



**Convention on the
Rights of the Child**

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**On State obligations regarding the impact of the business
sector on children's rights**

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I. Introduction and objectives

1. The UN Committee on the Rights of the Child (the Committee) recognises that the business sector's impact on children's rights has grown in past decades because of factors such as the globalised nature of economies and of business operations and the on-going trends of decentralisation, and outsourcing and privatising of State functions that affect the enjoyment of human rights. Business can be an essential driver for societies and economies to advance in ways that strengthen the realisation of children's rights through, for example, technological advances, investment and generations of decent work. However, the realisation of children's rights is not an automatic consequence of economic growth and business enterprises can also negatively impact children's rights.

2. States have obligations regarding the impact of business activities and operations on children's rights arising from the Convention on the Rights of the Child (the Convention or the CRC), the Optional Protocol on the Sale of Children, Child Prostitution and Child Pornography (OPSC) and the Optional Protocol on the Involvement of Children in Armed Conflict (OPAC). These obligations cover a diversity of different issues reflecting the fact that children are both rights-holders and stakeholders in business as consumers, legally engaged employees, future employees and business leaders and members of communities and environments in which business operates. This General Comment aims to clarify these obligations and outline the measures that should be undertaken by States to meet them.

3. For the purposes of this General Comment, the business sector is defined as including all business enterprises, both national and transnational, regardless of size, sector, location, ownership and structure. The General Comment also addresses obligations regarding not for profit organisations that play a role in the provision of services that are critical to the enjoyment of children's rights.

4. It is necessary for States to have adequate legal and institutional frameworks to respect, protect and fulfil children's rights, and to provide remedies in case of violations in the context of business activities and operations. In this regard, States should take into account that:

- Childhood is a unique period of physical, mental, emotional and spiritual development and violations of children's rights, such as exposure to violence; child labour or unsafe products or environmental hazards may have life-long, irreversible and even trans-generational consequences.
- Children are often politically voiceless and lack access to relevant information. They are reliant on governance systems, over which they have little influence, to have their rights realised. This makes it hard for them to have a say in decisions regarding laws and policies that impact their rights. In the process of decision-making, States may not adequately consider the impact on children of business-related laws and policies whilst, conversely, the business sector often exerts a powerful influence on decisions without reference to children's rights.
- It is generally challenging for children to obtain remedy -whether in courts or other mechanisms- when their rights are infringed upon, even more so by business enterprises. Children often lack legal standing, knowledge of remedy mechanisms, financial resources and adequate legal representation. Furthermore, there are particular difficulties for children to obtain remedy for abuses that occur in the context of businesses' global operations.

5. Given the broad scope of children's rights that can be affected by business activities and operations, the General Comment does not examine every pertinent article of the

Convention and its protocols. Instead it seeks to provide States with a framework for implementing the Convention as a whole with regard to the business sector whilst focussing on specific contexts where the impact of business activities on children's rights can be most significant. The General Comment aims to provide States with guidance on how they should:

- Ensure that the activities and operations of business enterprises do not adversely impact on children's rights;
- Create an enabling and supportive environment for business enterprises to respect children's rights including across any business relationships linked to their operations, products or services and across their global operations; and,
- Ensure access to effective remedy for children whose rights have been infringed by a business enterprise acting as a private party or as a State agent.

6. This General Comment draws from the experience of the Committee in reviewing States' reports and its Day of General Discussion on the private sector as service provider in 2002.¹ It is also informed by regional and international consultations with numerous stakeholders, including children, as well as by public consultations that have taken place since 2011.

7. The Committee is mindful of the relevance for this General Comment of existing and evolving national and international norms, standards and policy guidance on business and human rights. This General Comment is consistent with international conventions including 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 work. The Committee recognises the relevance of the UN "Protect, Respect and Remedy" Framework and the Guiding Principles on Business and Human Rights adopted by the Human Rights Council, and of the ILO Tripartite Declaration on Multinationals and Social Policy. Other documents, such as the Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises, the UN Global Compact, and the UN Study on Violence against Children, and the Children's Rights and Business Principles have been useful reference for the Committee.

II. Scope and application

8. This General Comment principally addresses States' obligations under the Convention and its protocols. At this juncture, there is no international legally binding instrument on the business sector's responsibilities vis-à-vis human rights. However, the Committee recognises that duties and responsibilities to respect the rights of children extend in practice beyond the State and State-controlled services and institutions and apply to private actors and business enterprises. Therefore all businesses must meet their responsibilities regarding children's rights and States must ensure they do so. In addition, business enterprises should not undermine the State's ability to meet their obligations towards children under the CRC and its protocols.

9. The Committee acknowledges that voluntary actions of corporate responsibility by business enterprises such as social investments, advocacy and public policy engagement, voluntary codes of conduct, philanthropy and other collective action can advance children's rights. States should encourage such voluntary actions and initiatives as a means to create a

¹ The Private Sector as Service Provider and its Role in Implementing Children's Rights, CRC/C/121, 20 September 2002.

business culture which respects and supports children's rights. However, it should be emphasised that such voluntary actions and initiatives are not a substitute for State action and regulation of businesses in line with obligations under the Convention and its protocols or for businesses to comply with their responsibilities to respect children's rights.

10. It is important to recall that the CRC and its protocols engage the State as a whole, regardless of its internal structures, branches or organization. Furthermore, decentralisation of power, through devolution and delegation, does not reduce the direct responsibility of the State to meet its obligations to all children within its jurisdiction.

11. This General Comment first considers the relationship between State obligations regarding business activities and the general principles of the Convention. It then defines the general nature and scope of State obligations with regards to children's rights and the business sector. An examination of the scope of obligations follows in contexts where the impact of business activities and operations on children's rights is most significant including when business enterprises are service providers, when children are affected in the informal economy, when States engage with international organisations and when businesses operate abroad in areas where there is insufficient State protection for children's rights. The General Comment concludes by outlining a framework for implementation and dissemination.

