



# STATE OBLIGATIONS REGARDING THE IMPACT OF THE BUSINESS SECTOR ON CHILDREN'S RIGHTS

A practical guide for Non-Governmental Organisations  
on how to use the United Nations Committee on the Rights  
of the Child's General Comment no. 16

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## LIST OF ABBREVIATIONS

<b>AGM</b>	Annual General Meeting (of a company's shareholders)
<b>ATCA</b>	Alien Tort Claims Act
<b>CRC</b>	United Nations Convention on the Rights of the Child
<b>CRIA</b>	Child rights impact assessment
<b>CRIN</b>	Child Rights International Network
<b>CRPBs</b>	Children's Rights and Business Principles
<b>CSR</b>	Corporate social responsibility
<b>GC</b>	General Comment
<b>HRC</b>	United Nations Human Rights Council
<b>IBFAN</b>	International Baby Food Action Network
<b>IACHR</b>	Inter-American Commission of Human Rights
<b>ICCPR</b>	International Covenant on Civil and Political Rights
<b>MNC</b>	Multinational Corporations
<b>NCP</b>	National Contact Point
<b>NHRIs</b>	National human rights institutions
<b>OECD</b>	Organisation for Economic Cooperation and Development
<b>OPAC</b>	Optional Protocol to the United Nations Convention on the Rights of the Child on the involvement of children in armed conflict
<b>OPIC</b>	Optional Protocol to the United Nations Convention on the Rights of the Child on a communications procedure
<b>OPSC</b>	Optional Protocol to the United Nations Convention on the Rights of the Child on the sale of children, child prostitution and child pornography
<b>SRSR</b>	Special Representative of the Secretary General
<b>UN</b>	United Nations
<b>UNGPs</b>	United Nations Guiding Principles on Business and Human Rights
<b>UNICEF</b>	United Nations Children's Fund

# I. INTRODUCTION

## Why business and children's rights matter

Business enterprises have a significant impact on children's lives. Not only are children consumers of businesses' products and services, many are also employed as workers in their factories and fields, are family members of their employees, or residents of the communities that host their operations.

Businesses can be a force for good in children's lives. They can be instrumental in improving children's lives through, among other things, the creation of employment and wealth, and the development of modern technologies that enrich children's education, enhance medical care, and connect families around the world. However, businesses may also have detrimental impacts on children's rights. For instance, companies may manufacture, market or sell products that are harmful to children, pollute the environments in which children reside, hire children under the minimum age for employment, or expose them to hazards in the workplace.

The impact of business on children is often invisible to many human rights advocates. While attention to the impacts of business on human rights has increased recently, the ways in which children are affected by business operations have not yet attracted sufficient attention.

Since children are still in the developmental phase in terms of their physical, emotional and mental growth, they can be particularly vulnerable to negative business impacts and can be disproportionately, severely and permanently affected by violations of their rights. For instance, children are much more susceptible than adults to the harmful physical effects of toxic chemicals, manual labour and poor diets. Children are more likely to fall prey to company marketing strategies persuading them to purchase harmful or unsuitable products. Young workers can never fully make up for the time spent out of education and the opportunities lost as a result. As workers, children's economic, social and cultural rights, such as the right to equal pay and to join associations, are rarely taken into account due to their low status.

Businesses rarely seek the input of children on decisions that will affect them. Children often fail to recognise that their rights are in jeopardy and, even when they do, they frequently face tremendous challenges in making their voices heard. In the majority of instances, child victims lack the confidence, resources and standing to demand accountability from those who violate their rights.

## Purpose of this guide

This guide is intended to serve as a practical resource for advocates interested in challenging negative impacts of businesses on children's rights.

Its aim is to support the efforts of civil society to promote States' adherence to their obligations under the Convention on the Rights of the Child (CRC), its Optional Protocols, and the UN Committee on the Rights of the Child's General Comment No. 16 on State obligations regarding the impact of the business sector on children's rights (GC 16).<sup>1</sup>

While GC 16 is mostly addressed at States, civil society has a crucial role to play in the promotion and protection of children's rights. They can also make use of international mechanisms such as those available with the Committee on the Rights of the Child, support children to have access to justice and remedies and engage in strategic litigation on behalf of affected children. Civil society serves as a watchdog drawing public attention to existing or potential corporate abuses; and holding States and businesses to account for their failure to abide by their obligations, as elaborated under GC 16, to ensure that business activity does not infringe or hinder the enjoyment or realisation of children's rights.

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<sup>1</sup> Committee on the Rights of the Child, General Comment 16 on State obligations regarding the impact of the business sector on children's rights, UN Doc. CRC/C/GC/16, 17 April 2013

## II. IMPACT OF BUSINESS OPERATIONS ON CHILDREN'S RIGHTS

Business operations can have an impact on virtually the full range of children's rights. The following case studies from various business sectors, ranging from the pharmaceutical industry to the extractive industry, illustrate the manner in which business activities cause or contribute to a broad range of children's rights violations.

### Pharmaceutical sector – Pfizer case involving drug trials on children

Box 1

In 1996 Pfizer reportedly conducted a drug trial in Kano State, Nigeria, during an epidemic of bacterial meningitis. The company allegedly tested an experimental antibiotic drug, Trovan, on about 200 children. Lawsuits were filed in the United States under the Alien Tort Claims Act (ATCA) alleging, among other things, that the company had violated customary international law by administering the drug to the children without the informed consent of the children and their parents, and that the drug trial led to the deaths of some children and serious injuries to many others. The cases were consolidated into a single lawsuit in the course of legal proceedings. In February 2011, the parties reached a settlement.<sup>2</sup>

Lawsuits were also filed in the federal courts of Nigeria. While those filed by individual plaintiffs in 2001 were eventually withdrawn, a lawsuit initiated in May 2007 by the State of Kano raising criminal charges and civil claims against Pfizer and seeking over \$2 billion USD in damages and restitution was settled out of court.<sup>3</sup> Furthermore, a lawsuit filed in 2007 by the Nigerian federal government against Pfizer and several of its employees seeking nearly \$7 billion USD in damages for the deaths of children involved in the Trovan drug trial was resolved in a final out-of-court settlement in 2009 for \$75 million USD. In November 2013 186 victims filed a new lawsuit in the Federal High Court in Kano, arguing that Pfizer is allegedly in breach of the 2009 settlement agreement for limiting the criteria for compensation. The hearings on this latest claim commenced in May 2014. In November 2014 the company agreed to pay out compensation according to the original agreement.<sup>4</sup>

### Extractive sector – La Oroya case

Box 2

A group of civil society organisations filed a series of petitions with the Inter-American Commission on Human Rights on behalf of 65 persons, including 33 children, from the smelting town of La Oroya, Peru. Residents of the town had long suffered serious health problems from dangerously high levels of industrial pollution. They sought to hold the Peruvian government responsible for failing to protect them from the ill effects of environmental contamination threatening the rights to life and physical integrity and children's rights contained in Article 19 of the American Convention on Human Rights. The Commission requested that the Peruvian government provide the victims with immediate medical assistance, noting the particularly harmful impacts on children, and remarked on possible rights violations.<sup>5</sup> The final report by the Commission forwarding the case to the Inter-American Court of Human Rights is pending.

### Communications sector – EchoMetrix case

Box 3

In 2010 EchoMetrix Inc. settled Federal Trade Commission charges of violating US federal law by failing to adequately inform parents using its web monitoring software, Sentry, that information collected about their children through the use of the Sentry monitoring program would be disclosed to third-party marketers through a web-based market research software program called Pulse, a product also advertised by EchoMetrix.<sup>6</sup> The only disclosure made to parents about this practice was a vague statement approximately 30 paragraphs into a multi-page end user licence agreement. To settle this case, EchoMetrix agreed not to use or share the information it obtained through its Sentry program - or any similar program - for any purpose other than allowing a registered user to access his or her account. The settlement order also required the company to destroy the information it had transferred from the Sentry program to its Pulse database of marketing information.<sup>7</sup>

2 The terms of the settlement are confidential. However, a joint statement issued by the parties explained that the plaintiffs in the US lawsuit will join the ongoing Healthcare/Meningitis Trust Fund process, which is being managed by an independent board of trustees in Kano, Nigeria. Pfizer Ends Suits Over Nigerian Trovan Deaths <http://www.law360.com/articles/227350/pfizer-ends-suits-over-nigerian-trovan-deaths>

3 Pfizer and Nigerian state in deal, <http://news.bbc.co.uk/2/hi/africa/8177388.stm> (accessed 12 October 2015).

4 Information available at: <http://business-humanrights.org/en/pfizer-lawsuit-re-nigeria#c106513> (accessed on 5 November 2014).

5 IACHR, Precautionary Measures, Community of La Oroya, 31 August 2007, available at: <http://www.cidh.org/medidas/2007.eng.htm> (accessed on 24 October 2014).

6 Pulse was advertised by EchoMetrix as allowing marketers to see "unbiased, unfiltered, anonymous" content from social media websites, blogs, forums, chats and message boards. One source of content available to Pulse users, the FTC alleged, was portions of the online activity of children recorded by the Sentry software. On the impact and risks for children of the Information and Communications Technologies-ICT, see "Releasing Children's Potential and Minimizing Risks- ICTs, the Internet and violence against children," Office of the UN SRSG on Violence against Children, New York, October 2014. Available at [https://srsg.violenceagainstchildren.org/sites/default/files/publications\\_final/icts/releasing\\_children\\_potential\\_and\\_minimizing\\_risks\\_icts\\_the\\_internet\\_and\\_violence\\_against\\_children.pdf](https://srsg.violenceagainstchildren.org/sites/default/files/publications_final/icts/releasing_children_potential_and_minimizing_risks_icts_the_internet_and_violence_against_children.pdf) (accessed 21 October 2015)

7 Available at: <http://www.ftc.gov/news-events/press-releases/2010/11/ftc-settles-company-failed-tell-parents-childrens-information> (accessed on 5 November, 2014).

# III. INTERNATIONAL LAW AND STANDARDS RELATING TO CHILDREN'S RIGHTS AND BUSINESS

To start addressing the impacts of the business sector on children's rights and to develop protective and preventative strategies, it is important to bear in mind the international law and standards prevailing in this field.

The CRC is the primary international instrument setting the standards for the protection and promotion of the rights of the child. The Convention enshrines a comprehensive set of civil, political, economic, social and cultural rights applicable to all children.<sup>8</sup> Children also enjoy all other human rights recognised in other international treaties.

However, the CRC does not explicitly, nor systematically, address the role of the State in protecting children's rights in the context of business operations. Certain provisions do so by implication. For instance, Article 32 requires, among other things, that States protect children from "economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development". States must take measures, including setting a minimum age(s) for admission to employment, appropriate regulation of the hours and conditions of employment, and appropriate penalties or other sanctions to ensure effective enforcement of this article.

The CRC is supplemented by three additional instruments:

- a) The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC);
- b) The Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (OPAC); and
- c) The Optional Protocol to the Convention on the Rights of the Child on a communications procedure (OPIC).

Other international instruments contain standards that are complementary to the CRC and its Protocols. These include:

- International Labour Organisation (ILO) Convention No. 138 on the Minimum Age for Admission to Employment, 1973; and
- ILO Convention No. 182 on the Worst Forms of Child Labour, 1999 (which expressly applies to all people under the age of 18).<sup>9</sup>

Various UN bodies have addressed the issue of businesses' impacts and responsibilities vis-à-vis human rights over the past decade, but it is only relatively recently that this subject has received systematic attention and greater prominence. There is a growing set of international standards, although still incipient institutional mechanisms. Following an attempt by the former UN Sub-Commission on the Protection and Promotion of Human Rights to elaborate human rights norms and principles applicable to business enterprises, the former Human Rights Commission established in 2005 the Special Representative of the Secretary General on Human Rights and Transnational Corporations and Other Business Enterprises with the mandate to, among other things, "identify and clarify standards of corporate responsibility and accountability for transnational corporations and other business enterprises with regard to human rights", and provide recommendations.<sup>10</sup> In the course of this work, the Special Representative proposed a framework on the "different but complementary" responsibilities of States and corporations (the UN "Protect, Respect and Remedy" Framework).<sup>11</sup> The work of the Special Representative culminated in 2011 in the Human Rights Council's endorsement of the UN Guiding Principles on Business and Human Rights (UNGPs).<sup>12</sup> The Human Rights Council (HRC) has since established a Working Group on business and human rights to disseminate and facilitate the implementation of the UNGPs by, among other things, identifying, exchanging and promoting good practices.<sup>13</sup>

8 Article 1 of the Convention defines a child as "every human being below the age of 18 years unless under the law applicable to the child, majority is attained earlier."

9 International Labour Organization, Convention concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour, International Labour Organization, Geneva, 17 June 1999, article 2.

10 UN Commission on Human Rights 2005/69 resolution requesting the Secretary-General to appoint a Special Representative on business and human rights.

11 Protect, Respect and Remedy: a Framework for Business and Human Rights, Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, Human Rights Council Resolution A/HRC/8/5, <http://www.reports-and-materials.org/sites/default/files/reports-and-materials/Ruggie-report-7-Apr-2008.pdf> (accessed 12 October 2015).

12 Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework (UNGPs), annexed to Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, General Principles, A/HRC/17/31, available at [www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR\\_EN.pdf](http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf)

13 Human rights and transnational corporations and other business enterprises, Human Rights Council Resolution A/HRC/RES/17/4 <http://business-humanrights.org/sites/default/files/media/documents/un-human-rights-council-resolution-re-human-rights-transnational-corps-eng-6-jul-2011.pdf> (accessed 12 October 2015)



A major development took place in June 2014 when the HRC decided to begin intergovernmental discussions towards a binding treaty on transnational corporations (TNCs), other business enterprises and human rights.<sup>14</sup> The first session of the Intergovernmental Working Group took place in July 2015.

Among other developments in this area, UNICEF, Save the Children and the UN Global Compact released in 2012 the Children's Rights and Business Principles.<sup>15</sup> These Principles elaborate on children's rights in the workplace, the marketplace, the community and the environment, guiding companies to respect and support children's rights across their activities, operations and relationships.

These developments have increased international interest in the issue of businesses and their human rights responsibilities, but also highlighted the lack of sufficient attention so far given to children's rights in this context. This, among other reasons, prompted the UN Committee on the Rights of the Child to produce General Comment No. 16.<sup>16</sup>

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14 Human Rights Council, Resolution 26/9, Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights, UN Doc. A/HRC/RES/26/9, 26 June 2014..

