Submission to the
General Comment on
Child Rights and the Business Sector

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Executive Summary

We propose the following recommendations (R) with respect to Article 24 on the right of the child to the highest attainable standard of health. The General Comment on Child Rights and the Business Sector should:

**R1 & R2:** Articulate the link between child rights and the business sector, and the rights of adults and the needs of communities that care for children, with particular emphasis on women, because women culturally carry a greater role of care for children, especially at the youngest age, and because they do so against the odds of social, economic, and political discrimination and structural violence.

**R3:** Articulate respect for, and attention to, the intertwined rights and subjectivities of mothers, infants and young children during pregnancy and breastfeeding, reflecting on girls’ and women’s needs for the full complement of human rights over the lifetime in order to maximize the rights of children at all ages to the highest attainable standard of health.

**R4:** Articulate States’ obligations to protect, respect and fulfil the right to adequate food for all by a) prohibiting State and Non-State actors’ participation in the social and commercial manipulation and disinformation which undermines breastfeeding as the norm; and b) deterring interference in the capacity of local agro-food systems to evolve to meet local nutritional needs of children and adults of all ages.

**R5:** Link articulation of inappropriate business practice to gender discrimination against girls, noting that this form of structural violence helps define the future well-being of communities and that ongoing discrimination renders business complicit in reifying ongoing patterns of poverty and instability.

**R6:** Highlight States’ obligation to respect the importance of local economic autonomy and sustainability in children’s communities to be achieved when a) the human rights and dignity of all are respected by the business sector, and b) engagement by the business sector – especially by industrial scale corporations – does not overwhelm local (food, nutrition and other) economies or create non-local dependencies that jeopardize community well-being.

**R7:** Explicitly mention States’ obligation to protect the human rights of communities from damages or threats of damages caused by imported products and approaches that can build dependency and override traditional practices, including breastfeeding, complementary feeding (that builds from and introduces children to local, traditional and sustainable diets), and local agriculture (that could be expanded and improved through, e.g., supportive policies and improved nutrition education and communication strategies) and that can therefore negatively affect the legal content attributes (adequacy and sustainability) of the Human Right to Adequate Food.
This submission aims at providing the Committee on the Rights of the Child with support for a more comprehensive interpretation of Article 24 on the right of the child to the highest attainable standard of health, in which the right of the child to adequate food and nutrition is embedded. The goal is to address the development of the General Comment on Child Rights and the Business Sector. Our recommendations start with the assumption that there should be an articulated link between the rights of the child on one hand, and the rights of adults and the needs of communities that support the well-being of children, on the other.

R1: The General Comment on Child Rights and the Business Sector should articulate the link between child rights and the business sector on the one hand, and the rights of adults and needs of communities that care for children on the other hand, with particular emphasis on women because women face structural discrimination and because they culturally carry a greater role of care for children, especially at the youngest age.

We applaud, of course, protection of children from labor violations and the promotion of education. However, because children, especially younger children, cannot manage by themselves, nor, especially among the youngest, speak for themselves, we argue that the General Comment should not isolate child rights and the business sector, but to make clear that these rights must be integrated within a larger framework of human rights and business that includes attention to other discriminated against groups who care for children, most particularly women. Part of the key to child protection is

I. Adults’ rights relative to the business sector, especially adult women’s rights;
II. Attention to the unique intertwined rights and needs of mothers, infants and young children during pregnancy, lactation and complementary feeding period;
III. Compromising girls’ rights results in a reproduction of inequality from youth to adulthood, impacting in the process the welfare of the entire communities;
IV. The capacity of communities to function productively and sustainably without dependency on external, especially extra-national business to secure health and good nutrition for residents.

I. Adults’ rights relative to the business sector, especially adult women’s rights

R2: The General Comment on Child Rights and the Business Sector should articulate a related link to women’s rights, highlighting the importance and challenge of women’s culturally particular, though not exclusive, role in caring for children against the odds of social, economic, and political discrimination and structural violence¹.

Countless studies identify women as the key to household food security (IFPRI 2005; Quisumbing and Smith 2007). Women have culturally gendered roles as caretakers of family health and nutrition. In much of the world they produce significant contributions and even the majority of foods for household consumption and local market retail. Importantly, a body of research confirms both that women invest a greater proportion of their income into household welfare and that women’s relative decision making power in the household (often influenced by their relative income status) is correlated with household well-being (Kent 2002; Maxwell and Smith 1992; Lemke et al. 2003; Lemke et al. 2009).

