responsibility to the parent company or its affiliates.

⁴⁴ UN Committee on the Rights of the Child (n. 8), pp. 67, p. 18.

Accessing relevant information and evidence dispersed across multiple jurisdictions is also highly challenging⁴⁵, and victims frequently encounter additional obstacles such as limited availability of legal aid in foreign courts and procedural barriers that can ultimately defeat extraterritorial claims. Against this backdrop, the application of the *forum non conveniens* doctrine further exacerbates these difficulties, creating yet another obstacle to victims' access to effective remedies for corporate-related human rights abuses, especially for children that are often overlooked in legal proceedings.

9. Statute of limitations (Article 10)

10.1. State Parties shall adopt such measures as may be necessary to ensure that no limitation period shall apply in relation to the commencement of legal proceedings in relation to human rights abuses *or violations* which constitute the ~~most serious crimes of concern to the international community as a whole~~ *crimes under international law*, including war crimes, crimes against humanity or crimes of genocide.

While restrictions in the establishment of jurisdiction may hinder a victim's ability to start proceedings by defining physical boundaries in space, a narrow scope for statutes of limitations may have the same effect. For this reason, the expressions "*the most serious*" and "*of concern to the international community as a whole*" should be taken out of Article 10.1. Should this change be made, it would avoid the application of a special regimen of statute of limitations only to those crimes which are considered the most serious under international law and, instead, would guarantee that every internationally recognized crime against human rights have their statute of limitations determined in accordance with this Legally Binding Instrument's provision. This suggestion aims to ensure that victims' rights to access to justice be protected for as long as needed.

10.2. In legal proceedings regarding human rights abuse *or violations* not falling within the scope of Article 10.1, each State Party shall adopt such measures as may be necessary to ensure that limitation periods for such proceedings:

(a) are of a duration that is appropriate in light of the gravity of the human rights abuse *or violation and its immediate, long-term and intergenerational effects, especially when it has affected children.*

(b) are not unduly restrictive in light of the context and circumstances, including the location where the relevant human rights abuse *or violation* took place or where the relevant harm was sustained, and the length of time needed for relevant harms to be identified; and

⁴⁵ *Ibidem.*

(c) are determined in a way that respects the rights of victims in accordance with Article 4, *while taking into account a child-sensitive, age appropriate and culturally inclusive perspective.*
(d) shall not run for such a period as no effective and adequate remedy is available.

(bis) Article 10.3. *In all cases of human rights abuse or violation, the States Parties to the present (Legally Binding Instrument), must allow a reasonable period of time for the commencement of legal proceedings in relation to human rights abuses or violations, particularly in cases when:*

(i) *the abuses or violations occurred within the jurisdiction of another State Party;*
(ii) *the harm may be identifiable only after a long period of time; and*
(iii) *where the victim is delayed in commencing a proceeding in respect of the claim because of their age, physical, mental or psychological condition. It is also the State's duty to offer support, in particular, for victims violence based on SOGIESC, as well as children and persons with disabilities”.*

For a variety of reasons, a victim may not be able to seek redress immediately after the harm is done. These include situations where: i) the harm has not yet presented itself (as is the case with diseases that develop some time after the harmful event happened); ii) situations when the victim has not yet been born (such as the case with intergenerational harm); iii) or situations where the victim has not yet come of age or understood the effects of the abuse or violation (such as in occasions where children are involved)⁴⁶.

Taking this into account, our suggestions are designed to address the immediate, long-term, and intergenerational effects of harmful actions⁴⁷, to expand the period of possible commencement of legal proceedings, taking into account various reasons why such a delay might happen, and to ensure that effective and adequate remedies are available when child victims are able to seek reparation. As the CRC underscores in its General Comment No. 5 (2003)⁴⁸, “*for rights to have meaning, effective remedies must be available to redress violations*”.

⁴⁶ This includes justice for sexual violence against children that should have no expiration date: <https://action.ecpat.org/timeless-justice>.

⁴⁷ UN Committee on the Rights of the Child (n. 8), pp. 31, p. 10. It highlights that: “*When determining the level or form of reparation, mechanisms should take into account that children can be more vulnerable to the effects of abuse of their rights than adults and that the effects can be irreversible and result in lifelong damage.*”

⁴⁸ UN Committee on the Rights of the Child. **General Comment No. 5 (2003) about General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6)** (27 November 2003), pp. 24, p. 7. Available at: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2F5&Lang=en. According to the Committee, “Meeting this obligation entails having in place child-sensitive mechanisms – criminal, civil or administrative – that are known by children and their representatives, that are prompt, genuinely available and accessible and that provide adequate reparation for harm suffered” (GC 26, pp. 30, n. 7).

III. Final remarks

The analysis carried out demonstrates that the updated draft of the treaty must necessarily integrate, in a transversal manner, the rights of the child and the right to a clean, healthy and sustainable environment as structuring dimensions of the international protection of human rights. Strengthening this perspective is essential to address the disproportionate impacts children face in the context of business-related abuses and violations, particularly those stemming from environmental degradation and climate change. In this regard, it is indispensable to align the instrument with the Convention on the Rights of the Child, the General Comments of the Committee, and the most recent standards adopted by the UN General Assembly and the Human Rights Council on the matter.

Only through such harmonization will it be possible to ensure normative coherence and the practical effectiveness of the treaty in regard to the protection of children's rights. Likewise, the incorporation of robust mechanisms of prevention, protection, access to justice, remedy and accountability – designed in a child-sensitive, inclusive and effective manner – is a prerequisite for the instrument to fulfill its purpose of ensuring that transnational corporations and other business enterprises are effectively held accountable for the human rights impacts of their activities, especially with regard to children and future generations.

In this sense, this policy paper demonstrates that the effectiveness and legitimacy of the Legally Binding Instrument (LBI) depend on the non-negotiable and systemic integration of children's rights and the right to a clean, healthy and sustainable environment. The analysis of Articles 1 to 10 shows that this perspective is vital to all pillars of the treaty. For foundational provisions (Articles 1 and 3), explicit recognition of environmental harm as a human rights abuse is essential. For prevention and justice (Articles 4, 5, 6 and 7), it is imperative to make due diligence binding, create child-sensitive access to justice mechanisms and adopt dynamic burdens of proof. Finally, for accountability (Articles 8, 9 and 10), joint and several liability, the expansion of jurisdiction, and flexible statutes of limitations adapted to long-term harms are required. By aligning the LBI with General Comment No. 16 and 26 of the CRC, and overall the principle of the best interest of the child, these proposals provide a robust legal instrument, capable of holding transnational corporations accountable for their human rights abuses and protecting childhood in the face of the socio-environmental harms.