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CHILD

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UNITED KINGDOM



## PREVENTING CORPORATE ABUSE AND REALISING CHILD RIGHTS:

THE CASE FOR UK LEGISLATION ON HUMAN RIGHTS  
AND ENVIRONMENTAL DUE DILIGENCE

## ACKNOWLEDGEMENTS AND COPYRIGHT

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# EXECUTIVE SUMMARY

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## The role of the private sector in society

Business is a central part of our society and vital to the lives of children. The role of business in all our lives has been brought into particular focus during the coronavirus pandemic. We have faced empty shelves as supply chains and shops raced to adapt, parents and caregivers have juggled childcare and work, others have lost jobs. We have seen businesses heralded for going above and beyond to support their communities, and others criticised for exploitative practices.

Prior to the COVID-19 pandemic, a central topic for debate in the business community was about redefining the purpose of a corporation, beyond the profit imperative. The pandemic has brought additional scrutiny to this question and the desire to do things differently. In particular, it has highlighted how tangible action brings to life or possibly undermines what a company says on paper about its social purpose.

The UK Prime Minister pledged to build back better for future generations, including a fairer, greener and more resilient global economy.<sup>1</sup> There is now the opportunity to reimagine a new economic system that works for everyone, including children.

## The impact of business on children's rights

UK businesses and supply chains operate around the globe. They connect us to children labouring to produce cocoa in Côte d'Ivoire, to children of factory workers in Bangladesh producing our clothes as well as to children around the world using apps and products developed by British tech companies.

While child labour is perhaps the most widely recognised abuse of child rights by business, UNICEF research shows multiple ways that

businesses may impact on children's rights. Poor working conditions of parents and carers may limit the opportunities for a child to receive education, receive adequate care and nutrition, to play or to access healthcare. In the online world, excessive data collection practices can endanger children's privacy and weak safety measures may expose children to cyber abuse. Business operations may degrade the environment and contribute to climate change that threatens many, if not all, children's rights.

In addition, when children seek remedies to redress these abuses, they often face heightened and specific challenges. Remedy is an essential element of businesses' responsibility to respect child rights and of the UK Government's obligation to protect children's rights from business. However, when it comes to remedy for corporate abuses, children face particular barriers. Lack of information, inability to pay for fees or costs, dependency on adult's will to inform and support them are some of these challenges.

**All these impacts can have serious, long lasting, often irreversible, consequences on the lives of children. However, with the necessary will and appropriate preventative action, many of these abuses could be avoided or reduced.**

The UN Guiding Principles on Business and Human Rights (UNGPs) clarify that all businesses have an independent responsibility to respect human rights, and that in order to uphold such responsibility they are required to exercise human rights due diligence. **Human rights and environmental due diligence (HREDD) is the framework that allows businesses to identify, prevent and mitigate against negative impacts and account for how they address potential and actual negative impacts.**

Some companies are leading the way in conducting human rights and environmental due diligence, and

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1 HMG, UK PM addresses Financing for Development event via video, 28 May 2020, available at <https://www.gov.uk/government/news/uk-pm-addresses-financing-for-development-event-via-video-28-may-2020>.



others are making efforts to improve responsible business practices. However, there are still too many that are failing to meet their responsibility to respect human rights and the environment. Very few are adequately integrating child rights into such due diligence measures.

The current rate of change is extremely slow and without concerted action, the Government's vision for a fairer, greener economy will not be achieved.

## A law on human rights and environmental due diligence in the UK

Mandatory measures and a system of accountability are one of the strongest levers that the UK has to ensure respect for child rights and the environment by business and to address market and governance failures that contribute to corporate abuses.

**A law mandating human rights and environmental due diligence integrating children's rights is required that ensures businesses operating in the UK and UK businesses operating abroad take preventative action against child rights and environmental abuses.** Such a law should apply to a businesses' operations, products, services, investments, as well as business partners and value chains, as appropriate in view of their size, the risks they pose to human and child rights and the nature and context of their operations.

To deliver effectively this legislation should have clear expectations of conduct for business and a definition of human rights and environmental due diligence aligned with the UNGPs, an effective enforcement mechanism, and a meaningful disclosure obligation. It should also allow for victims of abuses to seek remedies in the UK.

## The case for legislation

### 1. Meeting international obligations

A legal requirement to conduct human rights and environmental due diligence would be in line with the UK's international obligations on human rights, and specifically with the international children's human rights. In 2016, the UN Committee on the Rights of the Child urged the UK Government to establish and implement regulations to ensure that the business sector respect children's rights and to introduce a requirement for business to undertake child-rights due diligence.

International and regional bodies have also called on States to introduce a legal requirement to conduct human rights and environmental due diligence. There is a growing recognition that requiring businesses to conduct human rights and environmental due diligence by law would close a gap in human rights protection from abuses by businesses at the national level and is a way for States to meet their internationally agreed human rights obligations.

### 2. Voluntary measures have failed to address the problem

Almost 10 years after the adoption of the UN Guiding Principles on Business and Human Rights, there are still few companies that take a preventative approach to human rights abuses and environmental harm, and even fewer that take a comprehensive approach that integrates child rights in their human rights and environmental due diligence.

The recent 2020 Corporate Human Rights Benchmark showed that, among the 229 companies assessed, almost half of them failed to score any point for human rights due diligence. This situation not only undermines the full realisation of children's rights, but it also penalises responsible businesses that are investing in upholding their responsibilities. In addition, because many businesses are not consumer facing, they are also not incentivised to act, even for only reputational risks. Finally, while voluntary action might indicate the commitment of a business to respect human rights, it does not ensure accountability or recourse to remedy for victims, so providing limited additional protections.

Voluntary action alone will never be enough to bring the scale needed at the speed required.

### 3. Existing legislation is insufficient

The current UK legislative framework on responsible business conduct is not cohesive, thus limiting its effectiveness for promoting responsible business behaviour. There is not a comprehensive due diligence requirement for business, creating confusion among businesses and leaving gaps in human rights protection. What exists is fragmented and mainly relies on obligations for reporting rather than encouraging preventative action.

The UK's approach to access to remedy for corporate abuses has been considered weak by the Joint Committee on Human Rights due to challenges related to costs, access to corporate documents and limits to legal aid provisions. These challenges are exacerbated when those seeking justice are children. In addition, the failure to ratify the Third Optional Protocol to the UN Convention on the Rights of the Child (UNCRC) by the UK is depriving children of an additional avenue for seeking remedies.

Legislation mandating human rights and environmental due diligence and providing access to remedy, would bring policy and legislative coherence and dissipate confusion among businesses.

### 4. Business support the need for additional regulation

Businesses in UK have recognised that additional regulation on their corporate human rights obligations would bring clarity to their responsibilities. For those leading in this area, it would level the playing field and increase leverage with third parties to improve practice, including in their supply chains.

The legislative landscape of corporate accountability is changing; similar legislation has been adopted or is under consideration in a number of other countries. The UK needs to support its businesses to manage their risks consistently across their supply chain and be prepared to meet the highest standards for respecting children's rights and the environment.

### 5. Children and young people want business to act responsibly

Children and young people have also demonstrated in the recent years that they expect businesses to act responsibly and expect the UK Government to ensure that they do so. A law on human rights and environmental due diligence would address children's concerns and expectations around business' behaviour and responsible products.

## RECOMMENDATIONS

UNICEF UK recommends the UK Government to introduce new legislation that requires businesses operating in the UK and UK businesses operating abroad to take action to prevent child rights abuses and environmental harm, by conducting holistic human rights and environmental due diligence, and that allows victims to seek remedies for when abuses occur. The UK Government should also ensure that children have access to justice for the abuse of their rights by corporate entities and remove any additional barriers that they face. This would include also ratifying the Third Optional Protocol to the UN Convention on the Rights of the Child on a Communications Procedure.

Such legislation should include the following principal elements and supporting measures:

1. A comprehensive approach to human rights and environmental due diligence, based on internationally recognised human rights that consider specifically the rights of different groups at risk of being affected by business, such as children.
2. Meaningful engagement and active listening to the views of children.
3. A clear set of expectations and responsibilities for businesses.
4. Meaningful disclosure and transparency.
5. An effective enforcement mechanism.
6. Effective access to justice and remedies for victims of corporate abuses.
7. Strengthen the remedy system to integrate enabling measures to overcome additional barriers that children face.
8. Ratify the Third Optional Protocol to the UNCRC on a communications procedure.
9. Promote the new obligations and, in general, corporate respect for human rights and provide clear guidance on how to implement the legal requirement and related processes.

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## INTRODUCTION

*"I would rather be going to school or braiding my friend's hair. I can do many different designs [...] I suffer at home. I cough very hard and my chest hurts. Sometimes I cough and black comes on my hand."*

Sara Zanu, age 9



*In 2016, Sara had been working in the Okobaba sawmill industry in Ebute-Metta district in Lagos, Nigeria, for four years, breathing in toxic fumes as the sawdust burned.*

The private sector plays an increasingly important role in economies and societies at large, and, in particular, in the lives of children. Through research across a range of sectors and supply chains UNICEF knows how businesses can negatively impact children's rights. Far too often, children's considerations remain invisible in business' supply chains, products and operations.

Some businesses are voluntarily taking action to address the serious impact they can have on human rights and the environment, including climate change. However, children's rights are still not comprehensively integrated in the actions of companies that lead this work, while many companies fall even further behind. This leaves a substantial gap in the realisation of child rights and respect for the environment.

The COVID-19 pandemic has exacerbated existing vulnerabilities in the current business models and economic systems. Workers in the supply chains, who are often part of the hidden workforce and already face low wages, dangerous working conditions and few or no social protections, have been particularly exposed to the worsening conditions.<sup>2</sup> UNICEF and ILO have specifically warned about the increased risk of child labour.<sup>3</sup> The COVID-19 pandemic has highlighted the need for businesses to have appropriate rights-respecting tools and systems to face current and future crises, from coronavirus to climate change.

Prior to the COVID-19 pandemic, a central topic for debate emerging in the business community was about redefining the purpose of a corporation – beyond the profit imperative. A number of corporate statements and initiatives appeared with the underlying idea that a company should deliver value to all stakeholders, not just shareholders. The British Academy suggested a new definition of corporate purpose as "profitably solving the problems of people and planet and not profiting from creating

2 For example, see BHRRC, COVID-19: Supply Chains Workers, available at <https://www.business-humanrights.org/en/big-issues/covid-19-coronavirus-outbreak/supply-chain-workers/>.

3 UNICEF, ILO, COVID-19 and child labour: a time of crisis, a time to act, June 2020, available at <https://data.unicef.org/resources/covid-19-and-child-labour-a-time-of-crisis-a-time-to-act/>.

problems”.<sup>4</sup> The debate around the purpose of a corporation beyond profit has continued during the COVID-19 pandemic, showing how the role that companies play in society is an essential one. It became clearer that to achieve the vision of purposeful business, it is necessary that purpose is put into action.

The response to the COVID-19 pandemic has focused attention on the role of business in society and given us an opportunity to reimagine a new economic system that works for everyone, including children.

Indeed, the UK Government recognised that “we owe it to future generations to build back better and base our recovery on solid foundations, including a fairer, greener and more resilient global economy”.<sup>5</sup> The UK Government has also renewed its commitment to promote human rights in business in UK and abroad.<sup>6</sup> However, there is still a long way before this can become a reality. Change is possible and it requires the UK Government to take action to ensure that business positively contributes to society and upholds its responsibility to respect children’s rights and the environment.

Human rights and environmental due diligence is widely recognised as an effective way of preventing and mitigating child rights abuses and environmental harm.<sup>7</sup> This process requires businesses to identify, prevent, mitigate and account for how they address potential and actual impacts on human rights and harms to the environment. It is an essential way to ensure positive corporate purpose is matched with practical impact. However, such an approach cannot be left to the voluntary actions of some businesses. Government action is critical for speeding up and scaling up businesses’ respect for child rights and the environment and essential for delivering a sustainable economic system into the future.

The UK Government can and must create a legislative environment that enables businesses to respect children’s rights and the environment. **This can be achieved by introducing a requirement for businesses operating in the UK and UK businesses operating abroad to take action to prevent child rights abuses and environmental harm, by conducting comprehensive human rights and environmental due diligence. The UK Government should also ensure that children have access to justice if their rights are abused by corporate entities and remove any additional barriers that they face. This would include also ratifying the Third Optional Protocol to the UN Convention on the Rights of the Child on a Communications Procedure.**

This paper considers why the UK Government should legally require businesses in the UK to conduct human rights and environmental due diligence and why it should ensure accountability for abuses and environmental harms. It also explains the necessity for this explicitly to integrate child rights. Finally, it provides key principles and actions that the new piece of legislation should contain in order to be effective and to fully ensure children’s rights are accounted for.

Businesses have responsibilities to children and children have rights in relation to business. It is now time for the UK Government to take action to ensure children’s rights are respected by both businesses operating in UK and UK businesses operating abroad.

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<sup>4</sup> British Academy, Future of Corporation, available at <https://www.thebritishacademy.ac.uk/programmes/future-of-the-corporation/about/>.

<sup>5</sup> HMG, UK PM addresses Financing for Development event via video, 28 May 2020, available at <https://www.gov.uk/government/news/uk-pm-addresses-financing-for-development-event-via-video-28-may-2020>.

<sup>6</sup> Foreign & Commonwealth Office and Foreign, Commonwealth & Development Office, Implementing the UN Guiding Principles on Business and Human Rights: May 2020 update, 27 May 2020, available at <https://www.gov.uk/government/publications/implementing-the-un-guiding-principles-on-business-and-human-rights-may-2020-update>.

<sup>7</sup> UN Working Group on Business and Human Rights, Mandatory human rights due diligence (mHRDD), available at <https://www.ohchr.org/EN/Issues/Business/Pages/MandatoryHRDD.aspx>.

# 1. THE IMPACT OF BUSINESS ON CHILDREN'S RIGHTS

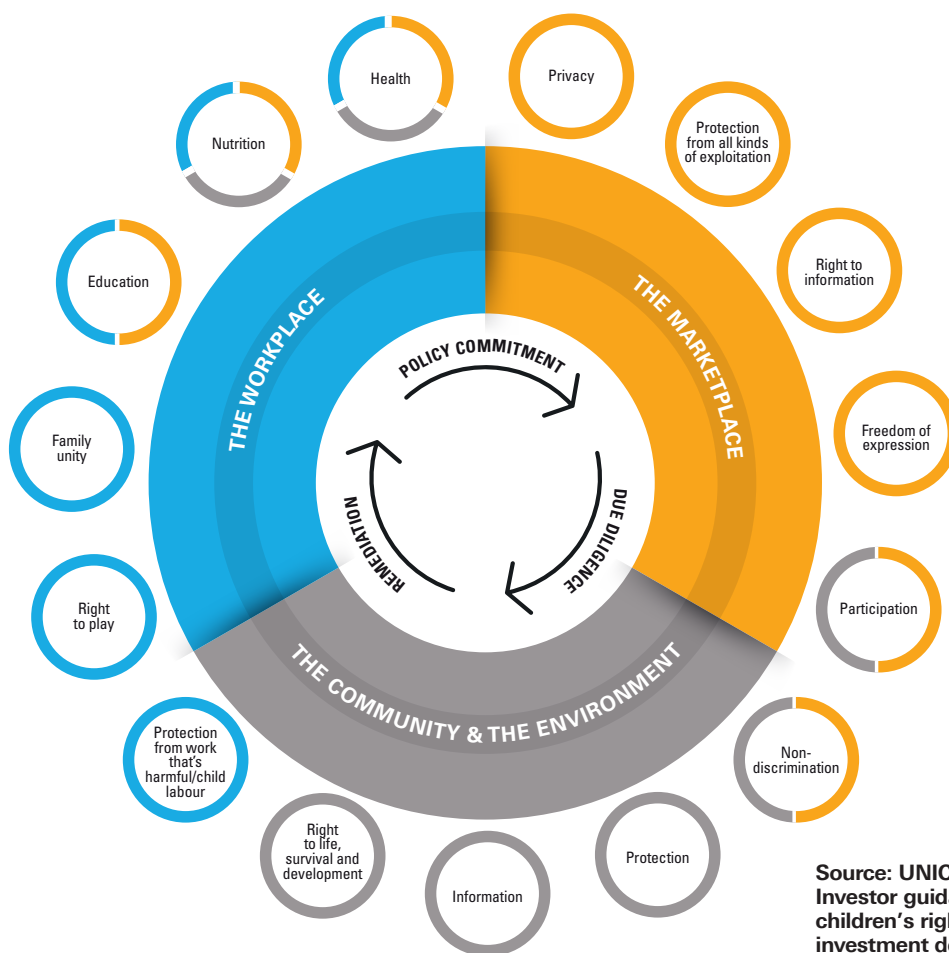
UNICEF research has demonstrated the wide-ranging direct and indirect impacts that business practices and policies have on children's rights here in the UK and around the world.<sup>8</sup> UK businesses have operations and supply chains that span the globe. All the case studies presented in this chapter have some connection to British companies, operationally or via their supply chains.

