

POLICY PAPER FOR 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

● A CHILD RIGHTS PERSPECTIVE

TWELFTH SESSION · 2026

SECOND EDITION · UPDATED

BUSINESS · HUMAN RIGHTS · CHILDREN



Clínica de
Direitos
Humanos
da UFMG



DKA Austria
Katholische Jungschar

Distinguished readers,

the publication of this policy paper provides a timely and vital opportunity to reaffirm that children's rights, business accountability and the right to a clean, healthy and sustainable environment are inseparable.

The Committee on the Rights of the Child has formally recognised in its General Comment No. 26 (GC26), adopted in 2023, that children have the right to a clean, healthy and sustainable environment. It is vital to recognise that a clean, healthy and sustainable environment is not only a fundamental human right in itself, but also indispensable for the full enjoyment of all children's rights. A healthy environment is a prerequisite for the enjoyment of rights such as life, health, education and development. The GC26 provides reliable and authoritative guidance, and in this respect, it is a historical document.

The Committee addresses this topic systematically throughout its monitoring process and follows the measures undertaken by its state parties. Despite its recognition by the Committee around the world, children are bearing the heaviest burdens of environmental degradation and climate change, harms in which business enterprises often play a significant role. Pollution, deforestation, biodiversity loss and greenhouse gas emissions are not abstract issues. These violations have a direct impact on children's daily lives and futures. It is well-documented that children are exposed to air that is detrimental to their health, with negative consequences for both their lungs and brains. The situation is such that they are compelled to consume contaminated water, while floods and wildfires impact their ability to sustain themselves. This results in migration from lands that are no longer viable for their families. The destruction of the environment is a key driver of poverty, hunger, displacement, and other social issues, including child labour and trafficking. These are significant violations of the UN CRC. It is essential that we establish effective and enforceable mechanisms that will deliver tangible results for children.

At the same time, the protection of children's rights requires a clear and consistent articulation of corporate responsibility across all sectors and value chains. Businesses shape children's lives not only through environmental impacts, but also through labour practices, digital environments, marketing, supply chains and community relations. A child-rights-based approach therefore obliges companies to identify, prevent, mitigate and account for adverse impacts, including those that are indirect or cumulative. This is crucial because children and youth are uniquely and disproportionately affected by business-related harms. Due to their physical and psychological development, environmental

degradation, toxic exposure and unsafe products can have lifelong and sometimes irreversible consequences. At the same time, children face structural barriers in exercising their rights. They are frequently denied meaningful political space, excluded from decision-making processes that affect them, and face procedural disadvantages and restricted access to effective remedies. Harm experienced during the formative period of childhood can entrench disadvantage across the life course and even across generations, creating a heightened duty of care for both states and businesses. Embedding children's rights into corporate governance, risk management and due diligence processes is therefore essential to move from voluntary commitments to measurable outcomes. Corporate responsibility thus constitutes not an adjunct to state obligations, but a necessary pillar of an effective system to ensure that economic activity supports the realisation of children's rights worldwide.

For this reason, I welcome the fact that this policy paper calls for the recognition of the right to a clean, healthy and sustainable environment in the LBI on business and human rights. Once adopted, this treaty will be the first of its kind, establishing binding obligations on states to ensure that business activities respect, protect and fulfil human rights (in line with UN CRC General Comment No. 16 on state obligations regarding the impact of the business sector on children's rights). Therefore, it must flag the full scope of children's rights in the context of environmental and climate-change-related harms. It is crucial that the legal mechanism, in the form of an international treaty, recognises the right of every child to a clean, healthy and sustainable environment. This is not just symbolic, it is profoundly important for accountability.

Furthermore, the treaty must require robust environmental due diligence from businesses, including child-sensitive, environmental and social impact assessments, as well as child rights impact assessments in general. These processes must identify and prevent risks before harm occurs, and children must be meaningfully involved in decision-making. Children are not merely passive victims of environmental harm, they are agents of change, too. Young people across the world are speaking out, mobilising their communities, and holding their leaders accountable. States and businesses must ensure that children's voices are heard and acted upon, and that their rights to participation and access to information are fully respected in all environmental matters.

As the Committee stated in GC26, states have a duty to prevent, mitigate and remedy environmental harm arising from business activities. This includes adopting laws and regulations that align with human rights and environmental standards, ensuring access to justice and remedies for affected children, and integrating a child rights-based approach into all sustainability frameworks. We also recognise that international courts and bodies, ranging from the Inter-American Court of Human Rights to the International Court of Justice (ICJ), have increasingly acknowledged states' obligations

to mitigate and prevent environmental harm. The time has come for the UN LBI to firmly embed these principles within its text, thereby ensuring that children's rights are incorporated into the global business and human rights framework.

Achieving a clean, healthy and sustainable environment for every child is a legal obligation enshrined in the UN Convention on the Rights of the Child, as well as a shared responsibility transcending borders, sectors and generations. As we launch this policy paper, let us reaffirm our collective commitment to a future where all children can grow, learn and thrive in a safer world. Let us ensure that the LBI reflects this vision and secures the rights of the world's youngest and most vulnerable.

Yours faithfully,
Prof. Sophie Kiladze

I. Executive Summary.....	6
II. Introduction.....	9
III. Terminological Approach.....	12
IV. Article-by-Article Review through a Child Rights–Based Approach to Environmental Protection.....	15
Part I: Substantive Framework of the Treaty (Preamble and selected provisions of Articles 1-10).....	16
1. Preamble.....	16
2. Definitions (Article 1).....	17
3. Scope of the Legally Binding Treaty (Article 3).....	20
4. Rights of Victims (Article 4).....	21
5. Protection of Victims (Article 5).....	25
6. Prevention (Article 6).....	27
7. Access to Remedy (Article 7).....	29
8. Legal Liability (Article 8).....	34
9. Jurisdiction (Article 9).....	41
10. Statute of limitations (Article 10).....	46
Part II: Operational and Institutional Architecture of the Treaty (Articles 13–16, 21–22)...	48
1. International Cooperation (Article 13).....	48
2. Consistency with International Law (Article 14).....	51
3. Institutional Arrangements (Article 15).....	54
4. Implementation (Article 16).....	57
5. Amendments (Article 21).....	59
6. Reservations (Article 22).....	62
V. Final remarks.....	64

I. Executive Summary

Business activities can cause lasting harm to human rights. Children face distinct and disproportionate risks because of their physical and psychological development. Environmental degradation intensifies these risks by undermining children's rights to life, health, development, food, water, sanitation, education, play and an adequate standard of living.

The proposed Legally Binding Instrument on Business and Human Rights offers a historic opportunity to address gaps in the prevention of and accountability for business-related harm. To fulfil this purpose, the Instrument must integrate children's rights across its substantive, procedural and institutional provisions.

The paper uses terminology to distinguish the forms of conduct and responsibility addressed by the Instrument. Human rights abuses refers to harmful acts or omissions by business enterprises and other non-State actors, while human rights violations refers to breaches of international obligations attributable to States. Both may arise from the same facts but engage different legal responsibilities. The expression adverse human rights impacts is used in the context of prevention and due diligence to include actual and potential effects without prejudging liability. The paper also distinguishes child-specific terminology, used for safeguards directed at children, from age-based terminology, used for measures with a broader life-course scope. Age-based language must not replace child-specific protections where children face distinct barriers or require enhanced safeguards.

Prevention must form a central and enforceable component of the Instrument. States should be required to adopt legislation that mandates human rights and environmental due diligence across business activities and relationships. Such processes must include child rights impact assessments, account for environmental and climate-related risks, and assess immediate, cumulative, long-term and intergenerational effects. Businesses should take prompt action when imminent harm is identified and engage in meaningful consultation with affected groups. Children must be able to participate through safe, accessible and child-sensitive methods that respect their evolving capacities.

The Instrument must also ensure that victims can seek protection, justice and remedy without facing procedural, financial, informational or institutional barriers. Its definition of victim should cover direct and indirect victims, family members, dependants and persons harmed while assisting victims or preventing victimization. Judicial and non-judicial mechanisms must be accessible, gender-responsive, child-sensitive, disability-inclusive and adapted to the circumstances of persons in vulnerable or marginalized situations. The use of a non-judicial mechanism must never prevent access to courts.

States should protect victims, witnesses, representatives and human rights defenders from actual and potential interference, intimidation, retaliation, discrimination and re-victimization,

including in digital environments. Precautionary measures must be available in cases involving a serious risk of irreparable or continuing harm and must take the best interests of the child into account. Investigations should be prompt, effective, thorough, transparent and impartial.

Remedies must address both immediate harm and its long-term consequences. They should include restitution, compensation, rehabilitation, satisfaction, cessation, environmental restoration, guarantees of non-repetition and other measures suited to the circumstances of the victim. Children must receive accessible information, representation and support throughout proceedings. Their privacy, safety, views and evolving capacities must be respected.

Effective accountability also requires robust liability and jurisdictional rules. States should establish civil, administrative and criminal liability, as appropriate, for enterprises that cause or contribute to human rights abuses. Joint and several liability should remain available where multiple entities or business relationships contribute to foreseeable harm. Conducting due diligence should not provide an automatic defence against liability for harm that occurred.

Jurisdictional provisions should reflect the transnational structure of business activity and prevent denial of justice. Victims should be able to bring connected claims against multiple defendants, and courts should not decline jurisdiction through restrictive doctrines such as *forum non conveniens*. Limitation periods must account for latent, long-term and intergenerational harm, as well as delays linked to a victim's age, disability, physical or psychological condition, or lack of access to an effective remedy.

The operational architecture of the Instrument must support these substantive guarantees. International cooperation should include technical and financial assistance, access to information, capacity-building, environmental protection and partnerships with civil society. The treaty should be interpreted consistently with international human rights law, including the Convention on the Rights of the Child and its Optional Protocols, and should preserve higher standards of protection available under domestic, regional, international or customary law.

The monitoring body established by the Instrument should be independent, transparent and accessible to affected persons. Its composition and procedures must incorporate expertise and meaningful participation related to children's rights. Reports and relevant information should be available in child-friendly formats, and formal mechanisms should enable children to express their views. The Committee should also be empowered to receive communications from individuals or groups claiming to be victims and to assess whether reservations are compatible with the object and purpose of the treaty.

The recommendations contained in this paper are guided by the four general principles of the Convention on the Rights of the Child, namely non-discrimination, the best interests of the child, the right to life, survival and development, and the right of the child to be heard. These principles should guide the interpretation and implementation of all provisions of the Instrument.

Taken together, these recommendations seek to ensure that the Legally Binding Instrument becomes an enforceable and coherent framework capable of preventing business-related human rights harm, holding responsible actors accountable and providing effective remedies. The systemic integration of children's rights and environmental protection is essential to the Instrument's legitimacy to respond to present and future forms of corporate harm.

II. 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, 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 counter, mitigate and prevent 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 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 taken into account all the

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>.

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 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.

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>.

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 operations that 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 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 present this *policy brief*.

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. **General Comment No. 26 (2023) on Children's Rights and the Environment, with a Special Focus on Climate Change** (22 August 2023), pp. 78, p. 13. Available at: <https://www.ohchr.org/en/documents/general-comments-and-recommendations/crccgc26-general-comment-no-26-2023-childrens-rights>.