III. General principles of the Convention as they relate to business activities

12. Children's rights are universal, indivisible, interdependent and interrelated. The Committee has established four general principles within the CRC as the basis for all State decisions and actions relating to business activities and operations in conformity with a child rights approach.²

A. The right to non-discrimination (article 2)

13. Article 2 of the CRC 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 legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status." States must ensure that all legislation, policies and programmes that deal with business issues are not intentionally or unintentionally discriminatory towards children in their content or implementation; for instance those that address access to employment for parents or caregivers, or access to goods and services for children with disabilities.

14. States are required to prevent discrimination in the private sphere in general and provide remedy if it occurs. States should collect statistical data that is appropriately disaggregated and other information to identify discrimination against children in the context of business activities and operations and mechanisms should be established to monitor and investigate discriminatory practices within the business sector. States should also take steps to create a supportive environment for business to respect the right to protection from discrimination by promoting knowledge and understanding of the right within the business sector including within the media, marketing and advertising sectors. Awareness-raising and sensitisation among business enterprises should be aimed at

² General Comment No.13 (2011): *The right of the child to freedom from all forms of violence*, CRC/C/GC/13, Paragraph 59.

challenging and eradicating discriminatory attitudes towards all children, especially those in vulnerable situations.

B. The best interests of the child (article 3(1))

15. Article 3(1) of the CRC provides that the best interests of the child shall be a primary consideration for States in all actions concerning children. States are obliged to integrate and apply this principle in all legislative, administrative and judicial proceedings concerning business activities and operations that directly or indirectly impact on children. For example, States must ensure that the best interests of the child are central to the development of legislation and policies that shape business activities and operations such as those relating to employment, taxation, corruption, privatisation, transport and other general economic, trade or financial issues.

16. Article 3(1) is also directly applicable to business enterprises that function as private or public social welfare bodies by providing any form of direct services for children, including care, foster care, health, education and the administration of detention facilities, among others.

17. The Convention and its protocols provide the framework for assessing and determining the best interests of the child. The obligation to make the best interests of the child a primary consideration becomes crucial when States are engaged in weighing competing priorities, such as short-term economic considerations and longer-term development decisions. States should be in a position to explain how the right to have the best interests of the child has been respected in decision-making, including how it has been weighed against other considerations.

C. The right to life, survival and development (article 6)

18. Article 6 of the CRC acknowledges that every child has an inherent right to life and that States shall ensure the survival and development of the child. 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."³

19. The activities and operations of business enterprises can impact on the realisation of article 6 in different ways. For example, environmental degradation and contamination arising from business activities can compromise children's rights to health, food security and access to safe drinking water and sanitation. Selling or leasing land to investors can deprive local populations of access to natural resources linked to their subsistence and cultural heritage; the rights of indigenous children may be particularly at risk in this context.⁴ The marketing to children of products such as cigarettes and alcohol as well as foods and drinks high in saturated fats, trans-fatty acids, sugar, salt or additives can have a long-term impact on their health. When business employment practices require adults to work long hours, older children, particularly girls, may take on their parent's domestic and child care obligations, which can negatively impact their right to education and to play;

³ General Comment No.5 (2003): *General measures of implementation for the Convention on the Rights of the Child* CRC/GC/2003/5, Paragraph 12.

⁴ General Comment No.11 (2009): *Indigenous children and their rights under the Convention [on the Rights of the Child]*, 12 February 2009, CRC/C/GC/11 Paragraph 35.

additionally, leaving children alone or in the care of older siblings can have implications for the quality of care and the health of younger children.

20. Measures for implementing article 6 with regards to the business sector will need to be adapted according to context and include preventive measures such as effective regulation and monitoring of advertising and marketing industries and the environmental impact of business. In the context of care of children, particularly young children, other measures will be needed for creating an enabling environment for business to respect article 6 through, for example, the introduction of family-friendly workplace policies. Such policies must take account of the impact of working hours of adults on the survival and development of the child at all stages of development and must include adequately remunerated parental leave.⁵

D. The right of the child to be heard (article 12)

21. Article 12 of the CRC 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 should hear children's views regularly -in line with General Comment No.12⁶- when developing national and local level business-related laws and policies that may affect them. In particular, States should consult with children who face difficulties in making themselves heard, such as children of minority and indigenous groups, children with disabilities as stated in Articles 4(3) and 7 of the Convention on the Rights of Persons with Disabilities⁷, and children in similar situations of vulnerability. Governmental bodies, such as education and labour inspectorates, concerned with regulating and monitoring the activities and operations of business enterprises should ensure that they take into account the views of affected children. States should also hear children when children's rights impact assessments of proposed business-related policy, legislation, regulations, budget or other administrative decisions are undertaken.

22. Children have a specific right "to be heard in any judicial and administrative proceedings affecting the child" (Article 12(3) of the CRC). This includes judicial proceedings and mechanisms of conciliation and arbitration that concern abuses of children's rights caused or contributed to by business enterprises. As set out in General Comment No.12, children should be allowed to voluntarily participate in such proceedings and be provided the opportunity to be heard 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.

23. There may be instances when business consults with communities that may be affected by a potential business project. In such circumstances, it can be critical for business to seek the views of children and consider them in decisions that affect them. States should provide businesses with specific guidance emphasising that such processes must be accessible, inclusive and meaningful to children and take into account the evolving capacities of children and their best interests at all times. Participation should be voluntary and occur in a child-friendly environment that challenges and does not reinforce patterns of

⁵ See *passim* General Comment No.7 (2005): *Implementing Child Rights in Early Childhood*, 2006, CRC/C/GC/7/Rev.1.

⁶ General Comment No.12 (2009): *The right of the child to be heard*, 2009, CRC/C/GC/12.