Children are in a crucial development phase, during which time harm to their physical and mental well-being may affect them for the rest of their lives.<sup>9</sup>

For instance, the size of their bodies, as well as the developmental stage of their internal organs and systems means children are more vulnerable to health risks from pollution and toxins, than the same exposure by adults.<sup>10</sup>

Children are not a homogeneous group, and different groups of children may be impacted differently by business' activities, products and operations. Yet, as a group, children remain in a particularly vulnerable and marginalised position.

**Figure 1: Business impact areas linked to the UN Convention on the Rights of the Child (UNCRC).**



**Source: UNICEF, Sustainability, Investor guidance on integrating children's rights considerations into investment decision making**

- 8 For an overview of the various impacts businesses can have on children see UNICEF, *Children are everyone's business workbook 2.0*, 2014, available at [https://www.unicef.org/csr/css/Workbook\\_2.0\\_Second\\_Edition\\_29092014\\_LR.pdf](https://www.unicef.org/csr/css/Workbook_2.0_Second_Edition_29092014_LR.pdf). In addition, specific analysis can be found on the following topics: apparel and footwear; travel and tourism; mining; pesticides. See UNICEF, *The Apparel and Footwear Sector and Children in Vietnam*, 2016; UNICEF, *The Ready Made Garment Sector and Children in Bangladesh*, 2015, available at [https://www.unicef.org/csr/files/CSR\\_BANGLADESH\\_RM\\_G\\_REPORT.PDF](https://www.unicef.org/csr/files/CSR_BANGLADESH_RM_G_REPORT.PDF); Unicef UK and UNICEF Mexico, *Children and the Hotel Industry in Mexico: taking action to protect, respect and support children's rights*, 2017; UNICEF, *Children's Rights and the Mining Sector*, 2015, available at [https://www.unicef.org/csr/files/UNICEF\\_REPORT\\_ON\\_CHILD\\_RIGHTS\\_AND\\_THE\\_MINING\\_SECTOR\\_APRIL\\_27.pdf](https://www.unicef.org/csr/files/UNICEF_REPORT_ON_CHILD_RIGHTS_AND_THE_MINING_SECTOR_APRIL_27.pdf); UNICEF, *Understanding the Impacts of Pesticides on Children: A discussion paper*, 2018, available at [https://www.unicef.org/csr/files/Understanding\\_the\\_impact\\_of\\_pesticides\\_on\\_children-Jan\\_2018.pdf](https://www.unicef.org/csr/files/Understanding_the_impact_of_pesticides_on_children-Jan_2018.pdf).
- 9 UNICEF, *Children are everyone's business workbook 2.0*, 2014, p. 5, available at [https://www.unicef.org/csr/css/Workbook\\_2.0\\_Second\\_Edition\\_29092014\\_LR.pdf](https://www.unicef.org/csr/css/Workbook_2.0_Second_Edition_29092014_LR.pdf).
- 10 Ibid., p. 40.

Physical and mental factors are often exacerbated by social and political circumstances that make children's situation towards business particularly challenging and imbalanced:

- Children lack avenues to participate in public discourse and often, their voices remain unheard.
- Children are typically not consulted in decisions that affect them.
- Children often face challenges in accessing State-based and non-State based remedies where their rights have been infringed, particularly in the context of corporate abuses.

***"[C]hildren are among the most marginalized and vulnerable members of society and can be disproportionately, severely, and permanently impacted by business activities, operations, and relationships."**<sup>11</sup>*

**Prof. John Ruggie**, Former Special Representative of the UN Secretary General for Business and Human Rights

Even when impacts are direct, these often take place at the end of the supply chain, where there is less scrutiny, thus making them particularly invisible. Child labour is the most widely recognised corporate abuse of children's rights. However, impacts on children can also derive from the way parents and caregivers are treated by companies. For instance, a child's right to education (art. 28 UNCRC), to play (art. 31 UNCRC) or to access healthcare (art. 24 UNCRC) can go unfulfilled due to poor working conditions of parents and carers and business-related land use. Low wages and/or long working hours of their parents or caregivers can jeopardise a child's right to an adequate standard of living (art. 27 UNCRC) or to receive adequate care (art. 18 UNCRC). Furthermore, if children are left home alone or have to work in order to supplement family income, they can be exposed to risks of abuse and exploitation, thus undermining their right to be protected from economic exploitation (art. 32 UNCRC) and all forms of sexual exploitation and sexual abuses (art. 34 UNCRC).

The socio-economic disruption created by the COVID-19 pandemic has highlighted and exacerbated the vulnerability of workers to abuse and could increase the risk of child labour.<sup>12</sup> The disruption in supply chains, halt in manufacturing, and economic insecurity can result in losses in the household income. These circumstances, combined with temporary school closures, might push children into hazardous and exploitative work, and those children already working may do so for longer hours or under worse conditions. Gender inequalities may be exacerbated, with girls expected to perform additional household chores and agricultural work.

11 UNICEF, *The Principles and other standards and norms*, available at <https://www.unicef.org/csr/theprinciples.html>.

12 UNICEF, ILO, *COVID-19 and child labour: a time of crisis, a time to act*, June 2020, available at <https://data.unicef.org/resources/covid-19-and-child-labour-a-time-of-crisis-time-to-act/>.

## The hotel industry in Mexico and children's rights to play and access services<sup>13</sup>



In 2017, UNICEF published a report on the research it conducted on the impact of the hotel industry on children in Mexico. The research identified three major areas of impact on children: decent work for parents and caregivers; child labour and sexual exploitation; and community and the environment. On this latter impact, the research highlighted how the migration that has accompanied the tourism development had increased pressure on the basic services and social infrastructures such as housing, schools, water and sanitation and health centres, with an increase in inflation. As a result of this, children living in those areas had less access to these crucial services. In addition, tourism-led development had resulted in the privatisation of public areas, such as beaches, despite being considered public property by the Constitution. This meant that children could not enjoy these areas to play and that communities were not able to earn a living through fishing, thus contributing to children's deprivation.

*"Access to the beaches – we can't go there – they are forbidden, private properties, I'm upset about it."*

**Child of hotel employee**

<sup>13</sup> Unicef UK and UNICEF Mexico, *Children and the Hotel Industry in Mexico: taking action to protect, respect and support children's rights*, 2017.

## The cocoa sector and children in Côte d'Ivoire<sup>14</sup>

Côte d'Ivoire is the largest producer of cocoa in the world, responsible for more than 40 per cent of global production. Within the cocoa-growing communities in Côte d'Ivoire, there are more than 3 million children. While myriad local farmers, sellers and traders are involved with production and marketing in the cocoa supply chain, processing and manufacturing are largely done by global players in facilities outside the country.

**UNICEF's research identified 4 key areas of severe negative impacts on children through the cocoa sector:**

### **1. Inadequate standard of living**

Farmers receive a small share of the total value in the cocoa value chain, and they are often undercut by brokers or not paid in time. They also often request credit from local vendors or intermediaries, thus making it difficult to escape from poverty for generations. Poverty thus limits the ability of the household to provide for their children in terms of health care services, school supplies, nutritious food and the long-term viability of the farms.



*Firimin Kouassi, age 13, uses a machete to harvest palm nuts on his uncle's cacao plantation in San-Pedro, Côte d'Ivoire. Firimin no longer goes to school.*

<sup>14</sup> UNICEF, Children's Rights in the Cocoa-Growing Communities of Côte d'Ivoire – Synthesis Report, 2018, available at <https://www.unicef.org/csr/css/synthesis-report-children-rights-cocoa-communities-en.pdf>.

## 2. Child protection

Children could be working in the farms, performing activities such as clearing land, using sharp tools such as machetes to open cocoa pods, and carrying heavy loads, thus exposing them to safety risks. Children, mostly girls, also carry water and firewood to the farm, help with the cooking, and care for younger siblings while their parents work on the cocoa farms. Many secondary school-aged children are out of school and often labour on family farms or pursue other income-generating opportunities. Due to low education levels, they often find themselves in precarious, informal work. Risks of child labour, human trafficking and labour exploitation for children are also heightened by the lack of birth registration. An estimated 40% and 50% of births in cocoa-growing regions are not registered.

## 3. Education

Children in cocoa-producing communities face challenges in terms of availability, accessibility and quality of education, and often their learning outcomes remain insufficient. Mothers in cocoa-growing families typically take their young children to cocoa farms, carrying them on their backs or leaving them in the care of older siblings while they work. This can expose young children to potential hazards on the farm, as well as increase the likelihood that older children, usually girls, drop out of school to help with childcare. Moreover, although primary school is free, the additional costs for uniforms, textbooks and other indirect contributions can represent financial barriers for many families. The distance of schools from where children live can also be a challenge as they might be late or be absent during rainy seasons due to conditions of the roads.

## 4. Health and nutrition

Malnutrition for children in cocoa-growing communities is caused by common food shortages when farmers have exhausted their income from the main harvest and by the lack of diversity and nutrient-rich foods in diets. In addition, local health facilities often do not have access to electricity and optimal sanitation conditions. This means that families would need to visit larger facilities or hospitals for many health-care interventions, but many of them do not make these longer journeys. Moreover, when farmers themselves fall ill they are likely to rely more heavily on family members, including children, to help with tasks on the farm. This in turn affects children's school attendance, their education, and inter-generational poverty, as well as the impacts that reduced incomes have on nutrition, health and well-being. Children are also exposed to a growing amount and variety of chemical fertilizers and pesticides through direct or indirect contact, thus impacting on their health.

Business can also affect children's rights through their products and the way they market them. For example, the internet has the ability to enhance children's autonomy and independence, as well as enable the realisation of their rights. However, children's privacy can be undermined by certain practices, such as the collection and onward sale of their data and browsing habits, behavioural targeting and advertising, the use of biometrics, age

verification and the mandatory use of identification, government surveillance and a variety of parental controls.<sup>15</sup> This can negatively affect not only a child's right to privacy (art. 16 UNCRC), but also can expose the child to safety risks, including sexual exploitation and abuse (art. 34 UNCRC), criminal uses of their data (art. 36 UNCRC) and commercial exploitation (art. 32 UNCRC).

15 UNICEF, *Children's rights in the digital age*, brief for policymakers, available at <https://www.unicef.org/csr/files/Brief-Childrens-Rights-in-the-Digital-Age.pdf>.

## How digital marketing affects children's rights<sup>16</sup>

The digital marketing ecosystem is sustained, in part, by the collection, analysis, storage and sale of children's personal data. Many data collection practices occur without children's knowledge or consent, or under circumstances that do not empower them to understand and control the use of their personal information. The result is that children's privacy is repeatedly breached.

Digital marketing can also result in economic exploitation of children and other negative rights impacts, including the promulgation of gender and other stereotypes. The marketing of certain products can be particularly harmful. For example, there is extremely compelling evidence of the link between childhood obesity and digital advertisements of foods high in saturated fat, salt and/or free sugars, highlighting the importance of preventing such exposure. Children can also be exposed to other monetization practices, including in-app purchases. However, children may not understand the real monetary value of online transactions, which can leave them prone to overspending.

Digital marketing often comes hand in hand with free content for children online, and thus contributes to their enjoyment of freedom of expression and access to information. However, the pervasive presence of advertising online can impede children's enjoyment of their right to express themselves, develop opinions and access pluralistic material free from marketing content.



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<sup>16</sup> UNICEF, *Children's rights and digital business during COVID-19 and Beyond: 10 Core Messages*, 2020, p. 8, at [https://www.unicef.org/csr/css/Digital\\_CRB\\_and\\_COVID-19\\_-\\_10\\_Core\\_Messages.pdf](https://www.unicef.org/csr/css/Digital_CRB_and_COVID-19_-_10_Core_Messages.pdf); UNICEF, *Children and Digital Marketing: Rights, risks and responsibilities*, 2018, available at [https://www.unicef.org/csr/css/Children\\_and\\_Digital\\_Marketing\\_-\\_Rights\\_Risks\\_and\\_Responsibilities.pdf](https://www.unicef.org/csr/css/Children_and_Digital_Marketing_-_Rights_Risks_and_Responsibilities.pdf).

Finally, abuses of children's rights can also be linked to past environmental degradation, current business practices or potential future environmental harm.<sup>17</sup> Nearly every business sector is directly or indirectly involved in the production, use, release and disposal of hazardous substances, the extraction of resources or other types of environmental impact. Business can impact children's environmental rights locally, nationally or globally, as in the case of the major greenhouse gas emitters and polluters.

Children are uniquely vulnerable to environmental damage and climate change. Children absorb hazardous substances more readily than adults and are especially vulnerable to certain toxins. Negative impacts on children due to environmental degradation or pollution often lead to irreversible, long-term damage, disability or death, thus infringing on the right to health (art. 24 UNCRC) and right to life, survival and development (art. 6 UNCRC). The UN Committee on the Rights of the Child has recognized climate change as "one of the biggest threats to children's health",<sup>18</sup> as well as its adverse impact on other rights, such as the right to education (art. 28 UNCRC), adequate housing (art. 27 UNCRC), safe drinking water and sanitation (art. 24 UNCRC).<sup>19</sup>

Droughts and changing global rainfall patterns are leading to crop failures and rising food prices, thus leading to food insecurity and nutritional deprivations.<sup>20</sup> These effects can have lifelong impacts, but also drive migration and conflict that have severe impacts on a child's enjoyment of their rights.

The private sector has a significant level of responsibility for the climate crisis. In 1988, human-induced climate change was officially recognized.<sup>21</sup> Since this time, the fossil fuel industry has doubled its contribution to global warming by emitting as much greenhouse gas in 28 years as in the 237 years between 1988 and the birth of the Industrial Revolution.<sup>22</sup> Half of global industrial GHG emissions can be attributed to 50 fossil fuel companies.<sup>23</sup>

Children's vulnerability to climate change impacts poses an immediate and far-reaching threat to the enjoyment of many, if not all, rights enshrined in the UNCRC and notably the right to life, survival and development (art. 6 UNCRC). In particular, for indigenous children, climate change impacts children's rights to culture (art. 30 UNCRC) and urban migration expose them to heightened risk of sexual exploitation and trafficking (arts. 34 and 35 UNCRC).

