



Submission on the Committee on the Rights of the Child's Draft One of the General Comment on Child Rights and the Business Sector

August 2012

Distinguished members of the Committee on the Rights of the Child,

The Gender, Nutrition and the Right to Adequate Food Working Group of the Gender and Nutrition Department at the University of Hohenheim thanks the Committee on the Rights of the Child for taking into account some of the recommendations made in our first submission to the Annotated Outline of its General Comment on Child Rights and the Business Sector.

The suggestions presented in this second submission relate mainly to the principles of interrelatedness and interdependence of human rights as a whole on the conviction that the full realization of the rights of children (and perhaps with particular relevance for the rights of children at their youngest age, referred to as infants in this submission) will remain unaccomplished as long as their caregivers' (traditionally primarily women), families' and communities' capacity to meet children's needs is not protected, without discrimination, from detrimental impacts from corporate activities.

Our submission is optimised in its structure and clarity by incorporating both our suggested text amendments (shadowed in light blue) as well as our comments (shadowed in light red) directly into the Committee's draft text, such that it will be easier for the Committee members to address them during the approaching phase of the consultation process.

We strongly hope that this submission will contribute to the continuous efforts of the CRC Committee to guide and support States parties in the implementation of the provisions made in the Convention of the Rights of the Child and thus to the realization of child rights in particular, and human rights in general.

Sincerely,

Gender, Nutrition and the Right to Adequate Food Working Group
Department of Gender and Nutrition, University of Hohenheim

Gender, Nutrition and Right to Adequate Food Working Group of the Department of Gender and Nutrition, University of Hohenheim

Anne C. Bellows, Stefanie Lemke, María Daniela Núñez Burbano de Lara, Veronika Scherbaum

Contact: anne.bellows@uni-hohenheim.de

**GENERAL COMMENT BY THE UN COMMITTEE ON THE RIGHTS OF THE CHILD
REGARDING CHILD RIGHTS AND THE BUSINESS SECTOR
- FIRST DRAFT -**

CONTENTS

Paragraph Page

I. INTRODUCTION

II. OBJECTIVES AND STRUCTURE

III. GENERAL OBLIGATIONS

- A. Obligations under the Convention
- B. The obligation to respect, protect and fulfil child rights in the context of business activities and operations

(i) A duty to respect

(ii) A duty to protect

(iii) A duty to fulfil

- C. Obligations in the context of business' global operation
- D. Obligations in the context of business operations in conflict situations
- E. Obligations in the context of international organisations

IV. STATE OBLIGATIONS AND THE GENERAL PRINCIPLES OF THE CONVENTION IN THE CONTEXT OF BUSINESS ACTIVITIES AND OPERATIONS

- A. The right to non-discrimination
- B. Principle of the best interests of the child
- C. The right to life, survival and development
- D. The right to be heard

V. FRAMEWORK FOR MEASURES OF IMPLEMENTATION

- A. Legislative and regulatory measures

(i) Legislative and regulatory measures

(ii) Child Rights Impact Assessments

(iii) Child rights due diligence for business

- B. Remedial measures
- C. Policy measures
- D. Administrative measures
- E. Collaborative and awareness-raising measures

I. INTRODUCTION

1. The UN Committee on the Rights of the Child recognises that the business sector increasingly has an impact upon many different areas of children's lives including, but not limited to, the issue of child labour. This impact has grown in the past decades because of a range of factors such as the globalised nature of economies and of business operations, the ongoing trend of State outsourcing and privatisation of functions to private sector providers and the inability of States to create appropriate legal and institutional frameworks to ensure respect for human rights in this context. The realisation of children's, especially infants' and young children's rights can be negatively affected by business activities both through direct interaction between business enterprises and children, but also indirectly through the impact of corporate activities on children's caregivers, families and communities (with particular relevance to the youngest children). Business enterprises can be an essential driver for societies and economies to advance in ways which strengthen the realisation of child rights through, for example, employment generation, technological advances and investment. However, the realisation of children's rights is not an inevitable consequence of economic growth and the experience of the Committee is that business enterprises can also commit, or contribute to, a wide range of abuses of rights under the UN Convention on the Rights of the Child (CRC) and its Optional Protocols. Furthermore it can be very challenging for children to obtain remedy for abuse of their rights in this context.

2. States parties have a number of obligations arising from the Convention and its Optional Protocols with regards to the activities and operations of business and this General Comment aims at clarifying these obligations and outlining the measures that should be undertaken by States to meet them. For the purposes of this General Comment, the business sector is defined as including all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.

3. While all child rights are relevant in this context, certain provisions of the CRC are more directly relevant, including the following: Article 3(1) which states that the best interests of the child should be a primary consideration for actions taken by public or private sector welfare providers, Article 17 on the role of mass media, Article 18 (3) regarding provision of child care for working parents, Article 19 on protection of children in the care of others, Article 21 (e) which ensures that inter-country adoptions do not result in improper financial gain, Article 23 on the rights of the disabled child, Article 24 on the right to health as well as the right to adequate food and nutrition, Article 28 on the right to education, Article 32 on economic exploitation, and Article 34 on sexual exploitation and sexual abuse. Article 3(4) of the Optional Protocol on the Sale of children, Child prostitution and Child pornography (OPSC) regarding the legal liability of legal persons (including business enterprises) is also directly relevant. Given the breadth of child rights that can be affected by business activities and operations, the General Comment seeks to provide States parties with a framework for implementation of the Convention as a whole with regard to the business sector. However, the principles of interrelatedness and interdependence of all human rights, including the rights of those responsible for taking care of children, especially infants and young children, should be kept in mind, particularly due to children's reliance on others for the fulfilment of their rights.

4. A General Comment on Child Rights and the Business Sector is necessary 1) due to the growing influence of the business sector in policy shaping/making and public service provision increasingly regulated by voluntary, legally non-binding measures/initiatives, and 2) because business operations can impact negatively on children due to their particular needs and characteristics - these include their age, maturity, development, evolving capacities and the opportunities they have to express their views and participate in decisions that affect them. In this context, consideration should be given to the following:

- Childhood is a unique period of physical, mental and emotional development and abuses of children's rights caused or contributed to by business enterprises may have life-long, irreversible and even inter-generational consequences. Such abuses can have a more severe impact on children than on adults and include economic exploitation, violence and discrimination in the workplace, irresponsible marketing and exposure to unsafe products or environmental hazards. Human rights abuses against children's (mostly female) caregivers, families and communities caused or contributed to by business enterprises can indirectly affect negatively the realisation of children's rights.
- Children are often politically voiceless and lack access to relevant information. They are reliant on systems of governance - adult and often male-centric - over which they have little influence in order to realise their rights. This makes it hard for them to have a say or to be represented by their (mostly female) caregivers, who in many situations also face social and political discrimination, on decisions regarding law and policy on business activities that will impact on child rights. In the process of decision-making, States rarely consider the impact on children of business related law and policy whilst, conversely, a vocal business sector often exerts a powerful influence. Furthermore, the best interests of the child is not always a primary consideration for States in decision making when weighing up differing if not competing priorities.
- It is challenging for children to obtain remedy - whether in courts or through other mechanisms - when their rights are infringed upon because of the actions or omissions of business enterprises. Children often lack legal standing, knowledge of remedy mechanisms, financial resources and adequate legal representation. There can be particular difficulties for children to obtain remedy for abuses which occur in the context of businesses' global operations.