III. Terminological Approach

Terminological precision is essential to the coherence of the legally binding instrument on business and human rights. The terms used throughout the Instrument define the subjects whose conduct is regulated and the forms of responsibility and remedy that may arise. Imprecise language may obscure these distinctions and hinder implementation. For this reason, this policy paper adopts an approach to two terminological questions: the distinction between *human rights abuses* and *human rights violations*, and the use of *child-specific* and *age-based* terminology.

International human rights law was developed as a system of binding obligations imposed on States. States are required to respect, protect and fulfil human rights. The duty to respect requires them to refrain from interfering with the enjoyment of rights; the duty to protect requires measures against harm caused by third parties; and the duty to fulfil requires positive action to secure the exercise of rights. Within this framework, a *human rights violation* occurs when a State breaches an international human rights obligation through an act or omission.

Business enterprises occupy a different legal position. Although their activities can cause severe harm, companies are not generally subject to the same international obligations and responsibility regime as States. International standards on business and human rights therefore use *human rights abuse* to describe adverse effects caused by the acts or omissions of business enterprises and other non-State actors. The distinction between *abuse* and *violation* reflects the identity of the responsible actor and the legal basis of the responsibility attributed to it.

A corporate abuse and a State violation may coexist within the same situation. A company may cause environmental contamination, labour exploitation, displacement or another adverse human rights impact. At the same time, the State may violate its international obligations by failing to regulate the activity, prevent foreseeable harm, monitor corporate conduct, investigate the facts, sanction those responsible or provide an effective remedy. In such cases, the corporate conduct constitutes an abuse, while the State's act or omission may constitute a violation. The terms describe connected but distinct forms of responsibility.

Maintaining this distinction is necessary to preserve the regulatory purpose of the Legally Binding Instrument. The treaty process emerged in response to gaps in the prevention of and accountability for harm associated with transnational corporations and other business enterprises. State responsibility is already governed by the broader framework of international human rights law. If violation is used without distinction in provisions directed at business conduct, the text may shift attention from corporate responsibility to State failure and create uncertainty as to the applicable legal consequences.

Accordingly, this policy paper uses *human rights abuses* when addressing acts, omissions, responsibilities and liability of business enterprises. It uses *human rights violations* when a provision

concerns a State's breach of its international obligations. The combined expression *human rights abuses and violations* is appropriate only where a provision is intended to cover both corporate conduct and State responsibility.

The whole text uses a child rights-based approach which recognises children as rights holders, States as primary duty bearers and business enterprises as actors with responsibilities to respect children's rights. It requires the systematic application of the principles of participation, non-discrimination, accountability, survival and development, and the best interests of the child throughout the implementation of the Instrument.

Terminological precision is also required when addressing children's rights. *Child-specific* and *age-based* language shows that the two approaches are complementary, but perform different normative functions. They should therefore be selected according to the purpose and scope of each provision.

Child-specific terminology recognizes children as distinct stakeholders. Children face barriers linked to their age, development, dependency, evolving capacities and limited access to information and representation. They also experience business-related harm in forms that differ from adults, with consequences that can be irreversible or persist throughout their lives. General references to age or vulnerability may not capture these conditions or provide the enhanced safeguards required by children's rights.

For this reason, *child-specific* terminology is most appropriate in provisions concerning access to justice, participation, protection, investigation and remedy. *Child-sensitive* describes laws, policies, institutions and mechanisms designed to identify and respond to children's rights, needs and circumstances. *Child-friendly* refers to information, environments and procedures that children can understand, access and use safely. These terms ensure that children remain visible within the Instrument and that measures intended for victims in general are adapted to their specific circumstances.

By contrast, *age-based* terminology has a broader, cross-cutting function. It reflects a life-course approach that may encompass childhood, youth, adulthood and old age. *Age-appropriate* requires information, procedures or measures to correspond to a person's age, development and capacities. *Age-responsive* requires policies, services and systems to respond to the needs associated with different stages of life. These terms are suitable for provisions addressing several age groups, intersectional forms of vulnerability or measures intended to operate across the life course.

The use of *age-based* terminology should not replace child-specific safeguards where a provision concerns rights or barriers unique to children. At the same time, *child-specific* language should not displace *age-based* terms in provisions intended to protect several groups or stages of life. Where both dimensions are relevant, the terms may be combined. This preserves the cross-cutting

reach of age-based protection while recognizing children as a distinct group entitled to enhanced safeguards.

On this basis, the terminology used throughout this policy paper follows the subject and function of each provision. *Human rights abuses* refers to harmful corporate conduct, *human rights violations* to breaches of State obligations, and *adverse human rights impacts* to actual or potential effects addressed through prevention and due diligence. *Child-specific* terms are used for rights, procedures and safeguards directed at children, while *age-based* terms are used for measures with a broader life-course scope. This approach strengthens conceptual coherence and supports the effective implementation of the Legally Binding Instrument related to protecting vulnerable groups.

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

The following section presents textual suggestions to selected provisions 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 dimensions, and that no holistic sustainability can be achieved if only one of these aspects is addressed.

In this context, the recommendations address a range of substantive, procedural and institutional 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 previous sessions of the OEIGWG and are here consolidated and further explained in order to justify their inclusion in the revised draft of the Legally Binding Instrument.

For analytical clarity, the recommendations are organized into two complementary parts. Part I focuses on the substantive framework of the treaty, examining the Preamble plus Articles 1, 3, 4, 5, 6, 7, 8, 9, and 10, which establish core provisions related to guiding principals, definitions, scope, rights of victims, prevention, access to remedy, legal liability, jurisdiction and statutes of limitations. These provisions constitute the normative foundation of the Instrument and determine how business-related human rights abuses and violations are identified, prevented, and remedied.

Part II addresses the operational and institutional architecture of the treaty, focusing on Articles 13, 14, 15, 16, 21 and 22. These provisions regulate key mechanisms related to international cooperation, interpretation in light of international law, monitoring and institutional arrangements, implementation measures, treaty amendments, and the regime of reservations. Together, they shape the practical functioning of the Instrument and play a decisive role in ensuring its effectiveness in addressing the transnational and systemic nature of business-related human rights harms.

Taken together, the provisions examined in this section demonstrate that a child rights–based approach must be integrated across both the substantive and operational dimensions of the treaty. Only through the combined strengthening of normative obligations, institutional safeguards, and participatory mechanisms will the Legally Binding Instrument be capable of effectively protecting children and other structurally vulnerable groups from the human rights impacts of business activities.

Part I: Substantive Framework of the Treaty (Preamble and selected provisions of Articles 1-10)

1. Preamble

The rationale for choosing an amendment to the preamble lies in its strategic nature. In the technique of International Law, a preamble may perform four main functions, simultaneously or alternatively: interpretative, supplementary, incorporative, and, exceptionally, binding.

Current version: (PP9) *Recognizing that, in all actions concerning children, including in the context of business activities, the best interests of the child shall be a primary consideration, and shall be respected in pursuing remedies for violations of the rights of the child;*

Proposed version: (PP9) *Recalling the principles of the best interest of the child and the right to be heard affirmed in the 1989 Convention on the Rights of the Child, and recognizing children as independent rights holders whose evolving capacities require both respect for their agency and enhanced protection against adverse business-related impacts arising from their physical, mental and emotional development;*

The Convention on the Rights of the Child establishes, within its own text, four guiding principles, namely: non-discrimination, the right to life, survival and development, the best interests of the child, and the right to be heard. While the first two, although important, are provisions that are already covered by the current content of the LBI, we consider it appropriate to expressly mention the latter two principles.

The principle of the best interests of the child establishes that, in situations involving the interests of children and those of other groups, the interests of the child must prevail, without prejudice to the protection of other groups, especially those also categorized as vulnerable. General Comment No. 14 of the UN Committee on the Rights of the Child understands this principle as, in fact, a threefold concept, encompassing the child's right to have their interests treated as a primary consideration in decision-making, a fundamental, interpretative legal principle, and a procedural rule, according to which any decision must take into account its impacts on children. This principle is particularly relevant in the context of business activities, since harms suffered during childhood may have disproportionate, cumulative and long-term consequences due to children's physical, mental and emotional development, including impacts that may only become apparent later in life.

In turn, and intrinsically connected to the best interests of the child, the right to be heard is particularly important because it places children as protagonists in the defense of their own rights, recognizing them as rights holders under the current international legal framework, as provided for in Article 12 of the Convention on the Rights of the Child. This principle is also essential in ensuring children's effective access to justice and remedies in cases of business-related human rights abuse, including through child-sensitive procedures adapted to children's age, maturity and evolving capacities.

The proposal identifies the Convention on the Rights of the Child as an interpretative instrument in cases of disagreement, compelling States, at the moment of implementation and accountability linked to the LBI, to observe this international instrument and prevent justifications that undermine the protection and reparation of children's rights.

It also fulfills a supplementary function in cases of gaps within the LBI. Furthermore, with a view to preventing potential apparent conflicts between legal regimes, the reference to the Convention highlights its compatibility with the LBI. Finally, its binding character derives from the recognition of principles already established under International Law, notably the principles of the best interests of the child and the right to be heard, which further reinforce their mandatory observance by States that become signatories to the instrument.

2. 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

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**”.

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 1.2 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
- 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

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

¹³ *Ibidem*, Article 6.

¹⁴ *Ibidem*, Article 31.

the core of business and human rights regulation, providing coherence, legal certainty, and stronger safeguards for those most vulnerable.

3. 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 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.

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.

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

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 States Parties*” can be interpreted in a restrictivemanner 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.

4. 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. It not only establishes the formal recognition of victims’ rights, but also sets out the substantive guarantees necessary to ensure that access to justice and remedy is effective in practice. Although children can be encompassed by the reference to victims in general, it is important to highlight the specific safeguards required for child victims, particularly given the vulnerability inherent to their stage of life.

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*.

In this regard, the definition of victim should also include child human rights defenders and child environmental human rights defenders who suffer harm arising from efforts to promote, protect or defend human rights and the environment.

Through an interpretation of this provision in light of the principle of the best interests of the child, Article 4 strengthens the treaty's capacity to ensure that remedies are accessible, appropriate and responsive to children's specific needs. In this sense, a number of amendments are proposed below, including in light of the new language suggested by the Chair.

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-sensitive** 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, which has highlighted that legal processes are rarely adapted to children and therefore create additional barriers to accessing remedies. Therefore, it is fundamental that States provide child-friendly safeguards to ensure effective access to justice.

This concern is already reflected 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”. Thus, the article emphasizes the need for gender-responsive, child-sensitive and victim-centred justice. Access to justice must include the possibility of seeking remedies through judicial and non-judicial mechanisms and obtaining a fair and timely outcome. In ensuring this access, it is essential to consider children's specific characteristics and eliminate barriers that may hinder their ability to claim their rights.

