

UN Committee on the Rights of Child

Day of Discussion on

**THE PRIVATE SECTOR AS SERVICE PROVIDER
AND ITS ROLE IN IMPLEMENTING CHILD RIGHTS**

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Submission by

UNICEF

**UNICEF comments for
Committee on the Rights of the Child Day of General Discussion**
“The private sector as service provider and its role in implementing child rights”
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Section I
Introduction

1. The private sector has always played a role in the provision of services. In most countries private sector providers pre-dated state involvement in functions such as delivering health and education services, although their coverage was limited. Nevertheless, throughout the 20th Century many of these functions came to be regarded as rights, and were included in international human rights instruments and in many national constitutions.
2. In recent decades, for various reasons, not the least being the increasing perception that state provision of services is insufficient, inefficient, of low quality, or a combination of these, a push for privatisation and a larger role for the private sector has been promoted and widely accepted in many countries. This has many implications for children’s rights.
3. The private sector can support governments in the fulfilment of their obligation to implement the Convention on the Rights of the Child. However, countries most in need of the private sector's assistance and collaboration are those least likely to be able to control and regulate its actions. In these countries, the private sector's role is sometimes viewed with apprehension because of the risk that the most vulnerable could be excluded, especially when the private sector acts as service provider of state functions.
4. However, there are different categories within the private sector. The advantages (and disadvantages) of a for-profit company providing basic social services (or in implementing many other provisions of the CRC) are very different from those of a religious-based charity, or a community-based organization. The present analysis will be restricted to the role of the for-profit private sector in the provision of state-like functions and basic services in developing countries, which aim to serve the poor on a large scale.
5. We wish, at the outset, to acknowledge that many of the conditions for ensuring that private, for-profit sector delivery of state functions contribute to the implementation of child rights could also apply to the not-for-profit private sector, which nonetheless charges for its services. However, these latter cases are not dealt with explicitly in the present paper.
6. UNICEF tackles all four topics (scope of action; legal obligations; governance; and models and guidelines) included in the Day of Discussion, as they pertain to the role of the private for-profit sector in the provision of basic services in developing countries. The section on models and guidelines reflects UNICEF's experience of partnership with the private sector in promoting children's rights. (A summary of the “UNICEF Guidelines and Manual for Working with the Business community” is attached to this paper as Annex 1). We have also added a section: *Experience and Considerations: The private for-profit sector as provider of basic services*.
7. UNICEF is also aware of the challenging questions that arise with regard to the private sector's responsibility for violations of child rights. Although the impact of the private sector’s role in impeding children's rights is not on the agenda of the day of general discussion, the issue of private sector involvement in situation of armed conflicts, where such violations often occur, has also been examined (attached to this paper as Annex 2 for further reflection).

Section II Scope of action of private sector

8. Building on the private sector's capacity, UNICEF has long been collaborating with private partners for the implementation of programmes to fulfil child rights and for the promotion of child rights. However, the involvement of the for-profit private sector in the implementation of state functions and in policies of public interest is not without major challenges.

9. This section presents concerns which the State must be in a position to address, if it is to fulfil its obligations when delegating responsibilities of service delivery to the private sector: cross-cutting themes of affordability, universality and regulation, which recur in all areas where the private sector is entrusted with a mission of public interest.

Affordability

10. By definition, the for-profit private sector has to charge fees for the services it provides, to allow it to cover all costs and make a profit. This, in many circumstances, implies that policies of cross-subsidization will need to be considered to ensure that services are affordable for all portions of the population expected to benefit. The issue of affordability is closely linked to that of access, as private providers will tend to flock to better-off areas, leaving the poor, especially those living in remote areas, out of reach of the service provision post and hence unable to fulfil their rights.

Universality

11. A human right, by definition, applies to all. When applied to basic education, basic health, water and sanitation, protection, and leisure activities, as is the case in the CRC, it is explicitly and emphatically recognised that all, absolutely all, children should be able to enjoy the service. The private sector is based on a different premise, as its natural context is the market. Markets have many characteristics, positive or negative depending on the eye of the beholder, but one is indisputable. Markets perform a rationing function in society: they separate those who will obtain something (goods, services) from those who will not. The latter are those who cannot afford the cost/fee.

Regulation

12. Since in most countries there is a for-profit sector already in place, its proper role, behaviour, and complementarity with public provision of services need to be addressed. Its quality, minimum standards, and staff qualifications need to be legislated in order to further the protection of child rights. It should be highlighted that a one-size-fits-all approach will usually not apply and there might be various alternative ways to engage the private sector, or some of its elements, depending on different circumstances in different countries. This raises governance questions about how to make the assessment of those circumstances, and who will make it, as well as about the various ways to engage and regulate the private sector.

Section III Legal obligations

13. This section provides examples of legal obligations of both states and the private sector in the fulfilment of a child's right to adequate nutrition. Lessons to be drawn from these experiences, as well as existing legislation, are presented, and show the need for a strong state presence to regulate and monitor the private sector's provision of food and nutrition services.