Despite women’s role as the main responsible for children’s welfare and nutrition (particularly, but not exclusively during pregnancy and early infancy), there is a clear intent in the Convention on the Rights of the Child to equalize the work and the authority of both mothers and fathers in making constant reference to ‘parents’. ‘Men’ or ‘fathers’ are not mentioned, whereas reference to ‘women’ appears once in the Preamble in the context of the Declaration on the Protection of Women and Children in Emergency and Armed Conflict; mothers’ health (not specifically nutritional well-being) receives notice to its critical role in the health and well-being of the child in the pre- and post-natal period in Article 24(2d).

It is to be applauded that the CRC refuses to stereotype the gender of parenting. However in the context of children’s rights and business, if parenting is interfered with by business sector practice that, for example, pays community members less than liveable wages, or participates in massive land acquisition that impairs household and community food and nutrition security, then a) communities become more vulnerable in their care of children, and b) structural discrimination and violence will most likely result in women receiving even worse working terms and conditions than men and be even more prone to landlessness and eviction because of their consistently inadequate link to land ownership and tenure, diminishing in turn, women’s capacity to care for children, whether they are the primary caretakers (which is probably the case) or not.

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II. **Attention to the unique intertwined rights and needs of mothers, infants and young children during pregnancy, lactation and complementary feeding period**

R3: The General Comment on Child Rights and the Business Sector should articulate respect for, and attention to, the intertwined rights and subjectivities of mothers, infants and young children during pregnancy and breastfeeding, reflecting on girls’ and women’s needs for the full complement of human rights over the lifetime in order to maximize the rights of children at all ages to the highest attainable standard of health.

“Intertwined subjectivities” is the term we introduce to grasp the independent and yet critically interconnected rights, needs, and capacities of women and children in the stages of pregnancy, childbirth, and breastfeeding/lactation and complementary feeding. We note that the first requirement of maternal and child nutritional well-being must be that it is rooted in women’s right to self-determination and autonomy with respect to reproductive and partner choices. Critically, there is no comprehensive framework or convention tackling the rights, needs, and capabilities of both mother and child during their critical period of biological, emotional, social and legal interconnectedness. This leads to insufficient attention to the time-dependent and specific food and nutrition rights and needs of women and children in pregnancy and up to age two.

Nutritional well-being typically reflects a cycle of positive and/or negative nutritional status during childhood and *in utero*, reaching back even to a child’s mother’s nutritional status prior to and during pregnancy.

The dependent link between child health and survival and maternal nutritional, cultural, and economic status that begins even before conception is described by the *Fetal Programming Theory (FPT)* (Godfrey & Barker 2000). The theory suggests that foetal programming starts in the mother’s womb and influences disease susceptibility later in life (e.g. blood pressure and insulin levels). Maternal malnutrition can impair the growth of foetal organs leading to permanent changes in structure and functioning of the foetus’ body (Godfrey & Barker 2000). According to Williams (2009), the mother’s “nutrient balance will be largely determined by dietary intake, the size of her nutrient reserve by her body size and composition, and the availability of nutrients to the foetus by her metabolic competence both to mobilise nutrients from stores and to partition dietary supply between stores and the fetoplacental unit.” The business sector should not be allowed to state that child malnutrition can be adequately addressed with short-term, medicalized interventions during the “window of opportunity.”

Malnutrition in the girl child and the female adolescent, including micronutrient deficiencies in iodine, iron, and vitamin A, is recycled into the woman of childbearing age. Poor nutrition

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literally and figuratively reproduces itself in the form of inter-generational cycles of growth failure, leaving the girls at nutritional disadvantage in subsequent generations with the same serious consequences for maternity, childbirth, infant physical and mental health (i.a., intellectual deficits), and contributes to poor pregnancy outcomes. Stunted adolescents and small adult women are more likely to have low-birth-weight (LBW) babies who are often already born stunted. For the newborn, especially under poor living conditions, LBW is a special risk factor for perinatal morbidity and mortality as well as health problems during infancy as well as in later life (i.e., pneumonia, diabetes, hypertension, coronary heart disease, and growth failure). LBW girls are more likely to become short statured (stunted) adult women who may face complications during childbirth, including heightened risk of dying and again having LBW babies (UN-SCN 2010, Save the Children 2006, ACC/SCN 1992)\(^6\). A short term medicalized intervention may provide short term measurable relief to food and nutrition insecurity, however, a) it cannot address child and adult malnutrition that is linked with chronic terms of poverty and discrimination which in fact, may have the greatest determining impact on the incidence of malnutrition, childbirth success, and population mortality and morbidity, and b) it does not address the child’s right to health, food, and nutrition over the lifetime, especially the particularly discriminated rights of girls, and therefore cannot change structural inequities leading to poverty, gender discrimination, and the intergenerational reproduction of poverty and hunger (cf. De Schutter 2011a, paras. 18 and 19, pp. 10-11)\(^7\).

