

NATIONS UNIES
HAUT COMMISSARIAT DES NATIONS UNIES
AUX DROITS DE L'HOMME



UNITED NATIONS
OFFICE OF THE UNITED NATIONS
HIGH COMMISSIONER FOR HUMAN RIGHTS

PROCEDURES SPECIALES DU CONSEIL DES
DROITS DE L'HOMME

SPECIAL PROCEDURES OF THE UNITED
NATIONS HUMAN RIGHTS COUNCIL

Téléfax: (41-22)-928 90 10
Télégrammes: UNATIONS, GENEVE
Télex: 41 29 62
Téléphone: (41-22)-928 92 99
Internet : www.ohchr.org/english/bodies/chr/special/index.htm
E-mail: jwendland@ohchr.org



Address:
Palais des Nations
CH-1211 GENEVE 10

State Responsibilities to Regulate and Adjudicate Corporate Activities under the United Nations' core Human Rights Treaties

Individual Report on the United Nations Convention on the Rights of the
Child and its Optional Protocols

Report No. 6

Prepared for the Special Representative of the Secretary-General on Human
Rights and Transnational Corporations and
Other Business Enterprises

With the support of
The Office of the United Nations High Commissioner for Human Rights

July 2007

PREFACE

The following report is part of a series examining States' obligations in relation to corporate activity under the United Nations' core human rights treaties.¹ A report summarizing the main findings and trends from the treaty-specific reports was submitted to the fourth session of the Human Rights Council.²

The series of reports maps the scope and content of States Parties' responsibilities to regulate and adjudicate the actions of business enterprises under the treaties and as elaborated by the respective treaty bodies.³ This mapping supports the work of the Special Representative of the United Nations Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises. The (then) United Nations Commission on Human Rights mandated the SRSG, *inter alia*, to:

“(b) elaborate on the role of States in effectively regulating and adjudicating the role of transnational corporations and other business enterprises with regard to human rights, including through international cooperation.”⁴

The reports analyze a representative sample of primary materials associated with each treaty:⁵ the actual treaty provisions; General Comments or Recommendations by the Committees; Concluding Observations on States Parties' periodic reports; and Views on Communications and under Early Warning Measures and Urgent Procedures.⁶

The reports are based on references by the treaties and treaty bodies to States Parties' duties to regulate and adjudicate corporate activities.⁷ However, as it is less common for

¹ The following treaties were considered as part of this series: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Rights of the Child (CRC); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW). The International Convention on the Rights of Persons with Disabilities (ICRPD) (adopted by the General Assembly in Dec. 2006) and the International Convention for the Protection of All Persons from Enforced Disappearances, which had not entered into force at the time of completing the research, have not been included. All reports will be made available as they are completed at <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>.

² A/HRC/4/35/Add.1.

³ The human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties. They are created in accordance with the provisions of the treaty that they monitor.

⁴ Commission on Human Rights Resolution 2005/69, para. (b). The SRSG now reports to the UN Human Rights Council.

⁵ The ICRMW report relies to some extent on secondary sources because of the scarcity of primary sources from the recently established Committee on Migrant Workers (CMW).

⁶ The ICCPR, CAT, ICERD, CEDAW and ICRMW all have associated individual complaints mechanisms. CEDAW and CAT also have procedures for urgent inquiries. ICERD has an early warning procedure.

⁷ Drawing on the SRSG's mandate, this report uses “regulation” to refer to treaty body language recommending legislative or other measures designed to prevent or monitor abuse by business enterprises, and “adjudication” to refer to judicial or other measures to punish or remediate abuse.

the treaty bodies to refer explicitly to corporations, the reports also highlight more general references to State obligations regarding acts by non-State actors, especially where they help identify patterns and measures relevant to business enterprises. The reports do not document references to non-State actors that are unrelated to the mandate, such as armed groups, educational institutions, family members and religious leaders. Further, the reports focus on States' obligations in relation to rights impacted by corporate activities, rather than on corporate entities as possible rights-holders.⁸

The decision to focus the research on the treaties reflects the global importance of the United Nations' human rights treaty machinery. Due to time and resource constraints, other domains of human rights law, such as the regional human rights systems and international customary law, have not been included in this particular series, though they are referenced briefly in the SRSG's report to the fourth session of the Human Rights Council.⁹ The same is true of other branches of international law that are relevant to the mandate, such as labor law.

