



**Submission of the Child Rights Information Network (CRIN)  
on the  
United Nations Special Representative of the Secretary General on  
Transnational Corporations and other Business Enterprises’  
Draft Guiding Principles**

Background

In November 2010, the Special Representative of the UN Secretary-General on transnational corporations and other business enterprises, Professor John Ruggie, proposed draft "Guiding Principles for the Implementation of the United Nations 'Protect, Respect and Remedy' Framework." This June, Special Representative Ruggie will present his final report to the UN Human Rights Council.

This statement represents the views of the Child Rights Information Network (CRIN) on the proposed draft Guiding Principles. CRIN comprises over 2,100 members in more than 150 countries, and envisions a world in which every child enjoys all of the human rights promised by the United Nations, regional organizations, and national governments alike.

Statement

In extending the SRSG's mandate in 2008, the Human Rights Council specifically instructed the Special Representative “[t]o integrate a gender perspective throughout his work and to give special attention to persons belonging to vulnerable groups, in particular children.” CRIN welcomes the engagement of the SRSG in crafting Guiding Principles to enhance respect for children's rights within the business community, and applauds the openness of the consultation process. Regrettably, for the reasons listed below, we believe that the Special Representative's mandate has not been fulfilled.

By some estimates, children make up half of the world's population. Yet in the draft Guiding Principles, they remain virtually invisible. In fact, mentions of children's rights in the draft are limited to two, and children are not discussed directly in any of the draft Principles. Both of the times that children appear, it is in the accompanying Commentary, and only then as an afterthought at the end of a list of “vulnerable and/or marginalized groups, such as indigenous peoples, women, ethnic and religious minorities, and children.” Such a sparse discussion of children's rights in the draft Guiding Principles is surely not consonant with the “special” attention envisioned by the Human Rights Council.

As such, as the Guiding Principles are now drafted, it is difficult to imagine that they could provide any meaningful direction for States and business enterprises seeking to “protect, respect and remedy” the human rights of children. Children are particularly and uniquely vulnerable to human rights abuses, and yet are also least able to draw attention to violations of their rights. The draft Guiding Principles do not appear to recognize either of these realities.

In relation to business enterprises, children's situation is especially precarious. While corporations are readily recognized as full legal persons in jurisdictions around the world, children almost universally are not. Unlike corporations, children cannot bring lawsuits, sign contracts, or even make simple financial transactions on their own.

Because children are not empowered to speak out against violations of their rights, and in recognition of the fact that children do not operate on a level playing field when engaging with business enterprises, CRIN believes that children's rights must be given far greater attention in the draft Guiding Principles. With this in mind, we make the following recommendations.

### Recommendations

#### **Foundational Principles: Principle 12**

Principle 12 calls on companies, “depending on circumstances,” to “consider additional standards” when seeking to respect human rights. CRIN believes that because children will *always* be in a vulnerable situation, their rights must *always* be considered separately. In this context, the widely ratified Convention on the Rights of the Child is of great utility. It sets out a comprehensive framework for considering children's rights, and should be included alongside the other instruments listed as an authoritative human rights treaty to be referenced in respecting children's rights.

→ *The Commentary should specify that companies have the responsibility to separately consider and respect children's rights in line with the Convention on the Rights of the Child.*

#### **Policy Commitment: Principle 14**

The policy-making procedure described in Principle 14 does not seem to contemplate the participation of children in the process or the delivery of finalized policies into children's hands. Participation is one of the four general principles of the Convention on the Rights of the Child, and Article 12 of that Convention recognizes the right of children to participate in all decisions that affect them. This would necessarily include discussions of corporate human rights policies that will undoubtedly impact their lives.

While Principle 14 does call for “external expertise” to be included in human rights policy-making, it does not recommend or require the involvement of stakeholders directly. All stakeholders should be consulted, and – because children are unlikely to be considered “experts” in the traditional sense – targeted efforts must be made to include children in the process.

By the same token, as “relevant stakeholders”, children are entitled to receive information targeted to their level of understanding. Again, this right is guaranteed under the Convention on the Rights of the Child, which requires in Article 17 that States Parties ensure the accessibility of information and material of social and cultural benefit from a diversity of sources. Surely, the same can be asked of corporations wishing to communicate their human rights policies to the wider public. Indeed, if the purpose of human rights policies is to set expectations for executives, employees, and

those in the community alike, all must understand what these expectations entail if they have any reasonable chance at fulfillment. The Guidelines, therefore, should ensure that businesses communicate these policies in a manner and in language that children can comprehend.

→ *Principle 14 should be amended to call for appropriate consultation with not only experts, but stakeholders, and to provide for policies to be communicated externally in a manner accessible to all. The Principle 14 Commentary should further elucidate the special attention that businesses must pay to children during and after the policy-making process.*

### **Human Rights Due Diligence: Principles 16, 18**

Principle 16 recommends that business enterprises “involve meaningful engagement with potentially affected groups,” and its Commentary further suggests that businesses should “identify any actual or potential human rights impact on marginalized and vulnerable groups, who may face particular human rights risks.” As discussed above, children's right to participate in matters that affect them is well established in international law. Because they will invariably be counted among marginalized and vulnerable groups, the specific duty to involve children in conducting human rights due diligence should be included under Principle 16. Moreover, as the Principle 18 Commentary asks companies to “make particular efforts to track their human rights performance with regard to...children,” it would only be logical to expect that companies make these same efforts when identifying and assessing human rights risks at the outset.