In addition, while renewable energy companies are key to the transition to a low carbon economy, they can nonetheless negatively affect children's rights through their practices and operations when adequate measures are not taken. Some renewable energies projects have been linked to allegations of negative human rights impacts connected to displacement of communities, access to water and availability of food sources.<sup>24</sup> All of these situations have an impact on child rights, such as the right to education (art. 28 UNCRC), the right to safe drinking water and sanitation (art. 24 UNCRC) and the right to food (art. 27 UNCRC).

17 UN Committee on the Rights of the Child, Report of the 2016 Day of General Discussion: Children's rights and the environment, 2017, p. 26, available at <https://www.ohchr.org/Documents/HRBodies/CRC/Discussions/2016/DGDDoutcomereport-May2017.pdf>.

18 UN Committee on the Rights of the Child, General Comment No. 15 (2013) on the right of the child to the enjoyment of the highest attainable standard of health (Art. 24), 2013, UN Doc. CRC/C/GC/15, para. 50, available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f15&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGC%2f15&Lang=en).

19 See for example, UN Committee on the Rights of the Child, Concluding Observations on Jamaica (2015), UN Doc. CRC/C/JAM/CO/3-4, para. 50, available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fJAM%2fCO%2f3-4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fJAM%2fCO%2f3-4&Lang=en); UN Committee on the Rights of the Child, Concluding Observations on Saint Lucia (2014), UN Doc. CRC/C/LCA/CO/2-4, para. 52, available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fLCA%2fCO%2f2-4&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fLCA%2fCO%2f2-4&Lang=en); UN Committee on the Rights of the Child, Concluding Observations on Tuvalu (2020), UN Doc. CRC/C/TUV/CO/2-5, para. 42, available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTUV%2fCO%2f2-5&Lang=en](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fTUV%2fCO%2f2-5&Lang=en).

20 UNICEF, Environment and climate change, climate change and environmental degradation undermine the rights of every child, <https://www.unicef.org/environment-and-climate-change>.

21 CPD, The Carbon Major Database, CDP Carbon Majors Report 2017, 2017, available at <https://b8f65cb373b1b7b15feb-c70d8ead6ced550b4d987d7c03fcd1d.ssl.cf3.rackcdn.com/cms/reports/documents/000/002/327/original/Carbon-Majors-Report-2017.pdf?1499691240>.

22 Ibid., p. 7.

23 Ibid., p. 10.

24 For a list of case studies see BHRRC, Renewable energy & human rights, available at <https://old.business-humanrights.org/en/case-studies-renewable-energy/>.

## Environmental degradation by business and the impact on children's rights<sup>25</sup>

The garment sector in Bangladesh is one of the leading contributors to water scarcity and water pollution in Bangladesh's urban areas. The industry's consumption of 1,500 billion litres of groundwater per year contributes to the reduction in groundwater levels in Dhaka, receding at a rate of about two metres per year. This results in poor households in urban areas facing increased pumping costs and having to resort to using alternative and more expensive sources of water. At the same time, the industry is also responsible for water contamination through inadequately treated industrial effluent from textile mills. Water pollution is harming the health of children living nearby and downstream. This problem is exacerbated by Bangladesh also being highly vulnerable to climate change.



*A young girl sits inside an informal glue factory, where workers process waste leathers to make glue in Hazaribagh Thana, near the Buriganga River in Dhaka. Hazaribagh is Dhaka's biggest leather processing industrial zone and is one of the most densely populated areas on Earth.*

## Climate change and health impacts of pesticides on children in the agricultural sector<sup>26</sup>

With the increase of population, agricultural demand is expected to increase. However, because the risks of climate change threaten agricultural stability, pesticides are being increasingly used in the agricultural sector.

The negative impacts of pesticides on children can be manifested in all stages of their development. For example, during the first 12 years of life, a child's breathing rate is double that of an adult. Thus, a child would inhale the double the amount of aerially sprayed pesticides. Chronic exposure to pesticides has been linked to serious consequences on children's health. In addition, acute pesticide poisoning usually results in death for young children.

Children can be exposed to pesticides directly or indirectly. They can be exposed through their parents, via their clothes, by being carried on the back of their mothers working in the fields, or through the placenta and breast milk. Children can also be exposed to pesticides at home or at school, while they are playing, eating, drinking or working. For example, pesticides can be sprayed or applied indoors, chemicals could be stored near living quarters or dumped illegally in public areas, and toxic residues of pesticides can still be found in vegetables and fruits eaten by children. Another pathway to exposure for children is through engagement in agricultural work, where children have been employed to spray pesticides without any protective equipment.



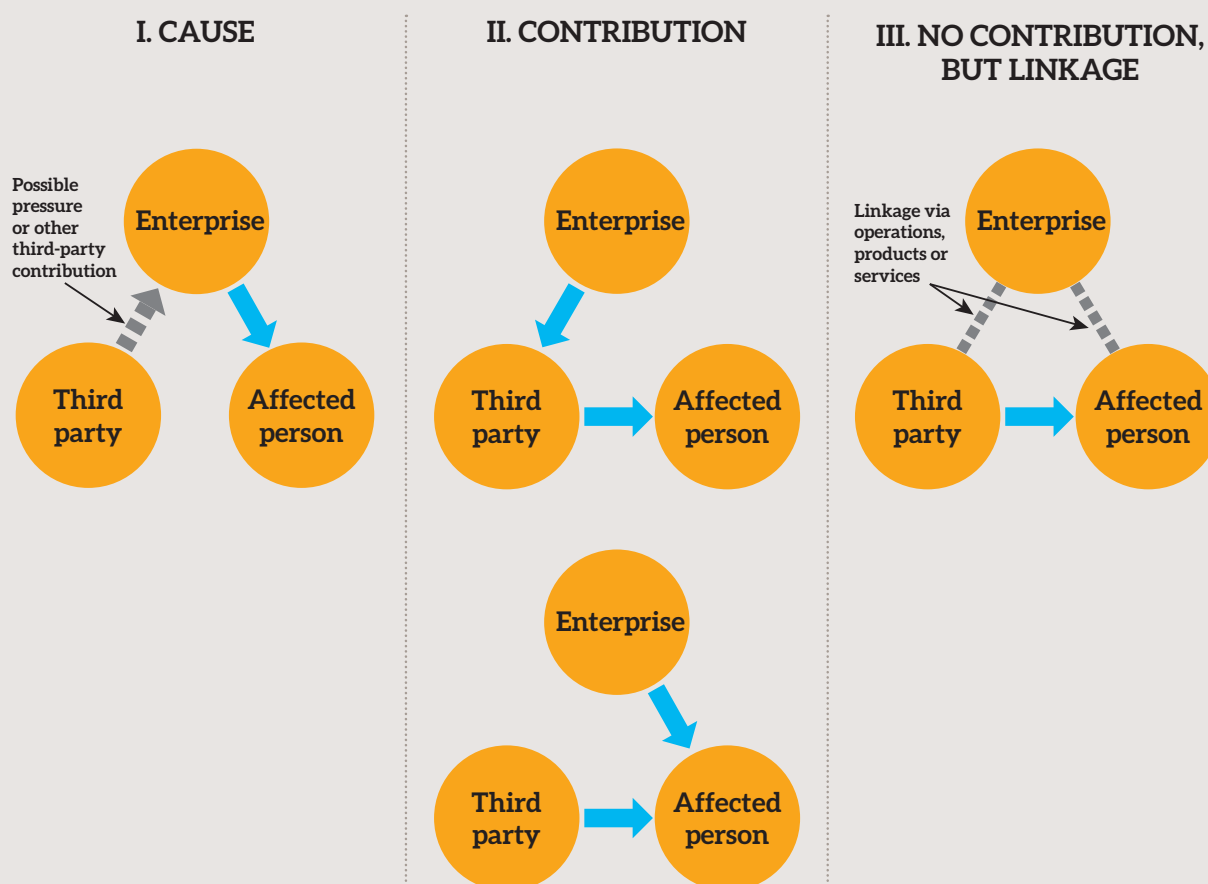
*Santiago, age 10, harvests peppers, placing those he has picked into a large plastic bucket, on his family's farm in the city of Las Brujas, Uruguay.*

<sup>25</sup> UNICEF, The ready-made garment sector and children in Bangladesh, 2015, p. 11, available at [https://www.unicef.org/csr/files/CSR\\_BANGLADESH\\_RMGM\\_REPORT.PDF](https://www.unicef.org/csr/files/CSR_BANGLADESH_RMGM_REPORT.PDF).

<sup>26</sup> UNICEF, Understanding the impacts of pesticides on children: a discussion paper, 2018, available at [https://www.unicef.org/csr/files/Understanding\\_the\\_impact\\_of\\_pesticides\\_on\\_children-Jan\\_2018.pdf](https://www.unicef.org/csr/files/Understanding_the_impact_of_pesticides_on_children-Jan_2018.pdf).

As demonstrated, businesses can have various impacts on many children's rights, and they can do so in different ways. They can cause, contribute or be directly linked to child and human rights abuses, as well as climate change and environmental harm, through their activities, operations, products, services, supply chain and business relationships. Understanding business' relationship to their negative impacts on children's rights and the environment would determine how they are expected to address these to uphold their responsibilities.

**Figure 2: Business involvement in negative impacts.**<sup>27</sup>



<sup>27</sup> OHCHR, The corporate responsibility to respect human rights, p. 21, available at [https://www.ohchr.org/Documents/Publications/HR.PUB.12.2\\_En.pdf](https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf).

Business can cause or contribute to negative impacts via its actions and decisions. Environmental degradation and factors causing climate change are a negative impact, and as such the links between company's actions and climate change need to be considered. Businesses can cause negative impacts directly on the affected individual and communities. This could happen for example, if a business refuses to allow workers to form trade unions, thus denying a child's rights to freedom of association if legally employed in the workplace (art. 15 UNCRC). They could also contribute to human rights abuses via a third party that is abusing child rights, either individually or collectively. A company could, for example, finance a project that entails forced evictions, thus abusing a child's right to adequate standard of living (art. 27 UNCRC) and the right to privacy, family and home (art. 16 UNCRC), among others. With regard to climate change, for example, a company could contribute to it by emitting greenhouse gas and not taking steps to mitigate that, among other factors.

Businesses can also be involved in a child rights abuse because it is directly linked to their operations, products or services via their business relationship with another entity. In this case, the individual or community is negatively affected directly by a third party that has a direct link with the company. This means that there needs to be a link between the negative impact caused and the company's products, operations or services.<sup>28</sup> For example, a company can be linked to child rights abuses if one of its suppliers subcontracts work, without its prior knowledge, to contractors that use child labour for the manufacture of a product of the company, thus abusing the right of children of being free from labour exploitation (art. 32 UNCRC). Businesses can be directly linked to climate change if one of their products, services, processes is linked to greenhouse gas emissions through a business relationship such as a client or supplier and they haven't taken steps to measure, analyse, report and mitigate the emissions.

Whilst there is a wealth of research demonstrating the wide-reaching negative impacts of business' practices on children's rights, there is still a low level of awareness among business of such impacts beyond child labour. This translates into a lack of significant progress in comprehensively integrating child rights across business policies, processes and programmes. Among investors, there is still low attention to children's rights, apart from child labour.<sup>29</sup>

## 1.1 Challenges for children in accessing justice for corporate abuses

When children's rights are not respected by business, children have a right to seek a remedy.<sup>30</sup> However, on account of their age and situation, children face particular barriers in accessing justice, whether via mechanisms administered by States or by business.<sup>31</sup>

Children's evolving capacities are rarely considered when designing and implementing remedial processes, thus effectively denying them the opportunity to seek redress. The power imbalance between business and communities are even more significant when it comes to children.

The barriers that children face include: lack of information or literacy; fear of reprisals; physical distance from legal offices, police stations and courts; and inability to pay necessary fees and costs. In addition, remedial mechanisms are not adapted to children's particular rights and needs and are not equipped to adequately accommodate complaints from children. The dependant situation of children means that they must rely on adults' goodwill to inform and support them, including financially, logistically and emotionally. Children often are not considered eligible to initiate and participate in legal or quasi-legal proceedings on account of their age.

28 The term "business relationships" covers relationships with business partners, entities in the value chain and in the supply chains beyond the first tier, State and non-State entities, direct and indirect business relationships. See OHCHR, Frequently asked questions about the Guiding Principles on Business and Human Rights, p. 33, available at [https://www.ohchr.org/Documents/Publications/FAQ\\_PrinciplesBusinessHR.pdf](https://www.ohchr.org/Documents/Publications/FAQ_PrinciplesBusinessHR.pdf).

29 UNICEF, Sustainability, Investor Guidance on integrating children's rights into investment decision making, 2019, p. 5, available at [https://www.unicef.org/csr/files/FINAL\\_Investor\\_Guidance\\_UNICEF\\_Sustainability.pdf](https://www.unicef.org/csr/files/FINAL_Investor_Guidance_UNICEF_Sustainability.pdf).

30 See UN Committee on the Rights of the Child, General Comment no. 16 (2013) on State obligations regarding the impacts of the business sector on children's rights, UN Doc. CRC/C/GC/16, para. 30, available at <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.16.pdf>: "States have an obligation to provide effective remedies and reparations for violations of the rights of the child, including by third parties such as business enterprises... 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."

31 UNICEF, Discussion Paper: operational-level grievance mechanisms fit for children, 2018, p. 6, available at [https://www.unicef.org/csr/css/DISCUSSION\\_PAPER\\_GRIEVANCES\\_final.pdf](https://www.unicef.org/csr/css/DISCUSSION_PAPER_GRIEVANCES_final.pdf).

## 2. HUMAN RIGHTS AND ENVIRONMENTAL DUE DILIGENCE AS A WAY TO RESPECT CHILD RIGHTS AND THE ENVIRONMENT

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Under the UN Guiding Principles on Business and Human Rights (UNGPs), businesses have the responsibility to respect human rights and remediate their negative impacts.<sup>32</sup> The UNGPs, adopted unanimously by the UN Human Rights Council in 2011, elucidated the roles and responsibilities of business and governments in relation to human rights. The UNGPs clarified that businesses are expected to prevent, mitigate, and remediate adverse impacts on human rights.

Human rights due diligence is one of the tenets of the UNGPs. Human rights due diligence is a process requiring businesses to identify, prevent, mitigate, and account for how they address potential and actual impacts on human rights and harms to the environment. Such negative impacts could be caused by or contributed to through their own activities, or directly linked to their operations, products or services by their business relationships. Human rights due diligence should be ongoing, recognising that risks to people and the planet could change in line with the changing context. It applies to all businesses, regardless of their size, sector, operational context, ownership, and structure. In practice, it involves a number of interrelated processes to be carried out.<sup>33</sup>

As a framework, human rights due diligence helps businesses prevent and mitigate adverse impacts on people, by requiring them to take a proactive approach to preventing and addressing them.<sup>34</sup> It is, therefore, a fundamental way for businesses to meet their responsibility to respect human and child rights, and the environment.

The UNGPs do not refer explicitly to climate change, however they need to be interpreted holistically. Businesses cannot fulfil their responsibility to respect children's rights without addressing their impact on the environment and the impact of their activities

contributing to climate change. As such, human rights due diligence, as intended in the UNGPs, should be implemented in a way that also covers the environment and climate change.