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 non-judicial grievance mechanisms shall not infringe upon the right to access judicial mechanisms;*

4.2. (...) (e) be protected from any unlawful interference *against their human rights and fundamental freedoms, including against their privacy*, and from intimidation and reprisals *[or from any violence, threats, harassment, retaliation, de facto or de jure adverse discrimination, pressure or any other harm or arbitrary action], [whether online or offline]*, before, during and after *any administrative, judicial or other* proceedings have been instituted, as well as from re-victimization in the course of proceedings *to seek for* access to effective, prompt and adequate remedy, including through appropriate protective and support services *that take into account their specific needs, including in a manner that is gender and age-responsive-child-sensitive and disability-inclusive.*

With regard to the amendments proposed by the Chair²¹, Article 4.2(e) has been significantly expanded to include protection against a broader range of harms, such as violence, threats, harassment, retaliation, discrimination and other forms of pressure, as well as to explicitly cover both online and offline contexts. It also introduces a broader formulation by referring to the protection of victims' human rights and fundamental freedoms, and incorporates a disability-inclusive approach.

We consider that these additions represent a significant improvement, as they strengthen the protective scope of the provision and better reflect the diverse risks faced by victims in contemporary contexts. The explicit reference to online environments is particularly relevant, as it acknowledges emerging forms of harm and exposure.

However, we reiterate the importance of maintaining the terminology “child-sensitive” instead of “age-responsive”, differing from the Chair’s approach, which adopts the latter term, in line with the recommendations of the Committee on the Rights of the Child, as it more accurately reflects the need to adapt procedures and protections to children’s specific conditions and development.

²¹ United Nations Human Rights Council. (2025). **OEIGWG Chair-Rapporteur suggested redrafting of selected provisions (Articles 4 to 11) of the Updated draft legally binding instrument (LBI) to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, discussed during the thematic inter-sessional consultations on (April–June 2025).** Available at: <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session11/igwg-11th-summary-intersessional-consultations-annex.pdf>

Furthermore, the inclusion of “disability-inclusive” is a positive development, as it reinforces an intersectional approach to victim protection, which is particularly relevant for children in situations of multiple vulnerability.

4.4. “Victims shall have the right to request State Parties, pending the resolution of a case, *including through judicial and non-judicial mechanisms*, to adopt precautionary measures ~~related to urgent situations that present a serious risk of to avoid possible irreparable or serious harm, or to cease an ongoing human rights abuse.~~”

The introduction of Article 4.4 by the Chair²² constitutes an important advancement, as it strengthens the preventive dimension of the treaty. By allowing victims to request precautionary measures, the provision ensures that protection is not limited to post-abuse remedies, but also includes mechanisms to prevent irreparable harm and halt ongoing abuses.

This is particularly relevant for child victims, given their heightened vulnerability and the potentially irreversible consequences of delayed protection.

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;
- On Article 4.2(e), the incorporation of the broader protective scope proposed by the Chair, including protection against multiple forms of harm and in both online and offline contexts, as well as the inclusion of a disability-inclusive approach;
- On Article 4.4, the recognition of the right of victims to request precautionary measures in situations of risk of irreparable harm or ongoing abuses.

²² *Ibidem.*

5. 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. It establishes the State obligations necessary to guarantee that victims can safely access justice and remedies.

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 where there are reasonable grounds to believe that such harms may occur, it is recommended that the expression "potential or actual" be included in Article 5.1. Furthermore, to highlight the specific obstacles faced by children within legal proceedings, explicit references to children should be maintained in Article 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 to, 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.*

As previously discussed in relation to the Chair's proposal for Article 4.2, the expansion of the scope of protection to include multiple forms of harm represents a significant improvement, since it strengthens the provision by better reflecting the range of risks faced by victims. This broader approach should also inform the interpretation of Article 5.1, which protects victims, their representatives, families and witnesses from "unlawful interference" with their human rights and fundamental freedoms.

In line with this approach, we propose the inclusion of the expression "potential or actual", as it reinforces the preventive dimension of the provision, ensuring protection not only after harm occurs, but also in situations of risk.

*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 highlights that business activities may negatively affect children's rights. Therefore, it is essential that States adopt measures to ensure that such environments are safe and that effective remedies are available.

*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.*

The Chair's proposal to redraft Article 5.3 aims to clarify States' duty to investigate human rights abuses or violations and to take action against the natural or legal persons responsible. We support this objective and, in particular, the Chair's proposal to include the expression "within a reasonable time", as it helps ensure that undue delays in investigations do not hinder victims' access to effective remedies, particularly where their age or physical, mental or psychological condition may create additional barriers to accessing justice, which is especially relevant for children and other vulnerable groups.

In addition to the Chair's proposal, we suggest adding "transparently", as transparency is particularly important to uphold victims' rights, including their right to the truth, and to prevent impunity by ensuring that investigations are conducted free from unlawful interference. Finally, maintaining the requirements of effectiveness, promptness, thoroughness and impartiality is essential to ensure that investigations produce meaningful results.

*Article 5.4: States Parties, pending the resolution of a case, shall adopt, either ex officio or ~~on~~ **upon** request by the victim, precautionary ~~measures related to~~ **in** urgent situations that present a serious risk of or an ongoing, human rights abuse, **ensuring that such measures are appropriately tailored to the needs of vulnerable groups.***

The Chair's proposal's objective to this article is to reinforce the obligation to adopt precautionary measures and to strengthen the preventive dimension of the provision. In line with this objective, our suggestions ensure that States act in situations of urgency, not only after abuses are fully established.

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 online environments, and the express reference to children, in order to highlight the need to address the specific obstacles faced by this group;
- On Article 5.3, the strengthening of provisions related to the duty to investigate, ensuring that such investigations are effective, prompt, transparent and capable of leading to accountability within a reasonable time;
- On Article 5.4, the reinforcement of precautionary measures as an essential tool to address urgent situations.

6. Prevention (Article 6)

Article 6 is one of the core provisions of the LBI, as it establishes States' obligations to formulate and implement legislation and legal policies to regulate business activities and ensure that companies respect human rights throughout their operations and value chains. By setting out thresholds to prevent, mitigate and remedy business-related harms, this provision advances the operationalization of binding duties reflected in the UN Guiding Principles on Business and Human Rights.

In this context, particular attention must be given to children, given their heightened vulnerability to environmental harms, which may directly affect their health, development and education. Therefore, the implementation of this provision must be aligned with a child-rights-based approach.

In light of the Chair's proposal to redraft Articles 6.1 and 6.2, we support the objective of strengthening States Parties' duty to adopt preventive measures, ensure respect for human rights, and establish a clear and effective legal framework governing business

enterprises' responsibilities. We share the Chair's view that States' obligations under this provision should not be merely programmatic, but should require concrete legislative, regulatory and other measures capable of preventing business-related human rights abuses.

However, while recognizing the considerations informing the Chair's proposed approach, we would respectfully suggest an alternative formulation for consideration:

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

*(d) promote the active, **informed** and meaningful participation 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**.*

Our proposition aims for ensuring that domestic legal frameworks effectively reflect international human rights obligations, particularly those established under the Convention on the Rights of the Child, and that they impose clear duties on business enterprises, including the obligation to conduct human rights due diligence.

Furthermore, in accordance with Article 12 of the Convention on the Rights of the Child, children must be heard in all decision-making processes affecting them, and their views must be given due weight according to their age and maturity. This requires ensuring their participation in a child-friendly, accessible and non-discriminatory manner.

Additionally, both in consultation processes and in impact assessments, it is essential that information, particularly on environmental matters, is made available in a child-accessible format, enabling meaningful participation.

Article 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 intervals, prior to and throughout their operations;***

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

(d) *conduct meaningful ~~consult~~ consultation and 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.*

The emphasis placed on due diligence reinforces the centrality of preventive obligations within this provision. Human rights due diligence must be understood as a legally enforceable requirement, capable of ensuring that business enterprises identify, prevent, mitigate and account for their impacts on human rights.

In this context, human rights and environmental impact assessments play a fundamental role in prevention, particularly when they explicitly incorporate child-specific considerations. In accordance with General Comment No. 26, such assessments must evaluate both direct and indirect environmental impacts on children's rights. The inclusion of child-rights impact assessments strengthens the preventive dimension of the provision, ensuring that risks disproportionately affecting children are identified and addressed in advance. Moreover, meaningful consultation reinforces the recognition of children as rights-holders and active participants, in line with their evolving capacities.

In summary, the proposed amendments to Article 6 include the following:

- On Article 6.2, the need for domestic legislation to reflect States' international human rights obligations, particularly those related to children's rights;
- On Article 6.2(d), the strengthening of participatory processes through the inclusion of children and the guarantee of meaningful, informed and child-sensitive participation;
- On Article 6.4, the inclusion of child-rights impact assessments as part of human rights due diligence, particularly in contexts of environmental and business-related risks.

7. 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 adverse human rights impacts 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.

In Article 7.2 the following changes were proposed by the Chair-Rapporteur²³:

7.2. "State Parties shall, consistent with its domestic legal ~~principles and administrative systems~~:
(a) develop and implement effective ~~policies~~ **legislative or other measures to promote** ensure the accessibility of its relevant ~~judicial and not judicial mechanisms~~ **State agencies** to victims of **human rights abuses in the context of business activities** and their representatives, taking into account the particular needs and interests of those victims who may be at risk of vulnerability ~~or marginalization~~;
(b) progressively ~~reduce~~ **remove** the legal, practical, and other relevant obstacles that, individually or in combination, hinder the ability of a victim from accessing such ~~judicial and non-judicial mechanisms~~ **State agencies** for the purposes of seeking an effective remedy; and
(c) ensure that relevant ~~judicial and non-judicial mechanisms~~ **State agencies** can either deliver, or contribute to the delivery of, effective remedies."

Regarding these suggestions, we consider that replacing "consistent with its domestic legal and administrative systems" with "consistent with its domestic legal principles" would weaken the provision. The reference to "legal and administrative systems" anchors the obligation in concrete institutional and procedural frameworks, whereas "legal principles" introduces a higher degree of abstraction and interpretative flexibility, potentially reducing the norm's enforceability.

²³ Ibidem.

By contrast, the substitution of “policies” with “legislative and other measures” is a significant improvement. This formulation strengthens the normative density of the provision by requiring States to adopt concrete and actionable steps.