15 United Nations Children's Fund, United Nations Global Compact and Save the Children, Children's Rights and Businesses Principles, <http://childrenandbusiness.org> (accessed on 8 October 2014).

16 Committee on the Rights of the Child, General Comment no. 16 on State obligations regarding the impact of the business sector on children's rights, UN Doc. CRC/C/GC/16, 17 April 2013, <https://www.crin.org/sites/default/files/g1342821.pdf>

# IV. ABOUT GENERAL COMMENT NO. 16

## The development of General Comment No. 16

In the context just described, the UN Committee on the Rights of the Child sought to provide State parties to the CRC with specific guidance on their implementation of the Convention in the context of business operations. In November 2010 the Committee launched a process of online and in-person consultations to define the focus and contents of the document and to build broad consensus for its work. Input was sought from a variety of stakeholders, including State representatives, civil society organisations, academics, businesses and children.

The Committee adopted GC 16 in February 2013.<sup>17</sup> The General Comment is addressed to all States that have ratified or acceded to the CRC and any of its three Optional Protocols. It broadly covers all national and transnational business enterprises, irrespective of their size, sector, location (where they are based and where they operate), ownership (whether they are State-owned or privately owned) and structure. Notably, GC 16 also covers the role of nominally not-for-profit organisations (i.e. FIFA and the International Olympic Committee) engaged in business activities that may have an impact on the enjoyment of children's rights.

## The responsibilities of States and business enterprises

GC 16's main focus is on emphasising the legal obligation of States to ensure that private sector enterprises respect the rights of the child, do not hinder efforts to realise and advance children's rights, whether directly or indirectly, and engage positively in the realisation of those rights. GC 16 provides clarification and guidance to States to carry out effective implementation of their obligations under the CRC by ensuring that business operations do not adversely impact on the rights of the child, creating a supportive environment for businesses to respect children's rights across business relationships and global operations, and ensuring access to effective remedies and reparation.<sup>18</sup>

Although the CRC binds only States that have ratified or acceded to it, the application of many of its standards, or those of its Optional Protocols, can involve private actors and business enterprises. Thus, GC 16 recognises that the "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."<sup>19</sup> Businesses must meet their responsibilities regarding children's rights and "States must ensure they do so."<sup>20</sup> The Committee has also said that all business enterprises have an obligation of due diligence with respect to human rights, which include all rights enshrined under the CRC.<sup>21</sup>

In General Comment 15, the Committee outlines the responsibilities of private companies "[to] refrain from engaging children in hazardous labour while ensuring they comply with the minimum age for child labour; comply with the International Code of Marketing of Breast-milk Substitutes and the relevant subsequent World Health Assembly resolutions; limit advertisement of energy-dense, micronutrient-poor foods, and drinks containing high levels of caffeine or other substances potentially harmful to children; and refrain from the advertisement, marketing and sale to children of tobacco, alcohol and other toxic substances or the use of child images."<sup>22</sup>

Non state service providers ("for profit" as well as "non profit" providers) must respect the principles and provisions of the Convention and States parties have the primary obligation to ensure their implementation. Where non state services play a major role, States have an obligation to monitor and regulate the quality of provisions to ensure that children's rights are protected and their best interests are served.<sup>23</sup>

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17 Ibid.

18 Ibid., para. 5

19 Ibid., para. 8

20 Ibid., para. 24

21 General comment No. 15 on the right of the child to the enjoyment of the highest attainable standard of health (art. 24)

22 Ibid., para 81

23 Committee of the Rights of the Child, General Comment No. 7 (2005): Implementing child rights in early childhood, /Rev.1, para. 32

## The general principles of the CRC in the context of business operations

GC 16 lays down the implications of the four general principles underpinning the Convention for State action regarding businesses: the right to non-discrimination;<sup>24</sup> the best interests of the child;<sup>25</sup> the rights to life, survival and development;<sup>26</sup> and the right to be heard.<sup>27</sup>

The obligation of States to duly consider the child's best interests is a comprehensive obligation encompassing all public and private social welfare institutions, courts of law, administrative authorities and legislative bodies involving or concerning children.<sup>28</sup> Private social welfare institutions include private sector organisations – either for-profit or non-profit – which play a role in the provision of services that are critical to children's enjoyment of their rights, and which act on behalf of or alongside government services.<sup>29</sup>

States are required to prevent discrimination in the private sphere in general, provide remedies if violations occur, ensure legislation is not discriminatory, and support businesses in providing non-discriminatory services and goods.

The right to life, survival and development (Article 6) should be understood as a "holistic concept, embracing the child's physical, mental, spiritual, moral, psychological and social development."<sup>30</sup> General Comment No. 7 of the UN Committee on the Rights of the Child calls on States and other concerned parties to implement the right to survival and development in a holistic manner, through the enforcement of all the other provisions of the Convention, including, among others, the rights to health, adequate nutrition, social security, an adequate standard of living and a healthy and safe environment.<sup>31</sup> More specifically, in relation to business operations, preventative measures for implementing Article 6 should be taken, such as effective regulation and monitoring of the advertising and marketing industries and the environmental impact of businesses, and the introduction of family-friendly workplace policies that include adequately remunerated parental leave.

## Children's rights in global business

GC 16 recognises that children's rights should be protected particularly in the context of global business operations. The rapid growth and spread of globalised business operations means that those operations take place in the territory or jurisdiction of several States. Tackling the abuses from those operations requires enhanced cross-country action by national authorities.

'Host' States in which TNCs operate have the primary responsibility towards the rights of children within their jurisdiction. They must ensure business enterprises are adequately regulated so as to prevent any adverse impact of their conduct on human rights or complicity in violations or infringements of children's rights in foreign jurisdictions. 'Home' States have obligations to respect, protect and fulfil children's rights in the context of business enterprises' extraterritorial operations. A State is treated as a 'home' State when there is a reasonable link between the State and the conduct covered, i.e. the enterprise has a centre of activity in the home State, or it is registered or incorporated or domiciled, or has its main place of business or substantial business activities, in the home State.<sup>32</sup> States should enable access to effective judicial and non-judicial mechanisms to provide remedies for children whose rights have been infringed by business enterprises extraterritorially when there is a link between the State and the conduct concerned.<sup>33</sup>

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24 CRC General Comment 16, paras 13-14

25 CRC General Comment 16, paras 15-17

26 CRC General Comment 16, paras 18-20

27 CRC General Comment 16, paras 21-23

28 Committee on the Rights of the Child, General Comment No. 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration (art. 3, para. 1), CRC/C/GC/14, para. 25.

29 *Ibid.*, para. 26

30 CRC General Comment 16, para 18

31 CRC General Comment 7, para 10

32 CRC General Comment 16, para 43

33 CRC General Comment 16, para 44

## Specific preventative measures: impact assessments and due diligence

GC 16 provides recommendations regarding measures that States should adopt, such as conducting impartial and independent child rights impact assessments (CRIAs),<sup>34</sup> and requiring businesses to carry out children's rights due diligence<sup>35</sup> to ensure that business enterprises identify, prevent and mitigate their negative impacts on children's rights, including across their business relationships and within any global operations. Large business enterprises should be encouraged and, where appropriate, required to make public their efforts to address their impact on children's rights.

## Access to effective remedy

Children have the right to effective remedies and reparation, guaranteed under international law. Remedial mechanisms should be independent and impartial, comply with due process standards and lead to an enforceable decision. Remedies may take the form of cessation, restitution, rehabilitation and/or reparation.

GC 16 recognises that States should have in place effective collective complaints mechanisms, including the possibility of bringing class actions and public interest litigation, as a means of increasing accessibility to the courts for large numbers of children similarly affected by business actions.<sup>36</sup>

## The role of civil society actors

While GC 16 is mostly addressed at States, civil society has a crucial role to play in the promotion and protection of children's rights by, for instance, monitoring State actions and business activities, contributing to CRIAs, and raising awareness amongst businesses of their responsibility to respect children's rights. They can make use of international mechanisms such as those available with the UN Committee on the Rights of the Child. Civil society organisations can help children obtain access to justice and remedies and engage in strategic litigation on behalf of affected children. Civil society serves as a watchdog, drawing public attention to existing or potential corporate abuses, and holding States and businesses to account for their failure to abide by their obligations, as elaborated under GC 16, to ensure that business activity does not violate or hinder the enjoyment or realisation of children's rights.<sup>37</sup>

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34 CRC General Comment 16, para 78-81

35 CRC General Comment 16, para. 62-65

36 CRC General Comment 16, paras 68 and 76

37 CRC General Comment 16, para. 84. Also see paras. 23, 76, 77, 80 and 82, which refer to civil society

# V. HOW NGOS CAN USE GENERAL COMMENT 16

The UN Committee on the Rights of the Child attributes a central role to civil society actors in advancing the rights of children and protecting them against abuses by business actors. Not only does the Committee request civil society to promote and protect children's rights, it also stresses the importance of holding businesses accountable for their actions and ensuring children have access to all forms of justice and remedies.

GC 16 specifically addresses the role of civil society actors:

*“Civil society has a critical role in the 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 of their responsibility to respect children’s rights. States should ensure conditions for an active and vigilant civil society, including effective collaboration with and support to independent civil society organizations, child and youth-led organizations, academia, chambers of commerce and industry, trade unions, consumer associations and professional institutions. States should refrain from interfering with these and other independent organizations and facilitate their involvement in public policy and programmes relating to children’s rights and business.”<sup>38</sup>*

This section of the guide explains how civil society can monitor and challenge violations of children's rights committed by companies, drawing from GC 16. It provides concrete examples of activities and the work already being undertaken in this field to encourage others to adopt similar strategies to protect children's rights from negative business impacts. The activities and examples below include advocacy, monitoring and reporting, awareness-raising amongst states and businesses, tips on campaigning, and strategic litigation.

## 1. Advocacy

*“Advocacy is the work we do to influence the policies and actions of governments, international institutions and the private sector, in order to achieve positive changes in children’s lives.*

*Our advocacy and campaigns build on the insights generated by our programmes around the world. We know that we can only sustain the impact of our programmes, and take that impact to scale, by persuading and challenging governments and other institutions with power and resources to change their own policies and practice. Advocacy encompasses research and policy analysis, lobbying, communications and public campaigning.*

*In different situations, our advocacy can be focused on securing formal policy changes; driving implementation; or creating an enabling environment for change.”<sup>39</sup>*

### a. General advocacy activities could include:

Children's rights advocates can promote national and international action by various means, including:

- Reporting on specific instances of violations or situations of risk for children to the pertinent authorities;
- Submitting information and/or proposals to authorities in the context of public processes and activities (i.e. child rights impact assessments, draft laws under consideration, national action plans, etc); and/or
- Providing information and suggestions for business enterprises to take into account in their internal human rights policies, due diligence and reporting processes.

<sup>38</sup> CRC General Comment 16, para 84

<sup>39</sup> Save the Children, at <https://www.savethechildren.net/advocacy> (accessed 20 March 2015)

## b. National Plans of Action

Civil society can participate in the development of national strategies and national action plans.

The UN Committee on the Rights of the Child highlights the need for the establishment and development of a national strategy and a national plan of action to ensure the effective realisation of children's rights and implementation of the Convention. GC 16 stresses the inclusion of a business angle in the overall context of the national policy framework on children's rights. In 2003 the Committee issued General Comment No. 5 on general measures for the implementation of the Convention, providing specific guidance on how to develop national action plans and the need to regularly review and update them.

National action plans (NAPs) in general need to incorporate applicable principles and processes to ensure the effective realisation of public policies beyond a mere set of good intentions. Their effectiveness rests on their ability to:

- Establish achievable goals and targets, rather than mere political statements, and outline specific measures of implementation;
- Identify the particular agencies entrusted with the specific development of each part of the plan and allocate the necessary financial and human resources; and
- Have in place appropriate monitoring mechanisms and periodic review.

These national strategies must be endorsed at the highest possible level of government and be allied to a broader national development strategy.

The UN Working Group on Business and Human Rights strongly encourages States to develop, enact and update a national action plan on business and human rights to disseminate and implement the Guiding Principles on Business and Human Rights at the national level. The Working Group has produced specific guidance for these processes.<sup>40</sup>

### UN Working Group on Business and Human Rights – guidance on NAPs

Box 4

#### Phase 1: Initiation

1. Seek and publish a formal Government commitment
2. Create a format for cross-departmental collaboration and designate leadership
3. Create a format for engagement with non-governmental stakeholders
4. Develop and publish a work plan and allocate adequate resources

#### Phase 2: Assessment and consultation

5. Get an understanding of adverse corporate human rights impacts
6. Identify gaps in State and business implementation of the UNGPs
7. Consult stakeholders and identify priority areas

#### Phase 3: Drafting of initial NAP

8. Draft the initial NAP
9. Consult on the draft with interested stake-holders
10. Finalize and launch the initial NAP

#### Phase 4: Implementation

11. Implement actions and continue cross-departmental collaboration
12. Ensure multi-stakeholder monitoring

#### Phase 5: Update

13. Evaluate impacts of the previous NAP and identify gaps
14. Consult stakeholders and identify priority areas
15. Draft updated NAP, consult on, finalize, and launch it

<sup>40</sup> Guidance on National Action Plans on Business and Human Rights, UN Working Group on Business and Human Rights, version 1 December 2014, available at [http://www.ohchr.org/Documents/Issues/Business/UNWG\\_%20NAPGuidance.pdf](http://www.ohchr.org/Documents/Issues/Business/UNWG_%20NAPGuidance.pdf) (accessed 17 March 2015)

There are different options for including business and children’s rights into NAPs. They can be factored into general business and human rights national action plans, be part of a general national action plan for the implementation of the CRC, or be part of a stand-alone national plan. The UN Human Rights Council has noted the importance of national action plans and other such frameworks or relevant initiatives in the area of business and human rights.<sup>41</sup> In all cases, the participation of, and consultation with, civil society and children is of great importance.

**c. Child Rights Impact Assessments**

Civil society groups can contribute to CRIAs, and are key to the effectiveness and success of such assessments. There is no unique methodology for undertaking CRIAs, but certain elements tend to be common to these kinds of impact assessments.

**Performing a CRIA**

**1 SCOPING**  
 Consider the full range of factors likely to affect children as a whole, or particular groups of children; explore the role and capacity of any government agency or agencies to be involved; and set the scope for the assessment’s influence on the decision-making process. Ensure senior leadership support, adequate oversight, and sufficient human and financial resources are in place to facilitate an objective and meaningful impact assessment.  
**CIVIL SOCIETY CONTRIBUTIONS TO CRIAS:**  
 Submit relevant information for the scoping; request relevant agencies and resources to be involved; provide information about its own intended contributions to the process and its first scoping of problems and tools to be used; and set up its own external watchdog for the process.