⁷ General Comment No.9 (2006): *The rights of children with disabilities*, 27 February 2007, CRC/C/GC/9, *passim*.

discrimination against children. Where possible, civil society organisations that are competent in facilitating child participation should be involved.

IV. Nature and scope of State obligations

A. General obligations

24. The CRC provides for a set of rights for children that impose a particular level of obligations on the State in view of the special status of children; there is particular gravity to violations of children's rights because they often have severe and long-lasting impact on child development. Article 4 sets out the obligation for States to undertake all appropriate legislative, administrative and other measures for the implementation of the rights in the Convention and devote the maximum amount of available resources to the realization of economic, social and cultural rights of the child.

25. Under international human rights law there are three types of obligation on States: to respect, to protect and to fulfil human rights.⁸ They encompass obligations of result and obligations of conduct. States are not relieved of their obligations under the Convention and its protocols when their functions are delegated or outsourced to a private business or non-profit organisation. A State will thereby be in breach of its obligations under the Convention where it fails to respect, protect and fulfil children's rights in relation to business activities and operations that impact on children. The scope of these duties is explored further below whilst the required framework for implementation is discussed in section VI.

B. The obligation to respect, protect and fulfil

(i) The obligation to respect

26. The obligation to respect means that States should not directly or indirectly facilitate, aid and abet any infringement of children's rights. Furthermore, States have the obligation to ensure that all actors respect children rights, including in the context of business activities and operations. To achieve this, all business-related policy, legislation or administrative acts and decision-making should be transparent, informed and include full and continuous consideration of the impact on the rights of the child.

27. The obligation to respect also implies that a State should not engage in, support or condone abuses of children's rights when it has a business role itself or conducts business with private enterprises. For example, States must take steps to ensure that public procurement contracts are awarded to bidders that are committed to respecting children's rights. State agencies and institutions, including security forces, should not collaborate with or condone the infringement of the rights of the child by third parties. Furthermore, States should not invest public finances and other resources in business activities that violate children's rights.

⁸ See UN Committee on Economic, Social and Cultural Rights, *General Comment No.13: The Right to Education (Art. 13 of the Covenant)*, E/C.12/1999/10, Paragraph 46

(ii) The obligation to protect

28. States have an obligation to protect against infringements of rights guaranteed under the CRC and its protocols, by third parties. This duty is of primary importance when considering States' obligations with regards to the business sector. It means that States must take all necessary, appropriate and reasonable measures to prevent business enterprises from causing or contributing to abuses of children's rights. Such measures can encompass the passing of law and regulation, their monitoring and enforcement, and policy adoption that frame how business enterprises can impact on children's rights. States must investigate, adjudicate and redress violations of children's rights caused or contributed to by a business enterprise. A State is therefore responsible for infringements of children's rights caused or contributed to by business enterprises where it has failed to undertake necessary, appropriate and reasonable measures to prevent and remedy such infringements or otherwise collaborated with or tolerated the infringements.

(iii) The obligation to fulfil

29. The obligation to fulfil requires States to take positive action to facilitate, promote and provide for the enjoyment of children's rights. This means that States must implement legislative, administrative, budgetary, judicial, promotional and other measures in conformity with article 4 relating to business activities that impact on children's rights. Such measures should ensure the best environment for full realisation of the CRC and its protocols. To meet this obligation, States should provide stable and predictable legal and regulatory environments which enable business enterprises to respect children's rights. This includes clear and well-enforced law and standards on labour, employment, health and safety, environment, anti-corruption, land-use and taxation that comply with the Convention and protocols. It also includes law and policies designed to create equality of opportunity and treatment in employment; measures to promote vocational training, decent work and to raise living standards; and policies conducive to the promotion of small and medium enterprises. States should put in place measures to promote knowledge and understanding of the Convention and protocols within government departments, agencies and other State-based institutions that shape business practices as well as foster a culture amongst business that is respectful of children's rights.

(iv) Remedies and reparations

30. States have an obligation to provide effective remedies and reparations for violations of the rights of the child, including by third parties such as business enterprises. The Committee states in General Comment No.5 that for rights to have meaning, effective remedies must be available to redress violations.⁹ 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.¹⁰ Meeting this obligation entails having in place child-sensitive mechanisms -criminal, civil or administrative- that are known by children and their representatives, that are prompt, genuinely available and accessible and that provide adequate reparation for harm suffered. Agencies with oversight powers relevant to children's rights including labour, education and health and safety inspectorates, environmental tribunals, taxation authorities, National Human Rights Institutions and

⁹ General Comment No.5 (2003), Paragraph 24. States should also take into account the Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law Adopted, General Assembly resolution 60/147 of 2005.

¹⁰ For example, see CRC Article 32(2), Articles 19 and 39.

bodies focusing on equality in the business sector can also play a role in the provision of remedies. These agencies can pro-actively investigate and monitor abuses and may also have regulatory powers allowing them to impose administrative sanctions on businesses which infringe on children's rights. In all cases, children should have recourse to independent and impartial justice, or judicial review of administrative proceedings.

31. When determining the level or form of reparation, mechanisms should take into account that children can be more vulnerable to the effects of abuse 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 children's development and capacities and reparation should be timely to limit on-going and future damage to the child or children affected; 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 health and development of children and repair any damage done. States should provide medical and psychological assistance, legal support, and measures of rehabilitation to children who are victims of abuse and violence caused or contributed to by business actors. They should also guarantee non-recurrence of abuse through, for example, reform of relevant law and policy and their application, including prosecution and sanction of the business actors concerned.

V. State obligations in specific contexts

32. Business activities and operations can impact on a broad range of children's rights. However, the Committee has identified the following non-exhaustive specific contexts where the impact of business enterprises can be significant and where States' legal and institutional frameworks are often insufficient, ineffective or are under pressure.

