

DRAFT ONE OF THE COMMITTEE ON THE RIGHTS OF THE CHILD'S GENERAL COMMENT ON  
CHILD RIGHTS AND BUSINESS SECTOR

Submission of Comments

*FXB Center for Health and Human Rights – Harvard University  
Mobile Crèches  
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## Overview

The François-Xavier Bagnoud Center for Health and Human Rights at the Harvard School of Public Health is an interdisciplinary center that works to protect and promote the welfare and well-being of vulnerable children and adolescents worldwide. In the last 20 years, the Center has become a world leader in developing the theory and practice of a rights-based approach to the improvement of lives for children and families trapped in severe poverty, harsh oppression, or crisis situations. FXB Center-based projects are ongoing in many geographic regions, including Angola, Chile, India, Sierra Leone, the United States, and Central and Southeastern Europe.<sup>1</sup>

The FXB Center, in collaboration with our India-based NGO partner - Mobile Crèches<sup>2</sup> - and our research partner, the Public Health Foundation in India<sup>3</sup>, are committed to protecting and promoting the rights of children through research, training, advocacy, and targeted action. The following suggestions are gleaned from extensive research, advocacy, and programmatic field experience focused on enhancing the rights of vulnerable children and families in India. We appreciate your time and consideration on this brief comment in response to the call for submission on Draft One of the Committee on the Rights of the Child's General Comment on Child Rights and the Business Sector.

## Comments – Duty to Protect

Para 12 of the general comment states: *“the duty to protect is of primary importance when considering States parties’ obligations under the CRC with respect to the business sector. It means that States parties should take appropriate and reasonable measures- including exercising due-diligence- to prevent the occurrence of abuses and should investigate, punish, and redress abuses caused or contributed to by business enterprises when they occur.”*<sup>4</sup> Our research experience with the SAFE Project<sup>5</sup> has demonstrated that the State often fails to meet their obligation to protect in the pursuit of economic development.

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<sup>1</sup> François-Xavier Bagnoud Center for Health and Human Rights Annual Report 2009-10 (2010), 23 August 2012

<sup>2</sup> Mobile Creches – “Our Vision: A just and caring world for young children of marginalized and mobile populations to enable them to develop into competent and confident individuals. Our Work: Creches and daycare centers to care for children at construction sites and slums of Delhi, Gurgaon, Noida, Ghaziabad, Faridabad (National Capital Region).”

<sup>3</sup> Public Health Foundation of India – “Working toward a healthier India: PHFI is helping to build institutional capacity in India for strengthening education, training, research and policy development in the area of Public Health.”

<sup>4</sup> UN Committee on the Rights of the Child, CRC General Comment (2012): General Comment by the UN Committee on the Rights of the Child Regarding Child Rights and the Business Sector (Para 12), 22 August 2012

<sup>5</sup> The SAFE Project aims to consider new ways of thinking about child protection and security by providing a model to promote children’s security, health, and development. The SAFE model is a rights-based, holistic framework for examining four fundamental domains of children’s security including: Safety and protection, Access to care; Family and community connectedness; and Education and livelihoods. This model underscores the interdependence of children’s survival needs and accounts for the survival strategies (dangerous and adaptive) that children and families employ to cope with deficits in any of these core security domains. The SAFE framework can be used to further understanding of the State’s obligation of the duty to protect under the Convention of the Rights of the Child.<sup>5</sup>

An example from our field work with Mobile Crèches in India is illustrative of this point. There are an estimated 40 million migrant laborers in the construction industry<sup>6</sup> who make a considerable contribution to India's developing economy.<sup>7</sup> Many of these laborers are parents who migrate with their young children to work and live in very challenging conditions.<sup>8 9 10</sup> To gain a deeper understanding of factors affecting children's security and well-being within this context, the SAFE Child Protection Initiative, in partnership with Mobile Crèches, conducted a research study whereby we sought to highlight child protection threats facing families migrating for work at a construction site in the National Capital Region of India.

Research findings demonstrated three major barriers to upholding the rights of children within this context. First, business operations at the construction site involved a complex network of players resulting in a diffusion of responsibility, making it difficult to hold parties accountable for the violation of child rights. Para 18 in the general comment echoes this point, "*Business enterprises increasingly operate on a global scale through a complex network of subsidiaries, contractors, suppliers, and joint ventures; this means that their impact on child rights is rarely the result of action or omission by a single unit.*" To address this issue, state parties must strengthen legislative and regulatory measures to respond to such challenges in a targeted and efficient manner.