**2 DATA COLLECTION**  
 Consult with key stakeholders including government departments, civil society organizations and children or their representatives. Gather relevant academic research, official data and statistics and anecdotal evidence. Develop and use tools like checklists and matrices to organize data, highlight key issues for analysis and indicate areas where further information is required.  
**CIVIL SOCIETY CONTRIBUTIONS TO CRIAS:**  
 Participate actively in the consultations; help provide publicity and visibility to the process; encourage and facilitate children’s participation in consultations; and gather its own data to contribute to the process.

**3 ANALYSIS**  
 Assess: the nature and objectives of the proposed changes; the social, legal and political environments in which these changes will occur; administrative, financial and other challenges to their implementation; outside influences that may shape the intended results; and potential alternative courses of action.  
**CIVIL SOCIETY CONTRIBUTIONS TO CRIAS:**  
 Participate in the meetings and share its analysis about potential risks and impacts on children; bring civil society perspectives as factors in the analysis; and monitor the integrity and independence of the analysis process.

**4 RECOMMENDATION AND ACTION**  
 Evaluate all suitable options and, where indicated, recommend and adopt mitigating measures to reduce or eliminate potential negative impacts on children. Where necessary, engage an independent technical expert to weigh competing risks and benefits.  
**CIVIL SOCIETY CONTRIBUTIONS TO CRIAS:**  
 Ensure that in the evaluation of options the best interests of the child are paramount; ensure a role for civil society and children in the design of options for mitigation or redress of impacts; and propose relevant changes and recommendations and/or challenge unacceptable results or recommendations.

**5 DISSEMINATION AND FOLLOW-UP**  
 Publish the results of the assessment and share these directly with all stakeholders consulted. Plan follow-up activities to ensure that impacts are monitored and reassessed as necessary and that recommendations are implemented. Look for opportunities to improve the impact assessment process.  
**CIVIL SOCIETY CONTRIBUTIONS TO CRIAS:**  
 Give publicity to the results and recommendations; ensure that children know and use these; monitor implementation and compliance by State agencies and businesses; and identify lessons learnt and seek ways to integrate them in its own strategies and programmes.

41 Human Rights Council resolution A/HRC/RES/26/22.



## 2. Awareness-raising

### a. Awareness-raising: States

Civil society plays a key role in sensitising the different levels of government to the impacts of business operations on children's rights at home and abroad, as well as to the applicable international law, standards and best practices the government can draw on to discharge its obligations to protect and realise the rights of the child.

Awareness-raising amongst government entities and public officers takes place in a variety of forms and circumstances, from private meetings to public conferences, the provision of general and targeted information, and requests for government action on specific instances.

The Guide for States "Obligations and actions on children's rights and business,"<sup>42</sup> produced jointly by ICJ and UNICEF, provides extensive guidance and examples of the various ways in which governments can act and civil society can participate or prompt government action.

### b. Awareness-raising: Businesses

Civil society plays an important role in "raising awareness amongst businesses of their responsibility to respect children's rights."<sup>43</sup> This section outlines the ways in which civil society can raise awareness amongst, and engage with, companies about their responsibilities, as well as get involved in targeted activism to stop or prevent specific violations of children's rights by companies.

#### (1) Corporate social responsibility and children's rights

Corporate social responsibility (CSR) is the responsibility of companies not only for the economic impacts of their decisions and activities, but also for their social and environmental impacts.

Human rights, including children's rights, are an increasingly important part of CSR. CSR should go beyond charity or philanthropy and should not be a mere public relations exercise for business enterprises. Companies seeking to fulfil their CSR, including their responsibility to respect children's rights, should act in full compliance with applicable national law and consistently with international law and standards on children's rights, particularly those contained in the CRC and its Optional Protocols. They should integrate children's rights throughout the organisation by means of policies and procedures, and practise these measures in their relationships. They should consult with and take into account the views of children, civil society, and other stakeholders in their decision-making and operations. They should ensure independent and impartial assessments of their impact on children's rights and take effective measures to ensure that adverse children's rights impacts are identified and addressed in their operations, and provide effective remedies and reparation where they have caused or contributed to such impacts.

The UN Committee on the Rights of the Child 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 actions, can advance children's rights."<sup>44</sup>

Recent studies have shown that companies and investors still have a long way to go to incorporate children's rights, let alone CSR or responsible investment considerations, into their activities.<sup>45</sup> Accordingly, there is wide scope for civil society to engage with businesses and investors worldwide about their responsibilities regarding children's rights under the CRC and its Optional Protocols.

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42 Obligations and Actions on Children's Rights and Business- A Practical Guide for States on how to Implement the United Nations Committee on the Rights of the Child's General Comment No. 16, ICJ and UNICEF, Geneva 2015, available at <http://icj.wpengine.netdna-cdn.com/wp-content/uploads/2015/09/Report-UNICEFChildrenBusiness-2015-ENG.pdf>

43 CRC General Comment 16, para. 84.

44 CRC General Comment 16, para. 9.

45 Global Child Forum, Investors perspectives on children's rights, Stockholm, 2014. Available at [http://globalchildforum.org/wp-content/uploads/2013/11/GCF\\_GES\\_OK.pdf](http://globalchildforum.org/wp-content/uploads/2013/11/GCF_GES_OK.pdf)



## Business Uptake of the rights of the child

Box 5

A study by the Global Child Forum and Boston Consulting Group of 1,032 publicly listed companies in eight industry sectors<sup>46</sup> with high exposure to children's rights issues found the following with respect to how they address and report on children's rights issues:

- Companies typically focused on child labour. While 62 per cent of the companies surveyed had a child labour policy, 24 per cent addressed other children's rights issues. Product responsibility related to children was the second most addressed issue.
- Less than half of the companies assessed in this study reported that the board of directors or a board committee had overall responsibility for sustainability, CSR, human rights or social issues. Thirteen per cent of all companies mentioned children's rights as part of these responsibilities. The majority of these companies were found in the Information and Communications Technology-ICT industry. Twenty-three per cent of the companies assessed included child labour or children's rights in their materiality or risk assessment.
- Half of the companies in the study referred to international standards that address children's rights in some way. The most frequently cited standards were the UN Global Compact and the ILO conventions on worst forms of child labour and minimum age. Only 1 per cent of the companies addressed the CRC and 1 per cent addressed the Children's Rights and Business Principles.
- European companies in general scored the highest. At the industry sector level, consumer goods and food and beverage industries had the strongest reporting results. The ICT industry sector was over-represented amongst the top scoring companies – 45 per cent of the companies that scored 8 or 9 were ICT companies.
- Typically businesses collaborate with smaller, more local organisations. Just below 40 per cent of the companies in the study that addressed children's rights collaborated with child rights organisations. The most frequently mentioned organisations are UNICEF, Save the Children, and Plan International.<sup>47</sup>

### (2) Codes of conduct and policies

Civil society can assist with developing, reviewing or modifying companies' codes of conduct, business principles, policies and procedures (including with respect to labour, environment, health and safety standards, employment, supply and distribution contracts) so that they are consistent with the CRC and its Optional Protocols.<sup>48</sup> Civil society can also contribute to developing industry-specific codes of conduct and advocating for companies to subscribe to them.

## Save the Children and IKEA's code of conduct

Box 6

Save the Children and Swedish furniture company IKEA worked together to develop the IKEA code of conduct to prevent child labour in IKEA's supply chain, known as the 'IKEA way on preventing child labour', which was launched in 2000.<sup>49</sup> IKEA's code of conduct is based on the CRC and International Labour Organisation (ILO) Convention No. 138 (1973) concerning minimum working ages, and ILO Convention No. 182 (1999) concerning the worst forms of child labour. Monitoring of compliance with this code of conduct is done by IKEA trading service offices and with unannounced visits by KPMG to suppliers and sub-contractors in South Asia.<sup>50</sup>

46 Food & Beverage, Consumer Goods, Information and Communications Technology (ICT), Travel & Tourism, Basic Materials, Industrial Goods, Oil & Gas and Healthcare.

47 Global Child Forum, Children's Rights and the Corporate Sector- Setting a Benchmark, Stockholm, 2014 [http://globalchildforum.org/wp-content/uploads/2014/03/GCF\\_BCG\\_OK\\_FINAL2.pdf](http://globalchildforum.org/wp-content/uploads/2014/03/GCF_BCG_OK_FINAL2.pdf) 48 For more information, see UNICEF and Save the Children, 'Children's rights in policies and codes of conduct: a tool for companies', 2013, available at: [http://www.unicef.org/csr/css/Children\\_s\\_Rights\\_in\\_Policies\\_26112013\\_Web.pdf](http://www.unicef.org/csr/css/Children_s_Rights_in_Policies_26112013_Web.pdf)

49 See, <http://www.ikea.com/ie/en/this-is-ikea/people-planet/people-communities/human-rights/>. Also, IWAY Standard at [http://www.ikea.com/ie/en/doc/ikea-download-the-iway-standard-pdf\\_\\_1364299975047.pdf](http://www.ikea.com/ie/en/doc/ikea-download-the-iway-standard-pdf__1364299975047.pdf) (accessed 25 November 2015)

50 [http://www.ikea.com/ms/en\\_JP/about\\_ikea/our\\_responsibility/working\\_conditions/ preventing\\_child\\_labour.html](http://www.ikea.com/ms/en_JP/about_ikea/our_responsibility/working_conditions/ preventing_child_labour.html)

Fair Wear Foundation (FWF), an NGO that works to improve conditions for workers in garment factories, has developed a Code of Labour Practices based on ILO Conventions and the UN Declaration on Human Rights, which includes a prohibition on the use of child labour.<sup>51</sup> FWF verifies whether its member companies are complying with the Code of Labour Practices through factory audits, a complaints procedure for workers to address instances of non-compliance, and monitoring of companies' management systems.<sup>52</sup>

(3) Child rights due diligence

Civil society can get involved in companies' child rights due diligence processes to ensure that companies "identify, prevent and mitigate their impact on children's rights including across their business relationships and within global operations," have "an effective monitoring system," "publicly communicate their reports on their impact on children's rights, including regular reporting," and "make public their efforts to address child rights impacts."<sup>53</sup>

**Civil society can:**

- Identify whether the company has a business grievance mechanism compliant with international law and standards that can be accessed by children, their representatives and others where the company has caused or contributed to child rights abuses, and whether this provides effective remedies and reparation to affected children;
- Review the implementation of agreed remedies (see section 4, chapter 5(f)(2) of this guide on business grievance mechanisms);<sup>55</sup> and
- Use public pressure or official public avenues or mechanisms to try to enforce the terms of the agreement, if necessary.

**Civil society can:**

- Request and/or propose that the company has a monitoring system to track the effectiveness of the measures adopted to address the identified adverse impacts on children's rights;
- Suggest that the company create an oversight body to perform this internal review and request to take part in it, or request information on the company's progress in integrating the findings of its impact assessment;
- Monitor the company's communications to ensure that it is fulfilling its obligation to publicly and regularly report on its impacts on children's rights and efforts to address adverse impacts; and
- Advocate for mandatory public reporting by companies on due diligence processes, and get involved in drafting standards, analysing companies' reports, providing alternative reports to any regulatory body on the adequacy of the process and measures adopted by the companies, making recommendations, and establishing sanctions if necessary.



**Civil society can:**

- Help the company to identify the actual and potential children's rights impacts that it may have or contribute to through its activities, or which may be directly linked to its operations, products or services through business relationships;
- If the company is using a general human rights impact assessment (HRIA), determine if the assessment sufficiently considers the impacts of the company's operations and business relationships on specific children and groups of children who are at higher risk due to the nature of the company's activities;
  - Facilitate consultations with children and particular groups at risk to identify and assess these impacts;
  - Support the company in evaluating whether its HRIA sufficiently covers children's rights and make recommendations to adapt the HRIA accordingly; and
  - Advocate for mandatory due diligence processes by companies to ensure their compliance with children's rights.

**Civil society can:**

- Help the company understand the causes of the adverse impacts, and adopt measures to integrate the findings of the assessment across its operations and business relationships so as to prevent or mitigate such impacts;
- If the company is using a general HRIA, ensure that the provisions of the CRC and its Optional Protocols influence the company's decisions and that any plan of action and measures to prevent and/or remedy human rights abuses has "special consideration for the differentiated impact on children";<sup>54</sup> and
- Facilitate consultations with children and particular groups at risk to discuss possible solutions or good practices to prevent violations from occurring or recurring.

51 <http://www.fairwear.nl/492/labour-standards/3.-no-exploitation-of-child-labour/>.

52 <http://www.fairwear.nl/514/about/verification/>.

53 General Comment 16, paras 62-65.

54 General Comment 16, para. 63.

55 For more information, see UNICEF and Danish Institute for Human Rights, 'Children's rights in impact assessments: a guide for integrating children's rights into impact assessments and taking action for children', 2013, available at: [http://www.unicef.org/csr/css/Children\\_s\\_Rights\\_in\\_Impact\\_Assessments\\_Web\\_161213.pdf](http://www.unicef.org/csr/css/Children_s_Rights_in_Impact_Assessments_Web_161213.pdf)

## Danish Institute for Human Rights and Stora Enso

### Box 8

The Danish Institute for Human Rights works directly with companies to help them improve the human rights impacts of their operations at the global, country and project level.<sup>56</sup> In 2014, the Institute helped Nordic paper manufacturer Stora Enso to undertake a group-wide human rights assessment. The report of the results of this assessment, released in February 2015, recommends that Bulleh Shah Packaging (BSP), Stora Enso's 35 per cent-owned Pakistani joint venture, address findings in relation to child labour in the lower tiers of BSP's agricultural and waste paper supply networks, including improvements to occupational health and safety practices and working conditions and improved monitoring and prevention of excessive overtime.<sup>57</sup> According to Stora Enso, the assessment is part of the company's ongoing due diligence and the focus for 2015 will be to develop action plans based on the results and start implementing them.<sup>58</sup>

Concurrently, in December 2014, AP7, a Swedish State-run pension fund, sold its SKr 31 million stake in Stora Enso and added the company to its investment blacklist amid concerns over the supply chain of BSP, which "is reportedly contaminated with child labour." AP7 said that Stora Enso "has yet to demonstrate a credible strategy to address and work towards the elimination of child labour" in BSP's agricultural supply chain. In response, Stora Enso said that it had "dismantled" the sections of BSP's supply chain that had contained child labour. Of the 640 children found to be engaged by BSP, 125 had been put into schools and their parents compensated, although the process was stymied by opposition from other parents. It is unclear what the company did with the remaining 515 children.