We also support the replacement of “State agencies” with “judicial and non-judicial mechanisms”. This shift reflects a change of approach to a functional understanding of access to remedy and also aligns the provision with Pillar III of the United Nations Guiding Principles on Business and Human Rights, which recognizes the complementary roles of judicial and non-judicial mechanisms in ensuring effective remedies.²⁴

With respect to the proposed removal of the term “marginalization,” we do not agree, as it is conceptually distinct from “vulnerability.” The EFA Global Monitoring Report 2010 defines marginalization as “a form of acute and persistent disadvantage rooted in underlying social inequalities,”²⁵ and UNESCO further illustrates this concept through concrete examples: “most disadvantaged sections of society are girls and women, hard-to-reach groups such as indigenous people and ethnic minorities, poor households, people living in informal settlements, individuals with disabilities, rural populations, nomadic populations, those affected by armed conflict and HIV and AIDS, and street and working children.”²⁶

By contrast, the United Nations Office for Disaster Risk Reduction defines vulnerability as “the conditions determined by physical, social, economic and environmental factors or processes which increase the susceptibility of an individual, a community, assets or systems to the impacts of hazards,” thereby emphasizing exposure to risk rather than the structural and enduring inequalities that characterize marginalization.²⁷

In the same vein, Chumo, Kabaria and Mberu affirm that “marginality refers to social exclusion and discrimination faced by specific groups, whereas vulnerability encompasses broader susceptibility to harm from various factors. Vulnerability, characterized by heightened susceptibility to harm from everyday challenges, often stems from factors like age, ethnicity, gender, disability, socioeconomic status, and can restrict access to essential support and development benefits. A significant underlying cause of vulnerability is

²⁴ https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

²⁵ <https://unesdoc.unesco.org/ark:/48223/pf0000186606>

²⁶ <https://unesdoc.unesco.org/ark:/48223/pf0000188679>

²⁷ <https://www.undrr.org/terminology/vulnerability>

marginalization, a process that pushes specific groups to the periphery of societal systems (economic, cultural, political, social), resulting in depreciations and disadvantages”.²⁸

In this sense, maintaining both terms ensures conceptual precision and reinforces a more robust and protective framework, capable of capturing not only the condition of risk but also its underlying determinants.

Finally, regarding the substitution of “reduce” with “remove”, we agree, as it seeks to impose a stronger obligation on States to eliminate barriers to access to remedy.

Moreover, the Chair-Rapporteur also suggested redrafting the article 7.3 as it follows:

7.3. "The policies *and measures* referred to in Article 7.2 (a) shall address to the extent applicable to the *State agency mechanism* in question:

(a) the need to ensure that procedures and facilities for accessing and interacting with such *judicial and non-judicial mechanisms agencies* are responsive to the needs of the people for whose use they are intended, including by providing appropriate, adequate, and effective legal aid throughout the legal process;

(b) the need to ensure that victims *and their representatives* have ready access to reliable sources of information, in relevant languages and accessible *and gender-responsive* formats to adults and children alike, including those with disabilities, for victims and their representatives, about their human rights, the role and capacity of relevant *judicial and non-judicial mechanisms-State agencies* in relation to helping victims obtain an effective remedy, *including in relation to* the status of their claims, and appropriate support to enable them to participate effectively in all relevant processes, including by facilitating requests for disclosure of relevant information of business-related activities or relationships linked to a human rights abuse;

~~(c) the implications in terms of access to remedy of imbalances of power as between victims and business enterprises; and~~

~~(d) risks of reprisals against victims and others."~~

Regarding the proposed amendments, we consider that the replacement of “policies” with “policies and measures” is not the most appropriate approach. In order to preserve the internal coherence and terminology consistency of the treaty it would be preferable to use only the term “measures”, particularly considering that the term policies was removed from Article 7.2(a).

Regarding the addition of the term “and gender-responsive”, we consider it an improvement. It goes beyond formal accessibility by requiring that procedures and

²⁸

<https://public-pages-files-2025.frontiersin.org/journals/sustainable-cities/articles/10.3389/frsc.2025.1693073/pdf>

information account for gender-specific barriers, by requiring adapting mechanisms to unequal social conditions and risks.

We also support the substitution of “State agencies” with “judicial and non-judicial mechanisms”, as previously defended.

Regarding the addition of “and their representatives” we consider it a significant improvement. It acknowledges that access to remedy is often exercised through intermediaries, including legal representatives such as parents or guardians acting on behalf of children, as well as human rights lawyers and civil society organizations. This clarification strengthens the provision by ensuring that both victims and those acting on their behalf have access to information and support, thereby enhancing effective participation and aligning with a victim-centered approach

However, the removal of subparagraphs (c) and (d) raises concerns, because they play a crucial role in acknowledging structural and contextual barriers faced by victims. Their removal may weaken the provision by reducing its ability to directly address these well-documented challenges.

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 vulnerable groups**; 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), the addition of “actively” emphasizes not only the depth of consultation that need to be conducted with the participation of children²⁹, but also the proactive involvement of victims in those processes.

On the other hand, in article 7.5(c), 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.

In summary, the proposed amendments to Article 7 include the following:

²⁹ For more on this topic, see considerations for Article 6 on the same matter.

- On Article 7.1, the clarification of States Parties' obligations to ensure effective access to remedy and justice, while expressly recognizing the specific barriers faced by children and other groups in vulnerable or marginalized situations;
- On Article 7.2, support for the Chair-Rapporteur's replacement of "policies" with "legislative and other measures", the substitution of "State agencies" with "judicial and non-judicial mechanisms", and the replacement of "reduce" with "remove", while defending the maintenance of the reference to "legal and administrative systems" and of both the terms "vulnerability" and "marginalization";
- On Article 7.3, disagreement with the Chair-Rapporteur's replacement of "policies" with "policies and measures", defending instead the use of only the term "measures" in order to preserve the treaty's terminological coherence, while supporting the inclusion of gender-responsive language, the recognition of victims' representatives, and the substitution of "State agencies" with "judicial and non-judicial mechanisms";
- On Article 7.3(c) and (d), concerns regarding the Chair-Rapporteur's proposal to remove provisions addressing power imbalances and risks of reprisals, due to their importance in confronting structural barriers faced by victims;
- On Article 7.5(b), the inclusion of the term "actively" to strengthen the requirement of proactive and meaningful participation of victims, especially children, in the design and delivery of remedies;
- On Article 7.5(c), support for the expression "effective measures" in order to reinforce the need for concrete and enforceable State action in ensuring compliance with remedies.

8. 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 LBI³⁰ appears to be the most effective approach to reinforcing the obligation to establish a comprehensive and adequate system of legal liability. Furthermore, it will ensure that joint and several liability remains available where the applicable legal requirements for responsibility are met by multiple actors involved in causing or contributing to the same harm. 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.

Regarding Art. 8.1 the Chair-Rapporteur did the following recommendations³¹:

8.1. "Each State Party *shall take effective legislative and other ~~adopt such~~ measures ~~as may be necessary~~* to establish a comprehensive and adequate system of legal liability of natural and legal persons conducting business activities within their territory, jurisdiction or otherwise under their control, for human rights abuses *and violations* that may arise from *their own actions or omissions in the context of* their business activities or *business* relationships, including those of transnational character."

The replacement of "take such measures as may be necessary" with "take effective legislative and other measures" strengthens the level of state obligation, making the provision more robust. This may also be a viable solution.

On the other hand, the expression "from their own actions or omissions" introduces a significant limitation to the attribution regime, as it requires conduct directly attributable to the subject as a precondition for responsibility. This tends to weaken the provision by increasing the evidentiary burden and making accountability more difficult in complex corporate contexts, where abuses often result from fragmented and diffuse arrangements.

³⁰ United Nations Human Rights Council. (2021). **OEIGWG Chairmanship Third Revised Draft: Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises.** Available at: <https://www.ohchr.org/sites/default/files/LBI3rdDRAFT.pdf>

³¹ United Nations Human Rights Council. (2025). **OEIGWG Chair-Rapporteur suggested redrafting of selected provisions (Articles 4 to 11) of the Updated draft legally binding instrument (LBI) to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, discussed during the thematic inter-sessional consultations on (April–June 2025).** Available at: <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session11/igwg-11th-summary-intersessional-consultations-annex.pdf>

Although the term “business relationships” formally preserves the application to transnational supply chains, it does so under a more restrictive model of causal linkage, in which the mere existence of a business relationship is not sufficient to establish attribution. Accordingly, this represents a weakening of the protective scope of the provision, as it limits the possibility of holding actors accountable for abuses arising from indirect structures of control or influence.

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 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. This position does not contradict the recommendation made in relation to Article 7.2. There, reference to domestic legal and administrative systems identifies the institutional framework through which access to remedy must be operationalized. In Article 8.2, by contrast, the same formulation operates as a qualifier of the obligation to establish effective liability and may therefore permit domestic law to narrow the standard required by the Instrument.

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.

In addition, introducing “*particularly people in vulnerable situations*” in Article 8.2(a) would contribute to ensuring that liability regimes adequately address the specific remedial needs of victims facing heightened vulnerabilities, such as children. Since the proposed PP9 already expressly recognizes children as a group particularly affected by vulnerability, there is no need for a separate child-specific reference in this provision.

Finally, regarding Article 8.2, the Chair-Rapporteur proposed a redraft in which he recommends replacing “shall” with “may”, which we disagree with, as it weakens the provision.

Nevertheless, the Chair-Rapporteur also proposed redrafting the article 8.3 with the flowing wording³²:

8.3. “Subject to the legal principles of the State Party, the liability of legal and natural persons referred to in Article 8.1 above, shall be established for:

(a) *acts or omissions causing conspiring to commit* human rights abuses or violations; *or and*

(b) *contributing to aiding, abetting, facilitating, and counselling the commission of* human rights abuses or violations, *resulting from actions or omissions that, in combination with the activities of other legal or natural persons, cause an adverse human rights impact, or substantially influence another legal or natural person to cause an adverse human rights impact;*”

In subparagraph (a), the alteration of the wording “conspiring to commit” to “acts or omissions causing” broadens, in practice, the scope of liability, as it shifts the focus away from the need to prove a subjective element related to agreement or intent to participate in the abuse or violation and instead allows attribution based on a causal link between conduct and the harmful result. This makes it possible to establish responsibility on the basis of the relationship between an act or omission and the human rights impact, regardless of proof of deliberate involvement in a coordinated plan to commit the abuse or violation.

In subparagraph (b), the replacement of “aiding, abetting, facilitating, and counselling” with “*contributing to human rights abuses or violations, resulting from actions or omissions that, in combination with the activities of other legal or natural persons, cause an adverse human rights impact, or substantially influence another legal or natural person to cause an adverse human rights impact*” further expands the scope of accountability. While

³² *Ibidem*.

the previous terms required relatively defined forms of secondary participation, the concept of “contributing” allows for the inclusion of more diffuse and indirect forms of involvement. Also, the use of “adverse human rights impact” in a liability provision nevertheless requires caution. As clarified in the Terminological Approach of this paper, adverse human rights impact is a preventive and due-diligence concept that does not, by itself, prejudice legal liability. Accordingly, Article 8 should clearly distinguish between the existence of an adverse impact and the legal conditions under which causing or contributing to that impact gives rise to liability.

Taken together, these changes significantly broaden the scope of application of the provision, making it more feasible to hold accountable actors who operate in indirect, structural, or fragmented ways in the production of human rights abuses or violations, particularly in complex economic and institutional contexts where human rights impacts result from the interaction of multiple agents and decision-making levels.

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 Draft³³, 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,

³³ United Nations Human Rights Council. (2021). **OEIGWG Chairmanship Third Revised Draft: Legally Binding Instrument to Regulate, in International Human Rights Law, the Activities of Transnational Corporations and Other Business Enterprises**. Available at: <https://www.ohchr.org/sites/default/files/LBI3rdDRAFT.pdf>

thereby preventing business from invoking a lack of funds when facing civil proceedings in which victims seek compensation for the harm suffered.