Any views or recommendations expressed in this series do not necessarily represent the views of the Office of the United Nations High Commissioner for Human Rights or the various treaty monitoring bodies. The reports were completed purely for research purposes on behalf of the SRSG's mandate and do not represent his final views or recommendations in relation to the treaty bodies' consideration of business and human rights issues.

The reports are numbered chronologically according to the date of adoption of each treaty.

⁸ The UN human rights treaties have not been interpreted to protect the rights of corporate bodies. This is in contrast to e.g. the European Convention on Human Rights, many rights of which have been extended to benefit companies or other non-State legal entities.

⁹ A/HRC/4/35.

EXECUTIVE SUMMARY

This report outlines the nature of States Parties' obligations vis-à-vis corporate activities under the United Nations Convention on the Rights of the Child (CRC) as well as its Optional Protocol on the sale of children, child prostitution and child pornography (OPSC), as elaborated by the Committee on the Rights of the Child (Committee).

Given that research uncovered very little commentary from the Committee in relation to State obligations to protect against corporate abuse under the Optional Protocol on the involvement of children in armed conflict (OPAC), the Protocol has not been analyzed in detail in this report. This should not be taken as an indication that the SRSG believes the Optional Protocol is irrelevant to the issue of business and human rights. Indeed, the Committee has made some references to State duties to regulate arms companies and it is foreseeable that it may offer guidance in relation to other types of companies in the future, including private security companies.

1. The Duty to Protect

There are numerous provisions in both the CRC and the OPSC which either explicitly or implicitly require States Parties to protect against abuse by non-State actors, including those dealing with contexts likely to involve business enterprises. Thus it is unsurprising that of the three duties usually ascribed to States Parties to human rights treaties (the duties to respect, protect and fulfill), the Committee focuses on the duty to protect when discussing State obligations to prevent and punish interference with rights by business enterprises.

CRC

The Committee has interpreted the CRC as requiring States Parties to protect against third party interference with rights, including by business enterprises. Such interpretations have formed part of discussions of the Convention's general principles, which are defined as principles concerning non-discrimination; consideration for children's best interests; the right to life and the State's duty to ensure to the maximum extent possible the child's survival and development; and the right to express views freely. It has also interpreted more specific CRC provisions, such as those protecting labor and health rights, as requiring State action to regulate and adjudicate the activities of non-State actors, including employers and business enterprises from certain industries.

For example, the Committee considers that States Parties are required to ensure non-State service providers, including businesses, act in accordance with rights. It has also said that States Parties must play a key role in combating discrimination by private actors. As detailed below, the Committee has discussed particular industries when suggesting measures to protect children from economic exploitation, discrimination and harmful information, including the media, Internet industry and pharmaceutical industry.

OPSC

The OPSC clearly requires States to protect children from abuse by both State and non-State actors. States Parties are required to prohibit the sale of children, child prostitution

and child pornography. To this end Art. 3(1) requires States Parties to ensure that offences related to these acts are covered under their criminal or penal law, whether the offences are committed domestically or transnationally, or on an individual or organized basis. Art. 3(2) says that subject to a State's national laws, attempt, complicity and participation should also be covered under relevant legislation. Art. 3(3) requires appropriate penalties to punish the offences.

Given that Art. 3(4) separately discusses liability for "legal persons," it appears that Arts. 3(1) - (3) apply mainly to action against natural persons, even if they acted in concert with others. Art. 3(4) provides that, subject to national law, each State Party shall take measures where appropriate to establish legal liability for legal persons for offences under Art. 3(1). In contrast to Art. 3(1), which requires the offences to be covered by criminal or penal law, Art. 3(4) provides that liability for legal persons may be criminal, civil or administrative. Thus it appears States have more discretion in deciding how to deal with offences by legal persons.