## Fair Labor Association's third party complaint procedure

### Box 9

Fair Labor Association (FLA) is a collaborative effort of civil society organisations, universities and companies to protect workers' rights around the world. FLA has established a third party complaint procedure as a means for any person, group or organisation to confidentially report serious violations of workers' rights in facilities used by any company that has committed to FLA labour standards.<sup>59</sup> The complaint procedure is intended as a tool of last resort when other channels have failed to protect workers' rights. If FLA accepts the complaint for review, it contacts participating companies sourcing from the factory in question. The FLA-affiliated company has 45 days to conduct an assessment and develop a remediation plan. If warranted, the FLA may intervene by engaging a third party to investigate the allegations and recommend corrective action to the affiliated company. The company is then required to develop a plan to address any non-compliance issues.<sup>60</sup> The FLA maintains a publicly available chart tracking the progress of its investigations into recent third party complaints.<sup>61</sup>

56 <http://www.humanrights.dk/our-work/business/working-companies>

57 Stora enso Human Rights Assessment: Review and consolidated report, 2015 [http://assets.storaenso.com/se/com/DownloadCenterDocuments/0502H-RA\\_2015\\_DIHR\\_REPORT.pdf](http://assets.storaenso.com/se/com/DownloadCenterDocuments/0502H-RA_2015_DIHR_REPORT.pdf) (accessed 25 November 2015)

58 <http://www.storaenso.com/about/news/stora-enso-launches-group-wide-human-rights-assessment-results-together-with-the-danish-institute-for-human-rights>

59 <http://www.fairlabor.org/labor-standards>.

60 <http://www.fairlabor.org/third-party-complaint-process>.

61 <http://www.fairlabor.org/third-party-complaint-tracking-chart>.

#### (4) Consultations

Civil society can provide expertise and recommendations to companies in their consultations with communities that may be affected by a potential business project and, where possible, facilitate child participation where companies are seeking the views of children and considering them in decisions that affect them. NGOs can help to ensure that these processes are “accessible, inclusive and meaningful to children and take into account the evolving capacities of children and their best interests at all times”, and that participation is voluntary and occurs in a “child-friendly environment that challenges and does not reinforce patterns of discrimination against children.”<sup>62</sup>

### Kuoni and Tourism Concern

#### Box 10

In 2012, Swiss tourism company Kuoni worked with Tourism Concern, a UK-based NGO that challenges exploitation in the global tourism industry, on a pilot project assessing the human rights impacts of the company’s operations and business relationships in Kenya. Tourism Concern arranged consultations with children’s rights organisations, as well as children and their representatives. The focus group meetings with child sex workers and rehabilitated child sex workers sought to establish the factors leading to children’s involvement in sex work in the tourism sector, how they perceived the industry and government to be responding, and what needs to happen to address the situation. The interactions were facilitated by a local NGO, including a social worker, who advised on an appropriate approach and language.<sup>63</sup>

## 3. CSR activism

Aside from general awareness-raising and engagement, civil society can take more direct action to address specific children’s rights violations. If your organisation becomes aware of a specific practice of a company that potentially causes harm to children’s rights, it might consider approaching the company and its investors directly to raise your organisation’s concerns.

### a. Research the violation

It is important to first research and identify specific details of the abuses, including when, where and how they occurred or are occurring (see ‘Research the company’ below).

The identification of those responsible for the abuses is the next step. There may be many different actors involved. For example, in the case of a defective product that has caused harm to children, it may be the manufacturer of the product, but may also be the distributor and retailer. The product itself may have multiple components, produced by several companies that could be responsible. Multinational corporations (MNCs) may have multi-layered operations as well as several subsidiaries. Harm caused by one company in one country may actually be traced to a parent company headquartered in another country. A violation that may appear to be committed by a State may also implicate a company in some capacity, for example, as a private contractor or supplier.

Researchers should check the company’s website as well as other online sources including news articles and investor information about the company.

### b. Research the company

The next step is to research some basic information about the company, including its Chief Executive Officer (CEO) or Managing Director and CSR manager, where available, and the contact details for the company and these relevant persons.

Companies usually have statements about their mission and values. Increasingly, companies also have codes of conduct, human rights statements and other policy documents pertaining to their principles, ethics, standards and practices, including on the environment, health and safety. Companies may also subscribe to and report under international guidelines and initiatives such as the UN Guiding Principles on Business and Human Rights and the UN Global Compact. Companies may publicise CSR reports on their business operations and have CSR managers. This information can be used to gauge the company’s and relevant persons’ interest in upholding human rights, including children’s rights, and can also be used as a benchmark to hold the company to account to its own commitments.

<sup>62</sup> General Comment 16, para. 23.

<sup>63</sup> [http://www.kuoni.com/docs/assessing\\_human\\_rights\\_impacts\\_0\\_0.pdf](http://www.kuoni.com/docs/assessing_human_rights_impacts_0_0.pdf)

Thorough research into the company's specific operations that may be responsible for the violation is needed. These details include the location(s) of the operations where the violation took place (e.g. manufacturing plants, plantations, schools, immigration detention facilities, prisons); what the company is specifically doing there (e.g. extracting a particular mineral or harvesting a particular plant using child labour or child slavery, testing a particular drug on children without their consent, unlawfully detaining children or subjecting them to torture or cruel, inhuman or degrading treatment or punishment, causing or contributing to environmental damage that affects a particular community); the period in which they have been doing this; and how they are doing it (e.g. with the assistance of X State or Y investor, employing Z number of people).

It may be also necessary to do some background research into the company's history, including any questionable practices, warnings or fines from regulatory bodies (e.g. environment, health and safety boards), prosecutions or other lawsuits that might be relevant to the abuses under investigation and the general approach and ethos of the company.

Much of this information can be found on the company's website and other online sources including news articles and investor information about the company.

### c. Research the investors

Additionally, it might be useful to research the company's investors and compile contact details and background information on these investors. This list may consist of investment banks, private equity firms and other companies, as well as government investment funds, public and private pension funds, ethical investors and individuals in some cases. The research should reveal which investors may have an interest in upholding children's rights and practising socially responsible investing - that is, investment that considers not just financial return but also the social good and encourages corporate practices that promote issues such as human rights, the environment, and social justice.

Much of this information can be found on the investors' websites and other online sources including news articles.

### d. Write to the company

Once the research is done, the concerns about a company's practices should be raised by first approaching the company directly. This could involve writing to the CEO, Managing Director, CSR Manager or other relevant person in the company who may be responsible for overall operations. The letter should outline the specific details of the practice causing concern, and how it impairs children's rights, as well as any principles and ethics expressed in the company's mission statement, code of conduct or other relevant document or provisions of external guidelines that the company has subscribed to. The letter should then set out a specific request, inviting the company to engage in a dialogue with civil society and offering civil society expertise to assist in working with the company to stop and address the violation and change its practices. This will hopefully initiate a working relationship with the company in which civil society groups can guide the process of reviewing and reforming the company's practices.

## Pharmaceutical companies, Reprieve, and the US lethal injection

Box 11

Up until 2011 Danish pharmaceuticals manufacturer Lundbeck had been producing a drug called pentobarbital that was being distributed to US prisons for use in lethal injections. Lundbeck had said it did not control the distribution of the product, and that there were no viable steps it could take to prevent misuse of the drug, short of withdrawing it from the market. UK anti-death penalty organisation Reprieve approached Danish pension funds and other investors to prompt Lundbeck to halt the use of pentobarbital in US executions. In May 2011 Unipension sold its entire shareholding in Lundbeck, citing its dissatisfaction with the way Lundbeck had handled the misuse of pentobarbital. Other pension funds in the country also entered into discussions with Lundbeck over the matter. Responding to pressure from investors, in July 2011 Lundbeck implemented new distribution controls and, since then, no further supplies of manufactured pentobarbital have been sold to prisons for use in lethal injections, forcing states across the United States to halt executions or change their protocols. Since then, Reprieve has worked closely with several other pharmaceutical companies that have taken similar steps to ensure their products are not sold to prisons for use in executions, including Fresenius Kabi/APP, Sun Pharma, Naari, Kayem, Par Pharmaceuticals, Hikma, Merck, Sandoz, Tamarang, and Siegfried.<sup>64</sup>

64 For more information, see <http://www.ipe.com/pension-funds-pressure-company-to-stop-use-of-drug-in-us-executions/41323.fullarticle> and <http://www.reprieve.org.uk/case-study/the-slip-story/>.



#### e. Write to the investors

If the company fails to respond to the request or is unwilling to engage, a letter addressed to the company's investors might prompt action by the company. The letter should outline the specific details of the abuses and the fact that the company has failed to stop it. You should also state that the investor's continued investment in the company implicates it in the violation. The letter may ask the investor to consider divesting from the company, that is, removing its stockholding in the company based on an ethical objection to the company's conduct. If an investor is socially and ethically concerned, it would usually raise the issue with the company directly before considering divestment. It may only take one shareholder - even one with a relatively small investment - to divest or threaten to divest, in order to encourage the company to reconsider its actions.

#### f. Use the media

To maximise public awareness of the company's conduct or an investor's complicity, civil society organisations should consider approaching a journalist to write an article "naming and shaming" the company or investor. This could be about the company's practices or failure to change its practices, the involvement of an investor in funding company's practices, or an investor divesting (or threatening to divest) from a company due to its practices.

Timing will be important. Care must be taken so as not to put a company or investor offside if progress is being made, or if a working relationship with the company is being sought. The targeted audience will also be important, i.e. an audience that could influence the company or investor's actions. Find a media outlet that could effectively reach that audience, such as a national newspaper and/or a journalist with an interest in children's rights, human rights generally, or corporate social responsibility.

Organisations may also consider preparing a press release to highlight the issue to be reported on, which you can pass on to a journalist. The press release should be simple, factual, short, accurate and include your organisation's contact details. For more information on working with journalists and how to write a press release, see CRIN's media toolkit.

To raise awareness and general support, the issue may also be highlighted in a newsletter or an article for an organisation's newsletter.

Social media, such as Twitter and Facebook, is also an effective tool that NGOs can use to raise public awareness of an issue or target companies for their abuses or investment in abuses.

## 4. Shareholder activism

Shareholder activism involves the exercise of powers by shareholders as owners of the company to influence its behaviour. Although this term does not exclusively refer to activism to uphold human rights, it is increasingly being used by NGOs acting in the public interest, such as those with environmental, social or ethical agendas. For example, activist shareholders might call on a company to reduce its carbon emissions, improve labour standards, divest from a particular country or industry or adopt corporate human rights policies.

### Business & Human Rights Resource Centre's company response process

Box 12

The Business & Human Rights Resource Centre invites companies to respond to allegations of misconduct raised by civil society, when the Centre finds no evidence that they have otherwise responded to the concerns. This process encourages companies to publicly address human rights concerns, and provides the public with both the allegations and the company's comments in full. In some cases this process helps to bring about resolution of the issues. In other cases it has led to dialogue between the company and those raising the concerns.<sup>65</sup> The Centre's company response process serves as an accessible, informal complaints mechanism in the absence of an effective international mechanism.<sup>66</sup> This process was used to target sulphur dioxide emissions from cruise ships, one of the major causes of air pollution in Hong Kong which has serious health impacts on the 280,000 citizens, especially children. In 2013 the Centre invited Royal Caribbean to respond publicly to a call by Friends of the Earth HK (FoE) to switch to low sulphur oil. It explained that the response would be public on the Centre's website and sent to all Weekly Update subscribers. FoE had been calling on Royal Caribbean to make the switch for six months but the company had not responded. Following pressure from the Business & Human Rights Resource Centre, the company did respond, and said that the ship would switch to low sulphur oil while docked in Hong Kong.<sup>67</sup>

<sup>65</sup> <http://business-humanrights.org/company-response-rates>.

<sup>66</sup> <http://business-humanrights.org/sites/default/files/documents/Examples-of-impact-full-Jan-2015.pdf>

<sup>67</sup> Ibid.

## a. Types of activities

Shareholder activism includes the following activities:

- “Voting with one’s feet” (divesting);
- Private discussions or public communications with corporate boards and management;
- Press campaigns, blogging and other e-ways of public “naming and shaming”;
- Whistle-blowing to regulators;
- Openly talking to other shareholders, putting forward shareholder resolutions, calling shareholder meetings, and seeking to replace individual directors or the entire board; and
- Interventions during annual general meetings.<sup>68</sup>

### Norges Bank Investment Management

**Box 13**

Norges Bank Investment Management (NBIM), which manages the world’s largest sovereign wealth fund, the Norwegian Government Pension Fund Global, has six focus areas of its responsible investment,<sup>69</sup> including children’s rights.<sup>70</sup> NBIM owns stakes in about 8,700 companies worldwide and has in the past few years stepped up its efforts to be a more active investor by establishing a dialogue with company chairpersons and seeking to influence the choice of directors of companies,<sup>71</sup> as well as voting at shareholder meetings and filing shareholder proposals. Additionally, in consultation with NGOs and the International Labour Organisation, it has developed the ‘NBIM Investor Expectations on Children’s Rights’, which outlines its expectations that companies, amongst other things, eliminate the worst forms of child labour and promote children’s rights in their operations and supply chains based on the CRC.<sup>72</sup> NBIM annually assesses the extent to which the companies it invests in meet these expectations and publishes the results in compliance reports.<sup>73</sup> In its first report on responsible investment released in 2015, NBIM stated that it called on UK retailer Sports Direct, Chinese textile group Far Eastern New Century and Spanish food producer Viscofan to improve their reporting on children’s rights.<sup>74</sup>

### Joseph Rowntree Charitable Trust

**Box 14**

The Joseph Rowntree Charitable Trust has been involved in significant shareholder engagement activity, which in some cases has led to it selling some of its investments. Recently, it was part of a coalition that held talks with the sportswear manufacturer Adidas over the working conditions in some of its supplier factories in Indonesia. This engagement led to an improvement in supply chain practices. Other actions in recent years have included engaging with the publishing company Reed Elsevier over its involvement in arms exhibitions, and with the mining firm Vedanta over human rights issues. In both cases, the charity sold its shareholding because its trustees did not feel the companies were moving quickly enough to address concerns, or felt that progress had stalled altogether.<sup>75</sup>

68 Shareholder Activism <http://www.ecgi.org/activism/>

69 For more information consult <http://www.nbim.no/en/responsibility/responsible-investments/childrens-rights/>

70 <http://www.nbim.no/globalassets/brochures/childrensrights.pdf?id=2813>

71 Norway’s oil fund plans to turn active, <http://www.ft.com/cms/s/0/e6e2b6fa-0036-11e3-9c40-00144feab7de.html#axzz3Sa9ZHqNF>

72 <http://www.nbim.no/en/responsibility/responsible-investments/childrens-rights/>

73 <http://www.nbim.no/en/responsibility/responsible-investments/childrens-rights/childrens-rights-risk-assessment/>

74 <http://www.nbim.no/globalassets/reports/2014/responsible-investment-report/responsible-investment-2014.pdf>

75 <http://www.thirdsector.co.uk/rise-shareholder-activism/finance/article/1187186>

76 For a guide on AGM interventions, see FairPensions. A Guide to Shareholder Resolutions in the UK, London, 2011

[http://www.shareaction.org/sites/default/files/uploaded\\_files/whatyoucando/ShareholderResolutionGuide.pdf](http://www.shareaction.org/sites/default/files/uploaded_files/whatyoucando/ShareholderResolutionGuide.pdf) (accessed 31 July 2015)

## b. Interventions at Annual General Meetings

A shareholder or proxy's concerns about a company's practices may be raised during its Annual General Meeting (AGM). Generally speaking, publicly listed companies are required by law to hold AGMs. These meetings provide an opportunity for a company's shareholders to hold its directors to account, and are increasingly being used by NGOs to put their issues on the company's agenda. This can be done by doing media work leading up to the AGM, holding a press conference outside the AGM, or attending the AGM to put a question directly to the company's directors. To gain access to an AGM, you need to be a registered shareholder, or a proxy who is appointed by the shareholder to attend in their place.