Regarding article 8.6, the Chair-Rapporteur suggest a new language as is follows:

8.6.bis. State Parties shall take all effective legislative and other measures to ensure that their domestic law provides for the joint and several liability of business enterprises for the failure to take adequate measures to prevent foreseeable human rights abuses that were caused or contributed to by actions and/or omissions of legal or natural persons with whom they have a business relationship

The proposal of Article 8.6 bis represents a significant normative advancement from the perspective of human rights protection, insofar as it expressly introduces joint and several liability for the failure to prevent human rights abuses, thereby reinforcing corporate due diligence obligations across complex value chains.

However, replacing Article 8.6 with this new wording is not appropriate. Article 8.6 performs a distinct and complementary function, operating at the level of sanctions applicable once liability has been established, whereas Article 8.6 bis addresses a different normative dimension, namely liability grounded in the failure to prevent harm.

In this sense, the most coherent solution would be the coexistence of both provisions, ensuring that the regime preserves both a robust sanctions framework and a strengthened preventive liability standard.

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 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. Conducting human rights due diligence should not constitute an automatic safe

harbour from liability. Whether liability arises must remain subject to the applicable substantive requirements of the relevant liability regime.³⁴

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

- On Article 8.1, the strengthening of corporate liability regimes through broader obligations imposed on States Parties and the defense of joint and several liability, while expressing concerns that the Chair-Rapporteur's proposed expression "from their own actions or omissions" narrows the scope of accountability in complex corporate structures;
- On Article 8.2, the recommendation to remove restrictive qualifiers such as "consistent with its domestic legal and administrative systems" and "as appropriate to the circumstances", as well as disagreement with the Chair-Rapporteur's proposal to replace "shall" with "may", in order to preserve the binding and protective nature of the provision;
- On Article 8.3, support for the Chair-Rapporteur's broader standards of liability based on "acts or omissions causing" and "contributing" to human rights abuses or violations, thereby expanding accountability for indirect, diffuse, and fragmented forms of participation in complex corporate contexts;
- On the proposed inclusion of a new provision regarding operational grievance mechanisms, the guarantee that victims' access to courts and judicial remedies shall not be precluded by the use of non-judicial mechanisms;
- On Article 8.5, the defense of financial security and availability of assets requirements to ensure effective compensation for victims;
- On the proposed Article 8.6 bis, support for the Chair-Rapporteur's introduction of joint and several liability for failures to prevent foreseeable abuses linked to business relationships, while defending the coexistence of both Articles 8.6 and 8.6 bis due to their complementary functions;
- On Article 8.7, the affirmation that human rights due diligence should not automatically exempt companies from liability for human rights abuses.

³⁴ UN. **Guiding Principles on Business and Human Rights**, page 24. Available at: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf.

9. 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,³⁵ is crucial. In response, jurisdiction should encompass all territories where abuses 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 abuses in cases where:

- (a) the human rights abuse **or the act or omission given rise to or contributing** to it took place, in whole or in part, 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.*

In Article 9.1(a), the inclusion of the expression “the act or omission giving rise to or contributing to it” clarifies that the territorial connecting factor may arise not only from the location where the human rights abuse took place, but also from the location of an act or omission that gives rise to or contributes to the abuse. This is particularly relevant in business and human rights cases, where the conduct legally relevant to a claim may consist of either an act or an omission. The proposed wording therefore makes clear that the location of such act or omission may constitute a territorial nexus for the exercise of jurisdiction where it took place, in whole or in part, within the territory or jurisdiction of the State Party.

The deletion of the term “relevant” in Article 9.1(b), in line with the Chair’s³⁶ suggestion, is necessary to avoid introducing an unnecessary and potentially restrictive

³⁵ UN Committee on the Rights of the Child (n. 8), pp. 66-72, p. 18-19.

³⁶ United Nations Human Rights Council. (2025). **OEIGWG Chair-Rapporteur suggested redrafting of selected provisions (Articles 4 to 11) of the Updated draft legally binding instrument (LBI) to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, discussed during the thematic inter-sessional consultations on (April–June 2025).** Available at: <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session11/igwg-11th-summary-intersessional-consultations-annex.pdf>

qualifier into the determination of jurisdiction. The notion of “relevant harm” is inherently indeterminate and may open space for narrow interpretations, allowing decision-makers to exclude certain forms or dimensions of harm from the jurisdictional scope of the provision. This is particularly problematic in the context of business-related human rights abuses, where harm is often diffuse, cumulative, or only partially identifiable at the outset.

By removing this qualifier, the provision adopts a broader and more objective standard, ensuring that any harm sustained, in whole or in part, within the territory or jurisdiction of a State Party can ground jurisdiction, irrespective of subjective assessments of its “relevance.” This approach strengthens legal certainty, prevents the exclusion of complex or emerging forms of harm – such as environmental or intergenerational impacts – and enhances the effectiveness of the instrument in addressing the realities of transnational corporate activities.

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 CRC³⁷ 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.

Accessing relevant information and evidence dispersed across multiple jurisdictions is also highly challenging³⁷, and victims frequently encounter additional obstacles such as

³⁷ UN Committee on the Rights of the Child (n. 8), pp. 66-72, p. 18-19.

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.

9.2. "For the purposes of Article 9.1, a legal person is considered domiciled in any territory or jurisdiction ~~of the State in which it has its~~:

- (a) ~~where it has its statutory seat~~ *place of incorporation or registration*;
- (b) ~~under the law of which it was incorporated or formed~~ *principal assets or operations*;
- (c) ~~where it has its central administration or management~~; or
- (d) ~~where it has its principal place of business~~ *or activity*."

Article 9.2. bis. The courts of the State Party that have jurisdiction over one of a number of defendants under Article 9.1(c), shall have jurisdiction over all of the defendants in respect of closely connected claims

The reformulation of Article 9.2 reflects a deliberate alignment with well-established doctrines of international law concerning jurisdictional connecting factors. As highlighted in the literature, jurisdiction in civil matters is typically grounded on identifiable links between the legal person and a given State, such as incorporation, central administration, or principal place of business. These factors are not arbitrary; rather, they represent a hybridization of territorial and personal connections that justify the exercise of adjudicative authority.

In this sense, the Chair's³⁸ proposal replaces broader and potentially indeterminate expressions – such as "*principal assets or operations*" – with more structured and internationally recognized criteria. The concept of incorporation or formation, for example, has long been treated as analogous to the "nationality" of a legal person, particularly in the context of diplomatic protection and jurisdictional attribution.³⁹ This provides a formal and legally verifiable link between the entity and a State, enhancing legal certainty.

³⁸ United Nations Human Rights Council. (2025). **OEIGWG Chair-Rapporteur suggested redrafting of selected provisions (Articles 4 to 11) of the Updated draft legally binding instrument (LBI) to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, discussed during the thematic inter-sessional consultations on (April–June 2025).** Available at: <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session11/igwg-11th-summary-intersessional-consultations-annex.pdf>

³⁹ ALLEN, Stephen et al. (eds.). *The Oxford Handbook of Jurisdiction in International Law*. Oxford: Oxford University Press, 2019. Disponível em: <https://doi.org/10.1093/law/9780198786146.001.0001>, p. 349.

Another important dimension of the reformulation is its role in mitigating *forum-shopping*. As the literature indicates,⁴⁰ the multiplication of jurisdictional grounds – especially when loosely defined – may incentivize strategic litigation choices based on advantage rather than a genuine connection to the dispute. By articulating clearer and more objective criteria for domicile, the revised Article 9.2, as suggested by the Chair⁴¹, limits such practices and promotes a more balanced allocation of jurisdiction.

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 any aspect of such human rights abuse, the relevant State agencies of each State shall consult one another with a view to coordinating their actions.

Article 9.4 bis (or Article 9.1 ter): “The courts of any State Party shall have jurisdiction in respect of a civil claim brought by a victim arising from a human rights abuse covered under this (Legally Binding Instrument) in order to avert a denial of justice if no other court is available, the claimant cannot reasonably be expected to seize another court and there is a sufficient connection to the State Party concerned. A sufficient connection consists in particular in:

- (a) the presence or habitual residence of the claimant;*
- (b) the nationality of the claimant or the defendant;*
- (c) the presence of assets of the defendant;*
- (d) substantial activity of the defendant; or*
- (e) a civil claim based on an act giving rise to criminal proceedings in the court seized of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings.”*

Article 9.4 bis (or Article 9.1 ter) introduces a crucial complementary basis of jurisdiction by allowing courts to hear claims in situations where no other forum is reasonably available and a sufficient connection exists. This provision reflects a broader and more realistic understanding of jurisdiction in international law, acknowledging that strictly territorial or nationality-based criteria are not always capable of addressing the complexities

⁴⁰ ALLEN, Stephen et al. (eds.). *The Oxford Handbook of Jurisdiction in International Law*. Oxford: Oxford University Press, 2019. Disponível em: <https://doi.org/10.1093/law/9780198786146.001.0001>; RYNGAERT, Cedric. *Jurisdiction in International Law*. 2. ed. Oxford: Oxford University Press, 2015. Disponível em: <https://doi.org/10.1093/law/9780199688517.001.0001>.

⁴¹ United Nations Human Rights Council. (2025). **OEIGWG Chair-Rapporteur suggested redrafting of selected provisions (Articles 4 to 11) of the Updated draft legally binding instrument (LBI) to regulate, in international human rights law, the activities of transnational corporations and other business enterprises, discussed during the thematic inter-sessional consultations on (April–June 2025)**. Available at: <https://www.ohchr.org/sites/default/files/documents/hrbodies/hrcouncil/igwg-transcorp/session11/igwg-11th-summary-intersessional-consultations-annex.pdf>

of transnational disputes. In doing so, it responds to well-documented gaps in the current jurisdictional framework, where the absence of an available forum may leave certain claims – particularly those involving cross-border corporate conduct – without judicial resolution.

By incorporating a form of *forum necessitatis*,⁴² the provision operates as a residual and exceptional mechanism designed to prevent denial of justice while maintaining coherence with general principles of jurisdiction. Its structure is deliberately calibrated: jurisdiction is not asserted broadly, but conditioned on both the unavailability of alternative fora and the existence of objective connecting factors. This ensures that the exercise of jurisdiction remains anchored in internationally recognizable links, thereby avoiding arbitrary or excessive assertions of authority and preserving respect for the jurisdictional balance between States.

At the same time, the inclusion of this provision significantly enhances the effectiveness of the instrument in the business and human rights context. Structural obstacles – such as fragmented corporate structures, evidentiary asymmetries, and procedural barriers – often impede victims’ ability to access justice in traditional fora. By providing a narrowly tailored jurisdictional safety valve, Article 9.4 bis ensures that such obstacles do not result in impunity. It thus reinforces access to justice while aligning the jurisdictional regime with contemporary developments in international law, where the prevention of denial of justice is increasingly recognized as a central consideration in the design of jurisdictional rules.

In conclusion, the changes proposed ensure:

- On Article 9.1: The inclusion of “acts or omissions” and the expansion of access to justice to include civil and criminal proceedings;
- On Article 9.1(b): The deletion of the term “relevant” to ensure a broader and more objective understanding of harm;
- On Article 9 (general framework): The exclusion of the application of the doctrine of *forum non conveniens*, strengthening access to justice in transnational cases;
- On Article 9.2: The clarification and alignment of jurisdictional connecting factors with established principles of international law;

⁴² RYAN, Sophie. Fundamental legal conceptions and the international law of (civil) jurisdiction. The Australian Year Book of International Law Online, v. 42, n. 1, p. 130–168, 2024. Disponível em: <https://doi.org/10.1163/26660229-04201024>.