*“Prevent actions causing disasters such as irresponsible disposal of waste, which causes flooding.”*

**Young person in the Philippines<sup>35</sup>**

**Human rights and environmental due diligence (HREDD) has four essential elements:<sup>36</sup>**

1. Identification and assessment of actual or potential adverse human rights impacts that the business may have. Children's rights are human rights and as such, they should be taken into consideration.
2. Integration of findings from impact assessments across relevant functions and company processes and taking action according to its involvement on the impacts identified.
3. Tracking the effectiveness of the measures undertaken to assess whether they are working.
4. Communication of how the impacts are being addressed and show stakeholders, in particular those affected, that there are adequate policies and processes in place to respect human rights.

**While these are the essential elements of HREDD, these must be complemented by supporting measures, namely:<sup>37</sup>**

1. Policies that set out the commitment to respect human rights and efforts to embed HREDD across a business' levels and functions.
2. Active engagement in the remediation of adverse human rights impacts caused or contributed to by the business.

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<sup>32</sup> UN Guiding Principles on Business and Human Rights, 2011, available at [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>33</sup> UN Working Group on Business and Human Rights, Report to the UN General Assembly, 2018, UN Doc. A/73/163, para. 10, available at [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/73/163](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/73/163).

<sup>34</sup> Ibid., para. 17.

<sup>35</sup> UNICEF, UN Global Compact, Save the Children, How business affect us - children and young people share their perspectives on how business impact their lives and communities, 2011, available at [https://www.unicef.org/csr/css/How\\_Business\\_Affects\\_Us\\_report\\_on\\_children\\_s\\_consultation.pdf](https://www.unicef.org/csr/css/How_Business_Affects_Us_report_on_children_s_consultation.pdf).

<sup>36</sup> UN Working Group on Business and Human Rights, Report to the UN General Assembly, 2018, UN Doc. A/73/163, para. 10, available at [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/73/163](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/73/163).

<sup>37</sup> Ibid. para. 11.

**Figure 3: Human rights and environmental due diligence and supporting measures integrating child rights<sup>38</sup>**

### Policy commitment

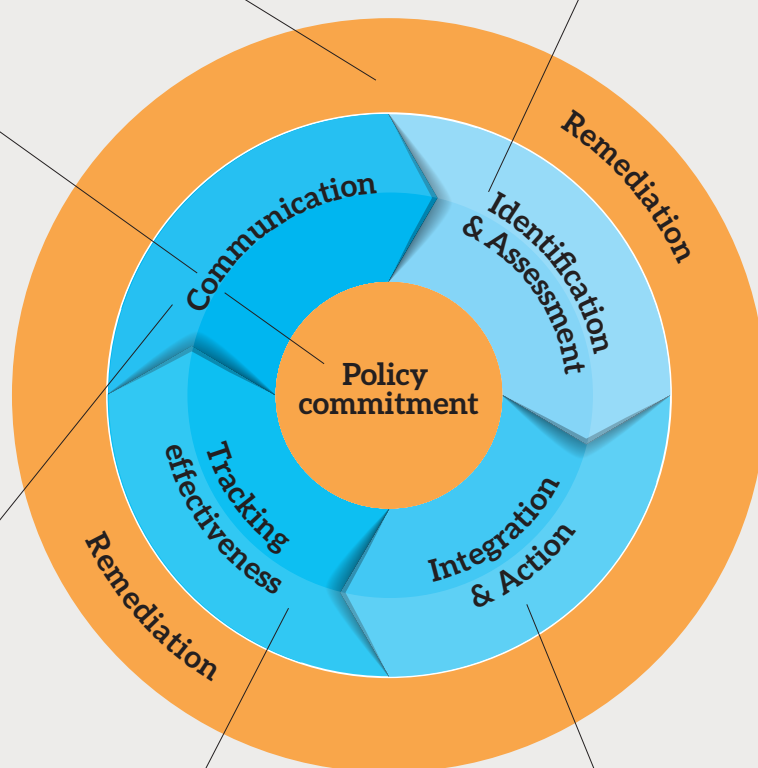
Adopt a policy commitment that refers to human rights, including children's rights, and the environment to serve as a basis for embedding the commitment throughout the business and its business relationships. Ensure that the policy commitment is reflected in the operational policies and procedures of the business.

### Remediation

Remedy adverse impacts through legitimate internal and external processes. Administer grievance mechanisms to provide victims with reparations as appropriate and cooperate with judicial mechanisms whenever indicated.

### Identification & Assessment

Identify and assess actual and potential impacts on children's rights, including: (i) impacts directly or indirectly caused by business activities, (ii) impacts to which business activities have contributed, and (iii) impacts that may be directly linked to operations, products or services through a business relationship. This includes also identifying how impacts on the environment negatively affect children's rights. Consult with human rights experts and key stakeholders, including civil society organisations, affected communities and children or their representatives.



### Communication

Communicate publicly how adverse impacts on children's rights have been identified and addressed. Discuss efforts and results in a variety of ways, including in person, online and in formal reports, so that there is sufficient information available to evaluate the adequacy and effectiveness of measures taken.

### Tracking effectiveness

Track the effectiveness of corporate responses to child rights impacts identified, with a view towards continuous improvement. Use appropriate tools and indicators and solicit feedback from external sources including key stakeholders.

### Integration & Action

Integrate and act on assessment of findings, ensuring that impacts on children's rights are raised and addressed across all relevant internal functions and processes. Take meaningful steps to cease or prevent actions that have caused or contributed to adverse impacts and use leverage to mitigate negative impacts linked to business relationships.

<sup>38</sup> UNICEF, ICJ, Obligations and Actions on child rights and business – A practical guide for States on how to implement the United Nations Committee on the Rights of the Child's General Comment no. 16, 2015, p. 25, available at [https://www.unicef.org/csr/css/CSR\\_GC\\_OBLIGATIONS\\_AND\\_ACTIONS\\_FINAL\\_AUGUST05.pdf](https://www.unicef.org/csr/css/CSR_GC_OBLIGATIONS_AND_ACTIONS_FINAL_AUGUST05.pdf).

Human rights and environmental due diligence has become the primary expectation of behaviour for any business with regard to their responsibility to respect human rights. The Organisation for Economic Co-operation and Development (OECD) has also produced guidance on how to implement it.<sup>39</sup>

The UNGPs and the OECD Guidelines have been recognised and adopted by stakeholders worldwide, including businesses, civil society organizations, and national and regional institutions. Together, they provide an initial framework for States and businesses to work towards meeting their respective human rights obligations and responsibilities.

The UNGPs recognise that businesses need to pay particular attention to impacts on individuals from groups or population at heightened risk of vulnerability and marginalisation, such as children.<sup>40</sup> The Children's Rights and Business Principles (CRBPs) developed by the United Nations Global Compact, Save the Children and UNICEF in 2012, help articulate these specific risks to children and recommend ways businesses can address them via appropriate policies and processes. These Principles offer a child rights lens to the UNGPs.

Despite broad recognition that children are at heightened risk of vulnerability and marginalisation by business action, children's rights are often overlooked in human rights and environmental due diligence undertaken by companies. Companies are addressing wider human rights issues but when it comes to children's rights, these are not fully or strategically integrated.<sup>41</sup> While there has been an encouraging increase in companies considering a child rights approach in their policies (although the primary focus is still limited to child labour), there is still a gap between policies and implementation.<sup>42</sup> Companies may have policies that address children's rights, but their implementation still lags behind. There is little transparency on the implementation and integration

of these policies into companies' operations and on the impact that these policies have on children.<sup>43</sup>

Because children are often overlooked in business-related processes, policies and legislation, there is a clear risk that negative impacts remain hidden, thus creating long-lasting and often irreversible consequences for their lives. As such, a comprehensive approach to human rights and environmental due diligence that integrates child rights considerations is the most effective way for businesses to understand their actual and potential impacts, address the most salient risks, and take responsibility for their supply chains, activities, products and operations. It also enables them to be better prepared for current and future crises, from coronavirus to climate change.

Conducting human rights and environmental due diligence is also the entry point for businesses to contribute to the realisation of the Sustainable Development Goals (SDGs). If businesses want to contribute to sustainable development, respect for human rights and the environment in their activities and across their value chain, focusing on negative impacts and addressing harms, is the most powerful action they can take.<sup>44</sup> However, a business's positive contribution to supporting the realisation of the SDGs is not a substitute for preventing and addressing negative impacts.<sup>45</sup>

***“One of the rules that all companies should follow before establishing themselves in an area is to “see” if they will not have a negative impact on the lives of people living around the place they have chosen”***

**16 year-old in Senegal<sup>46</sup>**

39 OECD, Guidelines on Multinational Enterprises, 2011, available at <http://www.oecd.org/daf/inv/mne/48004323.pdf> ; OECD, Due Diligence Guidance for Responsible Business Conduct, 2018, available at <http://mneguidelines.oecd.org/due-diligence-guidance-for-responsible-business-conduct.htm>.

40 Commentary to Principle 18, Un Guiding Principle on Business and human Rights, available at [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

41 Global Child Forum, The State of Children's Rights and Business, 2019, p. 9, available at <https://www.globalchildforum.org/wp-content/uploads/2019/11/The-State-of-Childrens-Rights-and-Business-2019.pdf>.

42 Ibid., p. 4. See also Annex, for a list of examples of companies considering children's rights, which shows limited action and scope.

43 Ibid.

44 UN Working group on Business and Human Rights, Companion note II to the Working Group's 2018 report to the General Assembly (A/73/163) Corporate human rights due diligence – Getting started, emerging practices, tools and resources, available at <https://www.ohchr.org/Documents/Issues/Business/Session18/CompanionNote2DiligenceReport.pdf>.

45 Ibid.

46 UNICEF, UN Global Compact, Save the Children, How business affect us - children and young people share their perspectives on how business impact their lives and communities, 2011, available at [https://www.unicef.org/csr/css/How\\_Business\\_Affects\\_Us\\_report\\_on\\_children\\_s\\_consultation.pdf](https://www.unicef.org/csr/css/How_Business_Affects_Us_report_on_children_s_consultation.pdf).

### 3. THE CASE FOR A LAW ON HUMAN RIGHTS AND ENVIRONMENTAL DUE DILIGENCE

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#### 3.1 The limits of voluntary action

While businesses are accountable for their impacts on child rights and the environment, it is for the UK Government to ensure that it has legal, policy and institutional frameworks in place that ensure businesses respect child rights and the environment.

While there is a small group of “early adopters” of human rights and environmental due diligence,<sup>47</sup> many companies are still failing to meet their responsibility to respect human rights and the environment and to take preventative action. This situation undermines the full realisation of children’s rights and also penalises responsible businesses that are investing in upholding their responsibilities. Recent studies show that relatively few companies disclose commitments to comprehensively respect human rights<sup>48</sup> and even fewer undertake human rights due diligence to avoid abuses.<sup>49</sup>

The recent 2020 Corporate Human Rights Benchmark showed that, among the 229 companies assessed, almost half of them fail to score any point on human rights due diligence.<sup>50</sup>

Reputational risk is one motivating factor for voluntarily undertaking due diligence, however many businesses are not consumer facing so are not motivated to act by this need. Furthermore, voluntary action does not ensure accountability or recourse to remedy for victims, and so provides limited additional protections.

*“Human rights due diligence has become a norm of expected conduct... but...most businesses around the world are still not carrying out human rights due diligence as expected of them”.*<sup>51</sup>

**UN High Commissioner for Human Rights**

The scope of human rights due diligence undertaken also varies. In a recent survey conducted by the British Institute of International and Comparative Law (BIICL) only 50% of the respondents indicated they undertake human rights due diligence while 28.57% confirmed that they undertake it only for certain areas, such as health and safety, anti-discrimination and equality, environment and labour rights.<sup>52</sup>

When it comes to children’s rights, less progress has been made. Children are often overlooked in actions by business. Companies are increasingly considering a child rights approach in their policies, even if still primarily with a narrow focus on child labour, but there is a gap between these and their implementation.<sup>53</sup> Without concrete and thorough implementation of these policies across business’ value chains and functions, the potential for positive impacts and prevention of abuses is limited.

With almost 10 years passed from the adoption of the UN Guiding Principles on Business and Human Rights and still so few companies taking action, it is evident that a voluntary approach is not delivering the speed or scale of change needed.

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47 UN Working Group on Business and Human Rights, Report to the UN General Assembly, 2018, UN Doc. A/73/163, para. 27, available at [https://ap.ohchr.org/documents/dpage\\_e.aspx?si=A/73/163](https://ap.ohchr.org/documents/dpage_e.aspx?si=A/73/163).

48 Vigeo Eiris, Business’ responsibilities for human rights in a changing world, 2017, available at [http://www.vigeo-eiris.com/wp-content/uploads/2017/02/20170222\\_PR\\_HR\\_study\\_EN-def.pdf](http://www.vigeo-eiris.com/wp-content/uploads/2017/02/20170222_PR_HR_study_EN-def.pdf).

49 Ibid.; BIICL, A UK Failure to prevent mechanisms for corporate human rights harms, 2020, p.14, available at [https://www.biicl.org/documents/84\\_failure\\_to\\_prevent\\_final\\_10\\_feb.pdf](https://www.biicl.org/documents/84_failure_to_prevent_final_10_feb.pdf); Corporate Human Rights Benchmark, Key Findings 2020, available at <https://assets.worldbenchmarkingalliance.org/app/uploads/2020/11/WBA-2020-CHRB-Key-Findings-Report.pdf>.

50 Corporate Human Rights Benchmark, Key Findings 2020, available at <https://assets.worldbenchmarkingalliance.org/app/uploads/2020/11/WBA-2020-CHRB-Key-Findings-Report.pdf>.

51 7th Annual UN Forum on Business and Human Rights, Opening remarks by UN High Commissioner for Human Rights Michelle Bachelet, 26 November 2018, available at <https://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=23930&LangID=E>.

52 BIICL, A UK Failure to prevent mechanisms for corporate human rights harms, 2020, p.14, available at [https://www.biicl.org/documents/84\\_failure\\_to\\_prevent\\_final\\_10\\_feb.pdf](https://www.biicl.org/documents/84_failure_to_prevent_final_10_feb.pdf).

53 Global Child Forum, The State of Children’s Rights and Business, 2019, p. 4, available at <https://www.globalchildforum.org/wp-content/uploads/2019/11/The-State-of-Childrens-Rights-and-Business-2019.pdf>. See also Annex, for a list of examples of companies considering children’s rights, which shows limited action and scope.



*Children and mothers at a mine near Ouagadougou, capital of Burkina Faso.*

In 2017 the Joint Committee on Human Rights recommended that: "... the Government bring forward legislation to impose a duty on all companies to prevent human rights abuses... [which] would require all companies to put in place effective human rights due diligence processes (as recommended by the UN Guiding Principles), both for their subsidiaries and across their whole supply chain. The legislation should enable remedies against the parent company and other companies when abuses do occur, so civil remedies (as well as criminal remedies) must be provided. It should include a defence for companies where they had conducted effective human rights due diligence, and the burden of proof should fall on companies to demonstrate that this has been done."<sup>54</sup>

The Global Resource Initiative Taskforce, convened by the UK Government and comprising senior representatives from the private sector and civil society, recommended the urgent introduction of a mandatory due diligence obligation covering human rights and environmental risks and impacts to drive market demand for sustainable commodities.<sup>55</sup> While focus on forests and land conversion was

recognised as a first priority, it was recommended to extend the scope of such legal requirement to other commodities in the future.