5. Many of these issues have arisen in the context of the Committee's examination of States parties' periodic reports and have been addressed in Concluding Observations and Recommendations. The present General Comment draws from the experience gained over a number of years by the Committee in reviewing States parties' reports. It has also been informed by regional and international consultations with different categories of stakeholders held in 2011 and 2012, as well as public online consultations.

6. The Committee is mindful of the relevance for this General Comment of existing and developing national and international norms, standards and policy guidance in the area of business and human rights. In addition to well established international conventions such as the International Labour Organisation (ILO) Conventions No. 182 on the worst forms of child labour and No. 138 on the minimum age for admission to employment and workⁱ, the Committee recognises the importance of the UN "Protect, Respect and Remedy" Framework and the Guiding Principles on Business and Human Rights.ⁱⁱ The Organisation for Economic Cooperation and Development (OECD)

Guidelines for Multinational Enterprises and the ILO Tripartite Declaration on Multinationals and Social Policyⁱⁱⁱ also provide important reference to the Committee.^{iv} Other references include the UN Global Compact and the Children's Rights and Business Principles^v developed by UNICEF, Save the Children and the UN Global Compact.

We would like to express our concern related to the reference made to the Children's Rights and Business Principles Initiative (CRBPI), which is based on the UN Global Compact's model of Corporate Social Responsibility and which focuses on legally non-binding measures rather than on States Parties' obligations to monitor and regulate State- and non-State-actors vis-à-vis the impact of business on children's rights, including the right to adequate food and nutrition. We stress that it is important that the Committee on the Rights of the Child rejects voluntary, legally non-binding solutions that undermine its efforts in preparing the present General Comment. As the UN Joint Inspection Unit concluded in their evaluation of the UN Global Compact, "[T]he reporting mechanism consists in a self-assessment exercise and it does not provide effective monitoring and verification of the [10 Global Compact] principles."

[Reference: "United Nations Corporate Partnerships: The Role and Functioning of the Global Compact" (JIU/REP/2010/9): Papa Louis Fall, Mohamed Mounir Zahran, Joint Inspection Unit, Geneva 2010; <http://www.unjiu.org/data/reports/2010/JIU.REP.2010.9_For%20Printing_17%20January%202011.pdf>.]

II. OBJECTIVES AND STRUCTURE

7. This General Comment provides guidance to States Party on the scope and nature of their obligations under the Convention to respect, protect and fulfil the rights of the child in the context of business activities and operations. As such, the focus is on States parties' obligations under the CRC with regard to the business sector and so the General Comment includes guidance on how States parties can ensure that the activities of business enterprises do not infringe on the rights of the child but does not focus directly on the roles and responsibilities of the business sector itself. The General Comment first examines the scope and nature of States parties' obligations in a number of different contexts and then considers the relevance of the general principles of the CRC in the context of business operations and activities. It concludes by outlining a framework for practical measures of implementation.

III. GENERAL OBLIGATIONS

A. OBLIGATIONS UNDER THE CONVENTION

8. Article 2.1 of the CRC provides for the general obligation that "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...". Consequently, the rights of the child impose three types or levels of obligation on States parties: the duty to respect, the duty to protect and the duty to fulfil child rights.^{vi} A State will be in breach of its obligations under the Convention when an act of a business enterprise can be attributed to it or where it fails to adequately respect, protect and fulfil child rights in the context of private business activities and operations. The CRC provides for a set of

specific rights for children that demand a heightened level of protection from the State in view of the characteristics of children. States should take all positive measures necessary to ensure full enjoyment of these rights. Violations of these rights entail special gravity because of their severe and long-lasting impact on children's well being and capacity.^{vii}

9. In certain circumstances, States can be held directly responsible when business enterprises infringe child rights. This is when wrongful acts by business that amount to a violation of child rights may be attributed directly to the State when such enterprises are exercising governmental authority,^{viii} which may include a range of different governmental functions relevant for the realisation of child rights such as running youth detention facilities or providing health and education services. Where a business entity is not exercising elements of governmental authority, then its activities may be attributed to the State if it is "acting on the instructions of, or under the direction and control of" a State^{ix}. In certain cases actions of business enterprises can also be attributed to the State when these private actors act in collaboration and/or complicity with State agents. Where a wrongful act of a business enterprise can be attributed to a State, the State must put an end to the violation of child rights, whether it is of a continuing nature or occasional, make reparations to the children concerned and take steps to prevent any re-occurrence.

10. The Committee is aware that children's rights can be particularly at risk from business activities that take place outside of the ordinary legal and institutional frameworks that regulate and protect rights - such as in the case of the so-called "informal economy". Since States have an ongoing obligation to respect, protect and fulfil child rights, they should take measures to ensure that business activities take place within appropriate legal and institutional frameworks in all circumstances whereby children's rights can be clearly recognised and protected.

B. THE SCOPE OF OBLIGATIONS TO RESPECT, PROTECT AND FULFIL THE RIGHTS OF THE CHILD IN THE CONTEXT OF BUSINESS ACTIVITIES AND OPERATIONS

(i). The duty to respect

11. The duty to respect children's rights means that States parties should avoid directly or indirectly interfering or facilitating, aiding and abetting others' interference with children's enjoyment of their rights. The rights of the child extend directly to all children from infancy to age 18 and indirectly to children's caregivers, families and communities who create the web of care and well-being for children that crosses life-stages and generations. In the context of business operations and activities, this means that all business-related policy, legislation or administrative practices must be in conformity with the Convention. Furthermore, decision-making on such issues as laws, regulations and policies regarding the business sector should be transparent, informed and include full consideration of the impact of measures on the rights of the child. The duty to respect also implies that the State party should not engage in, support or condone child rights abuses, neither direct nor indirect abuses, the latter, for example, through the impairment of caregivers', families' and communities' capacity to meet children's needs, when the State # has a commercial role itself. For example, States parties must take steps to ensure that public procurement contracts are awarded to bidders that are committed to respecting child rights and that they do not invest public financial assets such as pension funds in business activities that violate child rights.

(ii). The duty to protect

12. States parties have a duty to protect against infringements of rights guaranteed under the Convention by third parties, including business enterprises. 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. Such measures encompass law, regulation, policy, administration and enforcement that all frame how business enterprises operate in relation to child rights. They also encompass awareness-raising measures to promote knowledge and understanding of the Convention within the business sector.