- On Article 9.2 bis: The consolidation of jurisdiction over multiple defendants in closely connected claims;
- On Article 9.4 bis (or Article 9.1 ter): The introduction of a *forum necessitatis* clause to prevent denial of justice.

By incorporating these recommendations, Article 9 establishes a more coherent, effective, and accessible jurisdictional regime, capable of addressing the complexities of transnational business activities. These amendments ensure that jurisdictional rules do not operate as barriers to justice, but rather as mechanisms that facilitate accountability, prevent impunity, and guarantee that victims – especially children and other structurally vulnerable groups – have access to adequate, timely, and effective remedies.

10. 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

(c) are determined in a way that respects *and protects* the rights of victims in accordance with Article 4,

(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 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)⁴³. For child victims, limitation periods shall not begin to run before the child has reached the age of majority or has effective access to an available and adequate remedy.

Taking this into account, our suggestions are designed to address the immediate, long-term, and intergenerational effects of harmful actions⁴⁴, 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

⁴³ This includes justice for sexual violence against children that should have no expiration date: <https://action.ecpat.org/timeless-justice>.

⁴⁴ 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.”

(2003)⁴⁵, “for rights to have meaning, effective remedies must be available to redress violations”.

In conclusion, the changes proposed ensure:

- On Article 10.1: The removal of the expressions “the most serious” and “of concern to the international community as a whole,” ensuring broader applicability of the non-applicability of limitation periods;
- On Article 10.2(a): The recognition of immediate, long-term, and intergenerational effects of harm, particularly in relation to children;
- On Article 10.2(b): The prevention of unduly restrictive limitation periods in light of contextual and evidentiary challenges;
- On Article 10.2(d): The suspension of limitation periods where no effective and adequate remedy is available;
- On Article 10.3: The establishment of a reasonable time frame for the commencement of proceedings, taking into account delayed harm, extraterritorial contexts, and the specific conditions of victims, particularly children and persons in vulnerable situations.

Part II: Operational and Institutional Architecture of the Treaty (Articles 13–16, 21–22)

1. International Cooperation (Article 13)

Article 13 constitutes the central pillar for the effective implementation of this Legally Binding Instrument, reinforcing that international cooperation is a binding obligation grounded in Articles 55 and 56 of the UN Charter⁴⁶. It is important to highlight that this duty is particularly critical in the spheres of environmental protection and climate change. As

⁴⁵ 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).

⁴⁶ UNITED NATIONS. Charter of the United Nations, San Francisco, 26 June 1945. Available at: <https://www.un.org/en/about-us/un-charter>. Accessed: 29 Jan. 2026.

underscored by the ICJ Advisory Opinion, “the duty of States to co-operate for the protection of the environment is a rule whose customary character has been established”⁴⁷.

In the specific context of business and human rights, in which corporate activities frequently transcend national borders, this duty to cooperate becomes a practical necessity. Therefore, International Cooperation is essential to ensure justice across complex global supply chains. Without a robust framework in this regard, victims of transnational corporate abuses will continue to encounter systemic barriers in their pursuit of justice and effective remedies.

13.2. States Parties recognize the importance of international cooperation, including financial and technical assistance and capacity building, for the realization of the purpose of the present (Legally Binding Instrument) and will undertake appropriate and effective measures in this regard, between and among States and, ~~as appropriate~~, in partnership with relevant international and regional organizations and civil society. Such measures include, but are not limited to:

We suggest the deletion of the phrase “as appropriate”, because this change broadens the scope and applicability of partnerships with the relevant stakeholders concerned.

*(c) raising awareness about the rights of victims of business-related human rights abuses **and violations** and the obligations of States under this (Legally Binding Instrument), **ensuring that such information is age-appropriate and accessible**;*
*(d) facilitating cooperation in research and studies on the challenges, good practices and experiences in preventing human rights abuses **and violations** in the context of business activities, including those of transnational characters;*

We suggest adding “and violations” to ensure the text covers the full spectrum of State and non-State accountability.

Also, according to the child participation principle of the Convention on the Rights of the Child⁴⁸, children must be able to articulate and express their views on matters that affect

⁴⁷ INTERNATIONAL COURT OF JUSTICE. Advisory Opinion: Obligations of States in Respect of Climate Change, 23 July 2025, para. 140, Document No. 187-20250723-adv-01-00-en. Available at: <https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>. Accessed: 29 Jan. 2026.

⁴⁸ UNICEF; UN GLOBAL COMPACT; SAVE THE CHILDREN. Children’s Rights and Business Principles, 2012. UNICEF/UN0215999. Available at: <https://www.unicef.org/iran/media/5136/file/Children’s%20Rights%20and%20Business%20Principles.pdf>. Accessed: 29 Jan. 2026.

them. This principle involves the sharing of information and dialogue between children and adults, based on mutual respect and in an environment that fosters freedom of expression. Such processes must be authentic, inclusive, and meaningful, taking into account children's evolving capacities and providing opportunities for them to learn constructive ways to influence the world around them⁴⁹.

Accordingly, it is important that the LBI ensures that information is child-friendly and accessible, in order to be truly effective. To ensure that international cooperation translates into actual protection, states must provide information in languages, formats, and platforms that children can understand, safeguarding their right to be heard and their ability to seek remedies for business-related harms without being impeded by age-inappropriate communication.

(f) promoting cooperation on environmental protection, climate change mitigation, and sustainable business practices to prevent human rights and ecological harms.

The proposed addition of sub-paragraph (f) recognizes the right to a clean, healthy, and sustainable environment as a structuring dimension of modern human rights. Given the transnational nature of environmental degradation, States cannot address these challenges in isolation. Therefore, this provision transforms the duty of cooperation from a general principle into a functional mandate to prevent corporate-led ecological harms, ensuring that the right to a clean, healthy, and sustainable environment serves as a structuring dimension of this LBI.

In conclusion, the changes proposed ensure:

- On Article 13.2: A broader scope and applicability of partnerships with all relevant actors.
- On Article 13.2 (c) and (d): The alignment of terminology to include "violations," ensuring a comprehensive legal scope that covers the full spectrum of accountability for both States and business enterprises.

⁴⁹ UNICEF; UN GLOBAL COMPACT; SAVE THE CHILDREN. Children's Rights and Business Principles, 2012. UNICEF/UN0215999. Available at: <https://www.unicef.org/iran/media/5136/file/Children's%20Rights%20and%20Business%20Principles.pdf>. Accessed: 29 Jan. 2026.

- On Article 13.2 (c): The institutionalization of child-sensitive communication, ensuring that access to information is not a generic concept but one that is child-friendly and inclusive of the most vulnerable.
- On Article 13.2 (f): The integration of the right to a clean, healthy, and sustainable environment into the framework of international cooperation, acknowledging the duty of States to prevent ecological harms in the context of business activities.

By including these recommendations, the LBI becomes a dynamic framework capable of protecting children and future generations. These amendments ensure that international cooperation is not a vague political commitment, but a functional, transparent, and inclusive mechanism for preventing environmental and human rights harms globally. In this sense, our suggestions, aligned with the understanding of the Committee on the rights of the child, have the purpose of integrating, 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.

2. Consistency with International Law (Article 14)

Article 14 plays a central role in ensuring the coherence and legal certainty of this Legally Binding Instrument within the broader framework of international law. It sets out the parameters for interpreting and applying the obligations under the Instrument in relation to established principles and rules, such as sovereignty, jurisdiction, State immunity, treaty interpretation, and the relationship between human rights obligations and economic agreements.

In doing so, Article 14 responds to recurring concerns raised during the negotiations about potential tensions between stronger mechanisms of corporate accountability and fundamental principles of international law. Rather than weakening these principles, the provision clarifies how they should be understood, preventing them from being used to limit access to justice, effective remedy, or the protection of human rights in the context of business activities.

In the specific field of business and human rights, where global supply chains, corporate structures, and environmental impacts often cross national borders. Article 14 provides a legal framework to reconcile transnational accountability with respect for State

sovereignty and territorial integrity. At the same time, it reinforces the central role of human rights by requiring that domestic laws and international agreements be interpreted and applied in a manner consistent with the objectives of this Legally Binding Instrument.

In sum, Article 14 ensures that the Legally Binding Instrument operates in a coherent, non-regressive, and rights-centered manner, strengthening corporate accountability without creating legal conflicts or fragmentation within international law.

*14.3. Nothing in the present (Legally Binding Instrument) shall affect any provisions in the domestic legislation of a State Party or in any regional or international treaty or agreement that is more conducive to the respect, protection, fulfillment and promotion of human rights in the context of business activities and to guaranteeing the access to justice and **adequate, timely and** effective remedy to victims of human rights abuses **and violations** in the context of business activities, including those of transnational character.*

With regard to Article 14.3, we propose adding the terms “adequate, timely and” before “effective remedies”, in order to ensure consistent language throughout this Legally Binding Instrument, in line with the wording already used in other provisions, including Article 7. We also support the proposal to include “or customary international law” after the reference to “any regional or international treaty or agreement”. In addition, we suggest adding “and violations” after the expression “human rights abuse”, as proposed by Colombia, Egypt, Palestine, Cuba, Brazil and Uruguay.

14.6. States Parties shall interpret and apply this (Legally Binding Instrument) consistently with their obligations under the Convention on the Rights of the Child and its Optional Protocols.

Finally, we propose the creation of a new Article 14.6, with the following wording: “States Parties shall interpret and apply this (Legally Binding Instrument) consistently with their obligations under the Convention on the Rights of the Child and its Optional Protocols.”

With this proposal, we aim not only to ensure terminological and normative coherence throughout this Legally Binding Instrument, but also to strengthen its practical effectiveness in guaranteeing access to justice and remedies for victims of business-related human rights abuses and violations. At the same time, the explicit inclusion of the Convention on the Rights of the Child as an interpretative standard reinforces the need for a child-sensitive

approach, ensuring that children’s rights are integrated transversally into the application of the Instrument.

Taken together, these amendments contribute to a clearer, more consistent, and more protective legal framework, capable of responding to the challenges posed by transnational business activities without weakening established international human rights standards. In this way, Article 14 is strengthened as a provision that ensures international law principles are interpreted in support of accountability, effective remedies, and the protection of children and other groups in situations of vulnerability.

In conclusion, the proposed amendments ensure:

- On Article 14 (general framework): Greater legal clarity and coherence within the international legal order, affirming that principles such as sovereignty, jurisdiction, State immunity, and treaty interpretation must not be applied in a way that limits access to justice, effective remedies, or the protection of human rights in the context of business activities.
- On Article 14.3: The strengthening of the non-regression principle by clearly recognizing that domestic laws, regional and international treaties, and customary international law that provide higher standards of human rights protection shall prevail. The addition of the terms “adequate, timely and effective remedies” and “violations” promotes consistency throughout the Instrument and reinforces safeguards for victims of business-related human rights abuses and violations.
- On the proposed Article 14.6: The explicit inclusion of the Convention on the Rights of the Child and its Optional Protocols as interpretative standards for the application of this Legally Binding Instrument, ensuring a child-sensitive and rights-based approach in its implementation.