The unsatisfactory uptake of human rights and environmental due diligence by business coupled with the calls to introduce mandatory measures in UK demonstrates that a voluntary approach by companies is not enough to ensure that children's rights and the environment are respected by business. Human rights and environmental due diligence should not be a tick-box exercise for companies, rather it should be a concrete and adequate process aimed at preventing and mitigating abuses. Given the wide-ranging impacts that businesses can have on children at various levels of their activities and operations, a legal requirement to conduct HREDD should ensure that businesses specifically consider children as a separate and distinct group. It should also apply to businesses' own operations, products, services, investments, business partners and value chains, as appropriate in view of their size, the risks they pose to human and child rights and the nature and context of their operations.

<sup>54</sup> Joint Committee on Human Rights, Human Rights and Business 2017: Promoting responsibility and ensuring accountability, 2017, para. 193, available at <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/443.pdf>.

<sup>55</sup> GRI, Global Resource Initiative: Final Recommendations report, 2020, pp. 25-26, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/881395/global-resource-initiative.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/881395/global-resource-initiative.pdf).

## 3.2 The UK's international obligations

The UK has ratified the UNCRC and two of its Optional Protocols. These are, therefore, part of the UK's international obligations to ensure that child rights are respected, including by business.

While the UNCRC does not specifically address the role of business in realising children's rights, the specific rights enshrined therein are also connected to business activities e.g. right to health (art. 24), to adequate standard of living (art. 27) and freedom from labour exploitation (art. 32). In addition, the three optional protocols to the UNCRC also apply to the business sector.<sup>56</sup> For example, the Optional Protocol on the involvement of children in armed conflict (OPAC) is relevant to businesses engaged in the sale or transfer of arms and other forms of military assistance when the final destination is a country where children are known to be, or may potentially be, recruited or used in hostilities. The Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) requires States to extend liability to legal persons, including business, for the offences it contains. The Optional Protocol on a Communication Procedure (OPIC) can provide an avenue for seeking redress when States have failed to protect children from corporate abuses. However, the UK has not ratified it yet.

The UNGPs recognise that States have a duty to protect human rights from corporate actors and to provide effective remedies when abuses occur. They do not create new legal obligations, but they are based on international human rights standards, some of which are binding on States.

The UNGPs made clear that for States to fulfil their obligation to protect human rights from abuses by business enterprises, they should consider a "smart mix" of measures that includes mandatory measures.<sup>57</sup>

### The UNCRC and the business sector at glance: the Four General Principles

The UNCRC contains a wide-range of rights, but centres on four General Principles that should form the basis for all decisions and actions by States (including the UK) that relate to business, in conformity with a child-rights approach.<sup>58</sup>

#### 1. Non-discrimination (Article 2)

The child's right to be protected from discrimination extends to the private sphere as well. Legislation relating to businesses should not intentionally or unintentionally discriminate against children, for example, via access to employment for children's parents and caregivers and access to essential services for children with disabilities. States should monitor discrimination practices, provide remedies when these occur and create a supportive environment for businesses to respect children's right to be protected from discrimination.

#### 2. Best interests of the child (Article 3)

The development of legislation and policy that shape business activities and operations should have the best interests of the child as a primary consideration when weighing competing priorities, such as between short-term economic considerations and longer-term development decisions.

#### 3. Survival, development and protection (Article 6)

National authorities must protect children and help ensure their full development – physical, spiritual, moral and social, particularly with respect of business activities and operations. This entails, for example, implementing preventative measures to regulate and monitor advertising and marketing, environmental impacts of businesses and family-friendly workplace policies.

#### 4. Respect for the views of the child (Article 12)

The child's right to express their views and be heard applies to the business context as well, such as in business-led stakeholder consultations and judicial proceedings and other mechanisms relating to the remediation of alleged child rights abuses by business. Participation should always be voluntary and occur in a child-friendly manner. States should listen to the views of children regularly when developing business-related laws and policies that may affect children.

<sup>56</sup> Optional Protocol on the involvement of children in armed conflict (2002) (ratified by the UK in June 2003); Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2002) (ratified by the UK in 2009) and the Optional Protocol on a Communication Procedure (2014) (not ratified by the UK).

<sup>57</sup> Comment to Principle 3, UN Guiding Principles on Business and Human Rights, 2011, available at [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

<sup>58</sup> UN Committee on the Rights of the Child, General Comment No. 13 (2011) on the right of the child to be free from all forms of violence, UN Doc. CRC/C/GC/13, para. 59, available at [https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13\\_en.pdf](https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.13_en.pdf); 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, UN Doc. CRC/C/GC/16, para. 12, available at <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.16.pdf>.

Building on the State's obligation to protect human rights and the wide recognition of human rights due diligence as a way to prevent and mitigate negative impacts, a number of international and regional bodies have also recommended States to require businesses to conduct human rights due diligence.

The UN Committee on Economic, Social and Cultural Rights recommended that States mandate human rights due diligence by law, with appropriate monitoring and accountability procedures to prevent abuses of economic, social and cultural rights by businesses, including their subsidiaries and business partners.<sup>59</sup> The UK ratified the International Covenant on economic, social and cultural rights in 1976.

The UN Committee on the Rights of the Child provided guidance to States on the application of the UNCRC and its Optional Protocols to issues related to business.<sup>60</sup> The Committee stated that businesses should be required to take action to prevent child rights abuses and that States should establish liability for legal persons, including businesses, for offences such as those discussed under the Optional Protocol on the sale of children, child prostitution and child pornography.<sup>61</sup> Recognising how businesses often operate on a global scale, the Committee clarified that a State's obligation to protect children's rights may extend beyond territorial borders and cover also business' extraterritorial activities and operations, provided that there is a reasonable link.<sup>62</sup>

The Committee has also explicitly called on States to require businesses to conduct 'child-rights due diligence' as a way to implement the UN Convention on the Rights of Child with regard to the business sector.<sup>63</sup> It also clarified that, when this is subsumed within a more general process of human rights due diligence, the provisions of the UNCRC and its Optional Protocols should be given specific attention and influence decisions.<sup>64</sup>

When it comes to climate change and the role of business, the UN Committee on the Rights of the Child, together with four other UN treaty bodies, has recommended that States must regulate private actors and hold them accountable for the harm they cause domestically and extraterritorially and recognised that part of States' human rights obligation is to mandate human rights due diligence.<sup>65</sup>

*"...States should require businesses to undertake child-rights due diligence. This will ensure that business enterprises identify, prevent and mitigate their impact on children's rights including across their business relationships and within global operations.66 Where there is a high risk of business enterprises being involved in violations of children's rights because of the nature of their operations or their operating contexts, States should require a stricter process of due diligence and an effective monitoring system."*

#### UN Committee on the Rights of the Child

At the regional level, the Council of Europe, of which the UK is one of the founding members, has identified encouraging or requiring, where appropriate, human rights due diligence as one of the States' actions that enable corporate responsibility to respect human rights.<sup>67</sup> It went further to recommend children's rights must receive specific consideration.<sup>68</sup>

There is, therefore, a growing recognition that requiring businesses to conduct human rights and environmental due diligence by law would close a gap in human rights protection from abuses by businesses at the national level and is a way for States to meet their internationally agreed human rights obligations.

For the UK to respect its international obligations towards children, and to ensure that business works for everyone, policy and legislative measures

59 Comment to Principle 3, UN Guiding Principles on Business and Human Rights, 2011, available at [https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](https://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf).

60 UN Committee on the Rights of the Child, General Comment 16 on State obligations regarding the impact of the business sector on children's rights, 2013, UN Doc. CRC/C/GC/16, para. 8, available at <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.16.pdf>.

61 Ibid., para. 40.

62 Ibid., paras. 39 and 43.

63 Ibid., para. 62.

64 Ibid.

65 UN Committee on the Elimination of Discrimination Against Women, UN Committee on Economic, Social and Cultural Rights, UN Committee on the Protection of the Rights of All Migrant Workers and Members of their Families, UN Committee on the Rights of the Child, UN Committee on the Rights of Persons with Disabilities, Joint Statement on "Human Rights and Climate Change", 16 September 2019, paras. 3 and 7, available at [https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E#\\_edn12](https://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=24998&LangID=E#_edn12).

66 See UNICEF, Save the Children and Global Compact, Children's Rights and Business Principles (2011).

67 Council of Europe, Recommendation on human rights and business, CM/Rec (2016)3, para. 20, available at [https://search.coe.int/cm/Pages/result\\_details.aspx?ObjectID=09000016805c1ad4](https://search.coe.int/cm/Pages/result_details.aspx?ObjectID=09000016805c1ad4).

68 Ibid., para. 63.

that relate to business should comprehensively and adequately consider children as important stakeholders and rights-holders. For any legal requirement to conduct HREDD to effectively serve the purpose of preventing abuses and close the gap in human rights protection, it should recognise the need to adequately integrate children's rights considerations and contain an explicit reference to the international children's human rights framework. It should also ensure that its objectives are to protect children's rights in UK and abroad, and that, therefore, the requirement would apply to both businesses operating in UK and to UK businesses operating abroad. This would be in line with the UK's obligations to protect, respect and fulfil children's rights under the UNCRC.

### 3.3 Existing UK legal and policy landscape addressing responsible business

When it comes to business, human rights and children's rights, the UK legal and policy framework is inconsistent and incohesive and therefore creates confusion and allows for gaps in protection.

The UK ratified the UNCRC in 1991 and the first two Optional Protocols in 2003 and 2009 respectively.<sup>69</sup> It has not, however, ratified the Third Optional Protocol (OPIC) that provides individuals with the opportunity to file complaints before the UN Committee on the Rights of the Child. As a result, the UK is bound<sup>70</sup> under international law to apply the UNCRC and its first two Optional Protocols. However, unless these are incorporated into UK domestic law, UK judges can only use them for the purposes of interpretation

of domestic law, but they cannot base their judgment on them.

Child rights, as outlined in the UNCRC, are, as of yet, not consistently and comprehensively integrated into UK law, policy and practice, resulting in a fragmented approach to child rights protection in the domestic context.<sup>71</sup> The UK Government and the devolved Governments of Northern Ireland, Wales and Scotland have, to varying degrees, committed to take into consideration child rights when drafting legislation and policy. This could extend to those laws regulating the conduct of businesses. In support of this commitment, Government departments have conducted several child rights impact assessments<sup>72</sup> of existing and proposed legislation.<sup>73</sup>

The UK Government was the first in the world to publish a National Action Plan on Business and Human Rights,<sup>74</sup> a policy document that sets out how the Government intends to implement the UNGPs. In 2016 the Government published an updated National Action Plan that reaffirms the Government's commitment to the UNGPs and an expectation that UK companies "adopt appropriate due diligence policies to identify, prevent and mitigate human rights risks, and commit to monitoring and evaluating implementation".<sup>75</sup> In May 2020, it published a progress update on its National Action Plan.<sup>76</sup> However, the progress update did not contain any reference to the Government's expectation that companies conduct appropriate human rights due diligence.

In 2016, the UN Committee on the Rights of the Child, during its periodic review of the UK's implementation of the UNCRC, urged the UK Government to establish and implement regulations

69 Optional Protocol on the Involvement of Children in Armed Conflict (2002) (ratified by the UK in June 2003); Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (2002) (ratified by the UK in 2009).

70 The Scottish Government has introduced a bill to incorporate the UNCRC, see Scottish Government, UN Convention on the Rights of the Child, 2 September 2020, available at <https://www.gov.scot/news/un-convention-on-the-rights-of-the-child/>.

71 There are, however, signs that the UK Government, and in particular, the UK Department for Education, is supportive of policies that better support children's rights. The UK Department for Education has launched a children's rights training package across Government, see Nadhim Zahawi, Parliamentary Undersecretary of State for Children and Families, Written Ministerial Statement for Universal Children's Day, 20 November 2018, available at <https://questions-statements.parliament.uk/written-statements/detail/2018-11-20/HCVS1093>. In 2018, the UK Department for Education published a template child rights impact assessment for use by Government policy-makers when making policy, enacting laws or making decisions that could impact children, available at [http://clientarea.skillset.co.uk/DfE/Childrens%20Rights\\_v0.3%20-%20Storyline%20output/story\\_content/external\\_files/CRIA%20template.pdf](http://clientarea.skillset.co.uk/DfE/Childrens%20Rights_v0.3%20-%20Storyline%20output/story_content/external_files/CRIA%20template.pdf).

72 A child rights impact assessment involves examining existing and proposed policies, legislation and changes in administrative services to determine their impact on children and whether they effectively protect and implement the rights expressed in the UNCRC.

73 For some examples, see Unicef UK, Child Rights Impact Assessment: a review of comparative practice across the UK, 2017, available at [https://www.unicef.org.uk/wp-content/uploads/2017/09/Unicef-UK-CRIA-comparative-review\\_FOR-PUBLICATION.pdf](https://www.unicef.org.uk/wp-content/uploads/2017/09/Unicef-UK-CRIA-comparative-review_FOR-PUBLICATION.pdf).

74 HMG, Good Business: Implementing the UN Guiding Principles on Business and Human Rights, 2013, available at <https://media.business-humanrights.org/media/documents/files/media/documents/uk-national-action-plan-sep-2013.pdf>.

75 HMG, Good Business: Implementing the UN Guiding Principles on Business and Human Rights – Updated May 2016, 2016, para. 21., available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/522805/Good\\_Business\\_Implementing\\_the\\_UN\\_Guiding\\_Principles\\_on\\_Business\\_and\\_Human\\_Rights\\_updated\\_May\\_2016.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/522805/Good_Business_Implementing_the_UN_Guiding_Principles_on_Business_and_Human_Rights_updated_May_2016.pdf).

76 Foreign & Commonwealth Office and Foreign, Commonwealth & Development Office, Implementing the UN Guiding Principles on Business and Human Rights: May 2020 update, 2020, available at <https://www.gov.uk/government/publications/implementing-the-un-guiding-principles-on-business-and-human-rights-may-2020-update>.

to ensure that the business sector respect children's rights and to introduce a requirement for business to undertake child-rights due diligence.<sup>77</sup>

*"With reference to its General Comment No. 16 (2013) on State obligations regarding the impact of business on children's rights, the Committee recommends that the State party:*

- (a) Integrate an explicit focus on children's rights, including the requirement for businesses to undertake child-rights due diligence, in the revised version of its first National Action Plan on Business and Human Rights;*
- (b) Establish and implement regulations to ensure that the business sector, including in the context of public procurement, complies with the rights of the child."*

#### **UN Committee on the Rights of the Child**

While the UK Government has taken some positive steps to *encourage* businesses to implement HREDD in general terms, there are currently no UK laws *requiring* businesses to conduct HREDD integrating child rights. Instead, UK legislation aimed at protecting human rights from corporate abuses largely focuses on transparency and reporting.

The rest of this chapter sets out what legislation and policy is currently in place that refers to some elements of HREDD, as well as precedent from case law and the situation for children looking to seek remedy from business in the UK. While this is not an exhaustive analysis of UK legislation, it demonstrates the disjointed nature of the approach taken so far.

## **REPORTING AND TRANSPARENCY**

UK legislation encourages business transparency regarding environmental, social, and governance issues, including risks to human rights, but does not *require* that businesses undertake HREDD on a general basis.

### **Companies Act 2006**

S.172 of the Companies Act 2006 imposes a duty on company directors to " (...) act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members (i.e. the shareholders) as a whole, and in doing so have regard (amongst other matters) to—

- (a) the likely consequences of any decision in the long term,
- (b) the interests of the company's employees,
- (c) the need to foster the company's business relationships with suppliers, customers and others,
- (d) the impact of the company's operations on the community and the environment,
- (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
- (f) the need to act fairly as between members of the company."