A. Provision of services for the enjoyment of children's rights

33. Business enterprises and non-profit organisations can play a role in the provision and management of services such as clean water, sanitation, education, transport, health, alternative care, energy, security and detention facilities that are critical to the enjoyment of children's rights. The Committee does not prescribe the form of delivery of such services but it is important to emphasise that States are not exempted from their obligations under the CRC when they outsource or privatise services that impact on the fulfilment of children's rights.

34. States must adopt specific measures that take account of the involvement of the private sector in service delivery to ensure the rights enumerated in the Convention are not compromised.¹¹ They have an obligation to set standards in conformity with the CRC and closely monitor them. Inadequate oversight, inspection and monitoring of these bodies can result in serious violations of children's rights such as violence, exploitation and neglect. They must ensure that such provision does not threaten children's access to services on the basis of discriminatory criteria, especially under the principle of protection from discrimination and must also ensure that for all service sectors, children have access to an independent monitoring body, complaints mechanisms and, where relevant, to judicial recourse that can provide them with effective remedies in case of violations. The Committee recommends that there should be a permanent monitoring mechanism or

¹¹ Op. cit. CRC/C/121, 2002.

process aimed at ensuring that all non-State service providers have in place and apply policies, programmes and procedures which are in compliance with the Convention.¹²

B. The informal economy

35. The informal economy engages an important part of the economically active population in many countries and contributes significantly to GNP. However, children's rights can be particularly at risk from business activities that take place outside of the legal and institutional frameworks that regulate and protect rights. For example, products that are manufactured or handled in this context, such as toys, garments or foodstuffs, can be unhealthy and/or unsafe for children. Also, children are often found concentrated in hidden areas of informal work, such as small family enterprises, agricultural and hospitality sectors. Such work frequently involves precarious employment status, low, irregular or no remuneration, health risks, lack of social security, limited freedom of association and inadequate protection from discrimination and violence or exploitation. It can prevent children from attending school, doing schoolwork and having adequate rest and play, potentially infringing articles 28, 29 and 31 of the CRC. Moreover, parents or caregivers working in the informal economy often have to work long hours to obtain subsistence level earnings, thus seriously limiting their opportunities to exercise parental responsibilities or care for children in their charge.

36. States should put in place measures to ensure that business activities take place within appropriate legal and institutional frameworks in all circumstances regardless of size or sector of the economy so that children's rights can be clearly recognised and protected. Such measures can include: awareness-raising, conducting research and gathering data on the impact of the informal economy upon children's rights, supporting the creation of decent jobs that provide adequate pay to working parents or caregivers; implementing clear and predictable land use laws; improving the provision of social protection to low income families; and supporting informal sector enterprises by providing skills training, registration facilities, effective and flexible credit and banking services, appropriate tax arrangements and access to markets, among others.

37. States must regulate working conditions and ensure safeguards to protect children from economic exploitation and work that is hazardous or interferes with their education or harms their health or physical, mental, spiritual, moral or social development. Such work is often found, albeit not exclusively, within the informal and family economies. Therefore, States are required to design and implement programmes aimed at reaching businesses in these contexts, including by enforcing international standards regarding legal minimum age for work and appropriate conditions of work, investing in education and vocational training, providing support for adequate transition of children to the world of work. States should ensure that social and child protection policies reach all, especially families in the informal economy.

C. Children's rights and global operations of business

38. Business enterprises increasingly operate on a global scale through complex networks of subsidiaries, contractors, suppliers and joint ventures. Their impact on children's rights, whether positive or negative, is rarely the result of the action or omission of a single business unit, whether it is the parent company, subsidiary, contractor, supplier or others. Instead it may involve a link or participation between businesses units located in

¹² General Comment No.5 (2003), Paragraph 44.

different jurisdictions. For example, suppliers may be involved in the use of child labour, subsidiaries may be engaged in land dispossession and contractors or licensees may be involved in the marketing of goods and services that are harmful to children. There are particular difficulties for States to discharge their obligations to respect, protect and fulfill the rights of the child in this context due, among other reasons, to the fact that business enterprises are legally separate entities located in different jurisdictions even when they operate as an economic unit which has its centre of activity, registration and/or domicile in one country (the home State) and are operational in another (the host State).

39. Under the Convention, States have the obligation to respect and ensure children's rights within their jurisdiction. The Convention does not limit a State's jurisdiction to 'territory'. In accordance with international law, the Committee has previously urged States to protect the rights of children who may be beyond their territorial borders. It has also emphasised that State obligations under the Convention and protocols apply to each child within a State's territory and to all children subject to a State's jurisdiction.¹³

40. Extraterritorial obligations are also explicitly referred to in the OPSC. Article 3(1) provides that each State shall ensure that, as a minimum, offences under it are fully covered by its criminal or penal law, whether such offences are committed domestically or transnationally. Under article 3(4) of OPSC, liability for these offences, whether criminal, civil or administrative, should be established for legal persons, including business enterprises. This approach is consistent with other human rights treaties and instruments that impose obligations on States to establish criminal jurisdiction over nationals in relation to areas such as complicity in torture, enforced disappearance and apartheid, no matter where the abuse and the act constituting complicity is committed.

41. States have obligations to engage in international co-operation towards the realisation of children's rights beyond their territorial boundaries. 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."¹⁴ General Comment No.5 emphasizes that "implementation of the Convention is a cooperative exercise for the States of the world".¹⁵ As such, the full realisation of children's rights under the CRC is in part a function of how States interact. Furthermore, the Committee highlights that the Convention has been nearly universally ratified; thus realisation of its provisions should be of major concern to both host and home States of business enterprises.

42. Host States have the primary responsibility to respect, protect and fulfill children's rights in their jurisdiction. They must ensure that all business enterprises, including transnational corporations operating within their borders, are adequately regulated within a legal and institutional framework that ensures that they do not adversely impact on the rights of the child and/or aid and abet violations in foreign jurisdictions.

