



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

Day Associates is delighted to note the first draft of the forthcoming General Comment on Child Rights and Business that will provide States with a framework for implementation of the Convention of the Rights of the Child, with regard to the business sector.

We are very pleased to note that the drafters have included many specific points raised by a number of informed stakeholders following the first consultation on the annotated outline.

In particular, we are encouraged to see direct references made to the following:

- Section 22: States parties have an obligation to protect child rights from abuse by business enterprises operating extra-territorially when there is a reasonable link between the State and the conduct concerned.
- Section 25: International development banks, and/or their specialised branches for lending to States' development projects or to private investment projects can play a very important role in promoting the principles and goals of the Convention.
- Section 62: States should consider developing a national Business and Child Rights Policy framework that sets out government expectations for business enterprises to respect child rights in the context of its own business activities as well as within business relationships linked to operations, products or services.
- Section 62: It is particularly important that States parties provide Small and Medium-sized Enterprises with additional and tailored guidance and support that is readily available on how to respect child rights.
- Section 63: They (State parties) should also build capacity so that development assistance agencies and diplomatic overseas missions that are responsible for promoting trade can integrate business issues into bilateral human rights dialogues, including child rights, with foreign governments.

We believe that the first draft provides a very clear and comprehensive steer to the Committee on critical areas of focus for the General Comment. Resultantly, we have very few comments to make; however, we would like to take this opportunity to offer some minor suggestions, which we hope will be warmly received.



Child rights impact assessments

This draft makes numerous references to child rights impact assessments and specifically assessments that may be undertaken or commissioned by the State, in order to ascertain the potential impact of any new laws and/or policies regarding business activities on children's rights. This is one kind of child rights impact assessment. Another kind is one undertaken by a company, or a third party organisation on behalf of a company.

The second kind of child rights impact assessment is not highlighted in the first draft. Rather, reference is made to the need for businesses to undertake child rights due diligence and specifically businesses are '*encouraged and where appropriate required to make public their efforts to address child rights impacts.*' (section 50).

In our view, this statement, and the chapter entitled '*Child rights due diligence for business*' could be strengthened by making direct reference to the key elements of due diligence, as per the UN Guiding Principles on Business and Human Rights¹, namely:

- assessing actual and potential human rights impacts
- integrating and acting upon the findings
- tracking responses, and
- communicating how impacts are addressed

The core elements of due diligence as per the Guiding Principles can be viewed as distinct, tangible and actionable goals; therefore, the inclusion of such would not only provide clarity but also clearly signal the range of activities that businesses are expected to undertake. Ensuring that language is consistent with the Guiding Principles may also aid implementation.

Child rights impact assessments: selection of specific human rights

We believe that section 47 rightly notes that child rights impact assessments should, at a minimum, be anchored within the Convention on the Rights of the Child (CRC) and its Optional Protocols, as well as relevant Concluding Observations. However, it goes on to suggest that: '*First, they should identify which measure is being assessed and which rights should be looked at in more depth during the assessment.*' (*ibid.*).

¹ The 'Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework' was submitted by the former UN Special Representative on Business and Human Rights, John Ruggie to the UN Human Rights Council on 21st March 2011.



In relation to this specific point, we would like to submit our caution based on our knowledge and experience of developing human rights impact assessments². While the prospect of embarking on a child rights impact assessment that considers all of the 40+ children's rights, as per the CRC may seem time-consuming or potentially unnecessary to some stakeholders, in our view, it is very important to adopt a fully comprehensive review from the outset, which is predicated on assessing the impact of the business activity in relation to all rights in a systematic way.

Human rights abuses are often hidden. Sometimes they are nascent. At times, a violation of a right may often precipitate or even follow the abuse of a different human right. In our experience, an initial selection of a range of rights will narrow the assessment parameters and therefore, limit the level and rigour of analysis greatly. This in turn may restrict the framework for the stakeholder engagement process thereby prompting stakeholders to provide views on a limited set of issues.

By subjecting all children's rights to the assessment process, this should ensure that no children's rights issues have been overlooked; hence, the recipients of the assessment would be able to have greater confidence in the findings.

Day Associates would like to thank the Committee on the Rights of the Child for permitting us to comment on your first draft of the General Comment on Children's Rights and Business.

For further elaboration or clarification on any of the aforementioned points, please email Désirée Abrahams on desiree@dayassociates.org.uk

Day Associates is an independent 'think and do' tank committed to building the capacity of governments and companies to understand and address their human rights challenges.

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² In 2010, the 'Guide to Human Rights Impact Assessment and Management' (HRIAM) online tool – www.guidetohriam.org was developed by the International Business Leaders Forum (IBLF), International Finance Corporation (IFC) and the UN Global Compact. Désirée Abrahams was co-author of the Guide to HRIAM; at the time she worked for IBLF.