Information about a company's AGM is made available to shareholders of the company, and may also be found online on the company's corporate website.<sup>76</sup>

### Shareholder intervention at Shell's AGM

Box 15

At the 1997 AGM of oil and gas company Royal Dutch Shell, institutional and private investors, with the support of the Ecumenical Council on Corporate Responsibility, Amnesty International and WWF, filed a resolution highlighting concerns over Shell's human rights abuses and environmental destruction in the Niger Delta. The resolution requested that the company designate responsibility for the implementation of environmental and corporate responsibility policies to a named member of the Committee of Managing Directors; establish effective internal procedures for the implementation and monitoring of such policies; establish an independent external review and audit procedure for such policies; report to shareholders regularly on the implementation of such policies; and publish a report to shareholders on the implementation of such policies in relation to the company's operations in Nigeria by the end of 1997. In response, the Chairman of the Committee of Managing Directors was designated as responsible for the implementation of environmental and corporate responsibility policies, and a Social Investment Committee and Social Responsibility Committee were formed. Shell subsequently amended its Statement of General Business Principles to include human rights and sustainable development and published its first report on health, safety, and environmental activities. Shell Petroleum Development Company (the joint venture operating in Nigeria) also produced a report for the 1997 AGM on its controversial activities in Nigeria.<sup>77</sup>

### IBFAN's intervention at Nestlé's AGM

Box 16

The International Baby Food Action Network (IBFAN) regularly speaks out about Nestlé's practices that impact on children's rights during its AGMs. At Nestlé's AGM in 2015, the Geneva Infant Feeding Association (IBFAN-GIFA) drew attention to the movie *Tigers* (based on the story of the former Nestlé's sales representative for baby foods, Mr Aamir Raza, who resigned after becoming aware of the adverse impact of infant formula on children's health). IBFAN-GIFA called Nestlé's advertising deceiving, and urged the company to bring its policies and practices into line with the International Code of Breastmilk Substitutes.<sup>78</sup>

Baby Milk Action/IBFAN UK (BMA) also asked Nestlé Chairman, Mr Peter Brabeck, to change company policies that idealise breastmilk substitutes and endanger health. It argued that children fed on formula are more likely to become sick than breastfed babies and, in conditions of poverty, more likely to die. A 2014 report from the Bangladesh Paediatric Association was cited as a source of evidence of deaths of babies fed on formula. Nestlé's Chairman and its Head of Nutrition reportedly told shareholders the company enforces its own marketing policies. BMA claims these policies allow 90 per cent of the violations of the UN minimum standards. Company managers claim their formula milk is a "gentle start" and a "growth engine". Baby Milk Action informed shareholders that Nestlé was voted the "least ethical company of the past 25 years" by readers of *Ethical Consumer Magazine* in 2014, it is the target of a boycott over its baby milk marketing, and its California water bottling operations are accused of "water stealing".

There were 2,446 shareholders present to hear the intervention, representing 73.5 per cent of voting rights. IBFAN was the only campaign group raising concerns about Nestlé's business practices.<sup>79</sup>

<sup>76</sup> For a guide on AGM interventions, see FairPensions. A Guide to Shareholder Resolutions in the UK, London, 2011 [http://www.shareaction.org/sites/default/files/uploaded\\_files/whatyoucando/ShareholderResolutionGuide.pdf](http://www.shareaction.org/sites/default/files/uploaded_files/whatyoucando/ShareholderResolutionGuide.pdf) (accessed 31 July 2015)

<sup>77</sup> Nigeria: Corporate social responsibility, <http://www.mondaq.com/x/10724/Environmental+Law/Corporate+Social+Responsibility>.

<sup>78</sup> <http://breastfeedingandhr.blogspot.ch/2015/04/at-nestles-latest-annual-general.html>

<sup>79</sup> <http://www.babymilkaction.org/archives/3512>



## 5. Monitoring and reporting

### a. How to monitor business and children's rights

"Monitoring" is "a broad term describing the active collection, verification and immediate use of information to address human rights violations."<sup>80</sup> This may comprise gathering information about instances of non-compliance with international law and standards (e.g. the International Code of Marketing of Breast-Milk Substitutes and subsequent

World Health Assembly (WHA) resolutions),<sup>81</sup> incidents (e.g. clashes between communities and company security personnel), events (e.g. trials, demonstrations against business operations), sites (e.g. mining or oil camps or company premises), discussions with government authorities (e.g. those in charge of mining, energy, security or the environment) to obtain information and to pursue remedies and other immediate follow-up.

Civil society can monitor business operations and relationships to detect risks to and infringements of children's rights. It is essential that they also monitor States' efforts to comply with their obligation to respect, protect and fulfil children's rights in relation to business operations. In many instances reporting may be a necessary part or a complement to monitoring.

There are various domestic and international monitoring mechanisms and opportunities. Likewise there are various opportunities to prepare and present reports on your own monitoring efforts.

Monitoring can be done in different ways and in various contexts. It can feed into or cover CRIA processes and compliance with law and policies by government agencies and authorities, including labour, education and health and safety inspectorates, taxation authorities, economic and financial authorities or national human rights institutions. At the international level, monitoring the compliance of States with their international law obligations contributes to the work of international mechanisms such as the UN Committee on the Rights of the Child, the UN Human Rights Council and its Universal Periodic Review, UN working groups or Special Rapporteurs.

#### Box 17

### Monitoring States' implementation of and companies' compliance with the International Code of Marketing of Breast-milk Substitutes and subsequent WHA resolutions

As part of its project of global monitoring, the International Code Documentation Centre (IBFAN-ICDC) publishes periodic reports and updates on the state of national implementation of the International Code of Marketing of Breast-milk Substitutes and subsequent WHA relevant resolutions all over the world.<sup>82</sup>

In addition, IBFAN-ICDC regularly publishes 'Breaking the Rules' reports which detail global marketing trends by baby food manufacturers and expose their violations of the International Code and subsequent WHA resolutions. The latest 'Breaking the Rules' report, published in 2014, contains 813 entries from 81 countries and covers 27 companies.<sup>83</sup>

Based on this evidence, IBFAN national groups, in collaboration with the liaison office in Geneva (IBFAN-GIFA), prepare alternative reports to the CRC Committee. In 2014, 16 alternative reports on the situation of infant and young child feeding have been submitted.<sup>84</sup> The CRC Committee has raised questions on breastfeeding-related issues in most of its country reviews and has issued direct recommendations on breastfeeding to 11 countries (i.e. 65 per cent of the countries reviewed so far).<sup>85</sup>

80 OHCHR, Training Manual on Human Rights Monitoring, p. 9, <http://www.ohchr.org/Documents/Publications/training7Introen.pdf> (accessed 17 March 2015)

81 Incorporated in the GC 16 at para 57

82 See <http://www.ibfan-icdc.org/index.php/news/state-of-the-code>

83 See the executive summary [http://www.ibfan-icdc.org/files/1\\_Preliminary\\_pages\\_5-2-2014.pdf](http://www.ibfan-icdc.org/files/1_Preliminary_pages_5-2-2014.pdf)

84 See <http://ibfan.org/reports-on-the-un-committee-on-the-rights-of-the-child>

85 See <http://breastfeedingandhr.blogspot.ch/>

## b. Reporting on violations of children's rights

### *State reporting to the UN Committee on the Rights of the Child*

Civil society can assist and participate in the process of preparing a State's report to the UN Committee on the Rights of the Child. States may arrange direct consultations with interested organisations to collect information in order to prepare the report or during its preparation so as to receive comments, remarks or input on the text. Civil society can also take the initiative to organise meetings with State representatives to discuss the draft report before it is sent to the Committee.

### *Civil society reporting to the UN Committee on the Rights of the Child*

Parallel reporting is also an important tool for civil society to inform the Committee on the situation of children's rights in the context of business activities and operations in a given country. The Committee allows the submission to it of specific, reliable and objective information from non-state actors, including NGOs and children. NGOs and other groups that work directly with children and those that work in the area of business and children's rights can provide useful information and formulate proposed recommendations that the Committee may consider in its own examination of the State report.

Several NGOs that work in the field of children's rights provide advisory and capacity-building assistance to national NGOs and other groups to prepare parallel reports to the Committee.<sup>86</sup> These reports may focus on issues not mentioned, or covered insufficiently, by governments in relation to the measures undertaken to protect children from business abuses inside their country and transnationally. In this context, GC 16 may be used as guidance for reporting.

The Committee has published reporting guidelines that call on States parties to the CRC, OPAC and OPSC to provide information on the impact of business operations on children's rights.

### Box 18

#### Committee on the Rights of the Child's Guidelines for State reporting on business impacts

"[T]he State party should include relevant and updated information in relation to the Convention [on the Rights of the Child] and its Optional Protocols, as applicable, in particular on...[e]fforts undertaken or foreseen to make reports and concluding observations widely available to the public at large, to civil society, business organizations and labour unions, to religious organizations, the media, and others as appropriate..."<sup>87</sup>

"States parties are requested to provide information on whether the impact of activities by business corporations (extractive, pharmaceutical, agro-industry, among others) likely to affect the enjoyment by children of their rights are evaluated and whether measures are taken to investigate, adjudicate, repair and regulate."<sup>88</sup>

<sup>86</sup> For instance, Child Rights Connect: <http://www.childrightsconnect.org/connect-with-the-un-2/crc-reporting/>

<sup>87</sup> The Committee has adopted Treaty-specific guidelines regarding the form and content of periodic reports to be submitted by State parties under article 44, paragraph 1 (b) of the CRC to facilitate and standardize the reporting process. In these guidelines, the Committee specifies that State party reports should be limited to 60 pages, with information organized into the following clusters: General measures of implementation (Article 4, 42, 44 paras. 6); Definition of the child (Article 1); General principles (Article 2, 3, 6 and 12); Civil rights and freedoms (Article 7, 8, 13-17, 28.2, 37(a) and 39); Family environment and alternative care (arts. 5, 9-11, 18 (paras. 1 and 2), 19-21, 25, 27 (para. 4) and 39); Disability, basic health and welfare (arts. 6, 18 (para. 3), 23, 24, 26, 27 (paras. 1-3) and 33); Education, leisure and cultural activities (arts. 28, 29, 30 and 31); and Special protection measures (arts. 22, 30, 32-36, 37 (b)-(d), 38, 39 and 40)... see para. 19, CRC/C/58/Rev. 3, March 3, 2015.

<sup>88</sup> *Ibid.*, para. 20.

## The International Commission of Jurists' report on the Netherlands

### Box 19

The ICJ submitted information to the UN Committee on the Rights of the Child in preparation for the Committee's examination of the fourth periodic report of the Netherlands under the CRC. During its pre-sessional working group meeting in September 2014, the Committee adopted a 'List of Issues' for the examination in May to June 2015 of the fourth periodic report of the Netherlands. To assist the Committee in preparation of its List of Issues, the ICJ's submission raised issues concerning:

- The financing of development projects abroad by Dutch financial institutions; and
- The existing legal framework in the Netherlands pertaining to the responsibility of Dutch parent companies for the impairment of the enjoyment of children's rights as a consequence of the conduct of subsidiaries operating abroad.<sup>89</sup>

In its concluding observations to the Netherlands, the Committee, recalling GC 16, addressed the issues identified by the ICJ and recommended that the Netherlands adopt regulations to ensure companies under its jurisdiction do not negatively affect human rights or endanger environmental and other standards, especially those relating to children's rights; provide effective monitoring, sanctioning and remedies; and require companies to assess and disclose their impacts on human rights and their plans to address them.<sup>90</sup>

## The Global Initiative on Economic, Social and Cultural Rights' report on Morocco

### Box 20

The Global Initiative and the Moroccan Coalition for Education prepared a parallel report in 2014 for the UN Committee on Economic, Social and Cultural Rights' preparation of a list of issues on Morocco.<sup>91</sup> It highlighted that a policy and legal trend towards privatisation of education in Morocco is causing growing inequality in access to education and threatening the realisation of the right to education, an obligation of Morocco under the International Covenant on Economic, Social and Cultural Rights. The parallel report recalled the CRC and the statement in GC 16 that States must ensure that the provision of essential services by private actors "does not threaten children's access to services on the basis of discriminatory criteria."<sup>92</sup>

### Monitoring the implementation of the Committee's concluding observations

Civil society can play a critical role in holding governments accountable for the implementation of the recommendations made by the UN Committee on the Rights of the Child in its concluding observations after the examination of State reports.

States are regularly requested to disseminate the Committee's concluding observations. Civil society can help in the dissemination of the Committee's recommendations regardless of State action in this respect. NGOs may consider establishing networks or coalitions to monitor the implementation of recommendations and provide the Committee with regular updates. Coalitions can also serve as a platform to lobby and exercise greater pressure on governments to implement concluding observations.