43. Home States also have obligations, arising under the CRC and its protocols, to respect, protect and fulfil children's rights in the context of businesses' extra-territorial activities and operations provided that there is a reasonable link between the State and the conduct concerned. A reasonable link exists 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.¹⁶ When adopting measures to meet this obligation, States

¹³ General Comment No.6 (2005): *Treatment of Unaccompanied and Separated Children Outside their Country of Origin*, 2005, CRC/GC/2005/6, Paragraph. 12.

¹⁴ See CRC Articles 4, 24(4), 28(3), 17 and 22(2) as well as OPSC Article 10 and OPAC Article 10.

¹⁵ General Comment No. 5 (2003), Paragraph 60.

¹⁶ See Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and

must not violate the Charter of the United Nations and general international law nor diminish the obligations of the host State under the Convention.

44. States should enable access to effective judicial and non-judicial mechanisms to provide remedy for children and their families whose rights have been violated by business enterprises extra-territorially when there is a reasonable link between the State and the conduct concerned. Furthermore, States should provide international assistance and cooperation with investigations and enforcement of proceedings in other States.

45. Measures to prevent the infringement of children's rights by business enterprises when they are operating abroad include:

- Making access to public finance, and other forms of public support, such as insurance, conditional on a business carrying out a process to identify, prevent or mitigate any negative impacts on children's rights in their overseas operations;
- Taking into account the prior record of business enterprises on children's rights when deciding on the provision of public finance and other forms of official support;
- Ensuring that State agencies with a significant role regarding business, such as export credit agencies, take steps to identify, prevent and mitigate any adverse impacts the projects they support might have on children's rights before offering support to businesses operating abroad and stipulate that such agencies will not support activities that are likely to cause or contribute to children's rights abuses.

46. Both home and host States should establish institutional and legal frameworks that enable businesses to respect children's rights across their global operations. Home States should ensure that there are effective mechanisms in place so that the government agencies and institutions with responsibility for implementation of the CRC and its protocols coordinate effectively with those responsible for trade and investment abroad. They should also build capacity so that development assistance agencies and overseas missions that are responsible for promoting trade can integrate business issues into bilateral human rights dialogues, including children's rights, with foreign governments. States that adhere to the OECD Guidelines for Multinational Enterprises should support their National Contact Points in providing mediation and conciliation for matters that arise extra-territorially by ensuring that they are adequately resourced, independent and mandated to work to ensure respect for children's rights in the context of business issues. Recommendations issued by bodies such as the OECD National Contact Points, should be given adequate effect.

D. International organisations

47. All States are called upon, under article 4 of the CRC, to cooperate directly in the realisation of the rights in the Convention through international cooperation and through their membership in international organizations. In the context of business activities, these international organisations include international development, finance and trade institutions, such as the World Bank Group, the International Monetary Fund and the World Trade Organisation, and others of a regional scope, in which States act collectively. States must comply with their obligations under the CRC and its protocols when acting as members of such organisations and they should not accept loans from international organizations, or agree to conditions set forth by such organizations, if these loans or policies are likely to result in violations of the rights of children. States also retain their obligations in the field of development cooperation and should ensure that cooperation

Cultural Rights, Principle 25 (2012)

policies and programmes are designed and implemented in compliance with the Convention and its protocols.

48. A State engaged with international development, finance and trade organisations must take all reasonable actions and measures to ensure that such organisations act in accordance with the CRC and its protocols in their decision-making and operations, as well as when entering into agreements or establishing guidelines relevant to the business sector. Such actions and measures should go beyond the eradication of child labour and include the full realisation of all children's rights. International organizations should have standards and procedures to assess the risk of harm to children in conjunction with new projects and to take measures to mitigate risks of such harm. These organisations should put in place procedures and mechanisms to identify, address and remedy violations of children's rights in accordance with existing international standards including when they are committed by or result from activities of businesses linked to or funded by them.

E. Emergencies and conflict situations

49. There are particular challenges for both host and home States to meet their obligations to respect, protect and fulfill the rights of the child when businesses are operating in situations where protection institutions do not work properly because of conflict, disaster or the breakdown of social or legal order. It is important to emphasise that the Convention and its protocols apply at all times and that there are no provisions allowing for derogation of their provisions during emergencies.

50. In such contexts, there may be a greater risk of using child labour by business enterprises including within supply chains and subsidiaries, funding the use of child soldiers or of being involved in corruption and tax evasion. Given the heightened risks, home States should require business enterprises operating in situations of emergency and conflict to undertake stringent children's rights due diligence tailored to their size and activities. Home States should also develop and implement laws and regulations that address specific foreseeable risks to children's rights from business enterprises that are operating trans-nationally. This can include, for example, a requirement to publish actions taken to ensure that companies' operations do not contribute to serious violations of children's rights, and a prohibition on the sale or transfer of arms and other forms of military assistance when the final destination is a country in which children are known to be, or may potentially be, recruited or used in hostilities.

51. A home State should provide businesses with current, accurate and comprehensive information of the local children's rights context when they are operating or planning to operate in areas affected by conflict or emergency. This guidance should emphasise that companies have identical responsibilities to respect children's rights in such settings, as they do elsewhere. Children can be affected by violence, including sexual abuse or exploitation, child trafficking and gender based violence in conflict zones and this must be recognised by States when providing guidance to businesses.

52. The obligations of host and home States under the relevant provisions of the CRC should be emphasised when business is operating in areas affected by conflict: 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 OPAC contains provisions regarding recruitment of children into armed forces over 18 years of age. When operating in areas affected by conflict, business enterprises may employ private security companies and may risk being involved in violations such as exploitation and/or use of violence against children in the course of protecting facilities or other operations. To prevent this, both home and host States should introduce and implement national legislation that includes a specific prohibition on such companies recruiting children or using them in

hostilities; requirements for effective measures to protect children from violence and exploitation; and mechanisms for holding personnel accountable for abuses of children's rights.