By incorporating these amendments, Article 14 is reinforced as a provision that ensures coherence between this Instrument and the broader framework of international law, while avoiding restrictive interpretations that could weaken accountability.

These proposals make clear that consistency with international law should serve to strengthen, not limit, victims’ rights, ensuring access to justice and to adequate, timely and effective remedies.

In this context, the recognition of the Convention on the Rights of the Child as an interpretative reference further integrates children's rights into the application of the Instrument, contributing to a more protective, coherent, and effective framework for addressing the challenges posed by transnational business activities.

3. Institutional Arrangements (Article 15)

Article 15 establishes the institutional framework of the Committee responsible for monitoring the implementation of this Legally Binding Instrument. It sets out the composition, functions, and working methods of the Committee, playing a central role in ensuring accountability, transparency, and effective oversight of States Parties' obligations. Given the significant impact of business activities on children, particularly in areas such as global supply chains, environmental harm, and climate change, Article 15 is a key entry point for guaranteeing meaningful child participation within the monitoring architecture of the Instrument.

15.1. There shall be a Committee established in accordance with the following procedures:
(a) The Committee shall consist of, at the time of entry into force of the present (Legally Binding Instrument), (12) experts. After an additional sixty ratifications or accessions to the (Legally Binding Instrument), the membership of the Committee shall increase by six members, attaining a maximum number of (18) members. The members of the Committee shall serve in their personal capacity and shall be of high moral standing and recognized competence in the field of human rights, public international law or other relevant fields. At least one expert should be below the age of 18 to meaningfully include the voice of children affected by business activities.

With regard to Article 15.1 (a), we propose including the provision that “at least one expert should be below the age of 18 to meaningfully represent the voice of children affected by business activities.” This proposal is grounded in Article 12⁵⁰ of the UN Convention on the Rights of the Child, as well as General Comment No. 12 on the right of the child to be heard and General Comment No. 26⁵¹ on children's rights and the environment with a special focus on climate change. Ensuring the direct participation of children within the Committee

⁵⁰ UNITED NATIONS. Committee on the Rights of the Child. General comment No. 12 (2009): the right of the child to be heard. CRC/C/GC/12. Geneva: United Nations, 2009. Available at: <https://digitallibrary.un.org/record/671444?ln=en>. Accessed on: 27 Jan. 2026.

⁵¹ UNITED NATIONS. 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. CRC/C/GC/26. New York: United Nations, 22 Aug. 2023. Available at: <https://docs.un.org/en/CRC/C/GC/26>. Accessed on: 27 Jan. 2026.

strengthens its legitimacy and allows it to better reflect the lived experiences of those most affected by business-related human rights impacts.

In addition, we wish to highlight the importance of child-friendly versions of the Committee's reports. Access to information and the right to education are fundamental preconditions for children's meaningful participation in decision-making processes that affect them. Without accessible and age-appropriate information, children are effectively excluded from engagement with the Committee's work.

*(d) Submit an annual report on its activities under this (Legally Binding Instrument) to the States Parties and to the General Assembly of the United Nations, **accompanied by a child-friendly version to facilitate understanding and engagement by children;***

At the end of Article 15.4 (d), we suggest adding the phrase “accompanied by a child-friendly version to facilitate understanding and engagement by children.” This addition would institutionalize child participation as a structural element of the Committee's work, ensuring that children are not merely passive recipients of protection but active rights-holders whose perspectives inform monitoring and implementation.

Furthermore, we propose the inclusion of a new **Article 15.4 (f)**, reading as follows:

(f) The Committee shall establish child participation mechanisms to hear children's views and experiences relevant to business-related human rights impacts.

This addition would institutionalize child participation as a structural element of the Committee's work, ensuring that children are not merely passive recipients of protection but active rights-holders whose perspectives inform monitoring and implementation.

As a final remark, we believe that the Committee should also be empowered to receive communications from individuals or groups of individuals who claim to be victims of abuses and violations under this Legally Binding Instrument. Such a mechanism would significantly strengthen access to justice and enhance the effectiveness and credibility of the monitoring system.

Taken together, these proposals aim to strengthen the effectiveness and inclusiveness of the Committee established under Article 15. By ensuring meaningful child participation

and providing child-friendly versions of reports, the Committee's work becomes more accessible, transparent, and responsive to the realities faced by children affected by business activities.

In addition, allowing the Committee to receive communications from victims reinforces access to justice and accountability. Overall, these amendments help ensure that Article 15 supports a monitoring mechanism that is practical, participatory, and aligned with the Convention on the Rights of the Child.

In conclusion, the proposed amendments ensure:

- On Article 15 (general framework): The strengthening of the institutional architecture of this Legally Binding Instrument by enhancing accountability, transparency, and effective monitoring of States Parties' obligations, while ensuring that the Committee reflects the realities of those most affected by business-related human rights impacts.
- On Article 15.1(a): The meaningful inclusion of children within the composition of the Committee, through the provision that at least one expert be below the age of 18. This measure reinforces the principle of child participation and ensures that the lived experiences of children affected by business activities inform the Committee's work.
- On Article 15.4(d): The institutionalization of child-friendly versions of reports, ensuring that the Committee's outputs are accessible and understandable to children. This promotes transparency and enables informed and meaningful participation.
- On the proposed Article 15.4(f): The establishment of formal child participation mechanisms within the Committee, guaranteeing that children's views and experiences are systematically heard and considered in monitoring and implementation processes.

Furthermore, enabling the Committee to receive communications from individuals or groups claiming to be victims under this Instrument would significantly strengthen access to justice and enhance the credibility and effectiveness of the monitoring system.

By incorporating these amendments, Article 15 becomes a more inclusive, participatory, and responsive provision. Taken together, these proposals ensure that the monitoring mechanism established under this Instrument is not only effective, but also

aligned with the principles of child participation, access to information, and accountability, thereby reinforcing the protection of children in the context of business activities.

4. Implementation (Article 16)

Article 16 addresses the prevention, identification, and elimination of serious human rights abuses related to business activities, with particular attention to vulnerable groups and high-risk contexts. It plays a crucial role in strengthening protective measures against practices that cause severe and irreversible harm, including those affecting children and the environment.

Given the persistent use of child labour, the recruitment of children in hostilities, and the growing links between business activities, environmental harm, and climate change, Article 16 is a key provision to ensure that States adopt comprehensive and forward-looking measures of prevention and protection. It also provides an important opportunity to align this Legally Binding Instrument with existing international standards, including the Convention on the Rights of the Child, the Sustainable Development Goals (SDGs), and emerging norms on the right to a clean, healthy, and sustainable environment.

*16.3. Special attention shall be undertaken in the cases of business activities in conflict-affected areas including taking action to identify, prevent and mitigate the human rights-related risks of these activities and business relationships and to assess and address the heightened risks of abuses, paying special attention to ~~both gender-based and sexual~~ violence **based on SOGIESC**, the use of child soldiers and the worst forms of child labour, including forced and hazardous child labour, **and any practice that compromises the safety, development, or dignity of children.***

With regard to Article 16.3, to further strengthen the protection of children, we suggest adding the phrase “and any practice that compromises the safety, development, or dignity of children” at its end. This addition ensures broader coverage of harmful practices that may not fall neatly within existing categories but nevertheless pose serious risks to children’s rights.

Still concerning Article 16.3 and the reference to “child labour,” we would like to highlight that data collection on this issue is often limited and varies significantly across national and regional contexts. For this reason, it is crucial that this Legally Binding

Instrument use inclusive language, since a narrow or overly rigid approach risks excluding children from protection simply because there is insufficient data to classify their situation as one of the “worst forms of child labour.” Moreover, child labour frequently shifts between sectors within the same region, meaning that its circumstances and legal classification may change over time.

16.7. States Parties shall integrate environmental and climate considerations into all measures implementing this Instrument, recognizing the interdependence between a healthy environment and the enjoyment of human rights.

Finally, we support the inclusion of a new Article 16.7, with the following wording: “States Parties shall integrate environmental and climate considerations into all measures implementing this (Legally Binding Instrument), recognizing the interdependence between a clean, healthy, and sustainable environment and the enjoyment of human rights.” In this respect, we recall the statement of Astrid Puentes Riaño⁵², Special Rapporteur on the human right to a clean, healthy, and sustainable environment, who, during the 16th United Nations Conference on Trade and Development, urged States to reinstate this right in the draft treaty and to ensure that investment agreements do not prioritize private interests over the public interest and States’ obligations to protect human rights and the environment, including the climate system.

In conclusion, the proposals presented for Article 16 aim to strengthen the preventive and protective dimension of this Legally Binding Instrument, particularly with regard to children and environmental harm in the context of business activities.

By adopting inclusive language on child labour, expanding protection against practices that threaten children’s safety, development, and dignity, and explicitly integrating environmental and climate considerations, Article 16 becomes better equipped to address evolving and transnational risks. These amendments ensure that the Instrument responds to real-world challenges, reinforces international commitments under the Convention on the Rights of the Child and the Sustainable Development Goals, and promotes a holistic approach to human rights protection that leaves no child behind.

⁵² PUENTES RIAÑO, Astrid. Statement by the Special Rapporteur on the human right to a clean, healthy and sustainable environment. 80th Session of the United Nations General Assembly, Third Committee, New York, 17 Oct. 2025. United Nations Human Rights Council, Special Procedures. Available at: https://www.ohchr.org/en/special-procedures/sr-environment?utm_source Accessed on: 10 fev. 2026.

In conclusion, the proposed amendments ensure:

- On Article 16 (general framework): The strengthening of the preventive dimension of this Legally Binding Instrument, particularly in addressing serious human rights abuses linked to business activities, with special attention to children, vulnerable groups, and conflict-affected contexts.
- On Article 16.3: The reinforcement of protections concerning the use and recruitment of children in hostilities and child labour in all its forms. The addition of the phrase “and any practice that compromises the safety, development, or dignity of children” broadens the scope of protection and prevents gaps that could leave children unprotected.
- On Article 16.3 (child labour): The adoption of inclusive language that avoids restrictive classifications and ensures that all children at risk are covered, even in contexts where data is limited or circumstances evolve over time.
- On the proposed Article 16.7: The explicit integration of environmental and climate considerations into the implementation of the Instrument, recognizing the close link between a clean, healthy, and sustainable environment and the enjoyment of human rights.

By incorporating these amendments, Article 16 becomes a stronger and more effective provision, capable of preventing harm and responding to emerging challenges related to business activities. Taken together, these proposals reinforce the protection of children and the environment, ensuring that prevention, accountability, and human rights protection remain at the center of this Instrument.