13. Central to the duty to protect is the obligation to provide effective remedy and access to justice.^x To meet this obligation, entails having in place mechanisms that are known by children as well as by infants' and young children's caregivers, families and communities, that are genuinely available and accessible and that provide prompt and adequate reparation for the harm suffered. Often the most appropriate mechanisms will be criminal, civil and administrative justice mechanisms. However, agencies with oversight powers of standards relevant to child rights include labour inspectorates, health and safety inspectorates, environmental tribunals, taxation authorities, National Human Rights Institutions and bodies focussed on non-discrimination and unequal treatment in the business sector. These bodies can pro-actively investigate and monitor abuses and may also have regulatory powers allowing them to impose administrative sanctions on businesses which violate children's rights.

14. A central component of the duty to protect is that States parties have a commitment to assess, on an ongoing basis, whether or not measures are in fact appropriate and reasonable and do meet the required standard of conduct to protect children, including infants and young children, from violations and to provide adequate remedy. Moreover, decisions taken by the State that affect business and that may have an impact on the rights of the child must be taken in a transparent and inclusive way that allows them to evaluate risks for children in advance. Child rights impact assessments are extremely useful tools for ensuring that law and policy-making regarding business takes potential impacts on children and their rights sufficiently into account. They also help to promote policy coherence across government.

(iii). The duty to fulfil

15. The duty to fulfil requires States parties to take positive action to facilitate, promote and provide for the enjoyment of child rights. They must adopt appropriate legislative, administrative, budgetary, judicial, promotional and other measures that relate to business to ensure the best policy environment for full realisation of the Convention.

16. Business enterprises can play an essential role in the provision of public services such as water, education, transport, health or energy that are critical to the fulfilment of children's rights. The Committee does not have a preference for the form of delivery of services essential to the enjoyment of child rights but it is important to note that States parties are not exempted from their obligations under the Convention when they outsource or privatise tasks that impact on the fulfilment of child rights. When business enterprises are involved in service provision, then States

parties have a duty to regulate and monitor them. The Committee considered this issue during a Day of General Discussion in 2002^{xi} and concluded that States must adopt specific measures which take account of the involvement of business enterprises in service delivery to ensure that the rights enumerated in the Convention are not compromised. In particular they must ensure that private sector service providers of services and goods essential to the fulfilment of child rights, incorporate and apply the right to non-discrimination to their programmes and services. Furthermore, State parties must ensure that public sector agents dispose of an ethical framework and code of conduct that addresses conflicts of interest and sets out clear principles of engagement with the private sector.

17. The duty to fulfil has direct implications for the way in which States go about allocating resources to realise child rights 'to the maximum extent of their available resources' in line with Article 4 of the Convention. The amount of resources a government spends on social sectors that are directly, or indirectly, related to the fulfilment of child rights is closely linked to the fiscal space available and this can be dependent, among other things, upon an efficient corporate taxation system. Tax evasion by the business sector can harm a government's ability to provide the services and structures required to fulfil children's rights and States must ensure it is strictly regulated. Furthermore, loss of revenues arising from corruption and mismanagement of government revenues from the business can limit fulfilment of children's rights. States parties should strengthen their capacity to be transparent and accountable for revenue flows from the business sector through for example disclosure of tax payments received as well as disclosure of licensing arrangements and contracts with business.

C. OBLIGATIONS IN THE CONTEXT OF BUSINESS' GLOBAL OPERATIONS

18. 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, whether it is the parent company or subsidiary or other. Reported instances of abuse frequently entail some degree of participation with, or link to, companies located or domiciled in one jurisdiction in the abuse of rights occurring in other jurisdictions and directly caused by another company, the State or other actors. Some instances include the use of child labour by suppliers, pollution, indigenous land dispossession by subsidiaries and the marketing of goods and services by contractors/licensees that are harmful to children.

19. There are particular difficulties for children to obtain remedy for violations that occur in the context of businesses' global operations. Subsidiaries or others may lack insurance or have limited liability; the way in which transnational corporations are structured can make attribution of legal responsibility challenging; access to information and evidence located in different countries can be problematic when building and defending a claim; children will almost certainly have an unequal access to financial resources to prepare their case; legal aid may be difficult to obtain in foreign jurisdictions and various legal and procedural hurdles can be used to defeat extra-territorial claims.

20. Under Article 2 (1) of the Convention, State parties have the obligation to respect and ensure children's rights within their jurisdiction. The Convention does not limit jurisdiction to "territory" and the Committee has in the past actively encouraged States to protect the rights of children who may be beyond their borders.^{xii} Furthermore, the OPSC provides that, subject to

national law, each State Party shall take measures where appropriate to establish legal liability for legal persons for offences under Article 3(1) of the OPSC, including for acts by business enterprises committed trans-nationally. This can be criminal, civil or administrative liability. It is in keeping with a variety of other human rights treaties and other instruments that impose obligations on States to establish criminal jurisdiction over their nationals in relation to discrete areas such as complicity in torture, enforced disappearance and apartheid, no matter where the abuse and the act constituting complicity is committed.

21. The principle of international cooperation is clearly set out in the Convention and its Protocols. The Preamble and the provisions of the Convention consistently refer to the "importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries."^{xiii} General Comment No. 5 emphasizes that 'implementation of the Convention is a cooperative exercise for the States of the world.'^{xiv} In this context, the Committee highlights that the Convention has been nearly universally ratified and so realisation of its provisions in many circumstances will be of active concern to both host and home States. Under the principle of international cooperation, there is an obligation upon the international community to assist those countries possessing the least resources and capacity to prevent and address violations of child rights committed or contributed to by business.

22. The host State has the primary responsibility to respect, protect and fulfil child rights in its territory. It should ensure that any transnational corporations operating within its borders are adequately regulated within a framework that enables them to respect child rights and it should provide remedy if abuses occur. States parties also have an obligation to protect child rights from abuse by business enterprises operating extra-territorially when there is a reasonable link between the State and the conduct concerned^{xv}. A reasonable link can include when a business enterprise has its centre of activity, is registered or domiciled or has its main place of business or substantial business activities in the State concerned.^{xvi} This is provided that the measures taken to implement this requirement do not infringe the sovereignty or diminish the obligations of the host State under the Convention. Even where States parties are not in a position to regulate business enterprises, they may be able to influence their conduct in order to prevent abuses extra-territorially.

D. OBLIGATIONS IN THE CONTEXT OF BUSINESS OPERATIONS IN CONFLICT SITUATIONS

23. Business enterprises of all sizes can be at risk of committing or contributing to violations of children's rights in conflict-affected areas by, for instance, directly or indirectly funding the use of child soldiers by armed groups, sourcing natural resources that have been extracted by child labour, forcing the displacement of families, or employing private security services that exploit and/or use violence against children in the course of protecting facilities or other operations. States parties should put in place preventative and remedial measures to regulate and influence business when they are operating in conflict-affected areas that are likely to be characterised by poor or weak legal and protection systems.