NGOs can request meetings with relevant authorities to advocate for the swift implementation of the Committee's recommendations and obtain information about government strategies to implement recommendations. NGOs can suggest the establishment of a plan and provide contributions so that the plan has a timeframe, budgetary measures, priorities, consultation and ongoing dialogue with stakeholders, civil society and children, and a focal point within the government to implement the concluding observations and oversee the process.

89 <http://www.icj.org/icj-list-of-issues-submission-on-the-netherlands-to-the-committee-on-the-rights-of-the-child/>

90 Concluding Observations on the fourth periodic report of the Netherlands, CRC/C/NLD/CO/4, 8 July 2015, paras 22- 23 [http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NLD/INT\\_CRC\\_COC\\_NLD\\_20805\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CRC/Shared%20Documents/NLD/INT_CRC_COC_NLD_20805_E.pdf) 91 <http://globalinitiative-escr.org/wp-content/uploads/2014/01/10.12.13-GI-ESCR-Parallel-Report-CRC-Morocco-FINAL.pdf>

92 Ibid. para. 18

## Monitoring implementation of Concluding Observations in India

The Centre for Organisation, Research and Education (CORE) is an indigenous peoples' NGO in Manipur state, North East India, where around four per cent of the country's people live. The CRC Committee discussed India's report at its 23rd session in February 2000, and CORE had also filed its alternative report.

CORE has used the Committee's recommendations for monitoring the implementation of the government's obligations at both the state and national levels. It has assessed the impact of policies and programmes on indigenous children and on children in armed conflict situations and compared them to the recommendations. The findings have also been passed to children to encourage them to form their own views about the government's performance, and also to become familiar with the international community and how it works. CORE's views are acknowledged at the regional government level, but CORE has found that there has been limited progress in improving the status of indigenous children. NGO parallel reports and the Committee's concluding recommendations after the second review of India in 2004 shows the government's failure to fully address the problem and the Committee's recommendations.<sup>93</sup>

### *Reporting to the UN Working Group on Business and Human Rights*

Established by the UN Human Rights Council, 'Special Procedures' can receive, within their mandates, information on alleged violations and abuses of human rights. They may take action on cases relevant to their mandates by communicating directly with States and other stakeholders (including companies) on behalf of victims. As part of their work, they can also publish press releases on high-profile cases and substantial issues.

The Working Group on Business and Human Rights has, within its mandate, the capacity to "seek and receive information from all relevant sources, including Governments, transnational corporations and other business enterprises, national human rights institutions, civil society and rights-holders".<sup>94</sup> Civil society organisations can bring information to the attention of the Working Group and approach it on alleged violations on children's rights by business enterprises. The Working Group can act in light of the information received and address emblematic cases, where the result could be applied to a number of other similar situations around the world. The Working Group can also directly engage with victims of such violations during its official country missions.

Possible civil society actions include:

- Providing the Working Group or other similar mechanisms with information of cases where the State has contributed to or failed in protecting children from violations of their rights by business enterprises;
- Providing children with information on this mechanism; and
- Assisting children in accessing this mechanism and reporting to the Working Group.

<sup>93</sup> The Use of Concluding Observations for Monitoring the Implementation of the Convention on the Rights of the Child: The Experiences of NGO Coalitions in Nine Country Case Studies, CRIN, 2005, p. 14. <http://www.childrightsconnect.org/wp-content/uploads/2013/10/WPCConcludingObs.pdf>

<sup>94</sup> Human Rights Council resolution A/HRC/17/4, paragraph 6(b).

## 6. Strategic litigation: Courts and other complaints mechanisms

### a. What is meant by strategic litigation?

Strategic litigation is much more than simply stating a case before a judge. This section introduces some of the broader goals of strategic litigation, as well as some of the more important considerations that should be addressed before entering the courtroom.<sup>95</sup>

#### (1) Goals of strategic litigation

Strategic litigation, sometimes also called impact litigation, involves selecting and bringing a case to the courtroom with the goal of prompting broader changes in society. Those who bring strategic litigation want to use the law to leave a lasting mark beyond just winning the case at hand. This means that strategic litigation cases are as much concerned with the effects that they will have on larger populations and governments as they are with the end result of the cases themselves.<sup>96</sup>

Through filing lawsuits, advocates for social justice can use the courts to bring about legal and social change. This is often part of an overall advocacy campaign designed to raise awareness on a particular issue or promote the rights of a disadvantaged population. Many groups or individuals who bring strategic litigation also seek to convince others to join their cause, or to influence the government to change its laws. When it is successfully used, strategic litigation can bring ground-breaking results for children's rights.

It is, however, important to note that strategic litigation is very different from more traditional ideas of legal services. Strategic litigation is focused on changing policies and broader patterns of behaviour.

Strategic litigation is a creative and powerful means of advocacy, but it may not always be the best or most appropriate option. The clearest goal of strategic litigation is to alter the existing laws that govern a jurisdiction. Whether that is through enforcing laws already in place, clarifying laws that remain untested, challenging laws which violate children's rights you believe should be repealed, or building a body of new law, strategic litigation aims to use the power of the courts to defend and promote human rights and to change the way that laws and practises control behaviour in a society.<sup>97</sup>

Strategic litigation can be an excellent tool for advocacy and advancing a cause or goal, and a single case can have a dramatic impact. Advocacy inside the courtroom is only one part of strategic litigation. Your case gives you an opportunity to send your message out to the media, the public and the governing forces. It can bring a cause or issue into the limelight, sometimes at far less expense than an overall media campaign. This attention can raise general awareness and foster public discussion and debate. Given the open and public nature of most courtroom proceedings in many jurisdictions, it can also provide an excellent opportunity for media coverage surrounding all parties and organisations involved to gather momentum behind a cause. Changing public attitudes can be instrumental to any victories achieved being felt on the ground. Strategic litigation also creates a record of the injustices that underlie a case for all to see. Even if you lose, you can still highlight these injustices and potentially lay a foundation for future efforts to succeed.<sup>98</sup>

Strategic litigation can also educate the courts and legal professionals about a cause and the way that laws have brought about or failed to remedy the problem. As awareness spreads, a case may even lead to the introduction of formalised training programmes both inside and outside the courtroom.

#### (2) Strategic litigation and children

Before starting strategic litigation, there are many things to consider: the legal issues at stake, the goals, who can bring the case, whether a person different from the victims can bring the case, where the case can be brought, and how to see the case through.

Seeing rights enforced in the justice system is empowering, and strategic litigation can be an exciting and rewarding journey for children. However, it can also be a long, involved and even painful process, and it may prove difficult for children to be taken seriously in court.

<sup>95</sup> CRIN, Guide to Strategic Litigation, p. 6-7, available at: <https://www.crin.org/en/guides/legal/guide-strategic-litigation/what-strategic-litigation> and [https://www.crin.org/docs/Childrens\\_Rights\\_Guide\\_to\\_Strategic\\_Litigation.pdf](https://www.crin.org/docs/Childrens_Rights_Guide_to_Strategic_Litigation.pdf)

<sup>96</sup> Ibid.

<sup>97</sup> Ibid., p. 40.

<sup>98</sup> Ibid., p. 41.

When considering whether to bring a case on behalf of or otherwise involving children, there should be thorough consideration of the likely impact this will have on the judicial process and, perhaps more importantly, the ways in which it might affect those children's lives. Many particular concerns are addressed throughout this guide, although these are by no means the only challenges that may be faced in bringing strategic litigation to advance or enforce children's rights.<sup>99</sup>

## b. What roles can civil society and NHRIs play?

Many, if not most, NGOs are not fully equipped to run large-scale strategic litigation cases without assistance. If a case is to be filed in a location beyond commuting distance from an NGO's headquarters or field office, it may be very difficult to bring that case without local representation. However, NGOs without the resources to bring their own cases can still be heavily involved in strategic litigation. They can identify potential plaintiffs and cases; manage and advise on active lawsuits; publicise case progress and the eventual results; monitor the enforcement of judicial decisions; and advocate for the cause behind the litigation in other ways.<sup>100</sup>

People and organisations who are not directly involved in the case, but have an interest in it, can be brought in to participate. These people and organisations should be identified, and there should be a clear objective for their involvement. If they are interested, it may be possible to pool resources to work on the case together. For example, legal advisers, local NGOs, or experts in the field can be consulted to help in the formulation of the legal strategy, provide useful evidence, gather support in the community, or simply give general feedback and encouragement. Due to the fact that there might be sensitive or confidential information at stake, any potential third party to be consulted should first be authorised or vetted by the prospective plaintiffs and their lawyers.<sup>101</sup>

National human rights institutions (NHRIs), commissions or human rights ombudspersons, or their equivalent children's ombudspersons or commissions on children's rights matters, can play a very useful role in the development of a legal strategy. For the UN Committee on the Rights of the Child, "national human rights institutions can be involved, for example, in... conducting public inquiries into large-scale abuses, mediating in conflict situations and undertaking legislative reviews to ensure compliance with the Convention."<sup>102</sup>

Several NHRIs in the world have the mandate to receive complaints and conduct investigations, issue recommendations and ensure redress. In addition, because of their role in the promotion and protection of human rights at the national level, NHRIs can advise and support victims of abuse to bring their complaints to judicial bodies, or otherwise contribute to judicial proceedings with evidence and documentation. Prospective child plaintiffs and/or representatives should contemplate establishing alliances or coordinating with NHRIs.

### Examples of NHRIs in inquiry proceedings

#### Box 22

The **Kenya** National Human Rights Commission launched a public inquiry into community displacements resulting from the coastal salt manufacturing industry. The Commission uncovered numerous human rights violations and abuses, including issues related to harassment, inadequate compensation, corruption, poor labour conditions and pollution; identified the roles and responsibilities of all public and private sector actors involved; and issued targeted recommendations to both government and businesses. In addition, the Commission proactively organised consultations with local communities to inform them of their rights and discuss the potential impacts of future business projects.<sup>103</sup>

The **South Africa** National Human Rights Commission received a complaint concerning the abuses committed by security forces during the protests at the Marikana mining site, but because an official Commission of Inquiry on those events had been appointed, the NHRI decided to wait until that inquiry concluded. The NHRI participated in the inquiry process by submitting evidence and information, and showed satisfaction at the Commission of Inquiry's conclusions.<sup>104</sup> The submissions by the NHRI proved instrumental in the achievement of those conclusions.

99 Ibid.

100 Ibid., p. 22.

101 Ibid.

102 General Comment no. 16, para. 76

103 The Report of the Malindi Inquiry is available at <[http://www.knchr.org/Portals/0/Reports/Malindi\\_Inquiry.pdf](http://www.knchr.org/Portals/0/Reports/Malindi_Inquiry.pdf)>, accessed 17 October 2014.

104 <http://www.sahrc.org.za/home/index.php?ipkContentID=114&ipkMenuID=95> accessed 31 July 2015



### c. What are the difficulties with strategic litigation?

One of the main reasons to bring strategic litigation is to set a precedent for similar cases to succeed in the future. The impact the case will have varies depending on the legal system in place in the jurisdiction. If the case is likely to have little value for future plaintiffs, it may be better to reconsider filing it. In jurisdictions that rely heavily on precedent, a case may not have a great impact unless the highest court available hears it. Because of the different ways that judicial appeals work, it may not always be possible to get a judgment from the highest court. If the case is lost, it may set a bad precedent and build roadblocks for future cases. Losing can reinforce or strengthen a harmful law or practice, only making matters worse. On the other hand, a clearly unjust loss may be helpful to the cause overall.<sup>105</sup>

Strategic litigation can be a very expensive undertaking and a costly way of launching an advocacy campaign or bringing attention to an issue. Legal fees and expenses can be difficult to predict, and may easily become prohibitive. In addition, the plaintiff may also be responsible for the winning parties' expenses if they lose the case. If affordable counsel or volunteer lawyers cannot be found to handle your case, other forms of advocacy that are less expensive or more stable and predictable should be considered.<sup>106</sup>

Understandably, plaintiffs in strategic litigation can be less than ideal clients to begin with. Some may be afraid, inconsistent in their statements, have few resources, and lack the knowhow to fully understand the legal process. Particularly where there are many of these plaintiffs involved, it may not be easy to run and manage the case. Lawyers are another potential source of conflict, and sometimes their legal advice or recommendations may be ignored and the NGO may prefer to maintain more direct control over the advocacy strategy.

Where the courts are not truly independent from the government, it may not be worth bringing strategic litigation in an effort to change the way the law works. Instead, it might make more sense to avoid the hassle and expense of the courtroom and put efforts toward convincing the ruling government to change its laws, policies, or practices directly.<sup>107</sup>

As is the risk with any lawsuit, the outcome cannot be guaranteed. Even if won in the courtroom, the case may have little impact on the ground if there is no system in place to enforce the judgment or resulting new rights, laws, practices or policies. A judgment from the court may not necessarily reflect public opinion, and there may be little support on the ground for change. If there is widespread opposition, the government may even overturn the result by instituting or enacting a new rule or law. If the case is likely to have little impact in the community or jurisdiction, trying other methods of advocacy to build support and lay a foundation for change should be considered.<sup>108</sup>

### d. Bringing strategic litigation

Not all cases provide a good basis for strategic litigation and it may not always be necessary to file a case to reach a goal or further a cause. In general, litigation can be a costly and time-consuming process. In some instances, it may make sense to reserve filing lawsuits for people or governments who have been resistant to all other forms of change.

There are many factors to consider in deciding whether or not to bring a case:

- Is there a legal issue involved that exemplifies or relates to a broader social or societal problem?
- Would a court decision be able to address that problem?
- Would the court decision have a widespread effect?
- Are the cause and the key issues in the case easy to understand for the media and the general public? How great is the potential for media coverage?
- Are other methods of accomplishing the goals possible? If so, how effective would they be compared with a strategic litigation approach?
- Are the courts in the jurisdiction where the case will be filed independent from the other branches of government, well-regarded, and receptive or sympathetic to both the cause and strategic litigation in general?<sup>109</sup>

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<sup>105</sup> Ibid., p. 42.

<sup>106</sup> Ibid.

<sup>107</sup> Ibid.

<sup>108</sup> Ibid., p. 42-43.

<sup>109</sup> Ibid., p. 8.