14. A child's right to adequate nutrition – more particularly to food, health and care, as the Convention on the Rights of the Child puts it - has been expressed as a right in international human rights instruments since 1924¹. These international instruments recognised Governments' responsibilities to take appropriate measures to fulfil the right to adequate nutrition and combat malnutrition through, *inter alia*, the application of available technology and through the provision of adequate nutritious foods. International human rights instruments have also long imposed direct obligations on the private sector for the fulfilment of human rights in general. General Comment 12 of the Committee on Economic, Social and Cultural Rights (CESCR) on the right to food includes the private sector among those members of society that have responsibilities in the realisation of the right to adequate food.

15. In this context, Governments are obliged to pass and enforce appropriate legislation for quality control of private sector involvement in production, promotion and sale of foods. These include enforcing regulations on the quantity and quality of specified vitamins and minerals that are to be added to such foods as oils, flour and salt or included in supplements.

16. The obligation of the private industry is to ensure that quality assurance and socially responsible product promotion are practised, including fair pricing. Also the private industry needs to ensure that proper and correct information is passed to consumers through appropriate labelling.

17. As more privately funded health clinics are providing nutritional advice and provision of services, States have an obligation to ensure that the quality of these services is adequate. States should provide appropriate guidelines to all such companies and service providers (for profit or not) on standard information and services related to nutrition. In this context, particular attention should be paid to the private sector's activities in areas identified as key strategies for ensuring enjoyment of the right to nutrition, among others, breastfeeding and salt fortification.

18. In the realisation of infants' right to adequate food, breastfeeding is recognised as a key component, and there are thus obligations on governments and the private sector to protect, promote and support breastfeeding (referred to in Article 24 (e) of the CRC). Given the devastating impact of **not breastfeeding** on infant and young child health and survival, States parties are obliged to take appropriate measures to ensure that all segments of society - in particular parents - are informed, have access to education and are supported in the use of basic knowledge of the advantages of breastfeeding.

19. The private business sector, due to conflict of interest and innate commercial bias, should not interfere with breastfeeding and should comply with international regulatory instruments and policies adopted to prevent such interference.

20. In 1990, at the WHO/UNICEF policymakers' meeting on "*Breastfeeding in the 1990s: A Global Initiative*," co-sponsored by the United States Agency for International Development (USAID) and the Swedish International Development Authority (SIDA), the participants produced and adopted The Innocenti Declaration on the Protection, Promotion and Support of Breastfeeding. This Declaration was

¹ Declaration on the rights of the child - 1924 (known as the Geneva Declaration) adopted by the League of Nations after World War I

subsequently endorsed by the World Health Organization and provides details of 'appropriate measures' that States must take in fulfilment of Article 24 (e) of the CRC. These include:

- Ensuring that every facility providing maternity services fulfils the global criteria for the joint WHO/UNICEF Baby-Friendly Hospital Initiative (BFHI). This should include private facilities.
- Implementation and enforcement of the International Code of Marketing of Breast-Milk Substitutes and subsequent relevant World Health Assembly resolutions in their entirety.

21. The Code stipulates that there should be absolutely no promotion of breast-milk substitutes, bottles and teats to the general public; that neither health facilities nor health professionals should have a role in promoting breast-milk substitutes; and that free samples should not be provided to pregnant women, new mothers or families. The Code is intended as a minimum standard and should be implemented through national legislation, regulation or other suitable binding measures.

22. In May 2002 the World Health Assembly adopted a Global Strategy for Infant and Young Child Feeding. In terms of that strategy, the role of the private sector in contributing to children's right to adequate nutrition and access to safe and nutritious food was described as follows:

"Manufacturers and distributors of industrially processed foods intended for infants and young children also have a constructive role to play in achieving the aim of this strategy. They should ensure that processed food products for infants and children, when sold, meet applicable Codex Alimentarius standards and the Codex Code of Hygienic Practice for Foods for Infants and Children. In addition, all manufacturers and distributors of products within the scope of the International Code of Marketing of Breast-milk Substitutes, including feeding bottles and teats, are responsible for monitoring their marketing practices according to the principles and aims of the Code. They should ensure that their conduct at every level conforms to the Code, subsequent relevant Health Assembly resolutions, and national measures that have been adopted to give effect to both."

23. Unfortunately, there has been an increasing tendency for manufacturers of infant foods to go beyond the role described in the Global Strategy, and for them to propose themselves as providers of nutritional services (educational and informational services) in violation of the International Code of Marketing of Breast-milk Substitutes. The inappropriate influencing of health workers and mothers undermines optimal infant feeding, in particular the protection, promotion and support of breastfeeding². Companies also seek to influence policy in the area of infant and young child feeding, through a variety of means, undermining attempts to adopt effective legislation to regulate their inappropriate and unethical marketing practices.