VI. FRAMEWORK FOR IMPLEMENTATION

A. Legislative, regulatory and enforcement measures

(i) Legislation and regulation

53. Legislation and regulation are essential instruments for ensuring that the activities and operations of business enterprises do not adversely impact on or violate the rights of the child. States should enact legislation that gives effect to the rights of the child on third private parties and provides a clear and predictable legal and regulatory environment which enable business enterprises to respect children's rights. To meet their obligation to adopt appropriate and reasonable legislative and regulatory measures to ensure that business enterprises do not infringe on children's rights, States will need to gather data, evidence and research for identifying specific business sectors of concern.

54. In conformity with Article 18(3) of the CRC, States should create employment conditions within business enterprises which assist working parents and caregivers in fulfilling their responsibilities to children in their care such as: the introduction of family-friendly workplace policies including parental leave; support and facilitate breastfeeding; access to quality childcare services; payment of wages sufficient for an adequate standard of living; protection from discrimination and violence in the workplace; and, security and safety in the workplace.

55. Ineffective taxation systems, corruption and mismanagement of government revenues from, among others, State-owned businesses and corporate taxation, can limit the resources available for the fulfilment of children's rights, in accordance with article 4 of the CRC. In addition to any existing obligations under anti-bribery and anti-corruption instruments,¹⁷ States should develop and implement effective laws and regulations to obtain and manage revenue flows from all sources, ensuring transparency, accountability and equity.

56. States should implement article 32 of the CRC to ensure the prohibition of economic exploitation and hazardous work for children. Some children are above the minimum working age in line with international standards, and therefore can be legitimately working as employees, while still needing to be protected, for instance, from work that is hazardous to their health, safety or morals and ensuring that their rights to education, development and recreation are promoted and protected. States must set a minimum age for employment; appropriately regulate working hours and conditions; and establish penalties to effectively enforce article 32. They must have functioning labour inspection and enforcement systems and capacities in place. States should also ratify and enact into national law both of the fundamental ILO Conventions relating to child labour.¹⁸ Under article 39, States must take all appropriate measures to promote the physical and psychological recovery and social reintegration of a child who has experienced any form of violence, neglect, exploitation, or abuse including economic exploitation.

¹⁷ Such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions Adopted by the Negotiating Conference in 1997 and/or the UN General Assembly, United Nations Convention Against Corruption, 2003, A/58/422.

¹⁸ C182 Worst Forms of Child Labour Convention (1999) and C138 Minimum Age Convention (1973).

57. States are also required to implement and enforce internationally agreed standards concerning children's rights, health and business including the World Health Organization Framework Convention on Tobacco Control, International Code of Marketing of Breast-milk Substitutes and relevant subsequent World Health Assembly resolutions. The Committee is aware that the activities and operations of the pharmaceutical sector can have a profound impact on the health of children. Pharmaceutical companies should be encouraged to improve the access, availability, acceptability and quality of medicines for children taking into consideration existing guidance.¹⁹ Furthermore, intellectual property rights should be applied in ways that promote the affordability of medicines.²⁰

58. The mass media industry, including advertising and marketing industries, can have positive as well as negative impacts on children's rights. Under article 17 of the CRC, States have obligations to encourage the mass media, including private media, to disseminate information and materials of social and cultural benefit to the child, for example regarding healthy lifestyles. The media must be regulated appropriately to protect children from harmful information, especially pornographic materials and materials that portray or reinforce violence, discrimination and sexualised images of children, while recognising children's right to information and freedom of expression. States should encourage the mass media to develop guidelines to ensure full respect for the rights of the child, including their protection from violence and from portrayals that perpetuate discrimination, in all media coverage. States should establish copyright exceptions which permit reproduction of books and other printed publications in formats that are accessible for children with visual or other impairments.

59. Children may regard marketing and advertisements that are transmitted through the media, as truthful and unbiased and can consume and use products that are harmful as a consequence. Advertising and marketing can also have a powerful influence over children's self-esteem, for example when portraying unrealistic body images. States should ensure that marketing and advertising do not have adverse impacts on children's rights by adopting appropriate regulation and encouraging business enterprises to adhere to codes of conduct and use clear and accurate product labelling and information that allow parents and children to make informed consumer decisions.

60. Digital media is of particular concern as many children can be users of the Internet but also become victims of violence such as cyber-bullying, cyber-grooming, trafficking or sexual abuse and exploitation through the Internet. Although companies may not be directly involved in such criminal acts, they can be complicit in these violations through their actions; for example, child sex tourism can be facilitated by travel agencies operating on the Internet as they enable the exchange of information and planning of sex tourism activities. Child pornography can be indirectly facilitated by Internet businesses and credit card providers. As well as meeting their obligations under the OPSC, States should provide children with age-appropriate information regarding web-related safety so they can manage the risks and know where to go for help. They should coordinate with the information and communication technology industry for it to develop and put in place adequate measures to protect children from violent and inappropriate material.

¹⁹ Human Rights Guidelines for Pharmaceutical Companies in relation to Access to Medicines, UN General Assembly, Report of the Special Rapporteur on the Right to Health, 2008, (A/63/263); UN Human Rights Council, Resolution 15/22, 2010, (A/HRC/RES/15/22).

²⁰ World Trade Organization. Declaration on the TRIPS Agreement and Public Health. Doha, 2001. WT/MIN(01)/DEC/21.

