



Tidying up the Legally Binding Instrument: A Child Rights-Based Contribution to the current Draft

Concise version of a Policy Brief prepared for the Twelfth session of the Open-ended Intergovernmental Working Group on Transnational Corporations and other Business Enterprises with Respect to Human Rights

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INTRODUCTION

Business activities can affect the full range of human rights through conduct that crosses borders, corporate structures and value chains. Environmental degradation, unsafe labour, digital harms and obstacles to justice often affect children in distinct and disproportionate ways. Their physical, mental and emotional development may intensify exposure, delay the manifestation of harm and extend its consequences across the life course. The current stage of negotiations therefore provides an opportunity to tidy up the draft Legally Binding Instrument (LBI) through adjustments that clarify its concepts, in order to preserve a protective child-centered interpretation.

This concise paper is presented on the occasion of the Twelfth Session of the Open-ended Intergovernmental Working Group in 2026, when delegations will consider the updated draft and the textual proposals submitted during earlier sessions. Considering the primary interest of the institutions endorsing this document in the protection of children's rights, the proposals hereby addressed do not seek to redesign the LBI, but rather consolidate priority amendments that can make the present text more responsive to children in the context of business-related harm.

SUMMARY OF PROPOSALS

A first clean-up concerns terminology. Under international human rights law, a human rights violation arises when a State breaches an international obligation through an act or omission. A human rights abuse refers to harmful conduct by a business enterprise or another non-State actor. The same facts may engage both categories: a company may cause or contribute to an abuse, while a State may violate its duty to regulate, prevent, investigate, sanction or remedy that conduct. The LBI should therefore use human rights abuses in provisions directed at business conduct, human rights violations in provisions concerning State responsibility, and both terms only where both forms of responsibility are addressed. In provisions on risk assessment, prevention and due diligence, adverse human rights impacts is often the more accurate expression because it encompasses actual and potential effects without determining liability in advance.

A similar distinction is required between age-based and child-specific language. Terms such as age-responsive may be useful when a provision covers several age groups or adopts a life-course approach. They are not substitutes for child-sensitive or child-friendly safeguards where procedures, institutions, information and remedies must respond to children's rights, maturity, evolving capacities and barriers to participation. Child-specific terminology should remain explicit in provisions on consultation, access to information, protection, justice and remedy. Where a measure must address both age-related differences and the distinct legal status of children, the concepts may be used together.

Following the LBI structure, the proposed revision of **Preambular Paragraph 9 (PP9)** places this approach near the beginning of the Instrument. The current wording recognizes the best interests of the child but does not state the

closely connected right to be heard or children's status as independent rights holders. A concise revision would preserve the preambular structure while ensuring that the operative provisions are read in light of the Convention on the Rights of the Child (CRC).

Current version	(PP9) Recognizing that, in all actions concerning children, including in the context of business activities, the best interests of the child shall be a primary consideration, and shall be respected in pursuing remedies for violations of the rights of the child;
Proposed version	Recalling the principles of the best interest of the child and the right to be heard affirmed in the 1989 Convention on the Rights of the Child, and recognizing children as independent rights holders whose evolving capacities require both respect for their agency and enhanced protection against adverse business-related impacts arising from their physical, mental and emotional development;

About that, the CRC identifies four guiding principles: non-discrimination; life, survival and development; the best interests of the child; and the right to be heard. The latter two warrant express mention because they govern both the substance and the process of decisions affecting children. The best-interests principle is a substantive right, an interpretative legal principle and a rule of procedure; decision makers must identify and assess foreseeable effects on children. The right to be heard recognizes children as participants in the defence of their own rights and requires that their views receive due weight according to age and maturity. A preambular reference can guide interpretation, assist in filling gaps, confirm compatibility between legal regimes and reinforce principles already binding under international law. It should inform due diligence, impact assessments, remedies, implementation and monitoring throughout the LBI.

Definitions should also capture how harm occurs across complex corporate operations. References to acts and omissions are needed because responsibility may arise from a failure to prevent foreseeable harm. The definition of victim should cover persons directly or indirectly harmed, including relatives, dependants and those harmed while assisting victims or preventing victimization. For children, harm to a parent or caregiver may impair the enjoyment of their own rights. The description of business activities should cover the full value chain and harmful end-of-cycle practices, including recycling, release, waste disposal, restoration and repair. The definition of remedy should require child-sensitive and disability-inclusive measures capable of addressing immediate, long-term and intergenerational consequences.