Other provisions also suggest wide ranging measures to protect against offences by both State and non-State actors, including Art. 4, which requires the establishment of extraterritorial jurisdiction over the Art. 3(1) offences (see below); Art. 7, which discusses seizure and confiscation of assets used in or gained from offences; and Art. 9, which among other things calls for implementation of laws and other measures to prevent the offences; requires States to ensure victims have access to adequate procedures to seek compensation from those "legally responsible," and obliges States to take appropriate measures to effectively prohibit the production and dissemination of material advertising the prohibited acts.

There are no General Comments dealing specifically with the OPSC. However, it is clear from Concluding Observations that the Committee considers States to have a duty to prevent, punish, investigate and redress violations by non-State actors, including business enterprises. As discussed below, the Committee has recommended States to establish liability for legal persons in this regard and has made more specific recommendations in relation to employers, Internet service providers and the tourism industry.

Due Diligence

Unlike some of the other treaty bodies, the Committee has *not* expressly mentioned the concept of "due diligence" in relation to the duty to protect. The concept is perhaps featured most notably in General Comment 31 by the Human Rights Committee, where it refers to the State being required to exercise "**due diligence** to prevent, punish, investigate or redress the harm caused by ... acts by private persons or entities."

References to "due diligence" generally imply that the duty to protect is one of means rather than result. States will not be considered to have violated their treaty obligations simply because of proof of non-State abuse — there must be some State act or omission that evidences a failure to exercise due diligence in fulfilling the duty to protect.

Duties to respect and fulfill

The Committee has implicitly discussed State duties other than the duty to protect in the context of business activities. It has indicated that the duty to respect requires States to consider rights when entering into bilateral trade agreements and contracting with private service providers, including businesses. The Committee regularly discusses the duty to promote when it calls on States to educate the public about rights, including private sector actors. It also implies that the duties to facilitate and provide as part of the duty to fulfill might require States Parties to ensure private owners of public buildings provide certain facilities to children with disabilities and to pursue partnerships with the private sector to finance certain initiatives.

2. References to business enterprises

This report considers both explicit and implicit references to business enterprises. It considers the former to include statements by the Committee which mention terms such as business enterprises, business, companies, corporations, entities and enterprises. It considers the latter to include references to parties which could include business enterprises, such as private actors, private bodies, non-State actors, legal persons, employers, private service providers and broad references to particular industries.

CRC

The Convention does not explicitly refer to business enterprises or any similar terms though it does mention the mass media, which could involve business enterprises. For example, Art. 17 requires States to encourage the mass media to disseminate socially and culturally beneficial information and to consider minority or indigenous children's linguistic needs.

Other provisions protect rights in relation to contexts highly likely to involve business enterprises, including provisions dealing with privacy, health and employment. The Committee has referred to various commercial sectors when recommending State measures to ensure these rights.

Only one General Comment explicitly refers to business and only in defining the term "private sector service provider" to include businesses. Other General Comments either refer to particular sectors such as the mass media, the entertainment industry and the pharmaceutical industry or refer generally to private or non-State actors. Only three Concluding Observations in the research sample explicitly referred to business enterprises though there are numerous discussions about employers and particular industries, including Internet service providers, the mass media and the mining and agricultural sectors.

During its day of general discussion on the private sector as service providers, the Committee focused on businesses providing "traditional State functions" but stressed that it was aware of the wider impacts business could have on rights. There are no other days of general discussion which specifically address these impacts.

OPSC

The OPSC's Preamble emphasizes cooperation between governments and the Internet industry in combating child pornography. As discussed above, Art. 3(4) refers to "legal persons." While this term is not defined, its ordinary meaning includes business enterprises.