(ii) Enforcement measures

61. Generally it is the lack of implementation or poor enforcement of laws regulating business that poses the most critical problem for children. There are a number of measures States should employ to ensure effective implementation and enforcement, including:

- Strengthening regulatory agencies responsible for the oversight of standards relevant to children's rights such as health and safety, consumer rights, education, environment, labour and advertising and marketing so that they have sufficient powers and resources to monitor and to investigate complaints and to provide and enforce remedies for abuses of children's rights;
- Disseminating laws and regulations regarding children's rights and business to stakeholders, including children and business enterprises;
- Training judges and other administrative officials as well as lawyers and legal aid providers to ensure the correct application of the CRC and its protocols on business and children's rights, international human rights standards and relevant national legislation and to promote the development of national jurisprudence; and
- Providing effective remedy through judicial or non-judicial mechanisms and effective access to justice.

(iii) Children's rights and due diligence by business enterprises

62. To meet their obligation to adopt measures to ensure that business enterprises respect children's rights, States should require businesses to undertake child rights due diligence. This will ensure that business enterprises identify, prevent, and mitigate their impact on children's rights including across their business relationships and within global operations.²¹ Where there is a high risk of business enterprises being involved in violations of children's rights because of the nature of their operations or their operating contexts, States should require a stricter process of due diligence and an effective monitoring system.

63. Where child rights due diligence is subsumed within a more general process of human rights due diligence, it is imperative that the provisions of the CRC and its protocols influence decisions. Any plan of action and measures to prevent and/or remedy human rights abuses must have special consideration for the differentiated impact on children.

64. States should lead by example requiring all State-owned enterprises to undertake child rights due diligence and to publicly communicate their reports on their impact on children's rights, including regular reporting. States should make public support and services, such as those provided by an export credit agency, development finance, and investment insurance conditional on business' carrying out child rights due diligence.

65. As part of child rights due diligence, large business enterprises should be encouraged and, where appropriate, required to make public their efforts to address children's rights impacts. Such communication should be available, efficient, and comparable across enterprises and address measures taken by business to mitigate potential and actual adverse impacts for children caused by their activities. Business enterprises should be required to publish the actions taken to ensure that the goods and services they produce or commercialise do not involve serious violations of children's rights such as slavery or forced labour. Where reporting is mandatory, States should put in place verification and enforcement mechanisms to ensure compliance. States may support

²¹ See Children's Rights and Business Principles (2011), UNICEF, Save the Children and UN Global Compact.

reporting by creating instruments to benchmark and recognize good performance with regard to children's rights.

B. Remedial measures

66. Children often find it difficult to access the justice system to seek effective remedies for abuse or violations of their rights when business enterprises are involved. Children may lack legal standing preventing them from pursuing a claim; children and their families often lack knowledge about their rights and the mechanisms and procedures available to them to seek redress or may lack confidence in the justice system. States may not always investigate breaches of criminal, civil or administrative laws committed by business enterprises. There are vast power imbalances between children and business and, often, prohibitive costs involved in litigation against companies as well as difficulties in securing legal representation. Cases involving business are frequently settled 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 abandon undertaking litigation given uncertainty on the outcome.

67. There are particular difficulties in obtaining remedy for abuses 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 in separate entities can make identification and attribution of legal responsibility to each unit challenging; access to information and evidence located in different countries can be problematic when building and defending a claim; legal aid may be difficult to obtain in foreign jurisdictions and various legal and procedural hurdles can be used to defeat extra-territorial claims.

68. States should focus their attention on removing social, economic and juridical barriers so that children can in practice have access to effective judicial mechanisms without discrimination of any kind. Children and their representatives should be provided with information about remedies through, for example, the school curriculum, youth centres or community-based programmes. They should be allowed to initiate proceedings in their own right and have access to legal aid and the support of lawyers and legal aid providers in bringing cases against business enterprises to ensure equality of arms. States that do not already have provision for collective complaints such as class actions and public interest litigation should introduce these as a means of increasing accessibility to courts for large numbers of children similarly affected by business actions. States may have to provide special assistance to children who face obstacles to accessing justice, for example, because of language or disability or because they are very young.

69. Age should not be a barrier to a child's right to participate fully in the justice process. Special arrangements should be developed for child victims and witnesses in both civil and criminal proceedings, in line with General Comment No.12. Furthermore, States should implement the UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime.²² Confidentiality and privacy must be respected and 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.

²² UN Guidelines on Justice in Matters involving Child Victims and Witnesses of Crime ECOSOC Resolution 2005/20.

70. The OPSC requires that States enact criminal legislation that also applies to legal entities, including business enterprises. States should consider 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 forced labour. National tribunals should have jurisdiction over these serious violations in accordance with accepted rules of jurisdiction.

71. Non-judicial mechanisms, such as mediation, conciliation and arbitration can be useful alternatives for resolving disputes concerning children and enterprises. They must be available without prejudice to the right to judicial remedy. Such mechanisms can play an important role alongside judicial processes provided they are in conformity with the CRC and its protocols and with international principles and standards of effectiveness, promptness and due process and fairness. Grievance mechanisms established by business enterprises, can provide flexible and timely solutions 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. These mechanisms should follow criteria which include: accessibility, legitimacy, predictability, equitability, rights compatibility, transparency, continuous learning and dialogue.²³ In all cases, access to courts or judicial review of administrative remedies and other procedures should be available.

72. States should make every effort to facilitate access to international and regional human rights mechanisms including the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure²⁴, so that an individual child or a group of children, or others acting on his/her/their behalf, are able to obtain remedy for State failure to adequately respect, protect and fulfil children's rights in relation to business activities and operations.

C. Policy measures

73. States should encourage a business culture that understands and fully respects children's rights. To this end, States should include the issue of children's rights and business in the overall context of the national policy framework for implementation of the CRC. They should develop guidance that explicitly sets out government expectations for business enterprises to respect children's rights in the context of its own business activities as well as within business relationships linked to operations, products or services and activities abroad when they operate trans-nationally. This should include the implementation of zero tolerance policies for violence in all business activities and operations. As required, States should signpost and encourage adherence to relevant corporate responsibility initiatives.

