



ACERWC
African Committee of Experts on
the Rights and Welfare of the Child

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Policy Brief

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African Committee of Experts on the Rights and Welfare of the Child: Policy Brief on Access to Remedies for Victims of Corporate Induced Child Rights Violations

A. Introduction and Background

In line with Article 42 (a) (i) of the African Charter on the Rights and Welfare of the Child (Charter), the African Committee of Experts on the Rights and Welfare of the Child (the Committee) recognises the pivotal role of policy briefs in gathering and documenting crucial information, assessing the situation of children in Africa and providing Member States and other stakeholders with informed recommendations.

This policy brief, developed by the Committee's Working Group on Children's Rights and Business is aimed at AU Member States and at businesses themselves, for ensuring access to remedies for corporate induced child rights violations by the business sector.

B. Context or Scope of the Problem

Developing a critical understanding of the impact of business activities on the rights and welfare of children is essential and fundamental to solving the challenges of the global epidemic occasioned by child labour, neglect, and other dimensions of child rights violations. This is particularly more so for Africa, where lack of rule of law, enforcement capabilities, and inchoate control of business activities triggers vulnerability and exacerbates corporate-induced human rights violations of children, notwithstanding that businesses have at the same time potential to expand the existing gaps in access to education, healthcare delivery and other socio-economic benefits for children. Where not properly controlled, complex and intricate business activities could leave children exposed to various and significant child rights violations that could affect their psychological, mental, and developmental well-being.

Across Africa, children are exploited in a wide range of sectors, including mining, tourism, agriculture, manufacturing, advertising, marketing, and other services. Their rights are further undermined through environmental degradation, oil spills, land loss, online sexual abuse, and sexual exploitation linked to the tourism industry.¹

Participation of children in these activities exposes them to elevated risks of experiencing deficiencies in essential aspects such as access to food, shelter, clean water, education, and other violations of their rights. Beyond direct exploitation, children are often indirectly affected by corporate practices that cause environmental harm and social disruption. While business activities can generate economic opportunities, they may simultaneously produce adverse impacts that disproportionately affect children.

The International Labour Organization (ILO) stated that about '40 million girls and 52 million boys were involved in child labour on the African continent at the beginning of 2020, an increase of 20 million children in the last four years.' Specifically, 'one in five African children is engaged in child labour, with more than 80% involved in agriculture, for or alongside family members.' This indicates a significant and concerning trend in the region, highlighting the urgent need for targeted interventions and policy measures to address this issue. Upholding and validating the rights of children necessitates corporations to not only mitigate harm but also proactively protect children's rights.

1 For more detail, see ACERWC 'Study on children's rights and business in Africa' (2023) available at <https://www.acerwc.africa/en/resources/studies-research>.

A number of issues arise in relation to holding businesses to account for violations of children's rights, such as establishing jurisdiction, including extraterritorially to where the harm occurred; the use of the legal doctrine of corporate veil by businesses to shield parent companies from liability when their subsidiaries are involved in human rights abuses, even when they are in a position to influence these subsidiaries;² as well as of the use of *forum non conveniens* by courts when it is unclear that "victims will have access to effective remedies in the alternative jurisdiction";³ and proving a causal connection between the business activity and the violation suffered.

The focus of this policy brief is on one dimension of the quest for satisfaction: namely on remedies. The UN Framework⁴ stresses the importance of access to effective remedies to address grievances for wrongs caused by business activity.

C. Policy Options

The UN Framework distinguishes between different types of remedy mechanisms. State-based remedy mechanisms include both judicial and non-judicial remedies.⁵ The Framework encourages States to make available processes whereby corporations can be held accountable in civil as well as criminal law. There are also numerous non-judicial mechanisms such as public agencies, publicly funded mediation services, national human rights bodies and other soft-law mechanisms like the OECD⁶ National Contact Points (NCPs). Non-state remedy mechanisms may include arbitration, mediation or similar processes that are administered by industry-based or multi-industry associations or stakeholder groups, such as by labour inspectorates and tribunals, consumer and environmental protection agencies and financial supervision authorities. National Human Rights Institutions should be empowered to receive claims from victims of corporate conduct.

The UNGPs⁷ also define what is meant by effectiveness criteria for non-judicial mechanisms ("state based" or "non-state" based): they should be legitimate, accessible, predictable, equitable, rights-compatible and transparent, and should be based on dialogue and engagement.

2 CESCR Committee General Comment no 24 on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities (2017) E/C.12/GC/24 (accessed 20 September 2024), par 42.

3 CESCR Committee General Comment no 24 (n 2 above) par 43: the *forum non conveniens* doctrine is to the effect that a court may decline to exercise jurisdiction if another forum is available to victims; this may in effect constitute a barrier to the ability of victims residing in one State to seek redress before the courts of the State where the defendant business is domiciled. Practice shows that claims are often dismissed under this doctrine in favour of another jurisdiction, without necessarily ensuring that victims ultimately have access to effective remedies in the alternative jurisdiction.