In the 1990s, the concept “nutrition throughout the life cycle,” began inspiring intervention strategies to improve the nutritional status of women before and during pregnancy, but not, however, to address the critical window of opportunity from conception until two years of age (UN-SCN, 2000)\(^8\). Ten years later, the 6\(^{th}\) UN-SCN Report on World Nutrition Situation reiterates the importance of the life cycle approach. It argues that birth weight can be rapidly improved even in populations of short statured adult women through improving their diet, both in quantity and quality. Linking maternal and child nutrition and emphasizing the importance of maternal nutrition for mothers’ own health and development is an approach to redress and reverse effects of discrimination they are subjected to. The report describes nutritional and family planning activities that, the authors suggest, would help to break the intergenerational cycle of growth failure and be concrete contributions to the “progressive realization of the rights of the girl child and of the adolescent mother” in the CRC and CEDAW context (UN-SCN 2010, pp. 63)\(^6\). Unfortunately, the text only mentions the importance of breastfeeding, leaving out again the much needed emphasis on the entire ‘window of opportunity’ and life cycle approach.

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R4: The General Comment on Child Rights and the Business Sector should articulate States’ obligations to protect, respect and fulfil the right to adequate food for all by a) prohibiting State and Non-State actors’ participation in the social and commercial manipulation and disinformation which undermines breastfeeding as the norm; and b) deterring interference in the capacity of local agro-food systems to evolve to meet local nutritional needs of children and adults of all ages.

Achieving the highest attainable standard of health in infant and young child feeding requires the right to survival and development, and the right to be heard for both children, women, and their communities. States have the obligations to respect and protect the conditions promoting best nutritional practices for women, infants and young children in the stages of pregnancy, birth, lactation and complementary feeding by providing access to unbiased education about child health and nutrition and the advantages of breastfeeding, among other health and safety knowledge (CRC, Article 24(2e)).

Infants’ capacity to exercise their right to adequate food and to health, among others, however, depends on others. Due to the immediate and direct dependence of infants on their mothers, the nutritional status of infants is determined not only by the quality of the food, health services, and care they receive directly, but also by the food, health services, and care received by the mother herself as well as her long-term, nutritional and health status. Mothers, and fathers as well, should be entitled to parental nutrition-related services not only because of their own rights and needs, but also because of their legal responsibility to provide for their children. This includes rights to certain kinds of information and services, and for pregnant women and mothers, protection at the work place as well as the right to be protected from undue influences from commercial interests. Only then are they able to ensure progressive realization of their infants’ right to adequate food and health⁹.

The vast majority of Nation States have neglected to design and implement adequately national enforceable legal measures based on the International Code of Marketing of Breastmilk Substitutes and subsequent relevant World Health Assembly resolutions (the Code) that should protect mothers, their infants and young children, from commercial pressures by manufacturers and distributors of breastmilk substitutes.

The right to adequate food for older infants and young children means the right to continued breastfeeding along with the introduction of adequate and safe complementary foods. One concern is that complementary foods are introduced too early, inappropriately replacing nutritionally superior breastmilk with its disease-protection properties. Another concern is that fortified, processed, and commercialized ready-to-use foods (RUF) are being introduced as a substitute for production of complementary food from local food systems that either have sufficient food quality or are from a system that could be nutritionally enhanced. Especially, during the onset of complementary feeding, quality of the food is more important than

quantity\textsuperscript{10}. Complementary feeding is the young child’s entrée into the culture and geography of local food and nutrition systems and economies. It is essential that these systems produce successfully and that they not be overwhelmed or superseded by the growth of foreign imports, particularly of nutrition enhanced products that are marketed as superior to local production. Consumers and growers need knowledge regarding best combinations of local foods in order to maximize nutritional quality and ensure local diet sustainability and health for children and all family members.

