

**Submission on the draft General Comment on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities. January 2017.**

This submission represents the views of the Child Rights International Network (CRIN) ([www.crin.org](http://www.crin.org)) on the proposed draft general comment of the Committee on Economic, Social and Cultural Rights. CRIN is a global research, policy and advocacy organisation.

**Introduction**

This submission will focus on the aspects of the General Comment that specifically impact the economic, social and cultural rights of children as they are affected in the context of business activities. Article 10(3) of the Covenant on Economic, Social and Cultural Rights is particularly relevant here, requiring special measures of protection and assistance on behalf of children. In several respects and contexts involving business activities, children need special measures and protection and assistance for their rights to be fully realised and we urge the Committee to take account of these aspects of the Covenant throughout this General Comment.

This submission adopts the outline of the General Comment for ease of reference.

**Obligations of States Parties under the Covenant**

In introducing the general obligations of States with regards to the realisation of the Covenant, it would be useful for the General Comment to address the manner in which States realise rights under the Covenant, particularly with regards to privatisation. It is increasingly common for States to deliver services through, or in partnership with, the private sector, but the manner of delivery of rights does not alter their content or decrease the obligations of the State. While this issue does not exclusively affect children, children are particularly impacted in the context of the provision of education, social services, healthcare and in the justice system. The Committee on Economic, Social and Cultural Rights has addressed this issue, for example with regards to the privatisation of higher education in Indonesia, recommending that the process of this privatisation “be accompanied by measures ensuring that it remains equally accessible to all, on the basis of capacity.”<sup>1</sup> The Special Rapporteur on the right to education has also noted in the context of privatisation that “States remain primarily responsible for providing education on account of their international legal obligations”.<sup>2</sup>

In its General Comment 16, the Committee on the Rights of the Child addressed this issue with the following language:

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<sup>1</sup>Committee on Economic, Social and Cultural Rights, *Concluding observations on the initial report of Indonesia*, E/C.12/IDN/CO/1, 19 June 2014, para. 37.

<sup>2</sup> Report of the Special Rapporteur on the right to education, A/69/402, 24 September 2014, para. 103.

*“States are not relieved of their obligations under the Convention and the Optional Protocols thereto 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.”<sup>3</sup>*

### **Non-discrimination**

The list of groups of people disproportionately affected by the adverse impact of business activities is non-exhaustive and includes girls, but nonetheless, we encourage the Committee to recognise in this section that children in general are often disproportionately affected in this context.

### **Specific obligations linked to business activities**

#### ***Obligation to respect***

This section of the draft General Comment addresses the ways in which States can be held directly responsible for the action or inaction of business actors (para. 14), but could more clearly elaborate the situations in which States have obligations with regards to supporting or condoning abuses of children’s rights when it has a business role or conducts business with private enterprises. This may include, for example, ensuring that public procurement contracts are awarded to bidders with a demonstrable commitment to Covenant rights.<sup>4</sup>

#### ***Obligation to protect***

This section addresses the development of policies to ensure the enjoyment of Covenant rights (para. 20). To ensure the effectiveness of these policies, we urge the Committee to include language in the draft General Comment recommending that these policies address the situation of groups that are particularly vulnerable to abuse of their rights in relation to the actions of businesses, including children, for whom specific policies may be required.

Similarly, this section acknowledges the role that due diligence can play in ensuring that business practices are compliant with human rights obligations (para. 18), but could explain that human rights due diligence should take to address groups who are particularly vulnerable to abuse, including children. In addressing the role of children’s rights due

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<sup>3</sup> UN Committee on the Rights of the Child, General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights, CRC/C/GC/16, 17 April 2013, para. 25.

<sup>4</sup> For relevant commentary from the Committee on the Rights of the Child, see UN Committee on the Rights of the Child, General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights, CRC/C/GC/16, 17 April 2013, para. 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.”*

diligence in this context, the Committee on the Rights of the Child has used the following language:

*“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.*

*“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 Convention and the Optional Protocols thereto influence decisions.”*

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This section also highlights the implications of privatisation and the risks it may pose to the realisation of economic, social and cultural rights (para. 22), but could more clearly address the obligations of the State to realise these rights when service delivery involves private businesses. As discussed above, States are not relieved of their obligations by manner they choose to implement rights and deliver services.<sup>6</sup>

With regards to the examples given in paragraph 24, we would urge the Committee to mention girls in relation to the realisation of women’s sexual and reproductive health rights, as girls may be particularly vulnerable to denial of sexual and reproductive healthcare in this context.