24. The obligations of host and home States under the relevant provisions of the CRC relating to children in conflict should be emphasised in this context: Article 38 requires respect for the rules of international humanitarian law, Article 39 obliges States to provide appropriate psychological recovery and social reintegration and the Optional Protocol on Children in Armed Conflicts contains

provisions regarding recruitment of children into armed forces over 18 years of age. It is also important to note that there are no provisions in the CRC allowing for derogation in times of emergency so that the entire Convention is applicable in times of conflict. Under the principle of international cooperation, there is an obligation upon the international community to assist those countries possessing the least resources and capacity to act in relation to protecting children's rights from violations caused or contributed to by business. This could involve providing technical and financial assistance to conflict-affected States to ensure their institutions are equipped to prevent and address violations of child rights.

While recognizing the plight of orphans and of infants and young children whose mothers or other caregivers have totally or partially lost breast-milk (e.g. due to high stress levels), we strongly encourage the Committee additionally to address the obligation of States parties to protect the rights of children to the highest attainable standard of health, which includes the right to adequate food and nutrition, and to prohibit business enterprises from taking advantage of conflict and other emergency situations to promote their products, e.g. through illegitimate advertisement for breast-milk substitutes, thereby undermining safe, local and sustainable nutrition practices, including breastfeeding, as well as the dignity and self-determination of children, especially of infants and young children, and of their caregivers, families and communities, and as a result placing health at risk in both the short and long term.

E. OBLIGATIONS IN THE CONTEXT OF INTERNATIONAL ORGANISATIONS

25. When it is a member of an international economic or financial organisation, a States party must take all reasonable steps to ensure that the organisation enables rather than restrains their ability to meet their obligations under the Convention. International development banks, and/or their specialised branches for lending to States' development projects or to private investment projects can play a very important role in promoting the principles and goals of the Convention. They can clearly incorporate policies and measures into their operational criteria that are aimed at the protection of children's rights – such measures should go beyond the eradication of child labour and include, for instance, prohibiting the sexual abuse and exploitation of children. Violations of children's rights committed by businesses funded by those banks should be the object of appropriate investigation and remedial action in accordance with existing standards.

IV. STATE OBLIGATIONS AND THE GENERAL PRINCIPLES OF THE CONVENTION IN THE CONTEXT OF BUSINESS ACTIVITIES AND OPERATIONS

26. In discharging their duties to respect, protect and fulfil child rights regarding the business sector, States should observe the four general principles of the Convention: all rights should be recognized for each child in a State's jurisdiction without discrimination on any ground (Article 2); the best interests of the child must be a primary consideration in all actions concerning children (Article 3(1)); the right to life and maximum possible survival and development (Article 6); and respect for the child's views in all matters affecting the child including the opportunity to be heard in any judicial or administrative proceedings affecting the child (Article 12).

A. THE RIGHT TO NON-DISCRIMINATION

27. The Committee is aware that children may be discriminated against directly or indirectly by business enterprises in many different contexts; for example, marketing and advertising may project discriminatory images of certain categories of children such as girls and boys, children with disabilities and asylum-seeking or refugee children. Article 2 of the Convention calls on States to respect and ensure rights to each child in their jurisdiction "without discrimination of any kind" irrespective of a child's or his or her parent's or guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth, family structure or other status such as HIV or migration status. States parties thereby have obligations to ensure that all laws, policies and programmes, including those that deal with business issues, are not intentionally or unintentionally discriminatory and that effective measures are taken to combat discrimination and to empower marginalized groups of children. This entails having in place effective processes for investigating complaints, punishing offenders and providing victims with reparation. States also have obligations to take appropriate measures to prevent discrimination by non-State actors, such as businesses and to remedy it if it does occur.

28. With regards to preventive measures, child rights impact assessments should include a process to identify the way in which law, policy and administrative practice regarding business may impact on different groups of children and in particular on the most marginalised. Other recommended measures of prevention include promoting knowledge and understanding of the right to non-discrimination within the business sector as well as within society at large. Awareness raising and sensitisation should be aimed at and enhancing the status of children as rights-holders and eradicating discriminatory attitudes towards all children and especially those belonging to marginalised and disadvantaged groups.

B. THE BEST INTERESTS OF THE CHILD

29. Article 3 (1) of the Convention stipulates that the best interests of the child shall be a primary consideration for States when making decisions and taking actions. This includes of course decision-making in relation to business activities and operations and the right becomes vitally important when States are engaged in weighing competing priorities, such as short-term economic considerations and longer term development decisions. The principle of the best interests of the child is both a right of an individual child, a particular group of children and a right of the general child population.

30. Every legislative, administrative and judicial body or institution concerned with taking decisions that shape business law, policy and administrative practices is required to apply the best interests principle by systematically considering how children's rights and interests are, or will be, affected by their decisions and actions. In order to fulfil the procedural part of the principle of best interest of the child, States are obliged to first attempt to identify what the best interest of the child is. A child rights impact assessment could determine whether a policy, law or decision relating to the business sector is actually in the best interest of children affected. Consulting with children themselves – individuals, groups and child led organizations - should always be a part of this process.

31. The principle becomes directly applicable to business in cases where certain types of State functions are entrusted to companies. In many countries, States parties have entrusted the

alternative care of children to private bodies including business enterprises. Article 3(3) requires that private social welfare bodies should have the best interests of the child as a primary consideration in all their actions that affect children. States parties should institute a permanent monitoring mechanism or process to ensure that they respect this requirement.

C. THE RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT

32. Article 6 of the CRC acknowledges that every child has an inherent right to life and that States parties shall ensure, to the maximum extent possible, the survival and development of the child. Children have particular survival and developmental rights that differ from those of adults as a result of their rapid physical and psychological development and business enterprises can impact positively and negatively on these rights in a wide range of ways. The Committee states its understanding of development of the child in General Comment No. 5, as a "holistic concept embracing the child's physical, mental, spiritual, moral, psychological and social development"^{xvii}.

33. Businesses employment practices can impact on the capacity of families to protect children; for example if adults are working longer hours, older children particularly girls, may take on some of the adult's domestic and caregiving responsibilities, which can have a negative impact on the older children's right to education and to play, as well as on the younger children's right to health, including the right to adequate food and nutrition; businesses must not only have non-gender discriminatory employment practices to protect mothers' as well as fathers' capacity to safeguard children's economic security, they must make spaces safe and welcoming for women who are breastfeeding. Increasing levels of environmental degradation and contamination arising from business activities can compromise children's food security, health and nutrition, both directly and through the detrimental effects on their caregivers', families' and communities' capacity to meet children's needs, e.g. through gender-based discrimination and other structural forms of marginalization. Children may have been subjected by business enterprises to unnecessary or inappropriate biomedical research without giving their or their parents' full and informed consent. Aggressive marketing of products that are unhealthy for children such as cigarettes, alcohol and foods and drinks high in saturated fats, trans-fatty acids, free sugars, or salt, as well as social and commercial manipulation and disinformation of caregivers that undermines both breastfeeding as the norm as well as child feeding practices based on local food traditions and economies, can result in violations of children's right to life, survival and development. All facets of children's development can be undermined by exposure to violence in the media as well as by advertising by the business sector that sexualises children, particularly girls, at increasingly earlier ages and that promotes unrealistic body images.