Secondly, a critical component of the duty to protect is that State parties have a commitment to protect *all* of children's security requirements. As underscored by the SAFE model, the very definition of protection requires a holistic interpretation, taking into account children's interrelated security needs such as: Safety/protection; Access to health care and basic psychological needs, Family/Connection to others, and Education/economic security. Findings from our study illuminated numerous violations of child rights within these domains.<sup>11</sup> When interviewed, children recalled incidents where children or workers had been hurt or killed, resulting in a preoccupation with the safety of their parents. One girl, age 8, stated "*When people work on this site, [they climb from a rope.. then they fall, then people die.*"<sup>12</sup> Further, the quality and availability of basic amenities such as housing, access to drinking water,

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<sup>6</sup> Sarde, S. R. (2008). Migration in India: Trade Union Perspective in the Context of Neo-Liberal Globalization. New Delhi: International Metalworker's Federation – South Asian Regional Office, 23 August 2012

<sup>7</sup> Deshingkar, P., Sharma, P., Kumar, S., Akter, S., & Farrington, J. (2008). Circular migration in Madhya Pradesh: changing patterns and social protection needs. *The European Journal of Development Research*, 20(4), 612-628, 23 August 2012

<sup>8</sup> DeHaan, A. (1997). Migration as family strategy: rural-urban labor migration in India during the twentieth century. *Hist Fam*, 2(4), 481-505

<sup>9</sup> Mosse, D., Gupta, S., Mehta, M., Shah, V., & Rees, J. (2002). Brokered Livelihoods: Debt, Labour Migration and Development in Tribal Western India. *Journal of Development Studies*, 38(5), 59, 23 August 2012

<sup>10</sup> Surabhi, K. S., & Kumar, N. A. (2007). Labour Migration to Kerala: A Study of Tamil Migrant Labourers in Kochi. Kochi, Kerala: Centre for Socio-economic & Environmental Studies, 23 August 2012.

<sup>11</sup> Betancourt, T. S., Shaahinfar, A., Kellner, S.N., Dhavan, N., Williams, T. (2012) A Qualitative Case Study of Child Protection Issues in the Indian Construction Industry; Investigating the Interrelated Security, Health, and Rights of Migrant Families – Article Under Review with *BMC Public Health* (pg. 12 of manuscript in Theresa Betancourt's possession)

<sup>12</sup> Betancourt, T. S., Shaahinfar, A., Kellner, S.N., Dhavan, N., Williams, T. (2012) A Qualitative Case Study of Child Protection Issues in the Indian Construction Industry; Investigating the Interrelated Security, Health, and Rights of Migrant Families – Article Under Review with *BMC Public Health* (pg. 12 of manuscript in Theresa Betancourt's possession)

affordable food, and proper sanitation also posed threats to children's' security, health, and well-being. Mobile Crèches extensive work providing early childhood care in construction sites in India has highlighted a number of serious health issues plaguing children of workers. In 2010, they found that malnutrition and anemia were common among children living in construction site.

Further, Article 28 of the CRC defines that all state parties are obligated to establish educational systems and ensure access to them. Article 29 (1) "*...underlines the individual and subjective right to a specific quality of education.*" Compliance with the values recognized in article 29 (1) clearly requires that schools be child-friendly in the fullest sense of the term, and that they be consistent in all respects with the dignity of the child. Research findings demonstrated that access to education for children of migrant laborers was a major obstacle for migrant families, as schools were reluctant to admit children who were not permanent residents of the region. In response to a question regarding access to education on the construction site, one worker stated, "*We cannot keep our children here; otherwise their education will spoil.*"<sup>13</sup> The State is not freed from its obligation to respect, protect and fulfill the rights of children of migrants. In fact Article CRC - Article 2 clearly states: "*1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.*" Developing economies such as India are experiencing tremendous economic growth and as a corollary families are on the move for work. As a result, state parties must make an integrated effort to ensure that a broad, holistic approach to upholding the duty to protect is strictly enforced.

Lastly, child rights impact assessments, such as those developed by the SAFE project, are critical tools needed to develop a scientifically rigorous and reliable evidence base that is essential to providing truthful assessments of the impact of business operations on child well-being. Para 30 comments "*States are obliged to first attempt to identify what the best interest of the child is. A child's rights impact assessment could determine what policy, law, or decision relating to the business sector is actually in the best interest of children affected.*" State parties must appoint honest, impartial, and independent bodies to conduct such assessments to ensure rigorous and truthful evaluations of the impact of business operations on child rights. Further, such assessments should take care to measure both the direct and indirect impact of business activities on child rights.