Related Regulations from 2013 require, in some cases, UK public companies to report on their human rights record.<sup>78</sup> In 2016, the Companies Act was amended to incorporate the EU Non-Financial Reporting Directives (2014) that require large public interest entities with over 500 employees<sup>79</sup> to disclose a number of non-financial pieces of information, including on environmental protection and corporate social responsibility in relation to their undertakings.<sup>80</sup> Furthermore, in 2018 new Regulations were also introduced.<sup>81</sup>

As a result of these changes, current law<sup>82</sup> requires certain companies to report annually to their shareholders on how their directors carry out their duty to have regard to matters a) to f) of S.172. This analysis may also include, for quoted companies, a discussion of environmental,

77 UN Committee on the Rights of the Child, Concluding observations to the United Kingdom of Great Britain and Northern Ireland, 2016, UN Doc. CRC/C/GBR/CO/5, para. 19, available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5&Lang=En).

78 Companies Act (Strategic Report and Directors' Report) Regulations 2013; Home Office, Transparency in supply chains etc. A practical guide, pp. 25-27, at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/649906/Transparency\\_in\\_Supply\\_Chains\\_A\\_Practical\\_Guide\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/649906/Transparency_in_Supply_Chains_A_Practical_Guide_2017.pdf).

79 Qualifying companies under the EU Non-Financial Reporting Directive (2014/95/EU) include traded companies, banking companies, authorised insurance companies, and companies carrying out insurance market activity.

80 The Companies, Partnerships and Groups (Accounts and Non-Financial Reporting) Regulations 2016, SI 2016 No 1245 which implements the EU Non-Financial Reporting Directive (2014/95/EU) into UK law.

81 Companies (Miscellaneous Reporting) Regulations 2018.

82 Companies Act Chapter 4A Part 15. See also Financial Reporting Council, Guidance on the Strategic Report (2018) <https://www.frc.org.uk/getattachment/fb05dd7b-c76c-424e-9daf-4293c9fa2d6a/Guidance-on-the-Strategic-Report-31-7-18.pdf>.

social, community and human rights issues where relevant.<sup>83</sup> The report should include a description of the entity's policies (for example, due diligence procedures) on human rights issues, the outcome of such policies, and a description of the entity's principal human rights risks arising in connection with its operations, where relevant and proportionate.<sup>84</sup> However, these reporting obligations are subjected to the primary duty of directors "(...) to promote the success of the company for the benefit of its members as a whole (...)"'.<sup>85</sup> In a review of 25 FTSE 350 companies' non-financial reporting, 92% were found to refer to human rights, but only 36% gave any real insight into their policies on the subject.<sup>86</sup> This may be due to the fact that the decision on how to report information is subjective and may vary from one director to another.

The Companies Act has not, however, been amended to incorporate the 2017 EU conflict minerals regulation.<sup>87</sup> This regulation goes beyond reporting requirements and will require EU importers of certain minerals to comply with a range of supply-chain due diligence obligations when these are sourced from conflict-affected areas and high-risk areas.<sup>88</sup>

### Modern Slavery Act 2015

S.54 of the UK Modern Slavery Act 2015 requires commercial organisations with a turnover of £36 million or more and carrying out operations in the UK, to approve and publish an annual slavery and human trafficking statement on their website. The statement must include a description of the steps that the organisation took to ensure that there is no slavery or human trafficking within its supply chains or business, or that it has taken no steps.<sup>89</sup> This may be achieved by including information about, among other topics, "the due diligence processes in relation

to slavery and human trafficking in its business and supply chains".<sup>90</sup> However, the Act does not define the terms "business" or "supply chains". What constitute the business or supply chains of a UK company is for such a parent company to assess on a case by case basis.<sup>91</sup> The Government guidance also specifically recognises that, for many businesses, "due diligence in relation to modern slavery (...) should form part of a wider human rights due diligence process where possible".<sup>92</sup> However, no law mandates companies to engage a wider due diligence process.

The Modern Slavery Act refers to child labour and slavery. However, as explained in the Government's guidance, while the fact that a child is a worker should be taken into account in assessing whether a form of labour could be considered as modern slavery, child labour alone does not necessarily constitute modern slavery.<sup>93</sup>

Currently, if a statement fails to cover the areas suggested under S.54 of the Act, it will still be compliant. The UK Government estimates that only 75% of businesses within scope of the Act are compliant with S.54.<sup>94</sup> The UK Government has also sought an independent review by expert advisers to recommend how to strengthen the Modern Slavery Act. The review recognised further limitations of S.54, including, among other things, confusion on its scope, weak enforcement and the lack of penalties for non-compliance.<sup>95</sup> The Government has recently published its response to the consultation held following the independent review. In the response, it committed to mandate the areas that statements must cover; to require organisations in scope to publish their statements on the Government-run reporting service; to extend the TISC requirement

83 Section 414C (7)(b) (iii) of the Companies Act 2006.

84 Section 414CB(2)(b)-(d) of the Companies Act 2006.

85 Section 172 of the Companies Act 2006; Burges Salmon, ESG factors: can directors of UK companies take them into account?, 1 October 2019, available at <http://www.burges-salmon.com/news-and-insight/legal-updates/environment/esg-factors-can-directors-of-uk-companies-take-them-into-account/>.

86 PwC, The non-financial reporting regulations, what do they mean in practice? July 2017, page 7, available at <https://www.pwc.co.uk/audit-assurance/assets/pdf/non-financial-reporting-regulations-2017.pdf>.

87 2017 Regulation (EU) 2017/821 of the European Parliament and of the Council of 17 May 2017 laying down supply chain due diligence obligations for EU importers of tin, tantalum and tungsten, their ores, and gold originating from conflict-affected and high-risk areas, available at <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:L:2017:130:FULL&from=EN>.

88 Linklaters, Landmark EU Conflict Minerals Regulation mandates importer due diligence, June 2020, available at [https://lpscdn.linklaters.com/-/media/digital-marketing-image-library/files/01\\_insights/publications/2020/june/gc19916\\_conflict\\_minerals\\_2pp\\_fs\\_final\\_screen.ashx?rev=a8f38739-0771-4d19-82c7-c2f4fd947b00&extension=pdf&hash=E32BA66BD1307D5276631A72AE9B69A4](https://lpscdn.linklaters.com/-/media/digital-marketing-image-library/files/01_insights/publications/2020/june/gc19916_conflict_minerals_2pp_fs_final_screen.ashx?rev=a8f38739-0771-4d19-82c7-c2f4fd947b00&extension=pdf&hash=E32BA66BD1307D5276631A72AE9B69A4).

89 Section 54 of the Modern Slavery Act 2015.

90 Section 54 (5)(c) of the Modern Slavery Act 2015.

91 Home Office, Transparency in supply chains etc. A practical guide, pp. 23-24, at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/649906/Transparency\\_in\\_Supply\\_Chains\\_A\\_Practical\\_Guide\\_2017.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/649906/Transparency_in_Supply_Chains_A_Practical_Guide_2017.pdf).

92 Ibid., p. 32.

93 Ibid., pp. 17-19.

94 As outlined by Victoria Atkins, Parliamentary Under-Secretary of State for the Home Department on 15 July 2019, available at <https://www.theyworkforyou.com/debates/?id=2019-07-15b.572.1#g573.4>.

95 Independent Review of the Modern Slavery Act 2015: Final Report, May 2019, pp. 39-47, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/803406/Independent\\_review\\_of\\_the\\_Modern\\_Slavery\\_Act\\_-\\_final\\_report.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/803406/Independent_review_of_the_Modern_Slavery_Act_-_final_report.pdf).

to public bodies, and to create a single reporting deadline.<sup>96</sup> The UK Government also committed to consider enforcement options.<sup>97</sup>

### **Occupational Pension Schemes (Investment) Regulations 2005**

With regard to UK regulation governing investments, as of October 2019, trustees of a trust scheme of certain pension funds must publish a statement on investment principles that must cover, among other factors “the extent (if at all) to which social, environmental or ethical considerations are taken into account in the selection, retention and realisation of investments”.<sup>98</sup>

A common criticism of all such instruments is the fact that they do not provide sufficient specificity about the substance of what companies are supposed to report on, or the methods by which they are supposed to report.

While transparency is essential as part of a package of legislative measures on responsible business conduct, this needs to be meaningful. Excessively flexible standards for disclosure undermine the embedding of a culture of respect for child rights and the environment within the company and create challenges for monitoring the actions of businesses. Meaningful transparency would require comprehensive and regular information about impacts on people and planet and how these have been identified, actions taken to address actual or potential impacts, and the remediation measures that have been undertaken. This would allow not only for better scrutiny and monitoring of business’s responsibilities but would also drive internal and external business’ respect for child rights and the environment.

Effective enforcement is a necessary element of legislation, including for reporting requirements. This does not only incentivise compliance among business, but also ensures that leading companies

are rewarded and see the value in their actions.

An obligation to report is necessary to ensure transparency, however, it is not a due diligence requirement by itself, which is instead necessary to ensure businesses take preventative action against child rights abuses and environmental harms.

## **PUBLIC SECTOR INITIATIVES**

### **Public Procurement**

UK public procurement legislation could offer another incentive for businesses to implement HREDD integrating child rights. Existing legislation permits the UK Government and local authorities to exclude bidders from the public procurement process for violation of environmental, social or labour law established by EU law,<sup>99</sup> and *requires* them to exclude bidders who have been convicted for, among others offences, modern slavery and human trafficking.<sup>100</sup>

However, such legislation focuses heavily on abuses that have already occurred as opposed to their prevention. The mandatory exclusion of bidders also focuses on modern slavery and human trafficking, whereas the abuses of child rights by business often goes beyond this narrow scope. Requiring Government contractors to conduct comprehensive HREDD in the performance of public contracts would help address these risks.

### **Export Finance**

The UK export credit agency (UKEF), which offers financial support to UK exporters, has also stated<sup>101</sup> that, where appropriate, for projects they are requested to support, it undertakes its own due diligence of environmental, social and human rights risks and impacts in accordance with several standards, including the OECD Common Approaches guidelines.<sup>102</sup> The UNCRC is explicitly

96 Home Office, Transparency in supply chains consultation, Government response, 2020, Annex D, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/919937/Government\\_response\\_to\\_transparency\\_in\\_supply\\_chains\\_consultation\\_21\\_09\\_20.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/919937/Government_response_to_transparency_in_supply_chains_consultation_21_09_20.pdf).

97 Ibid.

98 The Occupational Pension Schemes (Investment) Regulations 2005 No 3378 Regulation 2(b)(vi); Pension Protection Fund (Pensionable Service) and Occupational Pension Schemes (Investment and Disclosure) (Amendment and Modification) Regulations 2018.

99 The UK authorities are permitted to exclude bidders where they breach “...environmental, social and labour law established by EU law, national law, collective agreements or by the international environmental, social and labour law provisions listed in Annex X to the Public Contracts Directive as amended from time to time”, Public Contract Regulations 2015 section 56(2).

100 The period of exclusion in such a case is five years from the date of the conviction, Public Contract Regulations 2015 section 57. See also, Cabinet Office, Public Procurement Note 05/2019 Tackling Modern Slavery in Government Supply Chains, 2019, available at <https://www.gov.uk/government/publications/procurement-policy-note-0519-tackling-modern-slavery-in-government-supply-chains>.

101 UK Export Finance, Policy and Practice on Environmental, Social and Human Rights due diligence and monitoring, 26 August 2020, available at <https://www.gov.uk/government/publications/uk-export-finance-environmental-social-and-human-rights-policy/policy-and-practice-on-environmental-social-and-human-rights-due-diligence-and-monitoring>.

102 OECD, Recommendation of the Council on Common Approaches for Officially Supported Export Credits and Environmental and Social Due Diligence, 2020, available at <https://legalinstruments.oecd.org/public/doc/280/280.en.pdf>.

listed in the “International Legal and Best Practice Framework for Human Rights” that forms the basis for managing human rights risks and impacts.<sup>103</sup> This arguably incentivises companies seeking export finance support to assess and mitigate their environmental, social and human rights risks.

## IMPACT ASSESSMENTS BY BUSINESS

### Data Protection Act 2018

Several UK laws and initiatives attempt to protect human rights, including the right to privacy, by regulating companies in the digital space. For example, the EU General Data Protection Regulation (which has been transposed into UK law with the Data Protection Act 2018) is designed to protect individuals’ right to privacy and recognises that a child’s personal data merits particular protection.<sup>104</sup> It also introduces a new obligation to conduct a Data Protection Impact Assessment (DPIA) before carrying out types of data processing that are likely going to result in high risk to individual’s rights and freedoms.<sup>105</sup>

### Age Appropriate Design Code 2020

The Information Commissioner’s Office, the UK’s independent body that upholds information rights, developed an Age-Appropriate Design Code that came into force in September 2020.<sup>106</sup> It aims to ensure online services that are likely to be accessed by children protect their personal data. The Code includes a standard that requires information society services to conduct DPIAs “(...) to assess and mitigate risks to the rights and freedoms of children (...)ak(ing) into account differing ages, capacities and development needs”.<sup>107</sup> The Code also states that “...(t)he best interests of the child should be a primary consideration (of information society

services) when (...) design(ing) and develop(ing) online services likely to be accessed by a child”.<sup>108</sup>

## UK CASE LAW

In recent years, litigators have increasingly argued that parent companies owe a duty of care towards tort victims damaged by their subsidiaries. Such damages may include those resulting from human rights and environmental abuses.

A first set of cases concerns the duty of care that parent companies owe towards their subsidiaries’ employees. In 2012, the Court of Appeal ruled in favour of a subsidiary employee who suffered from asbestosis after working with asbestos. The Court of Appeal ruled that a parent company owes a duty of care towards the employees of its subsidiary, not automatically, but under particular circumstances.<sup>109</sup> The Court relied on the relative similarity of the businesses, on the fact that the parent company knew (or ought to have known) that the subsidiary system of work was unsafe and that the parent company knew (or ought to have foreseen ) that the subsidiary or its employees would rely on its using that superior knowledge for the employees’ protection. In a similar subsequent case concerning asbestos exposure of an employee, the Court of Appeal ruled instead in favour of the company, because parent and subsidiary were not close enough for the parent company to owe a duty of care towards the claimant.<sup>110</sup>

Another set of cases focuses on the issue of jurisdiction because they concern the duty of care that a parent company owes extraterritorially towards victims detrimentally affected by its foreign subsidiary.<sup>111</sup>

103 UK Export Finance, Note on Human Rights and Social Risks and Impacts, Appendix A, 26 August 2020, available at [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/909235/Appendix\\_A\\_Int\\_L\\_Legal\\_and\\_Best\\_Practice\\_Framework\\_for\\_Human\\_Rights.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/909235/Appendix_A_Int_L_Legal_and_Best_Practice_Framework_for_Human_Rights.pdf).

104 Recital 38 of the Regulation (EU) 2016/679 (General Data Protection Regulation), available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32016R0679>.

105 Data Protection Regulation 2018, Section 64.

106 Age-Appropriate Design Code, available at <https://ico.org.uk/for-organisations/guide-to-data-protection/key-data-protection-themes/age-appropriate-design-a-code-of-practice-for-online-services/>.

107 Age-Appropriate Design Code, Standard 2, available at <https://ico.org.uk/for-organisations/guide-to-data-protection/key-data-protection-themes/age-appropriate-design-a-code-of-practice-for-online-services/2-data-protection-impact-assessments/>.

108 Age-Appropriation Design Code, Standard 1, available at <https://ico.org.uk/for-organisations/guide-to-data-protection/key-data-protection-themes/age-appropriate-design-a-code-of-practice-for-online-services/1-best-interests-of-the-child/>.