Prevention should remain the organizing principle of the LBI. [Article 6](#) should require States to adopt concrete legislative and regulatory measures that make human rights due diligence legally enforceable throughout business operations and value chains. Due diligence must identify, prevent, mitigate and account for adverse human rights and environmental impacts, including indirect and cumulative impacts on children. Child rights impact assessments are needed because general assessments may overlook risks connected with development, dependency, schooling, family life or future health. Consultation must be informed, accessible and safe, supported by information in formats that children can understand. Where imminent or irreversible harm is identified, preventive and precautionary action should not depend on the completion of lengthy proceedings.

The rights and protection of victims under [Articles 4 and 5](#) should translate formal guarantees into practical access. Child victims often depend on representatives, face age-related evidentiary barriers and may fear exposure, retaliation, social stigma or family consequences. The text should require child-friendly judicial and non-judicial mechanisms; privacy and identity protection by design; access to information and legal assistance; and safeguards against violence, sexual exploitation, threats, harassment, discrimination and other pressure in both online and offline contexts. Precautionary measures should be available when there is a risk of ongoing or irreparable harm. Investigations must be prompt, effective, thorough, transparent and impartial, and delays connected with age or physical, mental or psychological conditions must not prevent access to a remedy.

Article 7 should retain both vulnerability and marginalization. Vulnerability describes heightened susceptibility to harm, while marginalization concerns persistent disadvantage rooted in structural exclusion. Maintaining both concepts allows the LBI to address risks and its underlying causes. Barriers to remedy should be removed, not merely reduced, and access to judicial proceedings must not be obstructed by prior or parallel use of non-judicial mechanisms. Information and procedures must be accessible to victims and their representatives. Remedies should be adequate, timely, effective and capable of responding to restitution, compensation, rehabilitation, satisfaction, guarantees of non-repetition and the restoration of damaged environments where appropriate.

Legal liability, jurisdiction and limitation periods must operate as a coherent accountability framework. Liability rules should cover natural and legal persons and should not permit complex corporate structures, contractual relationships or value-chain fragmentation to shield responsible subjects. Jurisdictional rules should facilitate civil and criminal proceedings where there is a meaningful connection to the claim, allow closely related claims against multiple defendants to be heard together, reject forum non conveniens where it would create a barrier to justice and include forum necessitatis to prevent denial of justice. Limitation rules must account for latent illness, delayed awareness, dependency, trauma, the time required to reach adulthood and intergenerational harm. Periods should be suspended where no effective and adequate remedy is available.

The operational architecture of the LBI is as important as its substantive duties. **Article 13** should frame international cooperation as a practical obligation in transnational cases, including evidence gathering, enforcement, access to information and responses to environmental and climate harm. Cooperation should involve relevant stakeholders without qualifiers that allow unnecessary discretion, and communication should be available in child-friendly forms. **Article 14** should protect non-regression and require the Instrument to be interpreted consistently with higher standards in domestic law, treaties and customary international law. An express reference to the CRC and its Optional Protocols would provide a stable interpretative standard without creating conflict between regimes.

The Committee established under **Article 15** should have the capacity and procedures needed for effective, transparent and participatory monitoring. Children's views should inform its work through safe, representative and continuing participation mechanisms, and its reports should be accompanied by child-friendly versions. A communications procedure for individuals or groups claiming to be victims would strengthen accountability and access to justice. Implementation under **Article 16** should address child labour in all its forms, the recruitment or use of children in hostilities and any practice that compromises children's safety, development or dignity. It should also integrate environmental and climate considerations across domestic measures rather than isolate them in a single provision.

The treaty must remain adaptable without losing its protective core. Amendment procedures under **Article 21** should include meaningful engagement with civil society, affected communities and children through accessible processes. This is essential as business models, digital environments, artificial intelligence, supply chains and climate risks evolve. At the same time, **Article 22** should prevent reservations from fragmenting the regime or weakening access to justice, cooperation and accountability. Compatibility with the object and purpose of the LBI should be assessed through an authoritative institutional procedure linked to the monitoring body, reflecting the non-reciprocal and protective character of human rights obligations.

FINAL REMARKS

A focused clean-up can strengthen the LBI without delaying negotiations or reopening its settled architecture. Terminological precision will identify the responsible subject and the legal consequence; the express recognition of environmental and climate dimensions will reflect the realities of contemporary business-related harm; and child-specific safeguards will make prevention, participation, protection and remedy effective in practice. The proposed PP9 supports this work by anchoring the best interests of the child, the right to be heard and children's independent legal status in the Instrument's interpretative framework.

These proposals can be read as one coherent package. Strong definitions and scope must connect to enforceable due diligence; rights must connect to accessible procedures and effective remedies; jurisdiction and limitation rules must prevent denial of justice; and international cooperation, monitoring, implementation, amendment and reservation regimes must preserve the treaty's effectiveness over time. Incorporating these targeted adjustments would produce a clearer and more consistent Instrument, capable of protecting children and other affected persons from immediate, cumulative and intergenerational impacts of business activities.

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