24. The area of salt fortification has been successful in many regions of the world through the combination of private sector involvement and appropriate State party actions. Salt producers around the world have welcomed salt iodization but have also encouraged States to pass laws to create a level playing field for all producers of edible salt. In many countries, indeed, salt iodization can be put as an example of a good and positive interaction between government and private industry. Governments have formulated laws and initiated monitoring systems and the private sector has responded by producing and marketing quality iodised salt. In others, the salt industry has recognised its social responsibility and has produced salt without the existence of a law and an adequate monitoring system from government side.

25. States, in their role as duty bearers or protectors of the public interest, have been willing to pass laws and standards for salt iodization. In a few countries, the question of voluntary salt iodization in the context of free choice has arisen mainly from pressure of the private sector. This is not seen to be in the

² The ways in which companies have attempted to undermine the Code are documented in "Holding Corporations Accountable: Corporate Conduct, International Codes, and Citizen's Action", Richter, J, (2001)

interest of public health and advocacy with these governments is being undertaken to overcome this problem.

26. In the area of food fortification, a number of models, standards, guidelines are available as follows:

- Food Fortification Legislation and Regulations Manual (UNICEF/PAMM/USAID/the World Bank)
- Codex Alimentarius

27. UNICEF would like to encourage the Committee on the Rights of the Child to remind States parties that these instruments are 'appropriate measures' under the CRC, and Governments that have not implemented them are not fulfilling their obligations under the Convention.

28. UNICEF would like to draw the Committee's attention to the importance of the International Code of Marketing of Breast-milk Substitutes and other related international legal standards as appropriate measures for the implementation of State's obligations under the CRC, and the fact that these measures should be adopted as a minimum legal obligations for firms.

Section IV
Experience and Considerations:
The private for-profit sector as provider of basic social services

Education

29. Articles 28 and 29 of the CRC that establish the right to education recognise that the state has the prime responsibility for ensuring that this right is upheld for all its citizens. This does not necessarily mean that all education should be provided by the state. Article 29 of the CRC preserves the right of third parties to establish and direct educational institutions so long as these conform to minimum standards laid down by the state.

30. The private sector can play a critical role in helping countries achieve education for all as a basic right. It is however important for private sector provision of education to involve some form of partnership with the state. At the very least the state should be in a position to set a framework of conditions to be met before a private body can be licensed to start a school. On the other hand, the right and freedom of individuals to purchase private education for their children needs to be respected.

31. That means States have the obligation to control and monitor third parties' involvement in providing education, and to address the issue of regulation through partnership, to ensure that private provision of education is rights-oriented rather than simply profit-driven. States have the obligation:

- To ensure that all citizens have reasonable access to quality education, and are not denied such access on grounds such as gender, religion, race, social status, or economic means.
- To put in place a legislative framework within which various providers of education (including the state) can operate. Typically this would spell out conditions to be met before an educational institution operated by the private sector can be licensed or registered for business.
- To exercise some control over entry conditions, curriculum content, quality of the basic facilities, and qualifications of teaching staff through this legal framework. (But because total provision is often not sufficient to meet the needs of all children, there are unregulated private schools and non-formal learning centres, especially in the poorest communities.)
- To protect their citizens from exploitation in their quest for access to education. Indeed, the poor sometimes have to pay very high costs for poor quality education.

- To ensure access to basic education as a fundamental right for all citizens. There is a fundamental ethical principle at stake when the state spends public resources on educating some children but not on others, who are left to fend for themselves in non-formal learning centres.

32. In Kenya local communities are encouraged to start schools as part of the Government's drive to extend education to all citizens. Under this arrangement, communities build and furnish schools and provide housing for teachers. Government recruits qualified teachers, pays salaries and provides annual grants to meet recurrent costs. A similar approach is being used with the private sector, as is the case in Uganda, where schools set up by private (for-profit) bodies receive help in the form of teachers' salaries or annual subsidies, once they meet the criteria for recognition by government.

33. In many developing countries there is a significant sub-system of education that does not get appropriate recognition and support from the state. In the absence of adequate and efficient provision of educational opportunities by the state, many families increasingly have to rely on so-called non-formal education programmes to provide education for their children. These programmes are generally provided by non-governmental organisations and community groups and differ in important ways from the formal school system. They vary widely in terms of quality and are often directed towards other priorities such as helping to improve agriculture, rather than focusing on education *per se*. Despite these differences, the fact remains that a significant proportion of children who do not have access to formal schools have to rely on these programmes for some form of education. However these are often not even recognised by the state, nor do they receive any financial support from the state. This raises a fundamental ethical issue regarding the right of all children to education. Public resources are used to provide education for some children who are in schools, but not for those who get their education through non-formal programmes.

34. It is important for the state to address the legal implications of this sub-system of non-formal education in order to safeguard the right of all children to basic education. At the very least, this requires state recognition, followed by a regulatory partnership that includes financial support for this type of education, provision for transferring students from the non-formal to the formal system, and minimum curriculum standards. Some countries like South Africa and Kenya have made significant progress in this direction in recent years. To neglect this vital need would result in a sizeable proportion of the current generation of children being denied their basic right to education.