109 “(1) the businesses of the parent and subsidiary are in a relevant respect the same; (2) the parent has, or ought to have, superior knowledge on some relevant aspect of health and safety in the particular industry; (3) the subsidiary’s system of work is unsafe as the parent company knew, or ought to have known; and (4) the parent knew or ought to have foreseen that the subsidiary or its employees would rely on its using that superior knowledge for the employees’ protection. For the purpose of (4) it is not necessary to show that the parent is in the practice of intervening in the health and safety policies of the subsidiary. The court will look at the relationship between companies more widely. The court may find that element (4) is established where the evidence shows that the parent has a practice of intervening in the trading operations of the subsidiary, for example production and funding issues”. *Chandler v Cape Plc* [2012] (QB), EWCA civ 525 80.

110 *Thompson v The Renwick Group Plc* [2014] EWCA Civ 635.

111 See *Vedanta Resources PLC and another (Appellants) v Lungowe and others (Respondents)* [2019] UKSC 20; *AAA & Ors v Unilever Plc & Anor* [2018] EWCA Civ 1532 (EWCA (Civ)); *Okpabi & Ors v Royal Dutch Shell Plc & Anor* [2018] EWCA Civ 191 (EWCA (Civ)).

In 2019, the UK Supreme Court ruled *Lungowe v Vedanta Resources Plc*, a case concerning alleged environmental damage perpetrated in Zambia by a subsidiary of Vedanta Resources Plc, a UK company. It held that UK courts in principle have jurisdiction to hear cases against UK parent companies for breaches of their duty of care towards victims detrimentally affected by their foreign subsidiaries. Despite being a case on jurisdiction, in *Lungowe v Vedanta Resources Plc*, the UK Supreme Court had to assess the arguability of the claim and, in so doing, it provided some indications in respect of how to analyse the relationship between parent company and subsidiary in order to assess the existence of a duty of care. First, whether the parent company owes a duty of care towards the victim depends on the level of involvement that the parent has in the management of its subsidiary. Second, the duty of care case law applies not only to employees, but also to other tort victims that have been detrimentally affected by the subsidiary of a UK parent company, such as the victims of environmental damage in *Lungowe v Vedanta Resources Plc*.

Another case concerning environmental damage abroad by a subsidiary of a UK company is currently pending in front of the Supreme Court.<sup>112</sup> In another case of parent company liability, the Court of Appeal ruled instead in the company's favour because the parent was not sufficiently involved in the management of its subsidiary to arguably owe a duty of care towards the victims.<sup>113</sup>

Although the duty of care case law provides a possible avenue for victims to seek judicial redress against businesses, it still remains unclear the level of involvement that parent companies must have in the management of their subsidiaries in order for them to owe a duty of care towards victims. A comprehensive

and clear requirement to conduct human rights and environmental due diligence would also need to address the complexity of business' structures and relationships and how these interact with human rights and environmental impacts.

## REMEDIES FOR CORPORATE ABUSES

As part of its obligations to protect human and children's rights, the UK Government is responsible for ensuring that children and their representatives have full access to justice for infringement of their rights. This extends to abuses stemming from business activities, operations and relationships.<sup>114</sup>

*"[F]or rights to have meaning, effective remedies must be available to redress violations".<sup>115</sup>*

### UN Committee on the Rights of the Child

However, as concerns the area of access to remedy for corporate abuses, the Joint Committee on Human Rights considered UK's approach weak, due to challenges related to costs and access to corporate documents, and limits to legal aid provision.<sup>116</sup> Beyond judicial mechanisms, there are other avenues of redress for corporate abuses available in the UK. The UK has endorsed the OECD Guidelines for Multinational Enterprises,<sup>117</sup> and has established a National Contact Point (NCP) to review complaints of corporate human rights abuses. However, the UK NCP has faced criticism for being under-resourced and lacking the expertise to adjudicate human rights disputes.<sup>118</sup>

112 Okpabi & Ors v Royal Dutch Shell Plc & Anor [2018] EWCA Civ 191 (EWCA (Civ)).

113 AAA & Ors v Unilever Plc & Anor [2018] EWCA Civ 1532 (EWCA (Civ)).

114 See UN Committee on the Rights of the Child, General Comment no. 16 (2013) on State obligations regarding the impacts of the business sector on children's rights, UN Doc. CRC/C/GC/16, para. 30, available at <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.16.pdf>: "States have an obligation to provide effective remedies and reparations for violations of the rights of the child, including by third parties such as business enterprises... 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."

115 See UN Committee on the Rights of the Child, General Comment no. 16 (2013) on State obligations regarding the impacts of the business sector on children's rights, UN Doc. CRC/C/GC/16, para. 30, available at <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.16.pdf>: "States have an obligation to provide effective remedies and reparations for violations of the rights of the child, including by third parties such as business enterprises... 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."

116 Joint Committee on Human Rights, Human Rights and Business 2017: Promoting responsibility and ensuring accountability, 2017, available at <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/44311.htm>.

117 HMG, Good Business Implementing the UN Guiding Principles on Business and Human Rights Updated May 2016, available at <https://mk0globalnapshvllfq4.kinstacdn.com/wp-content/uploads/2017/11/uk-2016.pdf>.

118 Joint Committee on Human Rights, Human Rights and Business 2017: Promoting responsibility and ensuring accountability, 2017, available at <https://publications.parliament.uk/pa/jt201617/jtselect/jtrights/443/44311.htm>; Amnesty International UK, Obstacle Course, how the UK's National Contact Point handles human rights complaints under the OECD Guidelines for Multinational Enterprises, 2016, available at [https://www.amnesty.org.uk/files/uk\\_ncp\\_complaints\\_handling\\_full\\_report\\_lores\\_0.pdf?eHZjEXH9mk6pJMnaNhd33kDJ1A6K6xMo=](https://www.amnesty.org.uk/files/uk_ncp_complaints_handling_full_report_lores_0.pdf?eHZjEXH9mk6pJMnaNhd33kDJ1A6K6xMo=).

## Children's view on access to justice in UK<sup>119</sup>

In July 2012, the Office of the Children's Commissioner in England (UK) published two reports on children's and young people's access to, and experience of, the complaints systems in the health service and youth justice secure-estate settings. These latter services are partly also provided by private actors.

The reports highlighted how children and young people are not provided with information about their right to a remedy, how to make a complaint, confidentiality issues or what happens when they complain (the process). They also highlighted a number of barriers to making formal complaints. Young people's opinions include, for example:

*"I have never thought of putting in a complaint anyway. Don't have a clue how to."*

*"But we know something is getting done about it. Rather than waiting for letters to come through. Nine times out of ten you don't understand what they are saying in the letter."*

*"It takes so long you forget about it."*

*"I wouldn't think as a 14-year old that I could complain. I'd expect my parents to do it for you."*

*"In general, if you make a complaint the governors don't like you."*

*"It takes time to know what your rights are and to have the skills and not feel guilty to say what you wanted to say."*

Regional and international human rights mechanisms can also offer remedies for corporate abuses. With regard specifically to children's rights, the Third Optional Protocol to the UNCRC, which entered into force in 2014, allows individuals to submit complaints against ratifying States; the Committee on the Rights of the Child to conduct inquiries into allegations of grave or systematic violations of children's rights; and States to draw attention to violations of children's rights in other States. Applied to the field of business and human rights, this mechanism can be used to hold governments responsible for business-related child rights abuses when they have failed to protect them against these and for causing or contributing to violations through their own business-related activities.<sup>120</sup> However, the UK has

not ratified the Third Optional Protocol to the UNCRC, despite the UN Committee on the Rights of the Child recommending this in 2016.<sup>121</sup> The UK Government should ratify the Third Optional Protocol to the UNCRC in order to provide children with an additional effective remedy for corporate abuses of their rights.

<sup>119</sup> Children's Commissioner, Why are they going to listen to me?, 2012 available at <https://www.childrenscommissioner.gov.uk/publication/why-are-they-going-to-listen-to-me/>; and Children's Commissioner, It takes a lot of courage, 2012, available at [https://www.childrenscommissioner.gov.uk/wp-content/uploads/2017/07/It\\_takes\\_a\\_lot\\_of\\_courage.pdf](https://www.childrenscommissioner.gov.uk/wp-content/uploads/2017/07/It_takes_a_lot_of_courage.pdf).

<sup>120</sup> UNICEF, ICJ, Obligations and Actions on child rights and business – A practical guide for States on how to implement the United Nations Committee on the Rights of the Child's General Comment no. 16, 2015, p. 51, available at [https://www.unicef.org/csr/css/CSR\\_GC\\_OBLIGATIONS\\_AND\\_ACTIONS\\_FINAL\\_AUGUST05.pdf](https://www.unicef.org/csr/css/CSR_GC_OBLIGATIONS_AND_ACTIONS_FINAL_AUGUST05.pdf).

<sup>121</sup> UN Committee on the Rights of the Child, Concluding observations to the United Kingdom of Great Britain and Northern Ireland, 2016, UN Doc. CRC/C/GBR/CO/5, para. 86, available at [https://tbinternet.ohchr.org/\\_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5&Lang=En](https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC/C/GBR/CO/5&Lang=En).

## Using the UNCRC complaints procedure for the lack of Government action on the climate crisis<sup>122</sup>

In September 2019, 16 children lodged a complaint before the UN Committee on the Rights of Child against Argentina, Brazil, France, Germany and Turkey for alleged failure to uphold their obligations under the UNCRC in relation to climate change. Among other claims, the petitioners allege that these States have failed to prevent foreseeable preventable human rights harms caused by climate change and to regulate activities contributing to such harms, and to cooperate internationally in the face of the climate crisis. In this regard, the petitioners claim that these States:

- a) have not reduced their own domestic emissions, including those of non-state actors, and they are not on a pathway that would help address global warming;
- b) continue to subsidise fossil fuels;
- c) have not taken all reasonable measures to protect children from the climate crisis against the main carbon polluters, including business entities over which they exercise jurisdiction;
- d) fail to use all reasonable means to engage with the major emitters in international efforts to mitigate climate change.

The complaint alleges that the actions and omissions of the States in relation to climate change are violating the petitioner's right to life (art. 6 UNCRC), health (art. 24 UNCRC), the best interest of the child (art. 3 UNCRC) as well as the cultural rights of the petitioners from indigenous communities (art. 30 UNCRC).

The complaint seeks to obtain specific recommendations from the Committee to the States with regard to national and sub-national policies and laws to accelerate climate change mitigation and adaptation. It also seeks to create action in relation to international cooperation to establish binding and enforceable measures to mitigate the climate crisis, prevent further harms to children and ensure respect for their rights.



*Ranton Anjain, 17, from the Marshall Islands, speaks at a press conference announcing the complaint before the UN Committee on the Rights of the Child on behalf of young people facing the impacts of the climate crisis. "I'm here because climate change is destroying my islands through sea level rise and storms," he says.*

<sup>122</sup> Sacchi et al. v. Argentina et al., Communication to the Committee on the Rights of the Child, 2019, available at <https://childrenvsclimatecrisis.org/wp-content/uploads/2019/09/2019.09.23-CRC-communication-Sacchi-et-al-v.-Argentina-et-al-Redacted.pdf>.

While this is not an exhaustive analysis of UK policies, jurisprudence and legislation, it gives an overall picture of the lack of cohesiveness and clarity with regard to responsible business conduct and, in particular, with respect to children's rights. The instruments analysed incorporate some elements of an HREDD process (for instance, impact assessments, reporting), however none of them contain a comprehensive HREDD requirement. Some of these requirements apply to certain sectors, some focus only on certain rights or issues. More importantly, most of these have a reactive rather than a preventative approach: few of them ask companies to analyse what impacts they could have and to take action, while most require them to disclose what they have done. Some instruments specifically refer to children's rights and the UNCRC as a standard of reference when it comes to business conduct, demonstrating the UK's recognition that children's rights matter for business. However, this is not consistent across legislation and policy. This undermines the message that all businesses can have impacts on children and the environment, and this apply to all levels of the business, operations, supply chains and products.

The weaknesses in the UK remedy mechanisms coupled with the challenges that children face in accessing justice and the lack of the ratification of the Third Optional Protocol to the UNCRC, create hurdles for children to seek redress for abuses of their rights. The UK justice system needs to ensure that children are not only protected but that they can also effectively pursue legal avenues for obtaining remedies for abuses of their rights by businesses. Businesses responsible for child rights abuses should be held to account, both in cases where these have been committed in the territory of the State or outside its borders.<sup>123</sup>

These weaknesses and challenges demonstrate the need for a more comprehensive and stringent approach in shaping the legislative framework for enabling responsible business.

### 3.4 Business support for legislation

The concerns around the lack of cohesiveness of the UK legal framework are also shared by businesses.

A recent study confirmed that businesses in UK are not satisfied with the existing legal landscape with regard to human rights and environmental due diligence.<sup>124</sup> The research highlighted that the majority of businesses surveyed in the UK did not find that existing laws provided clarity or legal certainty about their corporate human rights obligations.<sup>125</sup> The majority of surveyed businesses recognised that additional regulation on corporate human rights obligations could provide the additional benefits of creating legal certainty for businesses.<sup>126</sup>

The introduction of a comprehensive and clear legal requirement for conducting human rights and environmental due diligence would create clarity among business' expectations to respect human rights and the environment. It would also contribute to form a common understanding around human rights and environmental due diligence to harmonise business' practices.

The businesses surveyed in the UK study recognised that there could be additional benefits that regulation on corporate human rights obligations would bring.<sup>127</sup> Levelling the playing field for businesses was indicated as one additional benefit, as it would hold competitors and suppliers to the same standards. It was also recognised that new regulation would support businesses in facilitating their leverage with third parties, including in the supply chain.<sup>128</sup>

In the EU, where discussions around legislative measures are advancing, there has already been broad public support by businesses for such measures.<sup>129</sup>

Creating a clear standard of conduct for businesses would incentivise industry collaboration and

123 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, UN Doc. CRC/C/GC/16, para. 39, available at <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.16.pdf>.

124 Smith, Bright, Pietropaoli, Hughes-Jennet, Hood, Business views on mandatory human rights due diligence regulation: a comparative analysis of two recent studies, in *Business and Human Rights Journal*, (2020), pp. 1–9, available at <https://www.cambridge.org/core/journals/business-and-human-rights-journal/article/business-views-on-mandatory-human-rights-due-diligence-regulation-a-comparative-analysis-of-two-recent-studies/3743DF18E12E1FA515ACED0CB3BB7BDC>.

125 Ibid.

126 Ibid.

127 BIICL, A UK Failure to prevent mechanisms for corporate human rights harms, 2020, p.14, available at [https://www.biicl.org/documents/84\\_failure\\_to\\_prevent\\_final\\_10\\_feb.pdf](https://www.biicl.org/documents/84_failure_to_prevent_final_10_feb.pdf).

128 Ibid.

129 See for example: AIM – European Brand Associations, EU Mandatory Human Rights Due Diligence, AIM Contribution to the debate, October 2020, available at <https://www.aim.be/wp-content/themes/aim/pdfs/AIM%20Contribution%20to%20EU%20HRDD%20debate%20Oct%202020%20final.pdf?t=1602836099>; Support for EU framework on mandatory human rights and environmental due diligence, September 2020, available at [https://media.business-humanrights.org/media/documents/EU\\_Business\\_Statement\\_Mandatory\\_Due\\_Diligence\\_02092020.pdf](https://media.business-humanrights.org/media/documents/EU_Business_Statement_Mandatory_Due_Diligence_02092020.pdf).