34. Deprivation of food, clean water, shelter, play, healthcare, protection and education can have an irreversible impact that can last for the rest of a child's life. States parties must respect, protect and fulfil the right to life, survival and development in the context of business activities and operations through a broad range of legislative, regulatory, policy, administrative, collaborative and adjudication measures aimed at achieving the optimal level of development for all children. Measures for implementing Article 6 in the context of the business sector will need to be adapted according to context. Consideration should be given to the following: effective monitoring and regulation of the media as well as advertising and marketing industries particularly those that promote breast-milk substitutes, as well as tobacco, alcohol or energy-dense, micronutrient-poor

foods, and drinks containing high levels of caffeine or other substances that are potentially harmful to children; protection of local livelihoods upon which children depend for the fulfilment of their rights; regulation of the environmental impact of business and provision of redress and compensation mechanisms when environmental damage by business has already occurred; adoption and implementation of an ethical framework to address conflicts of interest in the engagement of State parties with the private sector in the provision of public services, as well as monitoring of private sector service providers; and the introduction of family-friendly workplace policies including mandated maternity periods, payment of a living wage and consideration for the families of migrant workers.

35. The Committee urges States parties to implement and enforce certain internationally agreed standards concerning child rights and business including the World Health Organization Framework Convention on Tobacco Control as well as the International Code of Marketing of Breast-milk Substitutes and relevant subsequent World Health Assembly resolutions. The Committee also acknowledges the profound impact the pharmaceutical and agricultural sectors can have on the realisation of Article 6 and calls on States to ensure that intellectual property rights are not applied in ways that cause necessary medicines, seeds and plant varieties, or goods to be unaffordable for children or their caregivers and families.

D. THE RIGHT TO BE HEARD

36. Article 12 of the Convention establishes the right of every child to freely express her or his views, in all matters affecting her or him, and the subsequent right for those views to be given due weight, according to the child's age and maturity. States parties should ensure that children in general are given adequate information about business duties and roles, so that they are able to express informed views and play an effective role in business-related decision-making. Government bodies need to develop their capacity to consult with children regularly and systematically when developing business-related law and policy that may affect them and, in particular, when undertaking child rights impact assessments.

37. Children have a specific right "to be heard in any judicial and administrative proceedings affecting the child." This includes judicial proceedings and mechanisms of conciliation and arbitration that concern abuses of child rights caused or contributed to by business enterprises. Children should be allowed and encouraged to participate in such proceedings and be provided the opportunity to be heard either directly or indirectly through the assistance of a representative or appropriate body that has sufficient knowledge and understanding of the various aspects of the decision-making process as well as experience in working with children.

38. Governmental bodies concerned with monitoring the activities and operations of business enterprises should ensure that they take into account the views of affected children, for example, when worksites and conditions of work are examined by inspectors investigating the implementation of labour laws. States must ensure that where businesses do consult with children directly, this is done in an ethical manner which takes into account the best interests of the children concerned. Such participation must be voluntary and take place in a child-friendly environment which challenges and does not reinforce patterns of discrimination amongst children. Child

protection policies should be in place and where possible, civil society organisations that are trained and skilled in facilitating children's participation should be involved.

V. FRAMEWORK FOR MEASURES OF IMPLEMENTATION

39. The following section proposes a framework of practical measures of implementation that States should consider in order to discharge their duties to respect, protect and fulfil the rights of the child in the context of business activities and operations. These measures should be directed at all business enterprises, whether privately or State owned or both, from those that are small and medium sized operating at a national level to those operating through extensive global networks.

40. The Committee recommends that National Human Rights Institutions be given a role in ensuring that States respect, protect and fulfil child rights in the context of the business sector through, for example, developing ethical frameworks for addressing conflicts of interest in the engagement of public sector agents with business enterprises in the provision of public services to meet children's basic needs, as well as best practice guidance and policies for businesses on how to respect child rights; receiving, investigating and mediating complaints of violations; conducting public inquiries into large scale abuses; acting as mediators in conflict zones; undertaking legislative reviews to ensure compliance with the Convention; and contributing to the dissemination of the Convention and awareness-raising of its provisions amongst the business sector. Where necessary, States parties should broaden the legislative mandate of National Human Rights Institutions to accommodate issues pertaining to child rights and business. They should also strengthen their capacity to fulfil their independent mandate and cooperate constructively with them.

A. LEGISLATIVE AND REGULATORY MEASURES

(i) Legislative and regulatory measures

41. As a starting point States must ensure that the principle of the best interests of the child is central to the development of legislation that shapes business activities and operations including laws that cover labour, environmental, corporate, constitutional and administrative issues among others. States parties should periodically assess business-related legislation and regulations to ensure compatibility with the Convention and fill the gaps where necessary.

42. There is a specific requirement arising from Article 32 of the Convention to take "legislative, administrative, social and educational measures" to ensure the prohibition of economic exploitation and hazardous work. States parties must set a minimum age for employment; appropriately regulate working hours and conditions; and establish penalties in order to effectively enforce Article 32. In doing so, States parties should also ratify and enact into national law both ILO Conventions relating to child labour.

43. States parties should develop and implement law and regulation that addresses specific foreseeable risks to child rights from business enterprises that are operating abroad. This can include, for example, a prohibition on the export of hazardous waste and on the sale of arms and munitions when the final destination (end use) is a country where children are known to be, or may potentially be, recruited or used in hostilities. The Committee's review of States parties reports

under the OPAC often refers to the latter. States parties should incorporate clauses on the rights of the child into business agreements, investment treaties and other foreign investment agreements with transnational corporations and foreign governments.^{xviii} They should remove any stabilization clauses that could impede their ability to pass future legislation that strengthens child rights protections.

44. Law does not function in a vacuum and generally it is the lack of implementation or poor enforcement of laws regulating business activity and operations that poses the most critical problem for children. There are a number of measures States parties should employ to ensure effective implementation and enforcement of laws and regulations including:

- Strengthening regulatory agencies responsible for the oversight of standards relevant to child rights such as health and safety, consumer, environmental and labour inspectorates so that they have sufficient powers and resources to monitor and to investigate complaints and provide and enforce remedies for abuses of children's rights;
- Disseminating law and regulation regarding child rights and business to key stakeholders and the general public, including children as appropriate;
- Training judges and other judicial officials to ensure the correct application of national law on business and child rights and to promote the development of national jurisprudence.