35. In most developing countries, where school supplies and learning materials are not produced locally, the rural population is at the end of a long distribution chain and so has to pay the highest end user cost for these materials. Generally, everything from books and pencils to basic learning materials cost much more in the rural areas than in the urban centres, preventing the poorest and most disadvantaged children from meaningfully enjoying their right to education. Unless these materials are provided free of charge by the state, which would be optimal, it will be necessary to work in partnership with private sector businesses that produce and distribute these school materials. Under such an arrangement it should be possible for the private sector to operate a policy of cross-subsidisation, which requires legal provision set up by the state, whereby more affluent groups in urban areas pay a bit more to enable prices to fall for poorer rural populations.

Early Child Care

36. For families where both parents need to work full-time and have no alternative home care for their young children, having access to quality, affordable childcare at the workplace has some significant advantages for both employer and employee. Providing such childcare facilities is a clear contribution that the private sector can make to implementing child rights, although this does not relieve the state from its obligation to exercise quality control on the services and their safety. In some circumstances, the state could also assist in funding these services through tax advantages or subsidies to encourage private companies to also offer child care to non-employees from the community.

37. The key word here is 'quality' service. Besides ensuring quality programmes for children with qualified teachers, childcare centres should allow parents to visit their child during the day, which is particularly helpful to mothers who are breastfeeding. They must tailor their hours and registration options to a company's schedule. Finally, the fees should be on a sliding scale to ensure access to all employees.

Water Supply

38. UNICEF played a key role with UNDP and the World Bank in the 1980s in developing hand pumps, placing their designs in the public domain then stimulating private sector production, sales and distribution. In Mozambique, rather than importing Indian manufactured hand pumps, in the early and mid-1990s a national hand pump production capacity was created through investment in a local company and attention to quality control. After initial sole source procurement, new companies began to enter the market and prices dropped, leading to an extension of water provision services to unreached populations.

39. Despite the trend towards privatisation of water utilities, it is perhaps worth noting that in most of the developed countries provision of water supply and sanitation had until recently been considered to be primarily a 'state' responsibility. Those that have privatised have done so only after the basic infrastructure had been well developed by the state. Privatisation of water and sanitation services in developed countries did not come about until full coverage had been assured by the state. Indeed, under the principle that the market would not be interested in 'lame ducks', water utilities have to be profitable ventures in order to be candidates for privatisation. This historical reality needs to be taken into account when considering privatisation of water and sanitation services in developing countries.

Health

40. The Global Alliance for Vaccines and Immunization (GAVI), an innovative public/private partnership to protect a child's right to life, joins national governments (from countries where the need for assistance continues and from donor countries); United Nations bodies such as WHO, UNICEF and the World Bank; philanthropic foundations such as the Rockefeller Foundation and the Bill and Melinda Gates Foundation; the commercial private sector, represented by the International Federation of Pharmaceutical Manufacturers Associations; non-governmental organizations; and technical and research institutions. All these partners have united to ensure that all the world's children are protected against vaccine-preventable diseases.

41. In particular, GAVI aims to increase access to sustainable immunization services, expand the safe use of all required cost-effective vaccines, accelerate research and development efforts for new vaccines most needed in developing countries, make immunization coverage a key indicator of development, and promote sustainability by ensuring that adequate finances are allocated to immunization. The pharmaceutical industry's participation as a full member of the alliance is key to ensuring success, particularly with regard to efforts to bring about vaccine security and guaranteed supply.

42. Recognizing that children's health is a fundamental Government responsibility, public sector strengthening is a vital element of the Alliance. Through coordination at all levels -- national, regional and global -- members of the Alliance are helping ensure that Governments have the technical data, health system infrastructure, capacity, financial support, and supplies and equipment required to design, fund and implement successful child immunization programmes. In the last two years, some fifty-four countries have received support from GAVI, a unique example of private sector contribution to the fulfillment of States' obligations for child rights.

Children in vulnerable situations

43. The provision of services by the private sector raises a number of questions with regard to children in vulnerable situations. In general, these focus on that of accountability of providers and the responsibility for ensuring that the private sector meets the standards of protection to which children are entitled under the CRC and other applicable international legal standards. The contribution of the private sector can be both positive and negative. The priority, from a child rights perspective, is to ensure that proper regulation encourages and enables the private sector to contribute positively, while ruling out potentially harmful impacts on children. There are a number of areas that demonstrate this. Many of the concerns below regarding the best interests of the child are unfortunately not limited to the private sector, since they also apply to state providers of services to the vulnerable. However, due to its innate commercial bias and the inherent risk entailed thereby, attention is particularly drawn to the private sector's involvement.

44. Juvenile detention: The privatisation of facilities for juvenile offenders had tended to be seen as a developed world practice, but more recently has been extended to developing countries too. Privately-run juvenile detention raises a range of issues, as the owners of these facilities take on the role of providing care and thereby the responsibilities for protection and provision that ensue. Among the main concerns are:

- The lack of evidence that privately-run juvenile detention facilities provide rehabilitative as opposed to punitive responses.
- The lack of information about the quality of service provision and the efficacy of accountability measures within the private system.
- The lack of information about the success or failure of privately-run correctional facilities both in term of service delivery and cost efficiency.
- The lack of mechanisms for transparency and accountability in the management of private facilities.
- The difficulty of reconciling the role of private facilities in ensuring the secure confinement of young offenders with the rights of the latter to care, counselling, rehabilitation programmes and psychological support.
- The difficulty to see how working towards the release of young persons from custody could be consistent with the commercial interests of a private provider.