4 UN HR Council, Protect, Respect and Remedy: A Framework for Business and Human Rights Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (UN Framework), John Ruggie, A/HCR/8/5, 7 April 2008.

5 GC 24 notes a preference for judicial remedies: par 38. "[O]ther means [of ensuring accountability] used could be rendered ineffective if they are not reinforced or complemented by judicial remedies": par 39.

6 Organisation for Economic Cooperation and Development.

7 UN Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Human Rights Council, UN Doc. A/HRC/17/31 (21 March 2011) [UNGPs].

Remedies must be available, effective and expeditious. This requires that victims seeking redress must have prompt access to an independent public authority, which must have the power to determine whether a violation has taken place and to order cessation of the violation and reparation to redress the harm done.⁸

Reparations can be for individual and collective harm. Reparation for collective harm must not substitute the individual's right to reparation.

D. Specific remedies

The following remedies for corporate rights violations have been identified:

- i. **Restitution** aims, to the greatest extent possible, to restore the victim to the original situation before the human rights violation occurred, and may include, for example, restoration of their status or citizenship, being taken back to families, returning to school, returning the children affected by armed conflict to positions they were in before, and granting rights to land or property.
- ii. **Compensation or damages** provides for any economically assessable injury, as appropriate and proportional to the gravity of the violation and the circumstances of each case, resulting from violations of the Charter.⁹ Compensation must be fair, adequate, accessible, affordable, prompt, effective and proportionate to the harm suffered. Where appropriate, compensation may be provided not only in the form of monetary payments but also through financial or other forms of support for education, vocational training or income-generating activities that promote the child's long-term well-being. Where children are beneficiaries of compensation, States must ensure that appropriate safeguards are in place to meet children's specific needs and to protect their best interests, including, where necessary, through the establishment of trusts or other custodial arrangements. States must further ensure that compensation awarded results in tangible and meaningful benefits for child victims.
- iii. **Rehabilitation** includes medical and psychological care as well as legal, educational, re-integrative, social services and alternative vocational training. It should be holistic and aims to restore the victim's health and well-being, their independence, physical, mental, social, cultural, spiritual and vocational ability, dignity, reputation and full inclusion and participation in society.
- iv. **Satisfaction** aims to concede and acknowledge that the harm occurred. It is aimed at ending continuing violations. It might also be a vehicle to verify the facts and elicit full and public disclosure of the truth. It also includes measures to restore the dignity and reputation of the victim or victims. Various forms can include a public declaration, public apology, commemoration, or tributes to the victims. The search for the whereabouts of those that have disappeared, for the identities of the children abducted and for the bodies of those killed, and assistance in the recovery, identification and reburial of the bodies in accordance with the expressed or presumed wish of the victims, or the cultural practices of the families and communities, also promotes satisfaction.

⁸ GC 24 para 41.

⁹ Compensation can be pecuniary and non-pecuniary. Pecuniary damages, or material damages, refer to the financial loss of the victim, including any expenses incurred and any special or consequential damages, as a result of the violation. Non-pecuniary damages, or moral damages, compensate for the loss in dignity and reputation of the victim, as well as mental and emotional harm. Non-pecuniary damages seek to compensate victims for this suffering, including the physical, psychological harm, anguish, grief, sadness, distress, fear, frustration, anxiety, inconvenience, humiliation, and reputational harm caused by the violation. In addition to these emotional harms, non-pecuniary awards may also compensate a victim for the effect of the violation or crime on his or her family life and relationships.

- v. **Criminal sanctions** entail the prosecution of those responsible for violations and the bringing of perpetrators to justice. While criminal proceedings do not always result in direct benefits for victims, legal frameworks may provide mechanisms through which children can benefit from financial sanctions or restitution ordered in the course of criminal proceedings. This can contribute to meaningful redress for child victims. Criminal processes may also support restorative justice approaches, where appropriate, including measures that promote accountability, acknowledgment of harm and healing for child victims.
- vi. **Guarantees of non-repetition** aim to prevent the commission of similar human rights violations against the same or other potential victims and to break the structural causes of societal violations, such as setting minimum standards, reviewing and reforming legislation, and establishing and strengthening mechanisms to monitor compliance with standards. To ensure non-repetition, an effective remedy may require improvements to legislation and policies that have proven ineffective in preventing the abuses. This is the responsibility of States. National Human Rights Institutions can play a crucial role in monitoring that non-repetition guarantees are fully complied with.
- vii. **Remediation** entails measures aimed at restoring, to the greatest extent possible, the situation that existed prior to the violation of rights. It is particularly relevant in cases involving environmental harm linked to business activities, including in the mining and oil sectors. Across Africa, corporate activities have contributed to environmental degradation through practices such as over-exploitation of natural resources, gas flaring, pollution of land and water, improper waste disposal and other forms of environmental harm that undermine children's rights to health, development and a clean and healthy environment. Experience has shown that remediation efforts are sometimes inadequately implemented or misrepresented, including through the submission of reports that do not reflect the actual condition of affected sites. This underscores the need for effective monitoring, verification and follow-up by States Parties and relevant public institutions to ensure that remediation measures are genuine, effective and sustained. Victims of environmental harm also face significant obstacles in seeking redress, including challenges in establishing standing before courts and difficulties in attributing liability, particularly where corporate actors invoke defences such as third-party sabotage. These barriers further highlight the importance of robust legal frameworks, evidentiary standards and oversight mechanisms to ensure accountability and meaningful remediation for children affected by environmental harm.
- viii. **Administrative sanctions** may be useful to discourage conduct by business entities that leads, or may lead, to violations of children's rights. For instance, in their public procurement regimes, States could deny the awarding of public contracts to companies that have not provided information on the social or environmental impacts of their activities or that have not put in place measures to ensure that they act with due diligence to avoid or mitigate any negative impacts on the rights of children.¹⁰