Other provisions also suggest some regulation of activities by business enterprises might be necessary. For example, Art. 9(5) requires preventive action in relation to marketing, suggesting States might need to regulate companies providing marketing services.

None of the Concluding Observations in the research sample explicitly referred to business enterprises. However, the Committee has expressed its concern at situations where "legal persons" cannot be held liable for OPSC offences and has also recommended legislative and other measures in relation to several industries, including the Internet and tourism sector and various industries using child labor.

3. Regulation

Both the Convention and the OPSC refer to the implementation of State obligations through legislative, administrative and other measures. It is clear that the Committee believes that such implementation will only be effective if these measures target both State and non-State actors, including business enterprises, where appropriate.

CRC

(a) Types of measures contemplated

Art. 4, dealing with general measures of implementation, calls for appropriate legislative, administrative and other measures to implement the Convention rights. Other, more specific provisions, such as those dealing with work rights, also call for such measures. Many of these provisions relate to situations likely to involve business, including Art. 32, which requires States to take legislative, administrative, social and other measures to ensure the prohibition of economic exploitation and hazardous work. The Committee has interpreted such provisions to require regulatory action against private actors, including business enterprises, to prevent interference with rights.

(b) Legislation

The Committee sees legislation as key in preventing and punishing third party abuse. While it has confirmed States' discretion as to the scope and content of relevant legislation, it has also provided detailed guidance in some instances. For example, in order to combat violence, the Committee has recommended general protection laws, the repeal of laws allowing violence and "sectoral legislation," such that legislation dealing with education, employment etc., clearly prohibits violence in those settings.

The Committee has highlighted that legislation should be enforced and that States should create monitoring mechanisms to assist with implementation and enforcement.

It is rare for the Committee to explicitly recommend that legislation should cover the actions of business enterprises. However, it has supported legislative measures in

contexts in which business enterprises operate, implying that such measures will only be effective if they also regulate relevant enterprises. For example, the Committee has called for legislative action to combat economic exploitation as well as discrimination in the provision of health services.

Even when the Committee suggests regulation of activities by business enterprises it tends not to specify whether such measures should apply to natural persons acting on the business' behalf or whether the business enterprise itself should be regulated.

(c) Monitoring

The Committee has called for national human rights institutions (NHRIs) to play a key role in monitoring both private and public compliance.

The Committee has also recommended government-run monitoring bodies to ensure that private service providers protect rights and Concluding Observations regularly call for monitoring mechanisms to combat child labor.

(d) Administrative measures

As well as calling for legislative measures, the Convention also requires appropriate administrative measures. The Committee has recommended national policies to promote rights; departmental coordination; and multi-sectoral efforts including private parties.

It has also recommended impact assessments before introducing new laws or policies which could affect children's rights. The implication is that where such laws or policies relate to commercial projects, the Committee may expect States to require relevant access and information from private participants, including business enterprises, in order to effectively assess the project's likely impact on rights.

OPSC

(a) Types of measures contemplated

The OPSC provides less latitude concerning regulation of private acts, especially those by individuals. It requires that certain offences be covered under a State's criminal or penal law; that such offences are punishable by appropriate penalties; that measures be taken to seize goods or profits used in or gained by the offences; and that victims have access to procedures to seek compensation from those "legally responsible."

There appears to be more latitude regarding liability for legal persons as States may establish such liability through criminal, civil or administrative measures.

(b) Legislation

Legislation is clearly contemplated in order to prohibit the Protocol offences, at least in relation to individual offenders. Significant detail is provided as to the types of offences which must be included in criminal or penal laws as a minimum and the OPSC confirms that such laws should cover secondary liability such as attempt and complicity. Art. 9(1) also confirms the importance of legislative measures, saying that States Parties should adopt or strengthen, implement and disseminate laws to prevent the Protocol offences.