It is essential that States live up to their obligations for ensuring the rights of children in juvenile detention centres, even if they are privately run.

45. Institutional Care: All children are entitled to the right to be suitably cared for within their country of birth, and, wherever possible, by their biological parents. Where parental care cannot be assured (for example, because parents are deceased), alternative solutions include family-based care and institutional care. Studies show that children who grow up in families tend to have better physical and psychosocial development than those taken care of in institutions. UNICEF considers all forms of institutional care, including orphanages, to be a last resort.

46. Given the dramatic impact of institutions on the child's development, the role of the private sector in the provision of residential care facilities for children temporarily or permanently deprived of parental care is a cause for major concerns on many fronts:

- The existence of an institution, which usually provides conditions that are at least perceived to be better than those that a significant proportion of families can provide, sometimes encourages parents to abandon their children.

- Securing funding for an institution is far easier than securing funding for programmes designed to maintain or return children to their families. The great majority (usually at least 90 per cent) of children in residential care are not orphans, regardless of the term that may be used to describe the facility concerned.
- In many cases, foreign organisations provide materially high-quality residential care. However, this care may be in conditions that are unrelated to the country's socio-economic realities, making it hard for children leaving these institutions to cope. Children may have little or no contact with the community.
- Often, access to these institutions is on a selective and discriminatory basis, with even mildly disabled children excluded.
- The cost-per-child ratio is extremely high in relation to national standards, meaning that the resources employed might be otherwise used with more impact: institutions are often financially unsustainable, diverting funds which could be used to bolster family and communities efforts to care for children.
- Institutions may seek to ensure their own survival by retaining children in their care unnecessarily in order to secure subsidies or donations, and refuse to cooperate with family tracing and reunification programmes.

47. Despite moves in a growing number of countries to reduce to a minimum the number of children in institutions, there is still a worrying tendency for governments to welcome or tolerate institutional responses.

48. The greatest impact on orphans and other vulnerable children that the state, the private sector, NGOs and external groups can have is to support families (including foster families) to increase their own capacities. Communities and families that have organized themselves to protect and care for vulnerable children are in a better position than outsiders to determine which children and households are the most vulnerable and to channel outside resources to those who are most in need. States should prioritise policies and resources to facilitate the care of vulnerable children in families.

49. Adoption: Private sector involvement in adoptions, especially inter-country adoptions, raises major protection issues. Actors range from 'self-help' adoptive parents groups to large-scale adoption agencies, institutions and lawyers (who may be based in the country of origin or in a receiving country).

50. Insufficiently controlled private initiatives can turn an essentially protective/welfare measure into a fully-fledged business, where the principle of in-country, family-based care is repeatedly ignored and preserving children's best interests is not the main objective. A major concern is that governments in countries of origin frequently authorise greater numbers of private inter-country adoption agencies than they are capable of monitoring. Where there are many such companies, they may compete to identify or secure children for adoption. Where this happens, children risk being taken directly from their families rather than from institutional care, and further risk being the subject of a commercial transaction.

51. The state has to be able to monitor private sector involvement, and this involvement must be limited to those areas where the private sector can contribute to protecting the child's best interest, and avoid those which pose a risk to the rights of the child. For example, the role of lawyers should be strictly confined to representing the interests of their clients (the adoptive parents) in an impartial court setting, instead of serving as brokers between the child's guardian or biological parents, and the adoptive parents.

52. In short, there are roles in the inter-country adoption process that the private sector may be able to play. However, state involvement and oversight, both in receiving countries and countries of origin, are essential if the protective standards laid out in international law are to be routinely and reliably applied.

53. UNICEF would like to draw the Committee's attention to the importance of the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption of 1993, which fixes the rules and standards for intercountry adoption.

Media

54. The private sector has a potentially instrumental role in implementing the communication component, Article 17, of the Convention on the Rights of the Child (CRC). Specifically, the private sector offers tremendous possibilities for advocating the CRC and the issues which directly affect children and young people and promoting awareness (and acceptance) of corporate social responsibility. As such, States should facilitate the media's role in implementing the CRC.

55. The private sector can be a vital partner in promoting the CRC and make the public aware of the issues that affect children by:

- Capitalising upon the power of the privately held international media and web outlets;
- Promoting ethical corporate partnerships with child rights organizations for the purposes of advocacy and outreach.

56. Partnerships with the corporate sector can also be used as an advocacy tool to reach children and young people with key messages about their health, education and protection. For example, UNICEF's partnership with FIFA included an agreement to broadcast child rights public service announcements during the World Cup 2002. As the World Cup is the world's most watched sporting event – with a cumulative viewing audience of approximately 33 billion people for its 64 matches – this alliance was used to reach a worldwide audience of young people.