E. Recommendations

Recommendations to the international community

- In transnational cases, effective accountability and access to remedy require international cooperation. The international community, including States and relevant international and regional organisations, should strengthen cross-border cooperation between State agencies and judicial bodies in both public and private law enforcement. Direct communication and mutual legal and investigative assistance between competent authorities should be enhanced to enable timely and effective action, especially in the investigation and prosecution of criminal offences.

Recommendations to continental and regional bodies

- The African Union must ensure that child rights protection is fully integrated into the African Continental Free Trade Area (AfCFTA). Regional Economic communities (RECs) can play an important role in engaging with child rights violations by businesses in their frameworks and policies. They must integrate a child rights lens into these.

Recommendations to States Parties

- States parties must remove substantive, procedural and practical barriers to remedies, including by establishing parent company or group liability regimes, providing legal aid and other funding schemes to claimants, enabling human rights-related class actions and public interest litigation, facilitating access to relevant information and the collection of evidence abroad, including witness testimony, and allowing such evidence to be presented in judicial proceedings. Shifting the burden of proof may be justified where the facts and events relevant for resolving a claim lie wholly or in part within the exclusive knowledge of the corporate defendant, rendering it difficult for victims to access a remedy.¹¹ Such evidentiary changes would need legislative intervention.
- States parties must ensure access to a variety of dispute resolution models, such as arbitration and mediation. Child friendly justice must underpin all grievance mechanisms. Child participation must be fostered in all dispute resolution models, unless such participation might harm children. States must also facilitate access to legal aid to enable children to pursue remedies and support alternative legal assistance such as through university law clinics and professional organisations which can provide free legal services.
- States parties must integrate liability for children's rights violations and the available remedies into National Action Plans on Business and Human Rights (NAPs). States parties are recommended to forge alliances with businesses and concretise voluntary initiatives adopted by businesses in their NAPs.
- **Strategic lawsuits against public participation (SLAPPs)** constitute a misuse of the legal system, involving the initiation or threat of unmeritorious or abusive legal proceedings aimed at suppressing legitimate scrutiny, accountability and public participation. Such practices may arise where victims or affected communities seek to challenge powerful corporate actors, including in cases involving children's rights.

- States and relevant professional regulatory bodies should take measures to prevent the misuse of SLAPPs, including through appropriate legal safeguards and the enforcement of professional standards. Lawyers are expected to act with integrity and in a manner that upholds the rule of law, the proper administration of justice and public confidence in the legal system. Where necessary, legal regulatory bodies should sanction conduct that involves abusive, intimidatory or oppressive litigation practices.
- Enforcement of remedies should be a priority for States Parties, especially when they involve long lasting damage such as in the case of environmental degradation or loss of land. States must adopt regulations enshrining principles such as PPP (the polluter pays principle) and requiring restoration of damaged land.

Recommendations to businesses

- Businesses are encouraged to voluntarily undertake initiatives to promote the advocacy of children’s rights within the workplace, marketplace, and community.¹² Processes like human rights due diligence studies, human rights impact assessment, upholding transparent reporting standards that affirm that no child labour is being used in supply chains, are examples of these initiatives. Businesses should be encouraged to undertake these voluntary initiatives, also at the international level.
- Companies should establish operational grievance mechanisms to deal with complaints about rights violations or potential rights violations.

F. Conclusion

This policy brief highlights that access to effective, timely and child-sensitive remedies is essential to addressing corporate-induced violations of children’s rights. Without meaningful avenues for redress, such violations risk persisting with impunity, particularly in contexts of weak regulation and power imbalances.

The Working Group reiterates that States Parties bear the primary obligation to ensure that legal and institutional frameworks enable children to obtain effective remedies, while businesses have a responsibility to respect children’s rights and to prevent, mitigate and remedy harm linked to their activities. Strengthening access to remedy is therefore critical to accountability, justice and the realisation of children’s rights across the African continent.

More information about the ACERWC Working Group on Children’s Rights and Business can be found at <https://www.acerwc.africa/en/special-mechanisms/working-groups/working-group-business-and-childrens-rights>