74. In many contexts, small and medium sized enterprises represent a large part of the economy and it is particularly important that States provide them with readily available tailored guidance and support on how to respect children's rights and comply with national legislation whilst avoiding unnecessary administrative burdens. States should also encourage larger companies to use their influence over small and medium-sized enterprises to strengthen children's rights throughout their value chains.

²³ Guiding Principle 31 in *The Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* (2011).

²⁴ UN General Assembly, *Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure*, 2011, A/RES/66/138.

D. Coordination and monitoring measures

(i) Coordination

75. Full implementation of the CRC and its protocols requires effective cross-sectoral co-ordination, among government agencies and departments and across different levels of government, from local to regional and central.²⁵ Typically, the departments and agencies directly involved with business policies and practices work separately from departments and agencies with direct responsibility for children's rights. States must ensure that 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 ensure full compliance with the Convention when developing law and policy and entering into economic, trade and investment agreements. National Human Rights Institutions can play an important role as catalysts for linking different governmental departments concerned with children's rights and with business.

(ii) Monitoring

76. States have an obligation to monitor violations of the Convention and its protocols committed or contributed to by business enterprises, including in their global operations. This can be achieved, for instance, through: gathering data that can be used to identify problems and inform policy; investigating abuses; collaborating with civil society and National Human Rights Institutions (NHRI); and making business accountable publicly by using business reporting on their impact on children's rights to assess their performance. In particular, NHRI can be involved, for example in receiving, investigating and mediating complaints of violations; conducting public inquiries into large-scale abuses, mediating in conflict situations and undertaking legislative reviews to ensure compliance with the Convention. Where necessary, States should broaden the legislative mandate of National Human Rights Institutions to accommodate children's rights and business.

77. When States develop national strategies and plans of action for implementation of the Convention and its protocols, they should include explicit reference to the measures required to respect, protect and fulfil children's rights in the actions and operations of business enterprises. States should also ensure that they monitor progress in implementation of the CRC in 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 collaboration with other bodies such as parliamentary committees, civil society organizations, professional associations, and National Human Rights Institutions. Monitoring should include 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 associations of children.

(iii) Child rights impact assessments

78. Ensuring that the best interests of the child are a primary consideration in business-related legislation and policy development and delivery at all levels of government demands continuous child rights impact assessments. These can predict the impact of any proposed business-related policy, legislation, regulations, budget, or other administrative decisions which affect children and the enjoyment of their rights²⁶ and should complement

²⁵ General Comment No.5 (2003), Paragraph 37.

²⁶ Op. cit., Paragraph 45.

on-going monitoring and evaluation of the impact of laws, policies and programmes on children's rights.

79. Different methodologies and practices may be developed when undertaking child rights impact assessments. At a minimum they must use the framework of the CRC and its protocols as well as relevant Concluding Observations and General Comments issued by the Committee. When States conduct broader impact assessments of business-related policy, legislation or administrative practices, they should ensure that these assessments are underpinned by the general principles of the Convention and protocols and have special regard for the differentiated impact on children of the measures under consideration.

80. Child rights impact assessments can be used to consider the impact on all children affected by the activities of a particular business or sector but can also include assessment of the differential impact of measures on certain categories of children. The assessment of impact itself may be based upon input from children, 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 amendments, alternatives and improvements and be publicly available.²⁷

81. To ensure an impartial and independent process, the State may 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.

E. Collaborative and awareness-raising measures

82. While it is the State that takes on obligations under the CRC, the task of implementation needs to engage all sectors of society including business, civil society and children themselves. The Committee recommends that States adopt and implement a comprehensive strategy to inform and educate all children, parents and caregivers that business has a responsibility to respect children's rights wherever they operate, including through child-friendly and age-appropriate communications, for example through provision of education about financial awareness. Education, training and awareness-raising about the CRC should also be targeted at business enterprises to emphasize the status of the child as a holder of human rights, encourage active respect for all of the Convention's provisions and challenge and eradicate discriminatory attitudes towards all children and especially those in vulnerable and disadvantaged situations. In this context, the media should be encouraged to provide children with information about their rights in relation to business and raise awareness amongst businesses of their responsibility to respect children's rights.

83. The Committee highlights that National Human Rights Institutions can be involved in awareness-raising of the Convention's provisions amongst business enterprises, for instance by developing good practice guidance and policies for businesses and disseminating them.

84. Civil society has a critical role in independent promotion and protection of children's rights in the context of business operations. This includes monitoring and holding business accountable; supporting children to have access to justice and remedies; contributing to child rights impact assessments; and, raising awareness amongst businesses

²⁷ States may draw guidance from: Report of the 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).

of their responsibility to respect children's rights. States should ensure conditions for active and vigilant civil society, including effective collaboration with and support to independent civil society organisations, child and youth-led organisations, academia, chambers of commerce and industry, trade unions, consumer associations and professional institutions. States should refrain from interfering with these and other independent organisations and facilitate their involvement in public policy and programmes relating to children's rights and business.

VII. Dissemination

85. The Committee recommends that States widely disseminate this General Comment with parliament and across government, including within ministries, departments and municipal/local level bodies working on business issues and those responsible for trade and investment abroad such as development assistance agencies and overseas missions. The General Comment should be distributed to business enterprises, including those operating trans-nationally as well as to small and medium-sized enterprises and actors in the informal sector. It should also be distributed and made known to professionals working for and with children, including judges, lawyers and legal aid providers, teachers, guardians, social workers, officials of public or private welfare institutions, as well as to all children and civil society. This will require translating it into relevant languages, making accessible and child-friendly versions available, holding workshops and seminars to discuss its implications and how best to implement it, and incorporating it into the training of all relevant professionals.

86. States should 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.