(ii) Child Rights Impact Assessments

45. Child rights impact assessments can help States to evaluate in advance, how new business-related policy, proposed legislation, regulations, budgets, or other administrative decisions being adopted can have an impact on children. They can help States parties to identify and take appropriate measures to prevent potential negative impacts upon children's rights, including in the context of businesses' global operations. They could also maximise any potential beneficial effects for children before policies, legislation and budgets are finalised. Child rights impact assessments could also be used retrospectively to evaluate the actual impact of implementation in order to generate evidence and understanding of which measures are effective to protect children from violations caused or contributed to by business enterprises. This should be complementary to ongoing monitoring and evaluation of the impact of law, policies and programmes on child rights. When States are conducting general impact assessments of business-related policy, legislation or administrative practices, they should ensure that these assessments are underpinned by the general principles of the CRC and have special regard for the differentiated impact on children of the measure/s under consideration.

46. It would be impossible to carry out a child rights impact assessment on every business-related legislative or policy decision across government that might have an effect on children. Instead, they should be carried out on those decisions where the impact of new business-related law, policy or administrative practices on child rights is foreseen as significant; for example, where large numbers of children are involved, such as when developing macroeconomic policy reform, international investment agreements or regulation on advertising and/or where smaller numbers may be severely affected in enjoyment of their rights such as when developing regulation to eliminate child labour.

47. Different methodologies and practices may be developed when undertaking child rights impact assessments but at a minimum they must use the framework of the CRC and its Optional Protocols as well as relevant Concluding Observations^{xix}. First, they should identify which measure is being assessed and which rights should be looked at in more depth during the assessment. Child rights impact assessments can be used in considering the impact on specific groups of children affected by the activities of a particular business or sector but could also include assessment of the differential impact of measures on certain categories of children such as boys and/or girls, children with disabilities and children from indigenous backgrounds. The assessment stage should explicitly address the four general principles as well as other relevant articles in the Convention. The assessment of impact itself may be based upon input from children, their caregivers, families and communities, civil society and experts, as well as from relevant government departments, academic research and experiences documented in the country or elsewhere. The analysis should result in recommendations for potential amendments, alternatives and improvements and should be made publicly available.

48. In order to ensure an impartial and independent process, the State may wish to consider appointing an external actor to lead the assessment process. This can have significant advantages, but the State, as the party ultimately responsible for the result, must ensure that the actor undertaking the assessment is competent, honest and impartial.

(iii) Child rights due diligence for business

49. States parties should encourage and where appropriate require businesses to undertake human rights due diligence that has a specific focus on their direct impact on the rights of children of all ages, as well as the indirect impact through the impairment of caregivers', families' and communities' capacity to meet children's needs (e.g. because of gender-based and other structural forms of discrimination and marginalization) throughout their operations, including those operations conducted by their subsidiaries and other business partners globally. The objective of corporate child rights due diligence is that business enterprises avoid infringing upon children's rights from infancy to age 18 and address any adverse impacts with which they are involved.^{xx} Where child rights due diligence is subsumed within a more general process of human rights due diligence, it is imperative it should be underpinned by the provisions of the Convention and any plan of action and measures to prevent and/or remedy human rights abuses must have special regard for the differentiated impact on children. Child rights due diligence for business should be mandatory for activities and sectors where there is a significant risk of abuse of child rights such as in the context of conflict zones or where there is a foreseeable risk of child labour or child trafficking and sexual exploitation within business relationships.

50. As part of corporate child rights due diligence, businesses should be encouraged and where appropriate required to make public their efforts to address child rights impacts. Such communication should be available, efficient, comparable and address impacts and measures taken by business to mitigate potential and actual adverse impacts for children caused by their activities. Where reporting is mandatory then States should put in place verification and enforcement mechanisms.

51. States should encourage effective business child rights due diligence by creating instruments to benchmark and recognize good performance by business with regard to children's rights. They should lead by example requiring State-owned enterprises to undertake human rights due diligence and to publicly communicate their reports on their impact on children's rights, including reporting to Parliament when appropriate.

52. The question of child rights due diligence processes for business becomes very important in the context of extra-territorial harm and States parties should make it a requirement that business enterprises that receive public support and services, such as those provided by an export credit agency, carry out their own child rights due diligence, in order to demonstrate they have identified and are addressing any related risks. Access to public support and services should be denied for a business enterprise that is involved with child rights abuses and refuses to cooperate in addressing the situation. Further, States parties should ensure that export credit agencies themselves take steps to prevent, mitigate and remediate any adverse impacts the projects they support might have on children's rights before they offer support to businesses operating abroad.

B. REMEDIAL MEASURES

53. Children and the caregivers of infants and young children, often find it very challenging to access judicial mechanisms to seek effective remedy for abuse or violations of their rights. This is even more evident when business enterprises are involved. To illustrate, children may lack legal standing preventing them from pursuing a claim; children and their families often lack knowledge about their rights and the mechanisms available to them to seek redress; and children, and their caregivers, families and communities may lack access to, as well as trust and confidence in the judicial process. Furthermore, States parties may not always properly investigate criminal offences committed by business enterprises owing to a lack of confidence in the competence or capacity of children to be witnesses. Specific obstacles in the context of seeking remedy for abuses caused or contributed to by business activities and operations include the vast power imbalances between children, especially infants and young children, and the business sector, concerned as well as the possibility of prohibitive costs involved in litigation against companies and difficulties in securing legal representation. Such cases frequently settle 'out of court' and in the absence of a body of developed case law, children and their families in jurisdictions where judicial precedent is persuasive, may be more likely to be put off undertaking litigation given uncertainty of outcome. A few countries have heard some lawsuits against business enterprises for alleged abuses occurring in other countries but this is not common.

54. It is very important that States parties focus their attention on removing barriers so that children with legitimate cases involving infringement of their rights committed or contributed to by business enterprises, including those who have cases that have an international dimension, can in practice have access to effective judicial mechanisms. Children should be provided with information about remedies through, for example, the school curriculum, youth centres or community-based programmes. Children with the appropriate capacity should be allowed to initiate proceedings in their own right and have access to legal aid and the support of lawyers in bringing cases against business enterprises in order to ensure equality of arms. States parties that do not already have provision for collective complaints such as class actions and public interest litigation should consider

introducing these as a means of increasing accessibility to courts for large numbers of children similarly affected by business actions.

55. Age should not be a barrier to a child's right to participate fully in the justice process, but it nevertheless represents an obstacle in infancy and early childhood, requiring consideration for representational strategies by caregivers for the youngest of children. Special arrangements should be developed for child victims and witnesses in both civil and criminal proceedings and States parties should implement the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.^{xxi} Other barriers that prevent certain groups of children from accessing justice, such as gender, ethnicity, religious affiliation, language or disability, may require the State to provide special assistance to allow for the right to access justice such as provision of child-friendly settings and materials.