*K. Shekar, a member of the Children's Parliament in India, explains how he helped his school friend Kanti, who was working in a shoemaker's, to go back to school. "He told me that his parents put him to work but his dream is to study. I told this to our club members and teachers. Then we went to his home and explained to his parents the importance of education and the new government scheme to give money to mothers who send their children to school. They were convinced, but the shoemaker did not agree. We told him child labour is a crime. He did not hear our words, so we informed Childline on 1098 and our District Child Protection Officer. They responded immediately. The District Officer and Childline Coordinator warned the shop owner, then we took Kanti back into school. Now he comes to school regularly and works for other children in need."*

raise awareness among businesses about their responsibility to respect child rights and the environment. Requiring businesses to be transparent in their human rights and environmental due diligence and impact would also promote information sharing of best practices among businesses, between those who are most advanced in their journey and those who are still in the early stages.

A requirement to conduct human rights and environmental due diligence that is comprehensive and integrates children's rights would also enable businesses to establish consistent risk management process across their supply chains, given that numerous Governments have introduced or are considering introducing similar requirements.<sup>130</sup> Many businesses operate in multiple markets and will need to abide by similar legislation in other countries. In addition, by requiring businesses to look at their impacts more comprehensively and proactively, it will enable them to have more robust risk management

mechanisms. Often, the most serious abuses, such as forced labour, are more likely to occur in circumstances whether there are already other forms of exploitation and abuses and existing additional systemic contributing factors. Being required to take a wider approach would enable businesses to be more aware of the context in which they operate and the associated risks and to take preventative action.

To be effective and achieve wider positive impacts, the UK Government should create an enabling environment that facilitates the implementation of human rights and environmental due diligence. Legislation must be clear to make business's respect for child rights and the environment feasible. Efforts should be directed towards creating guidance and wide dissemination to reach out to businesses and to create a business environment conducive to respect for child rights and the environment.

<sup>130</sup> See for example: France's Duty of Vigilance Law and The Netherlands' Child Labour Due Diligence Law; the legislative proposals in Switzerland and Norway; the Finnish and German commitment to introduce human rights due diligence legislation and the recent EU announcement to develop a legislative proposal requiring businesses to carry out due diligence.

### 3.5 Children and young people's expectations on responsible business

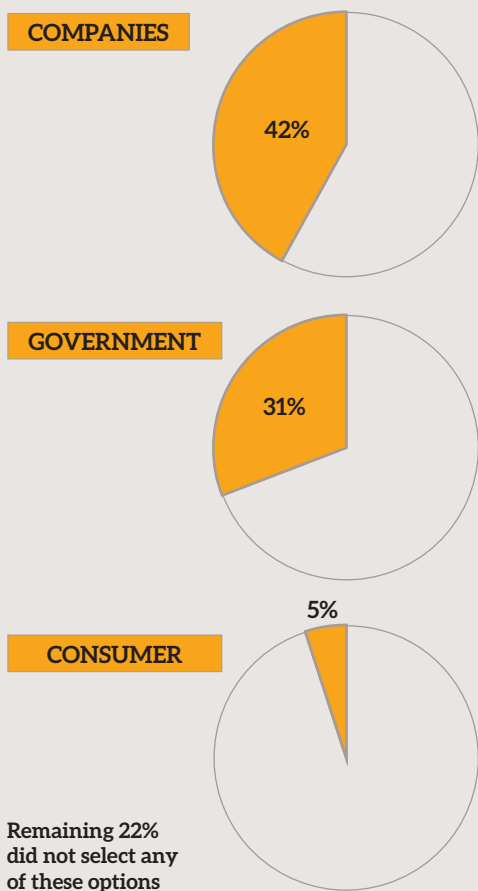
Children are essential rights-holders for companies and also critical stakeholders. They are consumers, members of communities, current and future workers, and children of employees.<sup>131</sup>

Children and young people are speaking up and demanding responsible business behaviour both from companies and the Government. They expect businesses to respect their rights, those of others and the environment. They also expect the UK Government to ensure businesses are environmentally and socially responsible.

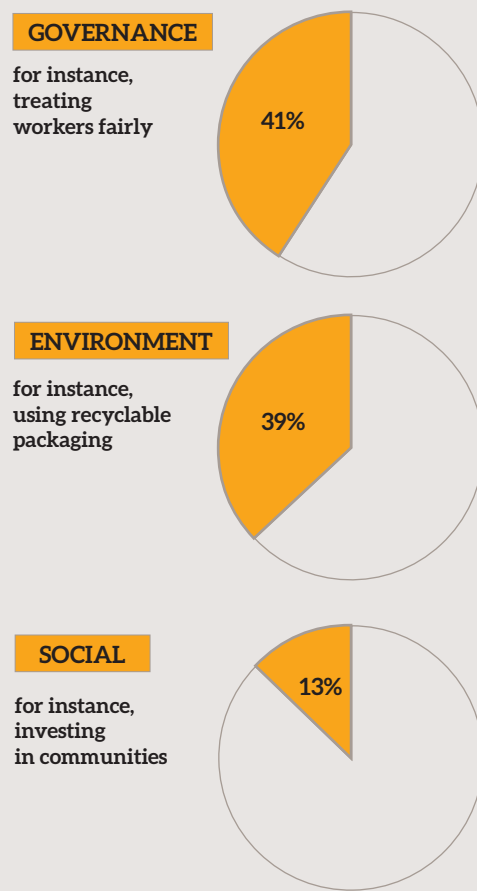
Recent years have seen an increase in consumer demand for responsible corporate practices and responsibly sourced products and services, covering issues around human rights as well as the environment. Children and young people have been among those creating such demand. Research shows that those born after 1994 (Gen Z) and 2009 (Gen Alpha) increasingly recognise the importance of corporate responsibility and social purpose and believe they need to be prioritised by businesses in an authentic way.<sup>132</sup>

**Figure 4: UK Children and Young People (16–25 years old) views on corporate sustainability<sup>133</sup>**

**Primary responsibility for ensuring consumer products are environmentally and socially responsible**



**Most important sustainability issues for consumer facing companies to focus on**



<sup>131</sup> 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, UN Doc. CRC/C/GC/16, para. 2, available at <https://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.16.pdf>.

<sup>132</sup> For example, see IPSOS and Innovation Forum, Sustainability, the next generation of consumers, 2019, at [https://docs.google.com/presentation/d/e/2PACX-1vTG3YcopE7F2R7vgxACH\\_14xSJmN5iKnzVs2-uoq5aQufoRXNTJ8jbr9LsTUmpOc1Nzu6EJvq36Y9fn/pub?start=false&loop=false&delayms=10000&slide=id.p1](https://docs.google.com/presentation/d/e/2PACX-1vTG3YcopE7F2R7vgxACH_14xSJmN5iKnzVs2-uoq5aQufoRXNTJ8jbr9LsTUmpOc1Nzu6EJvq36Y9fn/pub?start=false&loop=false&delayms=10000&slide=id.p1).

<sup>133</sup> Ibid.

In a recently published report surveying 1,500 16–24 years olds in the UK, 92% of those surveyed stated that if the business harmed the environment, they would think less of it, 47% would stop buying from the business and 11% would campaign against it; 90% would think less of a company if they were involved in a data security scandal, 45% would stop buying from them and 6% would campaign against them.<sup>134</sup>

Gen Alpha is already expressing its views on corporate sustainability: they are often key advocates for sustainability in their households, they influence families' consumer behaviour across sectors and they are also more likely to take action and campaign for causes they believe in.<sup>135</sup> Some of Gen Alpha have already attended march and protests and are encouraged by their parents to speak out as activists.<sup>136</sup>

During the COVID-19 pandemic young people in the UK have been conscious of how companies have responded to coronavirus and called on them to play a social role in responding to their needs.<sup>137</sup> A clear desire for involving and engaging young people in the recovery task forces was identified.<sup>138</sup>



**Figure 5: UK Children and Young People (16–24 years old) views on companies harming the environment**



<sup>134</sup> Voxburner, Youth Trends, 2019.

<sup>135</sup> Ibid.

<sup>136</sup> The Guardian, March of the under 10s – generation growing up as protesters, June 2019, available at <https://www.theguardian.com/media/2019/jun/19/march-of-the-under-10s-generation-growing-up-as-protesters>.

<sup>137</sup> Beatfrees, Take the temperature, 2020, p. 48, available at <https://www.beatfreesyouthtrends.com/take-the-temperature>.

<sup>138</sup> Ibid., p. 14.

## Children directly addressing companies to change their behaviours

When Ruby, a 9-year-old girl from Scotland checked a clothes catalogue, she realised that clothes for boys and girls were different and that the catalogue suggested that girls cannot do everything that boys can.<sup>139</sup> She decided to write to the company complaining about their gender stereotyping. When she did not receive an answer to her letter, she phoned them and read the letter out. The company sent her a voucher and said it would send the letter to all its departments. After this, she decided to write to other companies as well.

After receiving many letters from children talking about the environment and asking the Lego Group to remove single-use plastic packaging, the company has decided to begin phasing them out, as part of their ambition to make all its packaging sustainable by 2025.<sup>140</sup>

A law on human rights and environmental due diligence would address children's concerns and expectations around business' behaviour and responsible products. It would also support businesses in meeting the demands of their current and future customers, workforce and community members.

Children have demonstrated that they are powerful agents of change, including with regard to the business sector. It is, therefore, necessary that they are given the opportunity to meaningfully shape business-related legislation and policies (art. 12 UNCRC).



139 Children and young people commissioner Scotland, Promote. Protect. Defend, 2019, p. 16, available at <https://www.cypcs.org.uk/ufiles/PromoteProtectDefend.pdf>.

140 LEGO, LEGO Group to invest up to US\$400 million over three years to accelerate sustainability efforts, 15 September 2020, available at [https://www.lego.com/en-gb/aboutus/news/2020/september/sustainability?\\_lsrc=d57d008b-a04c-49f6-90fd-f997f6fff28a](https://www.lego.com/en-gb/aboutus/news/2020/september/sustainability?_lsrc=d57d008b-a04c-49f6-90fd-f997f6fff28a).

## 4. A LAW ON HUMAN RIGHTS AND ENVIRONMENTAL DUE DILIGENCE: KEY PRINCIPLES AND SUPPORTING MEASURES

Mandatory measures and a system of accountability are one of the strongest levers that the UK has to ensure respect for child rights and the environment by business and to address market and governance failures that contribute to corporate abuses.

The UK Government should introduce a new legislation that requires businesses in the UK to take action to prevent child rights abuses and environmental harm, by conducting comprehensive human rights and environmental due diligence, and that allows victims to seek remedies for when abuses occur. The UK Government should also ensure that children have access to justice for the

abuse of their rights by corporate entities and remove any additional barriers that they face. This would include also ratifying the Third Optional Protocol to the UN Convention on the Rights of the Child on a Communications Procedure.

To be effective and comprehensive, this legislation should consider the wide-ranging impacts of business on children's rights. It should also address the highlighted weaknesses of the current UK landscape for corporate human rights obligations and be informed by the UK's international children's human rights obligations in the context of the business sector, as discussed in the previous chapters.

### RECOMMENDATIONS

**UNICEF UK recommends that a law on human rights and environmental due diligence should be based on the following key principles and supporting measures:**

**1. Offer a comprehensive approach to human rights and environmental due diligence, based on internationally recognised human rights that consider specifically the rights of different groups at risk of being impacted by business, such as children.**

Legislation should:

- a. Contain an explicit requirement for businesses to give specific attention and consideration to groups or populations that may be at heightened risk of vulnerability or marginalisation such as children.
- b. Explicitly refer to the UNCRC and its Optional Protocols among the human rights standards of reference.
- c. Require businesses to incorporate safeguarding standards relating to children, in circumstances where they interact directly or indirectly with them.
- d. Acknowledge that in conducting human rights and environmental due diligence groups in vulnerable situations such as children require heightened protection from corporate abuses of their rights.

**2. Support meaningful engagement and active listening to the views of children.**

Children should be consulted and provided with the opportunity to contribute to shaping legislation on human rights and environmental due diligence.

**3. Establish a clear set of expectations and responsibilities for businesses.**

Legislation should:

- a. Apply to both businesses operating in UK and to UK businesses operating abroad.
- b. Apply to business operations, products, services, investments, business partners and value chains, as appropriate in view of their size, the risks they pose to human and child rights and the nature and context of their operations.
- c. Clearly define human rights due diligence and ensure that the definition is aligned with the UNGPs and other relevant international human rights standards, including those relevant for children's

rights. It also needs to address the complexity of business' structures and relationships and how these interact with human rights and environmental impacts.

#### **4. Require meaningful disclosure and transparency.**

Legislation should require businesses to regularly and comprehensively report on:

- a) their implementation of HREDD and future plans;
- b) the detection of their impact on human rights and child rights;
- c) their efforts to prevent, mitigate and cease such impacts;
- d) the remediation measures implemented in accordance with the UNGPs, CRBPs and UNCRC, when specific to children.

#### **5. Include an effective enforcement mechanism.**

Legislation should establish an effective enforcement mechanism for the HREDD requirement, including a disclosure obligation, and the ability to issue sanctions or other measures in connection with businesses' non-compliance with the HREDD requirement. Such measures should not detract from the judicial channels of redress that should remain available to victims of corporate abuse alongside non-judicial mechanisms.

#### **6. Ensure effective access to justice and remedies.**

Legislation should allow victims to bring complaints and seek remedies against all companies, including parent companies, when abuses occur for failure to prevent adverse child rights and environmental impacts for lack of adequate due diligence.

#### **7. Strengthen the remedy system.**

Ensure the system takes into account the challenges for business-related human rights litigation and that **integrates enabling measures to overcome additional barriers that children face:**

- a. Strengthen judicial and non-judicial mechanism for victims to access remedies for corporate abuses of their rights and ensure these are child friendly.
- b. Remove the additional barriers that children may face in accessing justice and obtaining remedies for corporate abuses.

#### **8. Ratify the third Optional Protocol to the UNCRC on a communications procedure** to ensure children have access to an international justice mechanism for the defence of their rights.

#### **9. Promote the new obligations and need for corporate respect for human rights. Include provision of clear guidance on how to implement the legal requirement and related processes.**

The UK Government should:

- a. Provide policy guidance to businesses expected to conduct HREDD. Such policy should indicate expected outcomes, illustrate good practice, share appropriate methods of how HREDD can be conducted and how it can effectively incorporate the rights of groups in vulnerable situations such as children.
- b. Engage with businesses, civil society organisations and children, to raise awareness of the risks to children in the context of business.
- c. Promote awareness among the public, and in particular children, about business' respect for human and child rights and the environment.

## 5. CONCLUSION

The UK Government has the opportunity to shape a new, fairer and more sustainable economy, that is founded on human and child rights and that benefits everyone, including children. Children are speaking up, demanding respect for their rights and to be heard. Now is the time to listen to them and involve them in reimagining and shaping a fairer and more sustainable economic system.

In order to fulfil its commitment to the future generations to build back better and base it on a fairer, greener and more resilient global economy, **the UK Government should introduce new legislation that requires businesses in the UK to take action to prevent child rights abuses and environmental harm, by conducting comprehensive human rights and environmental due diligence, and that allows victims to seek remedies for when abuses occur.** The UK Government should also ensure that children have access to justice for the abuse of their rights by corporate entities and remove any additional barriers that they face. This would include also ratifying the Third Optional Protocol to the UN Convention on the Rights of the Child on a Communications Procedure.



*Children in Germany present their demands and their vision of a world fit for children with a 100m2 banner. The message is: The solution for creating a better future lies in the realisation of children's rights.*

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