While the Committee has encouraged States Parties to extend liability for the Protocol offences to legal persons, these discussions have not specified when legislative measures are necessary. For example, the Committee has recommended legislative action to prevent abuse by Internet service providers but has not confirmed whether such legislation should focus on the company providing services or on individuals acting on the company's behalf.

(c) Monitoring

Concluding Observations recommend States to establish effective monitoring mechanisms to ensure compliance. The implication is that such mechanisms should monitor compliance by both State and non-State actors, including business enterprises.

(d) Administrative measures

The OPSC provides discretion as to whether to establish liability for legal persons through criminal, civil or administrative measures. More generally, it provides that States should adopt or strengthen administrative measures to prevent the Protocol offences.

Concluding Observations recommend administrative measures to ensure prevention and punishment of the offences, including the implementation of national plans of action.

4. Adjudication

CRC

(a) The right to an effective remedy

The Committee has said that effective remedies must be available if the Convention rights are to have “meaning” and that the right to an effective remedy is implicit in the Convention. It has also confirmed that States should promote physical and psychological recovery and social reintegration following harm such as neglect or exploitation.

(b) Complaints mechanisms and reparation

The Committee has said that the right to an effective remedy includes access to appropriate reparation, including compensation. The Committee also supports access to wide-ranging complaints mechanisms, including NHRIs where appropriate. In some situations the Committee has called for access to judicial mechanisms.

(c) Sanctions and penalties

In accordance with Art. 32, the Committee has called for prosecution and punishment of private actors engaged in economic exploitation. It has also recommended prosecution for any violence in private settings. It has said punishments should be well publicized so as to act as a deterrent.

OPSC

(a) The right to an effective remedy

The OPSC refers to compensation for victims and to penalties for perpetrators. It also requires measures to ensure recovery and reintegration for victims. The Committee

expects States Parties to ensure effective remedies are available for victims and to bring perpetrators to justice.

(b) Complaints mechanisms and reparation

Art. 9(5) requires that victims have access to adequate procedures to seek compensation for damages from “those legally responsible.” It is unclear if, by the phrase “those legally responsible,” the drafters intended a right to seek compensation from both natural and legal persons.

The Committee has not directly addressed this issue but has called for complaints mechanisms as well as measures to ensure recovery for victims.

(c) Sanctions and penalties

Art. 3(3) requires States Parties to make the Protocol offences punishable by appropriate penalties that consider the grave nature of the offences. The Committee has not yet addressed whether Art. 3(3) applies to penalties for legal persons, although it seems the provision could apply to individuals acting on a company’s behalf.

The Committee regularly calls for stronger penalties and has also recommended against reducing penalties merely because compensation has been offered to the victim.

Art. 7 discusses asset/profit confiscation and closing premises used to commit offences. None of the Concluding Observations in the research sample addressed Art. 7 so it is not yet known how the Committee would interpret a situation involving company assets.

5. *Promotional measures and “business responsibilities”*

CRC

(a) Promotional measures

Under Art. 42 of the Convention, States Parties undertake to make the Convention’s provisions “widely known.” Thus it is unsurprising that the Committee sees promotional measures as vital in informing State and non-State actors of ways to protect rights.

The Committee foresees a role for NHRIs in promoting rights, particularly by working with the media. It has called for rights-based training of all actors working with or for children and recommended that States Parties widely disseminate periodic reports and Concluding Observations. The Committee sees the media as key in promoting rights and alternates between directly addressing recommendations to the media and advising States to request, or require in some situations, the media to take on certain promotional tasks.

There were no specific recommendations to promote rights amongst the business community though the Committee has called for raising awareness amongst private service providers, including through codes of conduct. Concluding Observations have recommended “cooperation” with the media, Internet service providers and tour operators.

(b) “Business responsibilities”

While the Committee considers that only States Parties are ultimately accountable under the Convention, it has concurred with the Committee on Economic, Social and Cultural Rights that other actors, including business enterprises, may have responsibilities in relation to respecting and ensuring rights. For example, in General Comment 5, the Committee recognizes that “responsibilities to respect and ensure the rights of children extend in practice beyond the State and State-controlled services and institutions to include children, parents and wider families, other adults and non-State services and organizations.”