The Principle 16 Commentary also calls on businesses to “engage directly” with stakeholders in conducting human rights due diligence, just as Principle 18 would require companies to “draw on feed-back from both internal and external stakeholders” in monitoring and assessment. Neither Principle, however, provides any guidance or context for the engagement of children. CRIN recognizes that many have little or no experience consulting with children, and the draft Guiding Principles would be ideally suited to both emphasize the importance of engaging children directly and to provide clearer instructions for doing so. The involvement of children should be actively sought, and the tools and methods used must be accessible to all and child-friendly.

→ *Principle 16 and/or the Principle 16 Commentary should clarify that children must be directly involved in the process of conducting human rights due diligence. The Commentaries for Principles 16 and 18 should be revised to provide clearer obligations and instructions for companies to engage children in identifying, assessing, monitoring and addressing human rights impacts.*

### **Remediation: Principles 20, 22, 23, 24, 25, 27, 29**

In line with Principle 20, CRIN believes that business enterprises that have caused human rights violations must be responsible for remedying them. CRIN is very concerned, however, that the “legitimate processes” designed to facilitate this will in practice exclude children. As violations of children's rights require special attention, children especially must be provided with speedy, accessible, and effective justice.

Under Principle 22, business enterprises are told to “first seek to prevent those [potential adverse human rights impacts] that are most severe or where delayed response would make them irremediable.” Because children are still developing physically and psychologically, they are likely to suffer disproportionately from any rights violations. This particular vulnerability should be made

explicit. It must also be remembered that many children, especially very young children, will be unable to bring attention to violations of their rights and may even be unaware of the lasting harm that such violations can cause. Businesses should therefore be required to approach all potentially adverse human rights impacts on children with a view to providing immediate and effective relief.

→ *Principle 22 should draw particular attention to the special situation of child victims of human rights violations, and businesses should be explicitly required to consider all such potential violations with a view to providing immediate and effective relief.*

Principle 23 would obligate States to provide victims of rights violations with effective access to justice through “judicial, administrative, legislative or other appropriate means,” and its Commentary further states that “State-based judicial and non-judicial mechanisms should form the foundation of a wider system of remedy for business-related human rights abuse.” Reasonable as this may seem, basing access to justice on existing mechanisms promises little to child victims of rights violations. Indeed, children's ability to access these mechanisms under national laws is at best limited and at worst absent entirely. The vast majority of children cannot bring cases in their name, and even where this is a legal possibility, it is of no value if these mechanisms are not designed for children to use.

The Principle 23 Commentary does cite the Optional Protocol to the Convention on the Rights of the Child on the Sale of Children, Child Prostitution and Child Pornography, which obligates States Parties to take numerous and detailed steps in making justice systems accessible for children, but this citation is only in the context making business entities liable for human rights violations. States must do more than simply establish liability for legal persons, they must guarantee that all persons are able to address violations of their human rights.

→ *Principle 23 must recognize that children often do not have meaningful access to justice and call on States to provide children with effective means to seek redress for human rights violations. This should include not only permitting children to access State-based judicial and non-judicial mechanisms, but also adapting these mechanisms to suit the evolving capacities of children to participate in these processes.*

Similarly, Principle 24 asks States to “consider[ ] ways to reduce legal, practical and other relevant barriers that could lead to denial of access to remedy.” CRIN believes this language is both too weak and too vague to significantly increase children's access to justice on a national level. Furthermore, in the accompanying Commentary's illustrative list of barriers to accessing judicial remedies, age does not appear even once despite being a primary factor in opening courtroom doors. And while the need to give “particular attention” to “vulnerable and marginalized” groups in general is discussed, children again do not feature.

→ *Principle 24 should be strengthened to require that States take affirmative measures to eliminate all barriers that could lead to a denial of access to a remedy. In the accompanying Commentary, illustrative examples should include a reference to children facing age-related barriers to justice, and children's concerns should be given the “particular attention” envisioned. This discussion should include specific steps that States must take to eliminate barriers to access to justice for children in line with established principles of child-friendly justice.*

Principle 25 presents identical issues in relation to non-judicial grievance mechanisms. While more States provide for children's ombudspersons than for direct access to the courts, children must again be given special attention when considering their ability to reach effective and appropriate non-

judicial mechanisms. The same can be said for Principle 27's guidance on Operation-level grievance mechanisms, and it is perhaps even more unlikely that business enterprises would have child-friendly grievance mechanisms than would States. Yet in listing common barriers to accessing these mechanisms, Principle 29 again does not include age or concomitant development or maturity.

The Commentary for Principle 29 states that “a grievance mechanism can only serve its intended purpose if those whom it is intended to serve know about it, trust it, and are able to use it.” This would apply more broadly to any remedial mechanism, and each of these aspects is particularly challenging with regard to children. Because they will almost invariably lack access to justice, the Remediation Principles must ensure that children in particular are aware of, understand, and can access effective judicial, non-judicial, and Operation-level mechanisms to remedy violations of their rights.

→ *The Commentaries for Principles 25 and 27 should include specific discussions of the special challenges that children face in accessing justice before non-judicial and Operation-level grievance mechanisms. These discussions should include specific steps that States and business enterprises must take to eliminate barriers to access to justice for children in line with established principles of child-friendly justice.*

→ *Principle 29 should list age or a proxy consideration among those barriers to be addressed. The Commentary for Principle 29 should review effectiveness criteria specifically in relation to children, and should include specific steps that States and business enterprises must take to eliminate barriers to access to justice for children in line with established principles of child-friendly justice.*

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