56. The OPSC requires States parties to enact criminal legislation that also applies to legal entities, including business enterprises. States parties should contemplate the adoption of criminal legal liability – or other form of legal liability of equal deterrent effect - for legal entities, including business enterprises, in cases concerning serious violations of the rights of the child such as commercial sexual exploitation and child labour. National tribunals should have jurisdiction over these serious violations in accordance with accepted rules of jurisdiction.

57. The right to effective remedy means that children who are the victim of a human rights violation are entitled to reparation for the harm they have suffered. When determining the level or form of reparation, mechanisms should take into account that children from infancy to age 18 can be more vulnerable to the effects of corporate violations of their rights than adults and that the effects can be irreversible and result in lifelong damage. They should also take into account the evolving nature of their development and capacities and reparation should be timely to limit on-going and future damage to the child or children affected and should be in the best interests of the child; for example, if children are identified as victims of environmental pollution, immediate steps should be taken by all relevant parties to prevent further damage to the development of children and to reverse or compensate the damage occurred. States should provide medical and psychological assistance, legal support, and measures of rehabilitation to children who are proved to have been victims of abuse and violence caused or contributed to by business actors. They should also guarantee non-recurrence of abuse caused or contributed to by business through, for example, reform of relevant law and policy.

58. Non judicial mechanisms can create flexible solutions to issues concerning children and at times it may be in a child's best interests for concerns raised about a company's conduct to be resolved through them. Such mechanisms can play an important role alongside judicial processes provided they are in conformity with the Convention and with international principles and standards of effectiveness, promptness, and due process and fairness. In addition, the Guiding Principles on Business and Human Rights' stipulate a set of criteria to ensure the effectiveness of non-judicial mechanisms in the context of the need to enhance access to effective remedy for victims. Those principles include: accessibility, legitimacy, predictability, equitability, rights compatibility, transparency, continuous learning and, for company-led mechanisms, being based on dialogue^{xxii}.

We encourage the Committee to emphasize that the establishment and enforcement of recourse mechanisms remain first and foremost the duty of States Parties meeting their obligation to protect human rights in general and child rights with respect to all children from infancy to age 18 in particular, as stated in paragraph 13 of this draft document: "Central to the duty to protect is the obligation to provide effective remedy and access to justice." Therefore, judicial processes should not be replaced by non-judicial mechanisms that might give space for impunity gaps.

59. The following considerations should also be taken into account by States party:
- All remedies should be accessible to children, or to caregivers on behalf of infants and young children, in theory and in practice; for example by providing children with multiple points of entry, including the option of written complaints, telephone conversations, or e-mail;
 - They must be guided by the principle of the best interests of the child;
 - Remedies will be trusted and used by children so long as they treat children with dignity, are child-sensitive and are adapted to children's evolving maturity and understanding. A crucial part of building this trust and legitimacy is through ensuring that children have a voice and participate in the remedy process and their confidentiality and privacy is respected. Children should be kept informed of progress at all stages of the process giving due weight to the child's maturity and any speech, language or communication difficulties they might have; and
 - Proactive steps need to be taken to make children aware of non-judicial, as well as judicial mechanisms available to them; for example, publicising their existence through child rights clubs in schools and translating relevant publicity materials into local languages.
60. It is particularly important that States parties ensure that cases involving violations of children's rights trans-nationally have access to effective judicial mechanisms. States should provide international assistance and cooperation with investigations and enforcement to proceedings in other States. If effective remedy is not available in one jurisdiction, complaints should be heard in another that has a reasonable link to the case.
61. International and regional human rights mechanisms can also provide a remedy in the absence of action or failure of the State to respect, protect and fulfil child rights in the context of the activities and operations of business enterprises. States parties should take every effort to facilitate access to these procedures and in particular they should ratify, if they have not already done so, the recently adopted Optional Protocol on a communications procedure for the CRC and promote rapid ratification by other States parties.

C. POLICY MEASURES

62. In many circumstances, the business sector has a limited vision and understanding of the impact they have on children's rights. To complement a clear legislative and regulatory framework, States should develop and nurture a business culture that understands and fully respects child rights. To this end, States should consider developing a national Business and Child Rights Policy framework that sets out government expectations for business enterprises to respect child rights in the context of its own business activities as well as within business relationships linked to operations, products or services. It is particularly important that States parties provide Small and Medium-sized

Enterprises with additional and tailored guidance and support that is readily available on how to respect child rights given that in many settings they will represent a large part of the economy and can have a significant impact on children's rights.

63. States parties should create an enabling environment for business enterprises to respect child rights across their global operations. They should ensure that there are effective mechanisms in place so that the arms of government with responsibility for implementation of the Convention coordinate with those responsible for trade and investment abroad. They should also build capacity so that development assistance agencies and diplomatic overseas missions that are responsible for promoting trade can integrate business issues into bilateral human rights dialogues, including child rights, with foreign governments. It is particularly important that businesses contemplating operating in conflict zones are provided with current, accurate and comprehensive information of the local child rights context so that companies can act appropriately, particularly when engaging with local parties accused of alleged abuses. Children, both girls and boys, can be gravely affected by gender based violence in conflict zones and this needs to be recognised by States when providing guidance to businesses that are operating or planning to operate in conflict affected countries.

64. Voluntary initiatives on Corporate Social Responsibility cannot be considered by States parties as a substitute for regulation of business. However, as part of efforts to create a business culture that respects child rights, States parties could encourage adherence to relevant and effective child rights based voluntary initiatives additionally to the compliance with legally binding regulations.

D. ADMINISTRATIVE MEASURES

65. The full implementation of the CRC requires effective co-ordination, both horizontally between government agencies and departments and vertically across different levels of government, from local to regional and central.^{xxiii} Typically, the departments and agencies that are directly involved with business policies and practices will work quite separately from those departments and agencies with direct responsibility for child rights. States Parties need to ensure that ministries and other governmental bodies as well as parliamentarians that shape business law and practices are aware of the State's obligations with regard to children's rights. They may require relevant information, training and support so that they are equipped to take the Convention into account when developing law and policy and entering into economic agreements. This includes the provision of an ethical framework and code of conduct that addresses conflicts of interest and sets out clear principles of engagement with the private sector.

66. When States parties are developing national comprehensive strategies for implementation of the Convention they should include explicit reference to the measures required for States parties to respect, protect and fulfil child rights in the context of the actions and operations of business enterprises. States parties could consider the creation of a focal point for implementation of the CRC in the context of business. National Human Rights Institutions can also play an important role as a catalyst for linking different governmental departments concerned with child rights and with business.

