

Proposal of Amendment to Article 3 and Article 4 at 5<sup>th</sup> Meeting of the 7<sup>th</sup> Session (in red).  
Speaker: Ingrid Pintaritsch (DKA Austria)

On behalf of DKA Austria, Child Rights Connect, ECPAT International, Clínica de Direitos Humanos UFMG and Clínica de Direitos Humanos PPGD/PUCPR.

### Article 3. Scope

3.1. [This](#) (Legally Binding Instrument) shall apply to all business [activities](#), including business activities of a transnational character.

3.2. Notwithstanding [Article](#) 3.1. above, when imposing prevention obligations on business enterprises under this (Legally Binding Instrument), [States](#) Parties may establish in their law, a [non-discriminatory](#) basis to differentiate how business enterprises discharge these obligations commensurate with their size, sector, operational context [or](#) the severity of impacts on human rights.

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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 those recognized in](#) the Universal Declaration of Human Rights, [the ILO Declaration on Fundamental Principles and Rights at Work](#), [all](#) core international human rights [treaties](#) and fundamental ILO [Conventions](#) (Panamas proposal) to which a [State](#) is a [Party](#), and customary international law. **This (Legally Binding Instrument) shall also cover all applicable obligations for businesses.**

We also support Panamas proposal on adding: **and other international and regional environmental agreements after Fundamental ILO Convention.**

Note 3.3:

In relation to scope, **Article 3**, the new draft means progress in clarifying that it covers all “binding” obligations for States, but it should also cover all applicable obligations for businesses by referring to “internationally recognized human rights that are applicable to business enterprises.” This would be consistent with the new item of purposes defined under the treaty: to ensure businesses respect their human rights obligations.

#### Article 4. Rights of Victims

4.1.: Victims of human rights abuses in the context of business activities shall enjoy all internationally recognized human rights and fundamental freedoms, **and due regard should be given to children while taking in to account the best interest of the child.**

4.2: Without prejudice to [Article 4.1.](#) above, victims shall:

- a. be treated with humanity and respect for their dignity and human rights, and their safety, physical and psychological well-being and privacy shall be ensured;
- ~~b. be guaranteed the right to life, personal integrity, freedom of opinion and expression, peaceful assembly and association, and free movement;~~
- c. be guaranteed the right to **accessible**, fair, <sup>1</sup>adequate, effective, prompt ~~and~~, non- discriminatory, appropriate and gender- and age-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 **and the right to the truth.**  
**c. bis be generally guaranteed the right to a judicial remedy, which must be available without exception in case of gross human rights violations or abuses and serious violations of international humanitarian law;**
- d. 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, without prejudice to the right to judicial remedy of the StateStates Parties;
- e. be protected from any unlawful interference against their privacy, and from intimidation, and reprisals, before, during and after any proceedings have been instituted as well as from re-victimization in the course of proceedings for access to effective, prompt and adequate remedy, including through appropriate protective and support services that are gender and age responsive; **Child victims' identity shall not be revealed publicly without their express consent or, where this is not possible, without the consent of their legal representatives who shall be guided by the principle of the best interests of the child concerned; and**
- f. be guaranteed access to information **in relevant languages and accessible formats to adults and children alike, including those with disabilities**, and legal aid relevant to pursue effective remedy

**Commented [IP1]:** Art. 4.2b singles out certain specific rights, which could give rise to the inference that these rights are more important for protection than others. This goes against the principle of equality of all human rights. There is no hierarchy among rights and therefore we suggest the deletion of this article as unnecessary and unhelpful, as it overlaps and contradicts 4.1.

**Commented [IP2]:** The recent changes operated in this article incorporating more clearly a gender perspective, collective reparations and age-sensitive approaches are welcome.

**Commented [IP3]:** Right to the truth established by contemporary human rights law should also be referred as a means of reparation (see footnote 122 in ICJ/DKA Study on 2<sup>nd</sup> Draft LBI)

**Commented [IP4]:** At least regarding gross human rights violations and serious violations of international humanitarian law, it is essential that a judicial remedy is always available for victims to ensure proper redress. (see footnote 122 and 123 in ICJ/DKA Study on 2<sup>nd</sup> Draft LBI)

**Commented [IP5]:** The 3<sup>rd</sup> Draft LBI does not provide any information on what is appropriate and how this determination would be made.

**Commented [IP6]:** should recognize children respective needs

**Commented [IP7]:** With respect to **Article 4.2.f**, the proposal to add "access to information **in relevant languages and accessible formats to adults and children alike, including those with disabilities**, and legal aid relevant to pursue effective remedy" was not accepted in that article but was included in Art. 7 (3 – a). This is welcome, but the same language should be duplicated in Article 4.2.f, as the scope of access to information provided as the right of a victim is broader than the accessibility of information to victims as part of legal assistance throughout the legal process provided in 7.3 a.

Thank you Chair for taking our proposals into consideration!