Section IV **Governance**

57. The CRC also empowers people, the citizens, to monitor the effective provision of services. They have the right to ensure that minimum quality standards are sustained, for instance ensuring that drugs are available at health posts or that teachers actually show up for class. This also implies that they have a right to participate in decisions regarding available health services and schools (e.g. through Parent-Teacher Associations). Advocacy and education are required so that parents can meaningfully participate in school governance, so mothers know which childhood diseases they can manage themselves (and how), and which to refer to the health system, as well as what standard of health provision to expect. All citizens need to be educated in child rights so that they can assure, through social monitoring, that the private sector meets standards for rights fulfilment. This means recognising when standards are not met, knowing where to report the failures, and receiving satisfaction through appropriate remedies by the state. Integral to its rights-based approach to programming, UNICEF has been engaged in these activities to empower parents and citizens with knowledge, which are central to CRC implementation as they allow people to claim their rights as well as fulfil their duties as citizens.

58. Realising the rights of children to survival, health and development requires accessible, affordable provision of health interventions of demonstrated effectiveness. To sick children and their parents, avoiding death or averting severe illness and disability are the outcomes that matter. These concerns can be translated into measures to assess the role of the private sector in improving the health of children – fewer deaths, better growth, less frequent episodes of illness. These can be used as clear, transparent performance benchmarks that can be easily monitored.

59. Markets only function when information is freely and equally available to all market participants, buyers and sellers alike. Emergency health care for a child sick with fever will not be optimally allocated or provided through market mechanisms, because at the moment she must decide what care to seek for

her child, the mother lacks the opportunity to access information regarding provider performance. By contrast, a community council, in deciding with whom to contract for primary health care services, is well-positioned to consider the results of client satisfaction surveys and other available information about the spectrum of services each provider offers. Thus, distinction between market mechanisms for contracting for service provision and market mechanisms for selecting which individuals will receive care is vital - the first may improve the availability and quality of services and by extension, the health of service users, while the second is too often to the detriment of the health of children, particularly those who are poor or otherwise vulnerable.

60. Given these characteristics of health service delivery, States parties can ensure provision of necessary medical assistance through the development and implementation of policies and regulations that level the playing field among all providers, both public and private (e.g., all pharmaceutical products' distribution or sale to patients is done only by those who have attained minimum standards of knowledge, and received certification by the state). States can also take measures to ensure that information needed for selecting service delivery providers and for quality assurance is collected, analysed and disseminated.

61. The more citizens can be involved in monitoring the availability and quality of services, whether privately or publicly provided, the more responsive the service will be. In countries where state regulatory institutions are in their infancy, the participation of citizens in the governance system for monitoring access and quality of privately provided basic services will not only extend the state's regulatory reach, but will contribute to democracy.

Section V **Models and guidelines**

62. As said previously, UNICEF has forged alliances with the private sector for more than fifty years. This collaboration reflects the agency's recognition of the influence the business community has on the lives of children and their families everywhere, and the significant resources it can bring to better children's lives. It is also important to see the private sector in a more expansive context, as a source of knowledge and expertise for multilateralism.

63. Over the years, UNICEF has worked to identify a mechanism through which partnerships with the private sector can be screened against UNICEF's core values, including, of course, the Convention on the Rights of the Child. The result of these efforts has been the document titled "UNICEF Guidelines and Manual for Working with the Business Community" (attached to this paper as Annex 1).

64. In developing alliances with the for-profit private sector (business sector), UNICEF aims to:

- develop a responsive mechanism that would help identify private sector organizations to ally with and avoid alliances with those that undermine human rights, and children's rights in particular.
- encourage businesses to change their behaviour when they are in violation of some aspect of the Convention on the Rights of the Child; and,
- identify ways that the business sector can help meet the challenges of the next decade for child welfare and the fulfilment of child rights.

Identifying Potential Private Sector Partners

65. The eligibility criteria included in the Guidelines are used to 'screen' companies. These criteria reflect UNICEF's interpretation of the proper roles and responsibilities that are consistent with corporate responsibility in areas such as product type, manufacturing and child labour, and good advertising. Using these criteria, it is possible to screen companies and determine the appropriateness of a variety of feasible relationships with corporations.

66. Three mechanisms could be used to encourage the for-profit private sector to support the types of rights-based values enshrined in the CRC: selectivity, conditionality and encouragement. While UNICEF's partnerships with this sector at global level are not examples of direct involvement with the private sector in service delivery, we include these mechanisms for their potential value for adaptation by States in the selection and management of their own partnerships.

67. Selectivity: Of all the companies that screened annually, few are accepted as potential partners, and even fewer make it to the stage of contract negotiation.

68. Conditionality: At the contract negotiation stage of building an alliance with a for-profit private sector partner, UNICEF will sometimes, if needed, premise an alliance on certain child rights-related actions on the part of a potential partner. For example, a component of UNICEF's alliance with FIFA centres on addressing child-labour issues in the sports-related industry.