67. States parties have an obligation to monitor violations of the Convention committed or contributed to by business enterprises, including within global operations, through gathering data

that can be used to identify problems, investigating and making business accountable publicly. States parties should also ensure that they monitor their own progress in implementation of the Convention in the context of the activities and operations of business. This can be achieved both internally through the use of child rights impact assessments and evaluations as well as through external bodies such as parliamentary committees, civil society, professional institutions, academia, children's groups and National Human Rights Institutions. The Committee encourages States parties to use different methods for the collection of data and information for monitoring, including asking children directly for their views on the impact of business on their rights. Different mechanisms for consultation can be used such as youth councils and parliaments, social media, school councils and various associations of children.

68. The Committee is increasingly calling on States parties to include information in their periodic reporting to the Committee on the challenges they face and the measures they have taken to respect, protect and fulfil children's rights in the context of the activities and operations of business enterprises both domestically and, where appropriate, trans-nationally.

E. MEASURES OF EDUCATION, COLLABORATION AND AWARENESS-RAISING

69. While it is the State which takes on obligations under the Convention, its task of implementation - of making reality the human rights of children - needs to engage all sectors of society including business and children from infancy to age 18 themselves, as well as their caregivers, families and communities. The Committee takes the view that States parties should adopt and implement a comprehensive strategy to educate children, parents and caregivers that business has a responsibility to respect child rights wherever they operate. Education, training and awareness-raising about the Convention should be targeted at business enterprises, among other stakeholders, in order to emphasize the status of the child as a holder of human rights and to encourage active respect for all of the Convention's provisions.

We would welcome a paragraph by the Committee emphasizing the need for compliance with the totality of human rights (arising from the principles of interrelatedness and interdependence). This is of particular importance for the realisation of infants' and young children's rights due to their full reliance on others for meeting their needs. For example, infants cannot survive without their caregivers having access to the full complement of human rights with capacity for self-determination and a life in dignity; specifically, caregivers need adequate knowledge of nutrition principles, as well as family and community support to promote the well-being of children.

ⁱ C182 Worst Forms of Child Labour Convention (1999) <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C182> and C138 Minimum Age Convention (1973) <http://www.ilo.org/ilolex/cgi-lex/convde.pl?C138>.

ⁱⁱ Protect, Respect, Remedy: a Framework for Business and Human Rights, UN Human Rights Council doc. A/HRC/8/5; Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, UN Human Rights Council doc. A/HRC/17/31

ⁱⁱⁱ Tripartite declaration of principles concerning multinational enterprises and social policy (MNE Declaration) - 4th Edition http://www.ilo.org/empent/Publications/WCMS_094386/lang--en/index.htm

^{iv} OECD Guidelines for Multinational Enterprises, (2011) OECD Publishing <http://dx.doi.org/10.1787/9789264115415-en>

^v Children's Rights and Business Principles (2011), UNICEF, Save the Children and UN Global Compact <http://www.unicef.org/csr/12.htm>

^{vi} See, for example, the analysis by the UN Committee on Economic, Social and Cultural Rights, General Comment No 13 on the Right to Education 7 International Human Rights Reports (2000) 303, where the Committee states at [46]: 'The right to education, like all human rights, imposes three types or levels of obligations on states parties: the obligations to respect, protect and fulfil. In turn, the obligation to fulfil incorporates both an obligation to facilitate and an obligation to provide'.

^{vii} See Int Am Court of HR, The juridical condition and human rights of the child, Advisory Opinion 17/02, para. 54; Case "instituto de Reeducación del menor" vs Paraguay, preliminary objections, Merits, reparations and costs, 2 Sept 2004, para. 147

^{viii} In 2001, the International Law Commission (ILC) adopted Articles on the Responsibility of States for Internationally Wrongful Acts, Report of the International Law Commission on the Work of its 53rd session A/56/10, 2001 UN GAOR. ILC Article 5

^{ix} ILC Article 8: 'The conduct of a person or group of persons shall be considered an act of a State under international law if the person or group of persons is in fact acting on the instructions of, or under the direction or control of, that State in carrying out the conduct.'

^x Several provisions in the CRC call for penalties, compensation, judicial action and measures to promote recovery after harm caused or contributed to by third parties. For example, Article 32 (2) regarding the economic exploitation of children requires States to provide penalties or other sanctions; Article 19 regarding protecting children from violence refers to investigation and judicial involvement as protective measures; and Article 39 demands that States promote recovery and reintegration following harm such as neglect or exploitation.

^{xi} The Private Sector as Service Provider and its Role in Implementing Child Rights, excerpted from CRC/C/121, 31st Session, 20 September 2002

^{xii} For example, Concluding Observations have urged the use of extraterritorial jurisdiction to help combat female genital mutilation - see Concluding Observations, Ireland CRC/C/IRL/CO/2 (2006) Para. 55

^{xiii} Article 4 of the CRC states: "States Parties shall undertake all appropriate legislative, administrative and other measures for the implementation of the rights recognised in the present Convention.....where needed within the framework of international co-operation." Article 24(4) regarding the right to health and Article 28(3) regarding the right to education both aver that States parties should promote and encourage international co-operation to realise these rights. Article 17 encourages the use of international cooperation in the dissemination of socially beneficial information to children from a diverse range of sources. Article 22(2) speaks of cooperation in the context of parent and family tracing. Article 10 of the OPSC and Article 10 of the OPAC oblige States to cooperate to prevent and punish the sale of children, child prostitution and child pornography and the involvement of children in armed conflict and require States to assist victims and, if they are in a position to do so, to provide financial and technical assistance for these purposes.

^{xiv} General Comment No. 5 (2003) *General measures of implementation for the Convention on the Rights of the Child* CRC/GC/2003/5, para 60

^{xv} See, for example, Restatement (Third) of the Foreign Relations Law of the United States (American Law Institute, 1987), § 402, (2) (“...a state has jurisdiction to prescribe law with respect to ... (2) the activities, interests, status, or relations of its nationals outside as well as within its territory”).

^{xvi} Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, Principle 25.

^{xvii} General Comment No. 5 (2003) *General measures of implementation for the Convention on the Rights of the Child* CRC/GC/2003/5, para 12

^{xviii} See, for instance, Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises 'Principles for responsible contracts: integrating the management of human rights risks into State-investor contract negotiations: guidance for negotiators'.

^{xix} States may draw upon guidance provided in: Special Rapporteur on the Right to Food to the 19th Session of the Human Rights Council in Guiding Principles on human rights impact assessments of trade and investment agreements UN Doc A/HRC/19/59/Add.5 (2011)

^{xx} See as reference “Children's Rights and Business Principles” UNICEF, Save the Children and the UN Global Compact.

^{xxi} UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime ECOSOC Resolution 2005/20 of 22 July 2005

^{xxii} See Guiding Principle 31 with commentary in The Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework: Report of the Special Representative of the Secretary-General on the issue of and human rights and transnational corporations and other business enterprises, John Ruggie, A/HRC/1731, 21 March 2011.

^{xxiii} General Comment No. 5 (2003) *General measures of implementation for the Convention on the Rights of the Child* CRC/GC/2003/5, para 37