SUBMISSION TO THE
UNITED NATIONS COMMITTEE ON THE RIGHTS OF THE CHILD
CONCERNING DRAFT ONE OF THE COMMITTEE’S GENERAL COMMENT ON
CHILD RIGHTS AND THE BUSINESS SECTOR
AUGUST 2012

Background
The Institute for Human Rights and Business (IHRB) welcomes the initiative by the United Nations (UN) Committee on the Rights of the Child to develop a General Comment on Child Rights and the Business Sector. IHRB appreciates the opportunity to provide input to the Committee on the draft of its General Comment following the submission made earlier this year on its annotated outline1.

As noted in IHRB’s previous submission, the development of a General Comment on the subject of child rights and the business sector is an important contribution to clarifying state obligations and to further embedding existing internationally agreed standards in this area. Key to achieving that aim is to ensure that the Committee’s General Comment fully aligns with the UN Protect, Respect and Remedy framework and Guiding Principles on Business and Human Rights, which were unanimously endorsed by the UN Human Rights Council in June 2011. This submission focuses on the importance of fully integrating the UN framework and Guiding Principles into the draft General Comment.

1. General Comments

As noted in IHRB’s previous submission, the preparation by the Committee of a General Comment on child rights and the business sector is an important opportunity to develop authoritative guidance on how the UN Guiding Principles on Business and Human Rights apply specifically to children – and the role of states in making the realisation of children’s rights a reality through effective regulation of and support to the private sector.

Paragraph 6 of the draft General Comment states that:

"...the Committee recognises the importance of the UN ‘Protect, Respect and Remedy’ Framework and the Guiding Principles on Business and Human Rights..."

However, despite this affirmative statement, the remainder of the draft General Comment does not sufficiently seek to integrate or reference relevant provisions of the UN Guiding Principles, thereby limiting the full potential of the General Comment to contribute to

1http://www2.ohchr.org/english/bodies/crc/docs/CallSubmissionBusinessSector/InstituteforHumanRightsandBusiness.pdf
building greater national and international policy and legal coherence as well as authoritative guidance and clear recommendations for states in implementing their obligations concerning private sector actors consistent with the Convention on the Rights of the Child.

At a minimum, the General Comment should include a strong recommendation that all states should fully implement the UN Guiding Principles on Business and Human Rights. For example, a reference in paragraph 55 of the draft General Comment makes clear that:

"...States parties should implement the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime..."

A similar statement stressing the importance of implementing the UN Guiding Principles on Business and Human Rights would reinforce the fact that the Guiding Principles are recognised as the “authoritative UN normative document on business and human rights”\(^2\), reaffirming existing obligations of states as well as providing commentary with detailed guidance on how states can develop effective, child rights-sensitive regulation with respect to the private sector.

The following sections provide a select number of specific examples in the current draft where greater attention to the UN Guiding Principles on Business and Human Rights would strengthen the General Comment.

2. Child specificity

It is encouraging to note that the draft General Comment highlights the importance of distinguishing among different groups of children (for example by age, gender, ethnic status, disability). With respect to the issue of differentiated impacts relating to business activities and specific guidance to states, references should be made to the UN Guiding Principles where appropriate. For example, paragraphs 23 and 24 of the draft concerning state obligations in the context of business operations in conflict situations would benefit from specific recommendations such as those set out in the UN Guiding Principles with respect to conflict-affected areas\(^3\) as well as in a dedicated report on the subject by the UN Special Representative on Business and Human Rights.\(^4\)

Also with respect to differentiated impacts of private sector activities, it would be helpful for the Committee’s General Comment to reflect on issues raised in many of the useful contributions received during the consultation period on the annotated outline for the General Comment. For example, further references in the draft concerning children as consumers, as well as issues relating to the internet, tourism, finance, trafficking and land – all of which were highlighted in stakeholder contributions – would strengthen the point that states must ensure that all industry sectors prevent and mitigate negative human rights impacts on children which may be associated with their operations consistent with the UN Guiding Principles on Business and Human Rights.

\(^3\) UN Guiding Principle 7 and accompanying commentary, UN Doc A/HRC/17/31 of 21 March 2011
3. Child rights due diligence for business

Paragraphs 49 to 52 of the draft General Comment concerning steps states should take to encourage and in some cases require due diligence by businesses are important statements and appear to be generally consistent with provisions in the UN Guiding Principles. It would therefore strengthen the points made in the draft if direct references in this section to relevant provisions in the UN Guiding Principles were included as well, making clear that more information and guidance is available on these subjects in the Guiding Principles. Doing so would further reinforce consistency between the General Comment and the UN Guiding Principles, including provisions in the Guiding Principles which clearly set out steps necessary in undertaking human rights due diligence processes, and provide clarity with respect to state actions in this area.

4. States parties reports

Paragraph 68 of the draft General Comment notes that the Committee increasingly calls on States parties to include information in their periodic reports on challenges faced and measures taken to fulfil their obligations under the Convention on the Rights of the Child with respect to private sector activities. It would be helpful if the Committee made a specific recommendation in the General Comment that all periodic reports include a section providing information on how states are seeking to implement the UN Guiding Principles on Business and Human Rights from the perspective of child rights obligations under the Convention. Submissions by IHRB to the UN Human Rights Council’s Universal Periodic Review process provide examples of how information and recommendations in this area could be included in current reporting formats.

5. Recognition of positive contributions by business

While the draft General Comment rightly focuses on prevention of and accountability for child rights abuses involving private sector actors, recognition of positive contributions to respecting child rights by business is currently lacking. While such recognition clearly should not be the main focus of the General Comment, a brief statement affirming the positive contributions of responsible business in advancing respect for child rights would be an important addition to the General Comment.

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5 UN Guiding Principle 17 and accompanying commentary, UN Doc A/HRC/17/31 of 21 March 2011
6 See for example UN Guiding Principle 4 and accompanying commentary, UN Doc A/HRC/17/31 of 21 March 2011.
7 See IHRB submissions at: http://www.ihrb.org/about/programmes/capacity_and_accountability.html