5. Amendments (Article 21)

Article 21 regulates the procedure through which the Legally Binding Instrument may be amended over time. Although primarily procedural, this provision plays a decisive role in determining the long-term effectiveness and adaptability of the treaty. In this regard, as recognized in the law of treaties, the regulation of change requires striking a balance between flexibility and stability, so that international instruments remain capable of adapting to new realities without undermining their normative coherence⁵³. In a context marked by rapid

⁵³ KLABBERS, Jan. Treaties, amendment and revision. In: Max Planck Encyclopedia of Public International Law. Oxford: Oxford University Press, 2006. Available at:

transformations in global business practices, technological innovation, climate change, and evolving patterns of human rights abuses, the ability of the LBI to evolve is essential to ensure that it remains responsive to emerging risks and regulatory gaps.

From a business and human rights perspective, amendment procedures cannot be understood merely as a formal intergovernmental mechanism. Normative evolution in this field must reflect the lived realities of victims and affected communities, particularly those who experience corporate-related harms in a structural and recurring manner. Children are among the groups most exposed to the consequences of regulatory failures, especially in areas such as environmental degradation, digital environments, climate impacts, artificial intelligence, and global supply chains. Yet, they are systematically excluded from international norm-setting processes that directly shape the regulatory frameworks governing business conduct.

In this sense, the amendment procedure must be conceived as a participatory, inclusive, and victim-centered process. Without meaningful mechanisms for stakeholder engagement and child participation, the treaty risks reproducing the very democratic deficits and accountability gaps it seeks to overcome.

*21.1. Any State Party, **after consulting meaningfully with relevant stakeholders (including civil society)**, may propose an amendment to the present (Legally Binding Instrument) 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 favour a conference of States Parties 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 favour 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 States Parties shall be submitted by the Secretary-General to all States Parties for acceptance.*

Engagement with civil society is recognized by the United Nations as a key component of effective human rights protection, particularly in monitoring, accountability and normative development processes⁵⁴. Amendment procedures that exclude civil society

<https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1483>. Accessed on: 27 Jan. 2026.

⁵⁴ UNITED NATIONS. Manual on monitoring: chapter 16 – engagement and partnerships with civil society. HR/P/PT/7/Rev.1. New York: United Nations, 2011. Available at: <https://www.ohchr.org/sites/default/files/Documents/Publications/Chapter16-MHRM.pdf>. Accessed on: 27 Jan. 2026.

fail to benefit from the complementarity between institutional actors and rights-holders⁵⁵, thereby weakening the empirical basis and effectiveness of a treaty. Civil society actors often possess direct access to victims and communities affected by human rights abuses or violations, as well as long-term knowledge of local contexts. Excluding them from amendment procedures risks disconnecting treaty evolution from the lived realities it is meant to regulate.

This risk is particularly acute in the field of business and human rights, where regulatory gaps tend to disproportionately affect structurally vulnerable groups, including children. Given their heightened exposure to environmental harm, digital risks, labour exploitation and climate impacts, children are both primary rights-holders and essential stakeholders in the design and reform of normative frameworks governing corporate conduct. However, they remain largely invisible in international law-making processes.

21.4. States Parties should ensure that, whenever amendments may affect children's rights, such proposals are preceded by meaningful, inclusive, and accessible consultations with children, including those from vulnerable and marginalized communities ~~meaningful and inclusive consultations with children~~, in accordance with their evolving capacities.

The introduction of a new Article 21.4 institutionalizes child participation within the normative development of the LBI. This proposal is directly grounded in Article 12 of the Convention on the Rights of the Child⁵⁶, which recognizes children as rights-holders entitled to express their views in all matters affecting them and to have those views given due weight in accordance with their age and maturity. This principle is further reinforced by Article 4 of the Convention, which requires States to adopt all appropriate measures for the implementation of children's rights⁵⁷, and by Article 42, which establishes the duty to ensure that children have access to information about their rights⁵⁸.

⁵⁵ UNITED NATIONS. Manual on monitoring: chapter 16 – engagement and partnerships with civil society. HR/P/PT/7/Rev.1.

⁵⁶ UNITED NATIONS. General Assembly. Convention on the Rights of the Child. Adopted on 20 November 1989. Entered into force on 2 September 1990. Available at: <https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child>. Accessed on: 27 Jan. 2026.

⁵⁷ UNITED NATIONS. General Assembly. Convention on the Rights of the Child. Adopted on 20 November 1989.

⁵⁸ UNITED NATIONS. General Assembly. Convention on the Rights of the Child. Adopted on 20 November 1989.

The Committee on the Rights of the Child has consistently affirmed that participation is both a substantive right and a procedural guarantee. In its General Comment No. 12, the Committee emphasized that participation must be understood as an ongoing process requiring meaningful, inclusive, safe, voluntary and informed, and supported through child-friendly information and participation methods.⁵⁹ More recently, General Comment No. 26 stressed the need to ensure children's effective involvement in decision-making processes related to environmental policies, climate action, and business regulation, recognizing that children are disproportionately affected by long-term and intergenerational harms⁶⁰.

In conclusion, the changes proposed ensure:

- On Article 21.1: The institutionalization of meaningful stakeholder engagement, in line with established United Nations standards on participatory human rights governance; and
- On Article 21.4: The explicit integration of child participation as a procedural safeguard within the normative development of the treaty.

By including these recommendations, Article 21 is strengthened as a functional mechanism for treaty evolution, ensuring that amendments are informed by empirical realities, affected communities, and the specific vulnerabilities of children, thereby enhancing the overall effectiveness and responsiveness of the Legally Binding Instrument.

6. Reservations (Article 22)

Article 22 governs the regime of reservations to the LBI, which is understood, in accordance with general international law, as unilateral statements through which a State seeks to exclude or modify the legal effect of certain treaty provisions in their application to itself⁶¹. In normative multilateral treaties, such as human rights instruments, this mechanism raises concerns. The system of reservations under the Vienna Convention on the Law of

⁵⁹ UNITED NATIONS. Committee on the Rights of the Child. General comment No. 12 (2009): the right of the child to be heard. CRC/C/GC/12. Geneva: United Nations, 2009. Available at: <https://digitallibrary.un.org/record/671444?ln=en>. Accessed on: 27 Jan. 2026.

⁶⁰ UNITED NATIONS. 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. CRC/C/GC/26. New York: United Nations, 22 Aug. 2023. Available at: <https://docs.un.org/en/CRC/C/GC/26>. Accessed on: 27 Jan. 2026.

⁶¹ KIEGERICH, Thomas. Treaties, multilateral, reservations to. In: Max Planck Encyclopedia of Public International Law. Oxford: Oxford University Press, 2020. Available at: <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1680>. Accessed on: 27 Jan. 2026, para. 1.

Treaties is based on decentralized acceptance, and operates through a logic of reciprocity that presupposes bilateral exchanges of obligations⁶². This model is poorly suited to treaties that establish objective obligations aimed at protecting individuals and communities, rather than reciprocal rights and duties between States⁶³.

In the context of business and human rights, given the strong economic and political interests involved, and the asymmetries of power between States, corporations and affected communities, reservations may be strategically used to limit access to justice, weaken accountability mechanisms, or restrict international cooperation, thereby fragmenting the protective regime of the treaty. From a child-rights-based perspective, this fragmentation poses a direct threat to the coherence and effectiveness of protection standards.

22.1. Reservations incompatible with the object and purpose of the present (Legally Binding Instrument), as determined by the Committee established under Article 15, shall not be permitted.

The proposed amendment strengthens Article 22 by introducing an independent and authoritative mechanism for assessing the compatibility of reservations with the object and purpose of the treaty. Under the current wording, that follows the traditional model, the determination of compatibility remains implicitly in the hands of States themselves, which may accept, object, or remain silent⁶⁴. This proposed change reflects a broader understanding that the integrity of human rights treaties cannot be preserved through purely inter-State mechanisms, but requires institutional guardianship.

From a child rights perspective, this safeguard is essential. Reservations directed at procedural provisions, jurisdictional clauses, or cooperation mechanisms are especially harmful in business and human rights contexts, as they tend to undermine access to remedies and weaken accountability structures. Children, who already face structural barriers to justice, are disproportionately affected by such limitations.

By attributing the competence to assess reservations to the Committee established under Article 15, the LBI aligns its reservations regime with the specific nature of normative

⁶² KIEGERICH, Thomas. Treaties, multilateral, reservations to. In: Max Planck Encyclopedia of Public International Law, para. 20-26.

⁶³ KIEGERICH, Thomas. Treaties, multilateral, reservations to. In: Max Planck Encyclopedia of Public International Law, para. 43.

⁶⁴ UNITED NATIONS. Vienna Convention on the Law of Treaties. Vienna, 23 May 1969. United Nations, 1969. Available at: https://legal.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf. Accessed on: 27 Jan. 2026, Arts. 19-23.

human rights treaties. This ensures that the body responsible for monitoring implementation is also empowered to protect the treaty against internal erosion, preventing fragmentation and safeguarding its object and purpose.

In conclusion, the changes proposed ensure:

- On Article 22: The establishment of a centralized and authoritative procedure for assessing the permissibility of reservations, replacing the decentralized model based on inter-State reactions, and the alignment of Article 22 with the specific nature of normative human rights treaties, which require institutional oversight rather than reciprocal regulation.

By including this recommendation, Article 22 is strengthened as a structural safeguard of the LBI, ensuring that reservations do not operate as a mechanism for internal erosion of protection standards, particularly in relation to access to justice, accountability, and the effective protection of children and other structurally vulnerable groups in the context of business activities.

V. Final remarks

The analysis carried out demonstrates that the updated draft of the treaty must necessarily embed, 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, climate change, global supply chains, conflict-affected areas, and persistent barriers to remedy. 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.

Only through such harmonization will it be possible to ensure normative coherence and the practical effectiveness of the treaty with regard to the protection of children's rights. Likewise, the incorporation of robust mechanisms of prevention, protection, access to justice, remedies, 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 approaches to the burden of proof. Finally, for accountability (Articles 8, 9 and 10), robust liability regimes, expanded and accessible jurisdictional bases, the prevention of denial of justice in transnational disputes, and flexible statutes of limitations adapted to long-term and intergenerational harms are required.

At the same time, the analysis of the operational and institutional provisions (Articles 13, 14, 15, 16, 21 and 22) demonstrates that the implementation of these substantive obligations depends on robust mechanisms of international cooperation, participatory monitoring, child-sensitive implementation measures, and safeguards to preserve the integrity and evolution of the treaty. These provisions ensure that the Legally Binding Instrument does not remain limited to abstract commitments, but functions as a coherent and enforceable framework capable of addressing the transnational and systemic nature of business-related human rights harms. A child rights-based approach is not a sectoral or thematic concern, but a prerequisite for the effectiveness, legitimacy and long-term relevance of the Legally Binding Instrument. A treaty that does not effectively protect children from business-related harms cannot fully achieve its objective of protecting human rights.

Ultimately, the Treaty on Business and Human Rights represents a historic opportunity for the international community to close longstanding governance gaps in the regulation of transnational corporate activities. Ensuring that the Instrument effectively protects children – who are among the most affected by environmental degradation, labour exploitation, and barriers to justice – is not only a matter of legal coherence, but also a fundamental requirement for the credibility and long-term effectiveness of the treaty itself.

By aligning the LBI with General Comment No. 16 and 26 of the CRC, and the overarching principle of the best interests 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 growing socio-environmental risks.