



October 2019

**Written contribution on the “revised draft”, submitted by:
Child Rights Connect, DKA Austria, Geneva Infant Feeding Association,
International Baby Food Action Network**

**A valuable follow–up for children’s human rights.
Towards a binding treaty to hold corporations accountable.**

To delegates at the fifth session of the Open–ended Intergovernmental Working Group (IGWG) on transnational corporations and other business enterprises with respect to human rights, to be held on 14–18 October 2019 at Geneva.

We, the undersigned welcome the follow–up discussion on the revised draft for the legally binding international instrument at the fifth session of the Working Group. We reiterate our support to such a process that, if adequately designed, will make an important contribution to the protection of all human rights and give a clear message to TNCs and OBEs on their obligations to respect them. We take the view that the “revised draft”, published by the Chairperson–Rapporteur of the IGWG, is a constructive basis for discussion. The draft addresses important issues to meet the global challenges of abuses of human rights, globally by transnational corporations and other business enterprises.

Together with partners in the “Global South” and networks in the “Global North”, we advocate for action to ensure that the rights of children and women are represented. Based on long–lasting partnerships and a diverse range of experiences and approaches in promoting and protecting the rights of children throughout the world, we take this action with the aim of ensuring that the rights of disadvantaged people are heard, respected and fulfilled.

In this work with our partners in the “Global South”, we see legal gaps with regard to international human rights protection, that fail to redress with the evolution of global economic realities. The undersigned understand that children are particularly affected by corporate human rights abuses.

Childhood is a unique period of physical, mental, emotional and spiritual development. Abuses and violations of children’s rights, such as exposure to violence, child labour or unsafe products or environmental harm, are hazards that may have lifelong, irreversible, and even transgenerational consequences. Children are often politically voiceless and lack access to relevant information. It is generally challenging to obtain remedies and reparation for children – whether in the legal courts, or through other mechanisms – when their rights are impinged, even more so by business enterprises. (CRC GC 16)

As organizations dedicated to the promotion and protection of children’s rights throughout the world, we welcome that the “revised draft” includes a broader definition of “victim” in Article 1, which also protects families and dependents. We also see it as a positive step that children, as well as women and girls, are expressly mentioned in the preamble as an especially vulnerable group.

At the same time, a systematic and consistent examination of children’s rights with regard to corporate human rights abuses remains lacking. Given the broad range of children’s rights that can be affected by business activities and operations, we ask that these perspectives be more comprehensively considered in the ongoing debates on the “revised draft”, including in the context of recognizing the special social protection of childhood as set out within the United Nations Universal Declaration of Human Rights (Art. 25 II).

The undersigned identify the need for improvements in the following areas:

1. Interpretation (preamble): We welcome the fact that the “revised draft” now highlights in the preamble the disproportionate impact of corporate human rights abuses on children. In order to explicitly direct the interpretation to children’s rights, and recognize the particular impact of corporate human rights abuses on children, we suggest explicit reference to the Convention on the Rights of the Child and, in particular, reference to General Comment No14, 15 and 16 of the UN Committee on the Rights of the Child, as well as the work of the OECD and ILO in this regard. Additionally, we believe ILO Convention 183 on Maternity Protection should be mentioned, alongside ILO Convention 190. This ILO instrument is absolutely relevant in any context where the relationship between business and workers’ rights is entailed.
2. Collective complaints (article 4 (5)): Especially for children and adolescents, there are far-reaching social, economic and legal barriers for their ability to seek redress for violation or abuse of their rights. They are faced with a lack of legal knowledge and enforcement, dependency on legal representatives for litigation, and a generally disproportionate impact of corporate human rights’ abuses. For the removal of major obstacles for children as victims of human rights violations by business activities in their access to justice, including remedial action, an improvement to the possibility of collective complaints, such as class actions and public interest litigation (CRC GC 16, no 68), should be integrated in the elaboration of the “revised draft”. Collective complaints are one important measure to ensure comprehensive legal protection, fair procedure and an equality of the parties; thus, the “revised draft” should call for States to provide collective redress mechanisms in cases of business-related human rights abuses, with clearly expressed criteria on how they can be used, including by children (OHCHR Accountability and Remedy Project Part I, Policy Objective 15.3, A/HRC/32/19 (2016)).
3. Child-rights’ due diligence (article 5): We welcome amendments in the “revised draft” and the adoption of Human Rights’ Due Diligence, as envisaged by the United Nations Guiding Principles on Business and Human Rights. However, we suggest that the standards set in the “revised draft” are further strengthened based on the UNGPs and children specific protection needs. Additionally, it is important to recognize that a child-rights’ due diligence must be actually ensured. The general notion of Human Rights’ Due Diligence needs further development in sector- and country-specific ways. Here the ongoing work of the OECD can be used.
4. Legal liability (article 6):
 - a. We recognize the improvement in the “revised draft” with regard to legal liability. At the same time, article 6 needs clarification with regard to children’s rights. The link between the Human Rights Due Diligence procedure in article 5 and potential legal liability in article 6 remain to be clarified.
 - b. On the other hand, it should be made clear that the list of crimes in article 6 (6) is demonstrative and not complete. In particular, serious violations of children’s rights, such as exploitative and hazardous child labour, should be included as criminal offences (ILO Convention 182, art. 3).
 - c. It should be ensured that all damages caused by business activities be included in the binding treaty. Appropriate remedial measures, wherever rights are found to have been violated, should be available. This includes compensation, measures to promote physical and psychosocial recovery, rehabilitation and reintegration. In the case of damages with negative impacts in the future the protection of the rights of children and future generations have to be ensured. In the context of environmental harm, children may face additional barriers to access to justice. For example, they and their representatives may lack information about the effects of particular harms or the harms may manifest only years after exposure. This may make it difficult or impossible for those affected to have standing to make a case, meet applicable limitations periods or discharge applicable burdens of proof. The example of environmental pollution with serious consequences on the development of children shows the need for immediate as well as future legal protective mechanisms. In the case of harmful marketing by the baby-food industry, this can have long lasting effects on a child’s health such as life-long non-communicable diseases, or worse, premature death.

5. Choice of competent court of jurisdiction (article 7): We welcome the fact that, in article 7, the victim is granted the choice of the competent court of jurisdiction. However, it should also be possible to bring actions against subsidiaries and suppliers in the parent company's territory in civil proceedings. In the case of a lack of economic solvency of the subsidiary and supplier companies, joint and several liability of the parent company in a procedure should be made possible.
6. Applicable Law (article 9): As in the “zero draft” (article 7(2)), the choice of applicable law should apply to those affected by human rights abuses by companies. We suggest including in article 9(2) the addition “as requested by the victim”.
7. Agreements on Trade and Investment (article 12): The decision on possible conflict to existing and future international treaties remains unclear. It should be ensured that human rights standards are prior to provisions of other agreements, especially with regard to trade and investment agreements.

We call on all States to address these challenges to ensure children’s rights in the ongoing elaboration of the “binding treaty”. We urge all member States – and especially the European Union and its member States – to use this historic opportunity to discuss and support this process in a constructive and meaningful manner, until the mandate “to elaborate an international legally binding instrument” established by the United Nation Human Rights Council Resolution 26/9 is fulfilled, and that such an instrument as a “binding treaty” is in force.

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