69. Encouragement: Often the best way to obtain action from the business community as a whole is to encourage influential, senior business executives to support child-rights related actions in their own businesses and amongst their peers in other businesses.

70. During the UN Special Session on Children, in May 2002, UNICEF held a Public-Private Sector Dialogue for Children with partners. Participants in the dialogue stressed the importance for governments not to decrease support for social and developmental needs because of new contributions from the private sector, and that collaboration with the private sector be based on strong government commitments to meet its responsibilities, as others meet theirs. At the same time, the role of the for-profit private in support of children requires:

- Advocacy with its consumers on issues that affect the well-being of children;
- Demonstrating good labour practices that enhance the livelihoods of workers and their children;
- Shaping its advertising and public relations messages in ways that benefit children and communities;
- Using its influence with governments, institutions, networks and NGOs to promote measures that benefit children;
- Promoting sound, culturally appropriate health and nutritional practices that will benefit children; and,
- Engaging in fair practices that ensure fair prices to producers of raw materials and other inputs.

71. UNICEF would encourage States parties to develop their own criteria of for-profit private sector eligibility for participating in service delivery of state functions. In addition to the aims above, States, in their partnership with the private, for-profit sector, should ensure that this relationship contributes positively to the fulfilment of child rights by extending access and quality for all, including poor children who might otherwise not benefit from the service. In short, the public sector must retain its responsibility to ensure that private sector services are delivered fairly and equitably. Such services are to be judged on the level of individual members of the community – the individual child whose right to an education must be respected and realized – and not at a level of gross aggregation. Thus the privatisation of public service enterprises should be managed in a way that protects equity even at the cost of immediate gains in efficiency – the long-term gains for the community in ensuring that every child is immunized and every child is educated, far outweighing any immediate gains in efficiency and income that might otherwise be derived.

Annex 1
UNICEF Guidelines and Manual for Working with the Business Community (Summary)

I. INTRODUCTION

UNICEF, the United Nations Children’s Fund, has forged alliances with the business community for more than fifty years. This collaboration reflects our recognition of the influence the business community has on the lives of children and their families everywhere, and of the significant resources it can bring to better children’s lives -- and of the fact that it is possible for the United Nations to engage with the business community in a principled and effective manner that is beneficial to everyone.

UNICEF seeks alliances with the business community that can help us fulfil our mission. We consider all types of alliances that can provide support, directly and indirectly, to UNICEF’s work. UNICEF’s alliances with the business community take many forms -- programmatic alliances, advocacy, fundraising support, or contributions-in-kind.

UNICEF actively seeks alliances with those in the business community whose behaviour, on balance, demonstrates a willingness to exercise corporate social responsibility. UNICEF seeks to work with businesses that demonstrate a commitment to, affinity with, UNICEF’s mandate, core values and which fit with our programme, advocacy, and fundraising goals.

II. GUIDING PRINCIPLES

UNICEF applies two guiding principles when contemplating an alliance with a member of the business community: find the best ally, and find the best alliance.

The Best Ally. UNICEF takes two steps to determine whether a corporation is the best ally for UNICEF -- that is, whether its record, on balance, demonstrates a willingness to exercise corporate social responsibility. First, UNICEF undertakes research regarding the potential ally, a form of ‘due diligence’. Second, UNICEF measures that information against the fundamental principles on which UNICEF and the United Nations are based, and against our specific mission, mandate and brand values. The organization’s judgement is based on these considerations. The guidelines below help guide that assessment.

The Best Alliance. UNICEF seeks alliances which fit with our values and with our programme, advocacy, and fundraising goals. So we ask ourselves whether the proposed alliance helps UNICEF work for the survival, protection, and development of children in pursuance of their rights.

III. CHOOSING THE ALLY AND ALLIANCE

UNICEF has identified a number of positive criteria that help guide its assessment of whether to enter into a proposed alliance. UNICEF looks for alliances with entities that display corporate responsibility and leadership in the community; make a positive contribution to society; have a record of socially-responsible behaviour; have a positive public and/or product/service image; have a history of commitment to development-related causes; have responsible labour practices; and employ responsible environmental practices.

We have also identified exclusionary criteria and UNICEF gives special attention to some industry sectors. Some are unacceptable under any circumstances. Thus, for example, no alliances are possible with businesses in the armaments and weapons sector; toy manufacturers manufacturing replica weapons marketed to children; companies which violate United Nations Sanctions; manufacturers of infant formula whose marketing practices violate the International Code for the Marketing of Breastmilk Substitutes; and

companies involved in pornography, exploitative and/or corrupt practices; companies found in violation of environmental laws. UNICEF is prepared to consider alliances with corporate affiliates of companies in the alcohol or tobacco industry, but only within strict limits.

For alliances that are primarily fund-raising, UNICEF has certain expectations about the amount of support to be provided by its corporate allies.