### *Comments – Duty to Fulfill*

In this neo liberal age, state endeavours to fulfil the rights of the child by providing access to public goods such as healthcare and education<sup>14</sup>, are often entrusted to private companies. The human rights obligations of businesses charged with these functions are to act

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<sup>13</sup> Betancourt, T. S., Shaahinfar, A., Kellner, S.N., Dhavan, N., Williams, T. (2012) A Qualitative Case Study of Child Protection Issues in the Indian Construction Industry; Investigating the Interrelated Security, Health, and Rights of Migrant Families – Article Under Review with *BMC Public Health*

<sup>14</sup> See CRC Article 24,28,

with due diligence, to avoid infringing the rights of others and to address adverse impacts that occur<sup>15</sup>. States parties to the CRC on the other hand, have the obligation to respect, protect and fulfil the rights enshrined in the Convention and may incur responsibilities where business enterprises fail to adequately respect, protect and fulfil child rights in the context of private business activities and operations. As a result of this complex relationship between public and private bodies, the duty of the State to ‘fulfil’ and the responsibilities of businesses to ‘respect’ become muddled. Governments have a critical responsibility to ensure that the private sector has the capacity to provide public goods and services that protect and respect the rights of those who rely on them. In respect of provision for children, the best interest of the child is the guiding principal. As para 31 of the general comment provides “ *the principle of the best interest of the child is directly applicable to businesses who have been entrusted with certain State functions.* “

Under the terms of the 2011 Guiding Principles on Business and Human Rights private companies are mandated to provide an accessible grievance mechanism to ensure that infringements of human rights can be remedied. State governments can use complementary laws and standards to ensure children are protected in a privatized economy.

The duty to fulfil requires State parties to take positive action to facilitate, promote and provide for the enjoyment of child rights. Overlapping public and private interest provide States with opportunities to draw from private industry to meet their obligation to ‘fulfil’. For example, some large multi-national financial and technology companies have directed their corporate social responsibility efforts towards supporting local education and training. These private sector actors have a vested interest in education to promote continued economic growth and access to a qualified labour market in an increasingly knowledge based economy, i.e. they need to increase both the customer and employee pool. Banks have an interest in increasing the proportion of the population that is bankable, technology companies have an interest in maximizing the number of potential technology consumers. Education is critical to both goals. But the quality and relevance of much publically provided education is being called into question in many countries; the 2010 Annual Status of Education Report in India found that 62% of children in grade 4 could only read at a grade 1 level. According to the World Bank 2012, South Asia will have to absorb 1 to 1.2 million entrants to the labour force every month for the next two decades at rising levels of productivity<sup>16</sup>. Regions, such as the Middle East, experiencing a surge in youth populations, also find a growing gap between industry needs and young people’s skill sets, leaving millions of young people unemployed<sup>17</sup>. Private sector expertise and resources (as trainers, funders, mentors, role models, innovators) are of critical strategic importance to address these serious human rights issues facing adolescents as they

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<sup>15</sup> The UN Guiding Principles on Business and Human Rights: Relationship to UN Global Compact Commitments

<sup>16</sup> The UN World Bank Flagship Report: More Better Jobs in South Asia January 2012

<sup>17</sup> Education for Employment: Realizing Arab Youth Potential IFC-IsDB 2011

transition from school to work, and to equip the next generation with the health, resources and knowledge they need to become productive economic actors. State parties have an obligation to ensure that children benefit from increased private sector involvement so that they can realize their CRC protected rights.

*Comment – The Scope of Obligations to Respect, Protect, and Fulfil the Rights of the Child in the Context of Business Activities and Operations*

Para 16 states that *“Business enterprises can play an essential role the provision of public services such as water, education, transport, health, or energy that are critical to the fulfilment of children’s rights.... When business enterprises are involved in service provision, then States parties have a duty to regulate and monitor them.”* As the state increasingly employs private actors to assist in the discharge of its obligations to provide public goods, the modus operandi of these actors will have to evolve to reflect increased levels of responsibility and accountability. This evolution will not happen organically. States will need to provide legislative guidance, oversight and access to remedy, to ensure the increased role of the private sector is in keeping with states obligations under the CRC.

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