



Submission on the Draft General Comment by the UN Committee on the Rights of the Child regarding Child Rights in the Business Sector

**By the Child Rights International Network - CRIN
(www.crin.org, info@crin.org), August 2012**

This submission represents the views of the Child Rights International Network (CRIN) on the proposed draft general comment by the UN Committee on the Rights of the Child regarding Child Rights and the Business Sector.¹

CRIN believes that this General Comment on Child Rights and the Business Sector offers an important opportunity to identify the measures that should be taken by states to respect, protect and fulfil the rights in the Convention on the Rights of the Child (CRC) in relation to business corporate activities.

In recognition of the fact that children do not operate on a level playing field when engaging with business enterprises and because children are not empowered to speak out against violations of their rights, CRIN believes this General Comment should identify measures:

- to ensure that information regarding corporate policies and actions relevant to children's rights is made available to children in a manner and form that they can understand,
- to address how business enterprises engage with children whose interests will potentially be affected by a company decision, and
- to increase children's access to justice by making remedial procedures child friendly.

In the light of the above, CRIN suggests the following inclusions in the draft General Comment (justification for most suggestions has been added in italics at the end of the paragraphs):

¹ Contact CRIN at info@crin.org or visit www.CRIN.org.

CRIN is building a global network for children's rights, and envisions a world in which every child enjoys all of the human rights promised by the United Nations, regional organizations, and national governments alike. CRIN advocates for the strong and explicit promotion of all children's rights; provides authoritative information and analysis; works collectively with a broad range of actors; and seeks to make justice accessible for all. Our work is rooted in the United Nations Convention on the Rights of the Child. More than 2,200 organisations in 160 countries rely on CRIN's publications, research and information.

INTRODUCTION:

Paragraph 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 and children's rights to access appropriate information, 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, 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.

Article 17 of the CRC also requires the accessibility of information to children, giving children the right to receive information targeted to their level of understanding.

Paragraph 4, bullet point 3:

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. Privatisation can also limit access to legal remedies that would exist had an alleged violation occurred within the public sector. There can be particular difficulties for children to obtain remedy for abuses which occur in the context of businesses' global operations.

When areas of State operations are privatised, or government services are contracted out, it can affect the legal remedies that are open to those who receive those services. Administrative or public law remedies may no longer be accessible in relation to a given service. State parties should ensure that privatisation does not negatively affect access to justice with regards to Convention rights.

STATE DUTY TO PROTECT: ACCESS TO JUSTICE

Paragraph 13:

Central to the duty to protect is the obligation to provide effective remedy and access to justice. To meet this obligation, entails having in place mechanisms that are known by children, that are genuinely available and accessible and that provide prompt and adequate reparation for the harm suffered. Those mechanisms should be adapted to children's unique

needs and vulnerability. Often the most appropriate mechanisms will be criminal, civil and administrative. 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.

Those mechanisms should be designed and adapted for children, in order to reduce legal and practical barriers to children's access to justice and to suit their evolving capacities to participate in judicial processes.

BUSINESSES OPERATING IN CONFLICT SITUATIONS

Paragraph 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 as well as effective and accessible complaints mechanisms 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.

A clearer idea of what is meant by “preventative and remedial measures” would be helpful here, or perhaps examples, particularly given that poor or weak legal and protection systems are foreseen.

BEST INTERESTS OF THE CHILD

Paragraph 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. It should be a primary consideration when making decisions relating to all children's rights issues including children's health, education, deprivation of liberty and, respect for children's opinions.

CRIN suggests the above addition in the light of the best interest of the child being one of the

guiding principles of the CRC and a crosscutting principle that should be considered in all areas of children's rights.

RIGHT TO LIFE, SURVIVAL AND DEVELOPMENT: THE PHARMACEUTICAL INDUSTRY

Paragraph 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 responsibilities, which can have a negative impact on their right to education and to play. Increasing levels of environmental degradation and contamination arising from business activities can compromise children's food security, health and nutrition. Children may have been subjected by business enterprises to unnecessary or inappropriate biomedical research without giving their or their parents' full and informed consent. Children have also been subjected to unsafe and unregulated medical trials and prescriptions of untested medicine and medicine that can harm them. 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 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.

Paragraph 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 tobacco, alcohol or energy-dense, micronutrient-poor foods, and drinks containing high levels of caffeine or other substances that are potentially harmful to children; regulation of the environmental impact of business; monitoring of private sector service providers in particular the pharmaceutical industry, through pressing companies to realign their focus to ensure that their efforts are in the best interests of all children; 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.

It has come to CRIN's attention that, while pharmaceutical companies have the power to greatly increase children's well-being, concerns have been raised about those same companies conducting unsafe and unregulated trials, prescribing untested medicine as a matter of course, and lobbying to give some children medication they don't need while seeking to deny others the medication they do need. As the business of medicine expands

around the world, its focus must be fundamentally revisited and revised in light of global ethical concerns and, above all else, the pharmaceutical industry should realign its focus to ensure that its efforts are in the best interest of all children².

THE RIGHT TO BE HEARD

Paragraph 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 to provide the child with the support necessary to engage effectively with the proceedings, as well as experience in working with children.

CRIN believes that the involvement of children should be actively sought, and the tools and methods used must be child friendly and accessible to all. The added wording is intended to stress that the importance of the child’s right to be heard beyond that of his or her interests being considered.

ASSESSING THE IMPACT ON CHILDREN'S RIGHTS

Paragraph 45: (ii) Child Rights Impact Assessments

New title: “Assessing the impact on children's rights”

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.

² Children's Rights and the Pharmaceutical Industry, the Child Rights International Network, June 2012: <http://www.crin.org/resources/infodetail.asp?id=28576>.

Clarification on what is involved in “impact assessments” would be useful here. Specifically, it would be helpful to clarify whether a standardised form of “impact assessment” is intended, or a more flexible consideration of children’s rights issues when policy, law, regulations and other administrative decisions are made.

Paragraph 46: delete paragraph

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.

CRIN believes that it isn’t unreasonable to suggest that some form of impact assessment should be made with all laws or policies, and therefore recommends that paragraph 46 is deleted.

CRIN is concerned that the suggestion to only carry out impact assessments “where large numbers of children are involved” could be interpreted in a way that would discriminate against groups of children.

Paragraph 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 and the assessment process is completely transparent and results made available to the public.

It might be useful here to add a paragraph about a possible agency that could provide States with technical assistance when developing their impact assessment strategies.

DUE DILIGENCE FOR BUSINESS

Paragraph 49:

States parties should encourage and where appropriate require businesses to undertake human rights due diligence that has a specific focus on their impact on children's rights 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 children's rights and address any adverse impacts with which they are involved **directly or indirectly**. 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 on children's health and development, of child labour or child trafficking and sexual exploitation within business relationships.

Paragraph 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.

Justice should be available to all children; CRIN is concerned that such a mention ("with the appropriate capacity") will result in the exclusion of a large number of children from accessing judicial mechanisms. CRIN is also concerned that the way that this section is phrased implies that there ought to be a threshold at which children become able to initiate proceedings, rather than an onus on State parties to design means of children engaging with proceedings appropriate to their capacity and capabilities.