IV. PROCEDURES FOR ENTERING INTO ALLIANCES

All potential alliances with the business community, no matter how large or small, and no matter how complex or straightforward the proposed alliance, are to be subject to the "Best Ally, Best Alliance" review as a matter of course. UNICEF's Private Sector Division (International Accounts Section) is the organization's focal point to provide guidance in this area -- including in connection with the initial corporate screening or 'due diligence'.

Where the alliance would involve permission to use the UNICEF name, logo, or emblem in a commercial context, especially in fundraising alliances (with certain limited exceptions), the alliance is to be reviewed and approved by a co-ordination Committee, established by the Executive Director. In addition, where the corporate screening or 'due diligence' indicates that a proposed alliance -- of whatever nature -- requires further consideration, the co-ordination Committee is required to give final approval.

Without exception, and as a matter of policy, all corporate alliances must be put in writing, with the roles and responsibilities of each ally clearly set out. In most cases, this will involve a legally enforceable agreement. Certainly, all alliances where the corporate ally is permitted to use the UNICEF name, logo, and emblem must be set out in a legal agreement. This protects all involved.

V. USE OF THE UNICEF NAME, LOGO AND EMBLEM

The policy regarding general usage of the UNICEF name, logo and emblem is set out in the UNICEF Identification Standards Manual -- and also (for National Committees) in the Recognition and Co-operation Agreement. Compliance with the requirements of the Identification Standards Manual (currently under review as a follow up to the brand model development exercise recently completed) is mandatory, as it guarantees a clear, consistent, readily identified image of UNICEF.

The UNICEF name, logo, and emblem are not trademarks. They are not registered as trademarks or protected under trademark laws. They are protected under a special international convention, the Paris Convention. The UNICEF name, logo and emblem may not be registered as trademarks by any UNICEF office or National Committee, and they should not be referred to as trademarks in any legal or other documents.

Alternative UNICEF 'logos' or special 'corporate fundraising emblems', whether or not they incorporate any part of the UNICEF logo or emblem, may not be created. In order to ensure that UNICEF enjoys the highest visibility and awareness by the public it is recommended that the full representation of the UNICEF name, logo and emblem be used in all alliances or activities.

Permission to use the UNICEF name, logo and emblem may only be granted in writing and only on approved terms.

VI. FURTHER POINTS TO NOTE

Two further points are important to note. They apply to all UNICEF's alliances with members of the business community, whether or not they involve use of the UNICEF name, logo and emblem.

No endorsement. UNICEF does not endorse any products, goods, or services. At no time may any UNICEF office, staff member or UNICEF National Committee endorse or appear to endorse a company, group of companies, industry sector or other third party, its products or services.

No exclusivity UNICEF does not grant 'exclusive' permission to reproduce the UNICEF name, logo, or emblem. At no time may any UNICEF office, staff member or UNICEF National Committee grant exclusivity to any company, group of companies, industry sector or other third party. To do so could make UNICEF vulnerable to allegations of partisan behaviour by companies or their governments and is incompatible with our UN status. In addition, granting exclusive permission could be misconstrued as endorsement.

Annex 2

Private business sector's impact on children's rights in situations of armed conflict

There is growing international awareness and concern regarding the economic agendas of many current conflicts and the harmful role sometimes played by the private sector's activities in many of these conflicts. Indeed, today's armed conflicts often stem from economic greed and deliberate use of violence to ensure economic control over natural resources and to allow the conduct of illegal activities such as pillaging, trafficking, and extortion. The role of the private sector becomes crucial in many such conflicts. Parties to conflict rely on the private sector - from small companies in neighbouring countries to large transnational corporations - to exploit local resources and to market them abroad, acting as simple intermediaries or as direct partners present in the field. Thus, the fuelling and prolonging of armed conflicts due to economic activities have an indirect impact on children's rights, since children are often the most vulnerable victims of these conflict situations.

Armed conflicts increase the risk to children of abuse, exploitation, violence, and discrimination – while reducing the capacity of States, communities, and families to address those risks. Conflicts are the cause of displacement, breakdown in family and social structures, weak governance, a culture of violence, and the absence of accountability, which seriously impede the fulfilment of the rights enshrined in the CRC.

Private sector's responsibility for child rights violations can be described as direct when a corporation knowingly assists a State in violating international standards for the protection of child rights. Complicity has also been used to describe the corporate position vis-à-vis government violations when the business benefits from human rights and child rights abuses committed by someone else. In addition to refraining from direct or indirect complicity in such violations, companies have responsibility for the way local communities are treated, and they shall protect, respect, and promote international human rights and children's rights.

The UN Security Council has acknowledged this situation and addressed it on a number of occasions including in its recent Resolutions 1314 (2000) and 1379 (2001) on the protection of children in armed conflict. In particular, it has called upon Member States as well as international organizations to control the private sector's activities with parties to conflict who are responsible for gross violations of children's rights.

UNICEF urges the Committee on the Rights of the Child and the child rights community to address the impact of the private business sector on the protection of children's rights, in particular in situations of armed conflict. The decisions of the UN Security Council and the recommendations of UN Secretary-General provide a good framework in this regard.