**26.20.2022 – Joint Statement on Joint Statement on behalf of DKA Austria, Child Rights Connect, ECPAT International, Clínica de Direitos Humanos UFMG and Clínica de Direitos Humanos PPGD/PUCPR**

(Please note that all wording proposals are written in red)

# Article 9. Adjudicative Jurisdiction

* 1. Jurisdiction with respect to claims brought by victims, irrespectively of their nationality or place of domicile, arising from acts or omissions that result or may result in human rights abuses covered under this (Legally Binding Instrument), shall vest in the courts of the State where:
* **We propose to amend the Article 9.1 as follows:**
* 9.1.Jurisdiction with respect to claims brought by **or on behalf of** victims, irrespectively of their nationality or place of domicile, arising from acts or omissions that result or may result in human rights abuses **or violations** covered under this (Legally Binding Instrument), shall vest in the courts of the State where:
* 9.1 Jurisdiction with respect to claims brought by victims, irrespectively of their nationality or place of domicile, arising from acts or omissions that result or may result in human rights abuses **or violations** covered under this (Legally Binding Instrument), shall **upon the victims and their family’s choice,** vest in the courts of the State where: **(Palestine, South Africa)**
* 9.1 Jurisdiction with respect to claims brought by victims, irrespectively of their nationality or place of domicile, arising from acts or omissions that result or may result in human rights abuses **or violations** covered under this (Legally Binding Instrument), shall vest in the courts of the State where: **(Egypt)**
1. the human rights abuse occurred and/or produced effects; or
2. an act or omission contributing to the human rights abuse occurred;

b. an act or omission contributing to the human rights abuse **or violation** occurred;

**(Palestine)**

c. the legal or natural persons alleged to have committed an act or omission causing or contributing to such human rights abuse in the context of business activities, including those of a transnational character, are domiciled; or

d. the victim is a national of or is domiciled.

This provision does not exclude the exercise of civil jurisdiction on additional grounds provided for by international treaties or domestic laws.

* 1. Without prejudice to any broader definition of domicile provided for in any international instrument or domestic law, a legal person conducting business activities of a transnational character, including through their business relationships, is considered domiciled at the place where it has its:
1. place of incorporation or registration; or
2. place where the principal assets or operations are located; or
3. central administration or management is located; or
4. principal place of business or activity on a regular basis.

**d bis. substantial assets are held. (Palestine)**

* 1. Courts vested with jurisdiction on the basis of Article 9.1 and 9.2 shall avoid imposing any legal obstacles, including the doctrine of *forum non conveniens,* to initiate proceedings in line with Article 7.5 of this (legally binding instrument). **(South Africa)**

**We support keeping the doctrine of forum non conveniens in Article 9.3 as supported by South Africa, Palestine and Namibia.**

**And propose a new Article 9.3:**

**New Art. 9.3. on a Provision regarding jurisdiction with respect to criminal claims, including the provision for universal jurisdiction for certain crimes.**

**(Keep reference to *forum non conveniens*: Palestine, Namibia)**

* 1. Courts shall have jurisdiction over claims against legal or natural persons not domiciled in the territory of the forum State, if the claim is connected with a claim against a legal or natural person domiciled in the territory of the forum State.

**We propose to add a New Art. 9.4. on a Provision regarding jurisdiction with respect to administrative claims**

9.4. Courts shall have jurisdiction over claims against legal or natural persons not domiciled in the territory of the forum State if no other effective forum guaranteeing a fair judicial process is available and there is a connection to the State Party concerned as follows: **(Palestine (regarding entire article))**

1. the presence of the claimant on the territory of the forum;
2. the presence of assets of the defendant; or
3. a substantial activity of the defendant.

# Article 10. Statute of limitations

* 1. The States Parties to the present (Legally Binding Instrument) shall adopt any legislative or other measures necessary to ensure that statutory or other limitations shall not apply for the commencement of legal proceedings in relation to human rights abuses resulting in violations of international law which constitute the most serious crimes of concern to the international community as a whole.
* **We propose the deletion of “the most serious ” and “of concern to the international community as a whole” to the Article 10.1**
* The States Parties to the present (Legally Binding Instrument) shall adopt any legislative or other measures necessary to ensure that statutory or other limitations shall not apply for the commencement of legal proceedings in relation to human rights abuses resulting in violations of international law which constitute **~~the most serious~~** crimes ~~of concern to the international community as a whole~~ under international law.
	1. The States Parties to the present (Legally Binding Instrument) shall adopt any legislative or other measures necessary to ensure that statutory or other limitations applicable to civil claims or violations that do not constitute the most serious crimes of concern to the international community as a whole allow a reasonable period of time for the commencement of legal proceedings in relation to human rights abuses, particularly in cases where the abuses occurred in another State or when the harm may be identifiable only after a long period of time.
* **We propose the following amendments to the article 10.2 and it reads as such:**
* 10.1 The States Parties to the present (Legally Binding Instrument) shall adopt any legislative or other measures necessary to ensure that statutory or other limitations applicable to civil claims or violations that do not constitute **~~the most serious~~** crimes **~~of concern to the international community as a whole~~ under international law shall not run for such a period as no effective remedy is available and shall not apply to civil or administrative actions sought by victims seeking reparation for their injuries. In all cases they must** allow a reasonable period of time for the commencement of legal proceedings in relation to human rights abuses, particularly in cases where the abuses occurred in another State or when the harm may be identifiable only after a long period of time.
	1. The States Parties to the present (Legally Binding Instrument) shall adopt any legislative or other measures necessary to ensure that statutory or other limitations applicable to civil claims or violations that do not constitute the most serious crimes of concern to the international community as a whole allow a reasonable **gender-responsive** period of time for the commencement of legal proceedings in relation to human rights abuses, particularly in cases where the abuses occurred in another State or when the harm may be identifiable only after a long period of time**, or where the victim is delayed in commencing a proceeding in respect of the claim because of their age, physical, mental or psychological condition**. **(Palestine)**

10.2. The States Parties to the present (Legally Binding Instrument) shall **~~adopt any~~ ~~legislative or other measures necessary to ensure that statutory or other limitations~~ ~~applicable to civil claims or violations that do not constitute the most serious crimes of~~ ~~concern to the international community as a whole~~** allow a reasonable period of time for the commencement of legal proceedings in relation to human rights abuses, particularly in cases where the abuses occurred in another State or when the harm may be identifiable only after a long period of time. **(Brazil)**

# Article 11. Applicable Law

* 1. All matters of procedure regarding claims before the competent court which are not specifically regulated in the (Legally Binding Instrument) shall be governed by the law of that court seized on the matter.
	2. All matters of substance which are not specifically regulated under this [international legally binding instrument] may, upon the request of the victim, be governed by the law of another State where:

**(Has reservations: Brazil (particularly regarding “upon the request of the victim”))**

1. the acts or omissions have occurred or produced effects; or
* **We propose to add to Article 11.2.a ter the following**

 **a) *ter* the victim is domiciled; or**

1. the natural or legal person alleged to have committed the acts or omissions is domiciled.