### **Extraterritorial obligations**

As the draft General Comment notes, the application of the Covenant is not limited to the territory of the State (para. 31). The draft General Comment notes a number of the ways in which extraterritorial obligations and jurisdiction may arise, but leaves gaps that are of particular relevance to the the Covenant. Extraterritorial obligations with regards to the provision of aid and development are not explicitly addressed in the current draft. Within the Covenant, this obligation exists as a requirement to act in conformity with the Covenant in all actions within the jurisdiction of the State, but also through the provisions of Article 2(1), requiring States to take steps, individually and through international assistance and co-operations... with a view to achieving progressively the full realisation of the rights recognised in the ... Covenant”. The Committee on the Rights of the Child has recognised this impact of similar provisions in relation to its corresponding provisions of the CRC in its General Comment No. 16.<sup>7</sup>

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<sup>5</sup> UN Committee on the Rights of the Child, General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights, CRC/C/GC/16, 17 April 2013, paras. 62 and 63.

<sup>6</sup> UN Committee on the Rights of the Child, General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights, CRC/C/GC/16, 17 April 2013, para. 25.

<sup>7</sup> Committee on the Rights of the Child, General Comment 16 (2013) on State obligations regarding the impact of the business sector on children’s rights, CRC/C/GC/16, 17 April 2013, para. 41: “States have obligations to engage in international cooperation for the realisation of children’s rights beyond their

The Committee on Economic, Social and Cultural Rights has addressed this issue in its Concluding Observations, notably with regards to the United Kingdom in July 2016, where it expressed concern about the financial support provided to low-cost and private education projects in developing countries, which may have contributed to undermining the quality of free public education.<sup>8</sup> Recommendations to date primarily address these obligations in the context of private education, but in principle, the obligation could apply to a range of activities impacting the economic, social and cultural rights of children as well as adults. We encourage the Committee to address State obligations with regards to the private sector and international aid as part of this General Comment.

## Remedies

The substantial emphasis within the draft general comment on the importance of remedies in the context of human rights and business activities is very welcome, but could be enhanced with reference to the specific needs of children with regards to access to justice. The Protect, Respect and Remedy Framework recognises the particular barriers people experience in using complaints procedures to challenge corporate human rights abuses, including prohibitive costs lack of legal aid, legal standing and statutes of limitation.<sup>9</sup> As noted by the Committee on the Rights of the Child: “[c]hildren often lack legal standing, knowledge of remedy mechanisms, financial resources and adequate legal representation.”<sup>10</sup> If the justice system and complaints procedures are not tailored to the needs of children, children will be denied access to justice.<sup>11</sup>

As the Committee on Economic Social and Cultural Rights notes in the draft General Comment, article 2(1) of the Covenant would be rendered ineffective if it were not reinforced by judicial remedies (para. 42) and we would add that in turn these judicial remedies would be rendered ineffective for children if they are not tailored to the specific needs of children. This approach would be consistent with Article 10(3) of the Covenant, requiring special protection and assistance for children.

To effectively ensure children can access justice for violations of their economic, social and cultural rights in the context of business activities, the justice system as a whole must be adapted to the needs of children, but several aspects are of particular relevance in light of the current General Comment:

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territorial boundaries. The preamble and the provisions of the Convention consistently refer to the ‘importance of international cooperation for improving the living conditions of children in every country, in particular in the developing countries.’

<sup>8</sup> Committee on Economic, Social and Cultural Rights, *Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland*, E/C.12/GBR/CO/6, 14 July 2016, paras. 14 and 15.

<sup>9</sup> Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Protect, Respect and Remedy, a Framework for business and human rights, A/HRC/8/5, 7 April 2008, para. 89.

<sup>10</sup> UN Committee on the Rights of the Child, General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights, 17 April 2013, CRC/C/GC/16, para. 4(c).

<sup>11</sup> For analysis of, see CRIN, *Rights, remedies and representation: Global report on access to justice for children*, 2016. Available at: [www.crin.org/node/42383](http://www.crin.org/node/42383).

- **National human rights institutions for children** can provide a means of challenging abuses of the rights of groups or classes of children. Currently mentioned in paragraphs 21, the draft General Comment does not address the effective role in addressing complaints that NHRIs can play, particularly in representing vulnerable or disempowered groups such as children;
- **Age related barriers** preventing children from bringing complaints create a de jure bar to enforcing their rights;
- **Child friendly complaint procedures** are necessary to ensure children are able to enforce their rights in practice;
- **Restrictions on legal aid and assistance** are particularly harmful for children in bringing cases against corporations, against whom they are likely to face a serious lack of resources;
- **Limitation periods** that do not bar children from bringing complaints when they reach maturity ensure that children are able to bring complaints when they reach the age and maturity to be able to do so;

These issues are discussed in more depth through OHCHR's report on access to justice for children<sup>12</sup> and from a practical perspective in CRIN's global report on access to justice for children.<sup>13</sup>

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<sup>12</sup> *Report of the United Nations High Commissioner for Human Rights on access to justice for children*, A/HRC/25/35, 16 December 2013.

<sup>13</sup> CRIN, *Rights, Remedies and Representation: A global report on access to justice for children*, February 2016. Available at: [www.crin.org/node/42383](http://www.crin.org/node/42383).