Nutrition interventions should be but one part of broader-based strategies for the realization of the right to adequate food. For example, the provision of fortified foods (enriched to improve nutritional content) may be necessary, where local production is insufficiently diversified and incapable of supplying the full range of foods required for adequate diets. Rebuilding and strengthening local food systems through diversified farming systems to ensure the availability of and accessibility to adequate diets will be more sustainable in the long term. Food systems based on local knowledge and conditions, such as homestead or community gardens, can be a cost-effective way to combat micronutrient deficiency, as demonstrated by examples in Bangladesh, Cambodia, Nepal, the Niger and South Africa; such alternative food systems present the additional advantage of increasing local incomes and resilience to price shocks, another pathway through which positive nutritional outcomes can be achieved (De Schutter 2011a, para. 19, p. 11)\textsuperscript{7}.

### III. Compromising girls’ rights results in a reproduction of inequality from youth to adulthood, impacting in the process the welfare of the entire communities

**R5: The General Comment on Child Rights and the Business Sector should link articulation of inappropriate business practice to gender discrimination against girls, noting that this form of structural violence helps define the future well-being of communities and that ongoing discrimination renders business complicit in reifying ongoing patterns of poverty and instability.**

Numerous reports point out that women and girls face particular vulnerability to food insecurity risk and the denial of their right to adequate food because of a variety of factors. These include limited access to and control over food production resources; insecure and unstable labor conditions and gender biased labor markets; discrimination in laws, regulations and programs; shortcomings in access to education, health care, freedom in choices and timing of partners and

spouses; reproductive autonomy; and lack of adequate support during pregnancy, childbirth, lactation and complementary feeding (cf. UNDP 2003)\textsuperscript{11}.

Discrimination that women and girls face in achieving their right to adequate food and nutrition impacts, however, the human security of their entire communities. Empirical data connects gender discrimination and hunger in the IFPRI and Welthungerhilfe Global Hunger Index (GHI) (von Grebmer et al. 2009)\textsuperscript{12}. The GHI compares global hunger statistics with the 2008 Global Gender Gap Index (Hausmann et al. 2008)\textsuperscript{13}, which is made up of four subindices: economic participation, educational attainment, political empowerment, and health and survival. Of these indices, gender disparities in education and health access show the strongest correlation with hunger statistics for the entire population. Notably, the health and survival category includes WHO estimates of “the number of years that women and men can expect to live in good health, by taking into account the years lost to violence, disease, malnutrition or other relevant factors” (von Grebmer et al. 2009, p. 4)\textsuperscript{12}. A relevant factor in the incidence of hunger that effects children and adults on a gross national level is the structural violence of gender discrimination in the business sector.

Gender discrimination plays a key role not only in the vulnerability to food insecurity faced by women and girls and their communities. Gender discrimination has been associated with social instability and hunger more generally. The 2002 \textit{UN Women, Peace, and Security} study found that increasing violations of women’s rights constituted a reliable indicator of escalating intra-national conflict (UN 2002)\textsuperscript{14}. The Secretary General’s 2009 Report of the same name identifies special needs of women and girls associated with conflict escalation, prevention, resolution and peace-building to include violations associated with: a) sexual violence, b) security and access to social services for women and children, c) access to political participation, and d) access to education (UN Secretary General 2009)\textsuperscript{15}. A relevant factor in gender discrimination against women and girls that is associated with the escalation of intra-national conflict is workplace inequality which must be also addressed in the business sector.


IV. The capacity of communities to function productively and sustainably without dependency on external, especially extra-national business to secure health and good nutrition for residents

R6: The General Comment on Child Rights and the Business Sector should highlight States’ obligation to respect the importance of local economic autonomy and sustainability in children’s communities to be achieved when a) the human rights and dignity of all are respected by the business sector, and b) engagement by the business sector – especially by industrial scale corporations – does not overwhelm local (food, nutrition and other) economies or create non-local dependencies that jeopardize community well-being.

Good nutrition is a product of local engagement, empowerment, and integration with national and local food and nutrition systems and economies oriented towards preventive health care. Sustainable livelihood approaches and local food governance, in concert with agro-ecology approaches have great potential to provide alternative frames to address food and nutrition security and to bridge the divide of disciplines and paradigms. Governments must respect local food and nutrition systems and economies and not produce policies that shift healthy and sustainable consumption patterns towards diets that promote poor health, especially among children. Because public agricultural policy has contributed to agricultural systems complicit in the high sugar, high fat, highly processed diets increasingly common throughout the world, the 2004 WHO Global Strategy on Diet, Physical Activity and Health calls for agricultural policies to be re-aligned with public health and nutrition concerns (paras. 41 (2) and (4))

Governments must protect communities’ local food and nutrition systems and economies promoting healthy, affordable, and sustainable consumption patterns from inappropriate business sector marketing endeavors, especially those that claim health-based advantages, but that would shift consumption patterns in directions that promote poor health, especially in children.