Because litigation can be so resource-intensive, it is wise to assess and investigate the case and the claims before filing a lawsuit. The facts, the evidence, the claims themselves, and the jurisdiction should be thoroughly examined. The following may serve as guidance for that assessment:

- What are the relevant laws applicable to the claims? Are they generally enforced? How clearly are the laws written, interpreted and applied? Clear laws are generally easier to work with and bring claims under, whereas unclear laws offer a greater chance to create new and ground-breaking precedent, but at a higher risk.
- How strong are the legal claims? How will they be regarded by the courts and legal system? How popular will they be in the local, state, and national community?
- How likely is a favourable decision from the courts?
- Would the court be able and likely to provide for any more innovative or non-traditional remedies in this case?<sup>110</sup>  
In some jurisdictions, courts may be able to order that the person, government, or organisation being sued not only stop causing further harm, but actively work to remedy the damage they have caused and prevent such things from happening in the future. These bodies may be required to devise and put into place new systems and mechanisms to protect rights, provide care, or prevent abuses. In this regard, you should consider the following:
  - Would there be any backlash or other political reactions or repercussions if the claims in court were successful, or if they were unsuccessful?
  - Is the theory behind this case clear, simple, and easy to understand? If it were successful, is the remedy requested clear, simple, and easy to implement?
  - Is there another group or organisation that might be better able to handle the case?<sup>111</sup>

#### **e. Children's access to justice in the country**

Below are some useful additional questions when considering strategic litigation against a company or other entity, such as a government body, in relation to children's rights.

- How does the jurisdiction approach the application of treaties and other international agreements at the national level? Has the CRC been incorporated in the national laws? Can courts in the country apply and enforce the CRC directly when making decisions? Or, can the CRC at least be used by courts as interpretative guidance for national laws? Is there any precedent for this that may be used as an argument?
- Who will bring the case, against whom, and when? Do children have standing in court or do they require a representative or "next friend" to bring a claim?
- What are the kinds of remedies available, including civil, criminal, administrative or interim measures? Which remedy can be sought in which court? Which court and/or remedy might be the most attractive for the case from the perspective of potential campaign value or the possibility of setting regional or international precedent?
- How long might it take before the clients get a final decision from the court? Are there options for "fast tracking" certain types of cases involving children?
- Where can the case be brought and where should the case be brought, strategically?
- Is a group action lawsuit, also known as a class action, collective action or group litigation, a possibility in the jurisdiction?
- What are the rules of evidence in the relevant jurisdiction? Do children have a right to testify in legal proceedings? Are there particular rules, procedures or practices in the relevant jurisdiction for dealing with evidence that is produced or presented by children?
- What are the time requirements for this claim? Are there extended time limitations for young adults bringing claims regarding violations of their rights when they were children? What time requirements exist for bringing an appeal? Do local remedies need to be exhausted before the case can be heard by a regional or international court or complaints mechanism?
- What could be the costs associated with bringing a case in court, e.g. court costs, legal fees, bond or security requirements, and other financial commitments involved in every potential jurisdiction? Would legal fees be recoverable if the case is won, meaning that the losing defendants would have to pay for the plaintiff's lawyers and court costs? Are legal aid, contingency or conditional fees, or legal insurance an option?
- How can you obtain legal assistance for the case? Are there active bar associations in the country and is there a culture of pro bono amongst lawyers? Would there be other avenues for obtaining free legal advice, e.g. through an NGO or legal clinic?

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<sup>110</sup> Ibid., p. 9.

<sup>111</sup> Ibid.



- In what political and societal context would the claim be brought? Are the courts in the jurisdiction considered independent? Is corruption in the judicial system considered an issue? What is the general stance of the government as to human rights? Would those involved with the lawsuit face potential physical or other dangers? Is there a possibility of retaliation in the jurisdiction against individuals bringing legal challenges?
- Would it help to garner local/national/regional/international support for the case if the media gets interested and involved?
- Would it make sense to contact politicians that may support the efforts?
- Are there any other groups or people willing to offer their help and support for the case, such as NGOs, academics, national human rights institutions, individual human rights advocates and specialists, or local communities?

### CRIN's project on access to justice for children

**Box 23**

CRIN has embarked on a collaborative project with partners which seeks to establish how children can access justice. The project examines the status of the CRC in the national law of each country around the world, how the law treats children involved in legal proceedings, the legal means available to challenge violations of children's rights, and the practical considerations in challenging violations using the legal system. With this information, CRIN intends to show the ways in which national legal systems can be used to combat violations of children's rights, and the ways in which children can use the law to assert their own rights. CRIN intends to identify where the law falls short, where legal systems are designed in ways that make it difficult or impossible to combat abuses of children's rights.<sup>112</sup>

#### f. Litigating against corporations over children's rights violations

Suing corporations may have a sizable impact and set a strong precedent for business practices. However, corporations also have many legal resources and lawsuits can be difficult to pursue the many ways and jurisdictions in which a large corporation does business. Publicly held corporations, which are listed on stock exchanges and tend to be larger in scope, can expect reactions to the lawsuit from many interested parties. These parties include the corporation's shareholders, management, workforce, creditors and competitors. The general financial markets and market regulators may also take an interest. This will likely result in more people paying greater attention to a case, but this could work both for and against the lawsuit depending on what the interested parties have to say.<sup>113</sup>

##### (1) Examples of strategic litigation challenging children's rights violations

The following are examples of strategic litigation against corporations challenging children's rights violations. They show some of the efforts and strategies by lawyers and NGOs in using the courts in order to claim remedies for children's rights violations, in the country where the violation occurred or others.

### Challenging child slavery in Cote 'Ivoire

**Box 24**

A case was brought in US courts against three large corporations - Nestlé, Archer Daniels Midland Co., and Cargill - on behalf of individuals who had as children been trafficked into slavery on cocoa farms. The court ruled that the companies could be sued as they were well aware - from their own frequent visits and independent studies - that they were selling the products of child slavery.<sup>114</sup>

### Hazardous child labour in Liberia as a violation of international law

**Box 25**

Twenty-three Liberian children sued Firestone Natural Rubber Company in the United States, alleging that Firestone utilised hazardous child labour on its rubber plantation in Liberia and that these conditions violated international law. The plaintiffs argued that strict quotas encouraged employees to enlist their children as helpers. The court decided that a corporation could be held liable under the Alien Tort Statute, but that Firestone had not violated „customary international law“.The Court therefore dismissed the case.<sup>115</sup>

<sup>112</sup> CRIN, Access to justice for children project, available at: <https://www.crin.org/en/home/law/access>.

<sup>113</sup> Ibid., p. 21-22.

<sup>114</sup> United States Court of Appeals Ninth Circuit, John Doe I-III v Nestle, Archer, Cargill, 4 September 2014, available at: <http://cdn.ca9.uscourts.gov/datastore/opinions/2014/09/04/10-56739.pdf>; San Francisco Gate, U.S. court rules OK to sue chocolate firms over child slave labor, 5 September 2014, available at: <http://www.sfgate.com/nation/article/Court-allows-chocolate-manufacturers-to-be-sued-5734286.php>.

<sup>115</sup> United States Court of Appeals Seventh Circuit, Flomo v Firestone Natural Rubber CO LLC, 11 July 2011, available at: <http://caselaw.findlaw.com/us-7th-circuit/1573873.html>; a summary of the judgment is available at: <https://www.crin.org/en/library/legal-database/flomo-v-firestone-natural-rubber-co-llc>; Business and Human Rights Resource Centre, Firestone lawsuit (re Liberia), available at: <http://business-humanrights.org/en/firestone-lawsuit-re-liberia-0#c9343>.

## Criminal complaint regarding complicity in human rights abuses against a DRC community

Box 26

A criminal complaint filed in 2015 by the European Centre for Constitutional and Human Rights (ECCHR) and Global Witness accused a senior manager of Swiss and German timber manufacturer the Danzer Group of aiding and abetting, through omission, grave human rights violations against members of a forest community in the Democratic Republic of Congo (DRC). The complaint, submitted to the state prosecutor's office in Tübingen, Germany, asks the prosecutor to start an investigation. It accuses the individual of failing to prevent violence by Congolese police and military against civilians in the village of Bongulu, in Northern DRC, on 2 May 2011. According to witness testimony, security forces inflicted grave bodily harm, raped women and girls, arrested 16 people and destroyed property.<sup>116</sup>

## Justice for victims of corporate abuse during the Argentine military dictatorship

Box 27

Several cases addressing the emblematic role played by corporations during the military dictatorship between 1976 and 1983 have been pursued by human rights organisations in Argentina aiming to bring to justice those economic actors who supported and profited from the crimes of the Argentine military dictatorship. The cases encompass criminal complaints, amicus briefs and expert opinions and target Mercedes Benz Argentina, Ledesma sugar company and the mining company Minera Aguilar S.A.<sup>117</sup>

(2) Learning from human rights litigation: examples of strategic litigation challenging other human rights violations

The following examples illustrate innovative legal challenges of human rights violations caused by corporations which were not directly aimed at improving the rights of children, but may still provide helpful insights into alternative strategies for child rights activists.

## Criminal complaint against a gold refiner in Switzerland

Box 28

The NGOTRIAL filed a criminal complaint with the Swiss federal prosecutor's office against Argor-Heraeus SA, a Swiss gold refiner based in Mendrisio (Tessin, Switzerland). TRIAL used evidence collected by the United Nations Group of Experts on the Democratic Republic of the Congo (DRC) and Kathi Lynn Austin (former UN expert), alleging Argor-Heraeus SA was guilty of the crime of pillaging gold during an armed conflict.

From 2004 to 2005, Argor-Heraeus SA refined almost three tons of gold ore, pillaged from the DRC by an illegal armed group, the FNI (Front des Nationalistes et Intégrationnistes) whose activities were financed by the illicit sale and traffic of this gold ore.

The main argument put forward in the criminal complaint was that Argor-Heraeus SA knew or should have presumed that the raw material it was processing was looted, which is a war crime. For this reason, TRIAL asked Swiss prosecuting authorities to establish whether or not the refining company had committed a criminal offence.

On 10 March 2015, the public prosecutor of the Swiss Confederation decided that no criminal offence had been committed. After a 15-month investigation, the public prosecutor closed the proceedings. However the case had already attracted wide public attention.<sup>118</sup>

<sup>116</sup> European Centre for Constitutional and Human Rights, Danzer, case page, available at: <http://www.ecchr.de/danzer-en.html>

<sup>117</sup> The Economic Accomplices to the Argentine Dictatorship: Outstanding Debts, edited by H.

<sup>118</sup> <http://www.stop-pillage.org/swiss-criminal-case/>

## **g. Challenging corporations using non-judicial or quasi-judicial mechanisms**

In recent years, several alternative legal avenues for pursuing challenges of child rights violations and human rights violations more generally have emerged on the national, regional and international levels, some of them specifically pertaining to rights violations by corporations. Because these challenges are brought using alternative dispute mechanisms and are rooted in quasi-legal instruments, such as guidelines or resolutions of international organisations, these fora are often called 'soft law mechanisms'.<sup>119</sup>

### *(a) OECD complaints*

The OECD Guidelines for Multinational Enterprises (OECD Guidelines) are non-binding guidelines that lay out the expectations of adhering governments concerning responsible business conduct.<sup>120</sup> They also aim to assist multinational enterprises to ensure that their business operations are in line with government policies. Currently, 34 OECD Member States as well as another eight States have committed to adhere to the Guidelines. These include many Latin American and several Middle Eastern countries as well as the European Commission, the United States, Australia and New Zealand.<sup>121</sup>

Each adhering State is obliged to set up a National Contact Point (NCP) which is tasked with: 1) ensuring the promotion of the Guidelines at the national level; 2) handling complaints against businesses about their implementation of the Guidelines; 3) assisting in solving disputes related to the Guidelines; and 4) gathering information on national experiences with the Guidelines and reporting annually to the OECD Investment Committee.<sup>122</sup> This mechanism allows interested parties to bring a case to the NCP alleging an instance of non-compliance with the Guidelines. However, NCPs essentially have a consultative and mediation role between parties to a dispute over the Guidelines' implementation by businesses. The NCPs' approach is therefore non-contentious in respect of alleged violations and their "decisions" are non-coercive. The quality of NCPs' performance varies considerably between countries, but despite some NCPs' lack of capacity to enforce decisions, their conclusions often carry considerable weight for a company's public image and can influence the conduct of the company involved.

Where NCPs exist, civil society can play a considerable role in providing advice to children affected by business enterprises on how to access the OECD mechanism and bring complaints to one or several NCPs regarding a company's alleged violation of the Guidelines. Once the relevant NCP has made its decision on a given complaint, civil society can work with States to enforce the NCP's recommendations and to advocate for sanctions against a company which has been found to have violated the Guidelines.

Where this mechanism exists or should be in place, NGOs can monitor it to ensure it works with impartiality and due consideration, and that a response is given to the consultations submitted. When helping children accessing effective remedies, NGOs may provide information on all the existing mechanisms, including this one, to ensure they know all their options. Work should continue with States to link NCP recommendations with sanctions against companies that are found to have violated the Guidelines.

An OECD Guidelines complaint can be one of several strategies pursued simultaneously.<sup>123</sup> An OECD Guidelines complaint can be used instead of, or in addition to, other advocacy strategies such as lawsuits, public and media campaigns and shareholder actions. Other institutional non-judicial grievance mechanisms or dispute resolution procedures may also be appropriate. It should be kept in mind that the Guidelines' specific instance procedure is largely oriented towards mediation and conciliation and is designed to get parties together to resolve disputes amicably.<sup>124</sup> NCPs expect parties to engage with a view to finding a mutually-acceptable resolution to the issue(s). The nature and expectations of this process have to be weighed against other potential actions and instruments available to address the problem. A complaint should support, and not undermine, existing efforts if simultaneous strategies are pursued.

There are various instructions available online for civil society actors on how to file OECD complaints which include useful tips on eligibility, strategy and preliminary planning.<sup>125</sup>

The following are some examples of how civil society organisations have challenged corporations over human rights abuses using the OECD complaints procedure. While these examples do not all relate to children's rights specifically, they may still prove useful when developing strategies for OECD complaints on behalf of children.

119 An introduction to soft law as well as a list of articles and textbooks on the topic is available at: <http://www.oxfordbibliographies.com/view/document/obo-9780199796953/obo-9780199796953-0040.xml>.

120 OECD, Guidelines for Multinational Enterprises, available at: <http://www.oecd.org/investment/mne/>.

121 See for a list of OECD Member States who have committed to the Guidelines: <http://mneguidelines.oecd.org/ncps/>.

122 OECD, National Contact Points for the OECD Guidelines for Multinational Enterprises, available at: <http://www.oecd.org/investment/mne/ncps.htm>

123 OECD Watch, Filing complaints - instructions and strategic considerations, available at: <http://oecdwatch.org/filing-complaints/instructions-and-templates>.