The private sector, consistent with its responsibility to respect the right to adequate food, should:
(a) Comply fully with the International Code of Marketing of Breast-milk Substitutes, abstaining from promoting breast-milk substitutes, and comply with the WHO recommendations on the marketing of foods and non-alcoholic beverages to children, even where local enforcement of these recommendations is weak or non-existent;
(b) Abstain from imposing imported and medicalized nutrition-based interventions where local ecosystems are able to support sustainable diets, and systematically ensure that such interventions prioritize local solutions and are consistent with the objective of moving towards sustainable diets (De Schutter 2011a, paras. 51a and 51b. p. 22).

R7: The General Comment on Child Rights and the Business Sector should explicitly mention States’ obligation to protect the human rights of communities from damages or threats of damages caused by imported products and approaches that can build dependency and override traditional practices, including breastfeeding, complementary feeding (that builds from and introduces children to local, traditional and sustainable diets), and local agriculture (that could be expanded and improved through, e.g., supportive policies and improved nutrition education and communication strategies) and that can therefore negatively affect the legal content attributes (adequacy and sustainability) of the Human Right to Adequate Food.

A patronizing approach frames the delivery of food support and (technical/scientific) knowledge from the State to men and ostensibly to invisible women and children, without actively promoting the rights of women in their existing role as key to family and community food security. A similarly patronizing approach presumes that technical/medicalized assistance and international distribution/trade is the answer to food insecurity and malnutrition, without consideration of its capacity to promote dependency and preclude the development of sustainable regional food systems that promote local nutrition and health.

In both contexts, for a) women in general and b) women and men actors in local food systems, the need to claim rights and participate in self-determination is paramount and control over food security and nutrition must be based on principles of democracy and non-discrimination.

Food systems that meet needs and engender well-being could take the form, for example, of food policy councils\(^\text{17}\) that promote localized food systems with smaller scale, ecologically-oriented, and regionally-based farmers and food system entrepreneurs. We introduce a community food security\(^\text{18}\) approach that prioritizes social justice, including gender equity and youth representation and promotes practical programming such as participatory nutrition education and local food business development. A local food systems and community food security approach ideally can create space for participatory governance of healthy and equitable, locally-based and controlled food and nutrition economies. To create the space for the development of such participatory local food systems there is a need for rights-based regulation of public and private sector activities that address economic power inequities, for example, access to natural resources such as land\(^\text{19}\).

\(^\text{17}\) See http://www.statefoodpolicy.org/
The requirement of participation, consistent with guideline 10.3 of the Right to Food Guidelines, ensures that local agricultural and nutrition contexts be considered. It also means that solutions will be demand-driven, that local partners will be identified, and that country-led action will not be equated with government-led action. It also allows identifying alternative solutions based on local knowledge and conditions, such as homestead or community gardens. Participation requires that beneficiaries take part in the process of evaluation, and co-design the solutions that could benefit them most. This is not only empowering, but also enhances the effectiveness of interventions because it builds a feedback loop to facilitate ongoing learning and improvement of policies (De Schutter 2011a, para. 24, p. 12)\textsuperscript{7}.

**Developing local food and nutrition economies and systems faces multiple challenges that in particular impact children and are exacerbated by inappropriate activities in the business sector.** Rural peoples and food producers across the urban-rural expanse, and women as a particular vulnerable population among them, are often disconnected and alienated from the tools and traditions that might develop prosperous local food systems – including the practice of breastfeeding, the most local of food and nutrition systems and the introduction of complementary foods that are local in origin and tradition. Where land tenure and rights are insecure and land costs rise, vulnerable rural persons and groups can be displaced by powerful interest groups including through the recent phenomenon known as land-grabbing. Although women have been called the “key to household food security” and despite women’s role as the main responsible for the welfare of children (IFPRI 2005; Quisumbing & Smith 2007)\textsuperscript{2}, they have even greater *de jure* and *de facto* unequal access to inheritance, land ownership, credit, training and extension knowledge, and technology (FAO 2011)\textsuperscript{20}. Women’s labor is thus absorbed and their ability to profit from it, stymied by discrimination in culture, policy, and business traditions. Trends toward increasing concentration of land – and with it the means to produce—benefit higher income groups in general, and men in particular. The capacity of those who work hardest to raise and protect children is challenged by the structural violence of discrimination. Uneven access to health care and reproductive choices – from clinical access in youth, to autonomy in marriage decisions and control over fertility – impairs girls’ and women’s health and productivity, impacting also on agricultural production.