124 Ibid.

125 See, for example: OECD Watch, Filing OECD Complaints, available at: <http://oecdwatch.org/filing-complaints>.

**Box 29****Challenging supply of key communications infrastructure for drone strikes**

British Telecoms has been accused of aiding drone strikes by supplying a specially built military internet cable connecting US air force facilities in Northamptonshire with a US military base for unmanned craft in Djibouti on the Horn of Africa. The UK government was asked to investigate, via an OECD complaint, whether the \$23m USD (£13m GBP) fibre-optic circuit built by British Telecoms in 2012 was installed to facilitate air strikes in Yemen and Somalia by US air force drones. This resulted in considerable pressure on the company to justify its involvement.<sup>126</sup>

**Box 30****Complaints against corporations over export of mass surveillance technology**

In 2013, a group of human rights organisations filed OECD complaints against Gamma International and Trovicor GmbH, two companies which export surveillance software. The OECD NCPs in Germany and the United Kingdom were asked to ascertain whether the companies breached the OECD Guidelines by exporting surveillance products to Bahrain, where the authorities allegedly use those products in human rights abuses, including the arrest, detention and torture of political opponents and dissidents.<sup>127</sup>

*(b) Business grievance mechanisms*

A grievance mechanism is a formal, non-legal complaint process, which can be used by individuals, groups of individuals or civil society organisations that are negatively affected by a company's business activities.<sup>129</sup> Grievance mechanisms are diverse and exist at various levels, such as at the project, company, sector, national, regional and even intergovernmental levels.<sup>130</sup> Grievance mechanisms cannot be a substitute for courts, but they can be used by children victims of abuses by companies to seek some form of redress.<sup>131</sup>

At the regional level, regional multilateral development banks<sup>132</sup> may have a grievance procedure. Some of the companies which have set up their own grievance mechanisms include, for example, Adidas,<sup>133</sup> Tesco<sup>134</sup> and Hewlett Packard.<sup>135</sup>

**Box 31****Accountability for child labour of Uzbek officials and European cotton traders**

A group of human rights organisations lodged OECD complaints against seven European cotton trade houses accused of buying Uzbek cotton in violation of international standards for multinational enterprises in a fight against State-sponsored forced labour in Uzbek cotton fields of 1.5 to 2 million Uzbek children, as well as their teachers, civil servants and private employees.<sup>128</sup>

126 The Guardian, BT alleged to have supplied high-speed fibre-optic cable to aid US drone strikes, 27 August 2014, available at: <http://www.theguardian.com/world/2014/aug/27/drones-us-military>; Reprieve, Complaint filed against BT over facilitation of illegal US drone strikes, 22 Jul 2013, available at: [http://www.reprieve.org.uk/press/2013\\_07\\_22\\_bt\\_drone\\_strike\\_covert\\_strike\\_yemen/](http://www.reprieve.org.uk/press/2013_07_22_bt_drone_strike_covert_strike_yemen/).

127 Privacy International, OECD complaint: Gamma International exporting surveillance technology to Bahrain, available at: <https://www.privacyinternational.org/?q=node/55>.

128 Cotton Campaign, End forced labour in the cotton sector of Uzbekistan, available at: <http://www.cottoncampaign.org/>; European Centre for Constitutional and Human Rights, Uzbekistan case page, available at: <http://www.ecchr.de/uzbekistan.html>.

129 Human Rights & Grievance Mechanisms, What is a grievance mechanism?, available at: <http://grievancemechanisms.org/intro/what>.

130 Ibid.

131 Human Rights & Grievance Mechanisms, available at: <http://grievancemechanisms.org/intro>.

132 Human Rights & Grievance Mechanisms, Regional multilateral development banks, available at: <http://grievancemechanisms.org/grievance-mechanisms/regional-multilateral-development-banks>.

133 Adidas, Third Party Complaint Process for Breaches to the Adidas Group Workplace Standards or Violations of International Human Rights Norms, available at: [http://www.adidas-group.com/media/filer\\_public/3a/a8/3aa87bcf-9af9-477b-a2a5-100530e46b19/adidas\\_group\\_complaint\\_process\\_october\\_2014.pdf](http://www.adidas-group.com/media/filer_public/3a/a8/3aa87bcf-9af9-477b-a2a5-100530e46b19/adidas_group_complaint_process_october_2014.pdf); Triple Pundit, Adidas Creates Human Rights Complaint Process, available at: <http://www.triplepundit.com/2014/11/adidas-announces-human-rights-complaint-process/>.

134 Ethical Trading Initiative, Tesco's pilot of Ruggie's principles in South Africa, available at: <http://www.ethicaltrade.org/in-action/member-performance/tesco-pilot-of-ruggies-principles-in-south-africa>; Tesco PLC, Ethical trading at Tesco, available at: <http://www.tescopl.com/site/library/policiesand-factsheets/ethical-trading-at-tesco.htm>.

135 Hewlett Packard, HP Introduces New Responsible Supplier Guidelines for Student, Dispatch Workers in China, 2 August 2013, available at: [http://m.hp.com/ec/es/hp-news/details.do?id=1369263&articleType=news\\_release](http://m.hp.com/ec/es/hp-news/details.do?id=1369263&articleType=news_release); Ethical Corporation, Business and human rights: Ruggie's progress – The crucial test of grievance mechanism access, 1 March 2010, available at: <http://www.ethicalcorp.com/governance-regulation/business-and-human-rights-ruggie%E2%80%99s-progress-%E2%80%93-crucial-test-grievance-mechanism>; Harvard, Hewlett Packard & The Corporate Social Responsibility Initiative, available at: <http://blogs.law.harvard.edu/hnmcp/projects/hewlett-packard-the-corporate-social-responsibility-initiative/>.

Business grievance mechanisms vary in objective, approach, target group, composition and government backing. They also vary in how long the procedure can take to conclude and whether there are any costs involved.

Grievance mechanisms deal with complaints in various different ways. Some are focused on mediation between the parties, while others conduct investigations or fact-finding that lead to recommendations or statements. Some mechanisms are mandated to attach consequences to their findings, such as delisting, withdrawing funds or excluding access to government benefits.<sup>136</sup>

Grievance mechanisms do not typically charge fees. While the process of filing a complaint may still be costly for complainants, filing a complaint with a grievance mechanism is still usually cheaper than taking legal action.<sup>137</sup>

Civil society organisations can help children and their representatives comprehend and access grievance mechanisms, monitor the process and make sure that children's best interests are taken into account throughout. They can also ensure that the proposed remedies provide for an effective solution to the violations suffered by the child. When a solution is accepted, civil society can play a role in monitoring its implementation and ensuring that the obligations of the company that were agreed to during the grievance process are followed.

Although these mechanisms may be useful in some cases, they do not always provide an effective framework for addressing corporate breaches of widely accepted principles due to the non-enforceable nature of their decisions or recommendations.

### Box 32

#### Trying to stop Nestlé's violations of marketing standards for breast-milk substitutes

On 27 November 2009, Baby Milk Action asked the Swiss NCP to address Nestlé's marketing strategies for breast-milk substitutes that claim to 'protect' babies. The Swiss NCP had earlier said it could not act on a report detailing generally widespread violations by Nestlé and had asked for a specific case. As the Swiss NCP stressed it could only promote 'dialogue', Baby Milk Action suggested it ask Nestlé to provide copies of the labels it was refusing to change so these could be assessed against the minimum marketing requirements adopted by the World Health Assembly (Nestlé had told Baby Milk Action that they had been launched in 120 countries and BMA argued it was easier for Nestlé to provide the labels than for Baby Milk Action to try to retrieve examples from all these countries). The Swiss NCP declined to ask Nestlé for the labels and closed the case, expressing that it did not wish to be copied in on further correspondence between Baby Milk Action and Nestlé.

<sup>136</sup> Human Rights and Grievance Mechanisms, What is a grievance mechanism?

<sup>137</sup> Ibid.

## Report to the UN Global Compact Office concerning integrity measures applied to Nestlé

The Global Compact is 'a strategic policy initiative for businesses that are committed to aligning their operations and strategies with ten universally accepted principles in the areas of human rights, labour, environment and anti-corruption'.<sup>138</sup>

In June 2009, Baby Milk Action submitted a report to the Global Compact Office on behalf of the International Labor Rights Fund, trade unionists from the Philippines, Corporate Accountability International and IBFAN, requesting that Nestlé be expelled as a participant in the initiative. The report alleged that Nestlé's "Communications on Progress," posted on the UN Global Compact website, were misleading and that Nestlé used its participation in the initiative to divert criticism so that abuses of human rights and environmental standards could continue. It argued that this conduct would bring the initiative into disrepute. Other concerns raised included aggressive marketing of breast-milk substitutes in violation of the International Code and subsequent WHA resolutions, trade union busting and failing to act on related court decisions, failing to act on child labour and slavery in its cocoa supply chain, exploiting farmers and degrading water resources. It argued that these would be egregious violations of the Global Compact Principles.

Egregious violations and bringing the initiative into disrepute are grounds for complaints under the so-called Global Compact 'Integrity Measures'. But the Global Compact Office (GCO) declined to take action under the Integrity Measures. The GCO did not explain its decision. Baby Milk Action asked Executive Director Georg Kell to intervene. Although the Global Compact promotes itself as 'voluntary yet accountable', Mr Kell said, 'The UN Global Compact is not a compliance-based body, nor does it have the mandate to judge companies or the merits of concerns raised.'<sup>139</sup>

### (c) *Optional Protocol to the CRC on a communications procedure*

The individual complaints mechanism under the CRC came into force in April 2014 and now allows children to seek redress by bringing complaints directly to the UN Committee on the Rights of the Child against States that have ratified the OPIC. A children's rights complaints mechanism at the UN has been a long time in the making. The UN Committee on the Rights of the Child had, from the very beginning, the authority to review how countries have met their children's rights obligations under the CRC. Yet, unlike other UN human rights committees, the CRC Committee was powerless to provide child victims with redress when governments breached child rights.<sup>140</sup>

There are three ways in which violations of children's rights can be raised with the Committee: through individual complaints, inquiries and inter-State communications.

- Individual complaints are the most direct form of complaint under the communications procedure, which allows for individual children, or groups of children, to complain about a violation of their rights, either themselves or through their representatives. Filing a complaint with the CRC communications procedure gives child victims an opportunity to seek redress. The Committee can recognise violations that children have endured and recommend remedial action by the State where domestic courts have failed.<sup>141</sup>
- Inquiries look at serious or widespread violations of children's rights in a country, rather than whether a particular individual's rights have been violated. Inquiries are initiated and carried out by the Committee on the basis of information submitted from a number of sources. The advantage of the inquiry process is that it allows for investigations into large-scale abuses of children's rights, and allows for complaints that do not directly involve a specific child. Inquiries also allow for greater anonymity for persons wishing to raise violations by the responsible government.

<sup>138</sup> See <https://www.unglobalcompact.org/aboutthegc/>

<sup>139</sup> Information provided by IBFAN

<sup>140</sup> CRIN, CRC complaints mechanism toolkit, available at: <https://www.crin.org/en/guides/legal/crc-complaints-mechanism-toolkit>.

<sup>141</sup> Ibid.



- Inter-State communications allow States to lodge complaints against other States that have failed to live up to their children's rights obligations. This procedure offers the broadest scope to raise potential violations of children's rights. Complaints need not identify individual child victims and they are not limited to serious or widespread rights violations. Inter-State communications also offer the greatest flexibility and simplicity in terms of review procedures, but they have been little used by other treaty bodies. This procedure can only be used against a State that has accepted the Committee's competence on the matter.<sup>142</sup>

If children's rights have been violated by business activities, the Committee can provide remedies where States have failed to effectively protect children's rights. States can be held responsible for violations of children's rights committed by the private sector if they have contributed to these directly or indirectly, failed to take reasonable measures to prevent them, or, where they have occurred, failed to adequately investigate and sanction the violation or provide redress to the victims.

Civil society organisations are essential in providing information and assisting children in accessing these mechanisms. Those that can provide legal services may assist or represent children in instituting proceedings. They can also advocate for the ratification of the OPIC by all States to ensure children's access to the new complaint mechanism. They can also provide children with advice on accessing the mechanism and actively support the submission of complaints, once domestic remedies have been exhausted.

### Case of *Länsman v. Finland* before the UN Human Rights Committee

**Box 34**

The governmental body Central Forestry Board granted a permit to a private company to quarry stone from the Etela-Riutusvaara mountain. Indigenous members of the Muotkatunturi Herdsmen's Committee filed an application to the UN Human Rights Committee alleging that quarrying and transporting stone through their reindeer herding territory constitutes a violation of their right to enjoy their culture guaranteed by Article 27 of the International Covenant on Civil and Political Rights. The UN Human Rights Committee reaffirmed its view that economic activities (or means of livelihood) come within the ambit of Article 27 if they are an essential element of a minority group's culture, which may evolve over time with modern technology. A State Party's choice of development activities is limited by its obligations under Article 27. The Committee concluded that since the quarrying was limited to a small area it did not 'substantially' infringe the Herdsmen's rights, but warned that any future approval of large scale mining activities in the area used for reindeer herding may constitute a violation of a minority group's right to enjoy culture. The Committee emphasised the importance of consultation before undertaking the activity.<sup>143</sup>

<sup>142</sup> Ibid.

<sup>143</sup> *Länsman et al v Finland*, Communication No. 511/1992, UN GAOR, 52nd Session, UN Doc. CCPR / C / 52D / 511 / 1992, opinion approved the 8 November 1994. <http://www1.umn.edu/humanrts/undocs/html/vws511.htm>

## VI. AFTERWORD

This guide provides information about the various ways civil society organisations (CSOs) can work to make the recommendations and guidance provided in GC 16 a reality. The guide also provides real life examples and illustrations of the ways some CSOs have intervened, mostly successfully, in this regard. It should not be seen as a list of prescriptions or a recipe for success, but as guidance and suggestions for action.

A good number of publications and guidance documents are available in the field of business and human rights addressed to CSOs in general. There is very little, if any, addressed to CSOs working in the field of business and children's rights, whether exclusively or as part of a broader scope of work. There is hope and expectation that this guide fills this gap and will be useful for CSOs. Although it is not designed for, or addressed directly to, children, there is also hope that it will be accessible and useful for some of them. Like other guides and recommendations, it is subject to change and constant improvement with the emergence of new practices, and the incorporation of lessons, successes and failures into the growing set of practice in the field of children's rights.