The Committee has advised private actors, particularly private service providers, to incorporate rights-based protections into their guiding documents, including codes of conduct. It has also “appealed” to private actors to identify and remove obstacles to rights. Further, it has specifically requested the media, private service providers and banks to act in accordance with the Convention. In particular, the Committee has asked private service providers to consider the Convention when sub-contracting with other private actors. It has also encouraged private service providers to devise self-regulation mechanisms and consult with the communities in which they operate.

The Committee has mentioned requests for “a model statement for non-State actors” but it does not appear that this statement had been completed at the time of writing.

OPSC

(a) Promotional measures

The Preamble notes that public awareness is needed to reduce “consumer demand” for economic and sexual exploitation. The Committee considers that promotional activities are an important tool to prevent abuse in addition to legislation. Concluding Observations confirm that promotional activities should bring together government bodies, private institutions or bodies and civil society.

(b) “Business responsibilities”

Concluding Observations focus on State duties rather than responsibilities for private actors. Nevertheless, it is interesting to note that the Preamble stresses cooperation with the Internet industry.

6. *Sector specific information*

The Committee’s commentaries imply that the duty to protect applies to regulating and adjudicating actions by all types of business enterprises in relation to all rights capable of violation by private actors. Nevertheless, the Committee has mentioned certain sectors and rights more than others in discussing protection against interference with rights by business enterprises. This simply suggests current trends and does not indicate that the Committee may or will focus only on certain types of abuses by certain types of business enterprises. These trends are set out below:¹⁰

¹⁰ References relate to the Convention unless otherwise stated.

Type of actor	Recommendations to States Parties
Mass media, advertising and publishing companies	States Parties should encourage the media to disseminate culturally and socially beneficial information. The Committee calls for “cooperation” with the media to improve the quality of information. Further, States Parties should regulate media production and delivery to protect children from harmful information, including prohibiting marketing of substances such as tobacco and alcohol.
Employers	States Parties should prevent and punish discrimination, child labor and other forms of economic exploitation through measures such as law reform, monitoring mechanisms and awareness-raising. The Committee has expressed concern about interference with rights by certain sectors/industries in some States, including the agricultural, mining, entertainment/sports and informal sectors. In relation to the OPSC, the Committee has also called for strong penalties for contributing to forced labor.
Pharmaceutical industry	States Parties should negotiate with the pharmaceutical industry to lower medicine costs. Further, States should implement protective measures for children participating in bio-medical research.
Private owners of public places	States Parties should ensure all public buildings are accessible to children with disabilities – the implication seems to be that States should ensure private building owners comply with access regulations.
Companies with the capacity to damage the environment	States should implement policies to prevent environmental pollution. In Concluding Observations, the Committee has called for measures to prevent and combat pollution and has recommended independent, rights-based environmental and social impact assessments before developing mining and other industrial projects.
Internet industry, including Internet service providers	OPSC Concluding Observations have recommended legislation to strengthen liability for crimes on the Internet and called for States to ensure “full mandatory cooperation” of Internet service providers. In relation to the Convention, the Committee has expressed concern about the lack of legislation regarding Internet service providers.
Tourism industry	In relation to both the OPSC and the Convention, the Committee has recommended collaboration and cooperation with the tourism industry, especially tour operators, to combat economic and sexual exploitation, including through promoting codes of conduct.
Arms companies	While a detailed study of the OPAC was beyond the scope of this report, readers should note that Concluding Observations relating to the Optional Protocol implicitly refer to arms companies. For example, they have recommended States to review laws on the arms trade in order to abolish trade with countries where individuals under 18 take a direct part in hostilities.

7. State-owned or controlled enterprises and privatization

While the research did not uncover explicit discussions of State-owned or controlled enterprises, it seems the Committee considers States responsible for preventing and punishing abuse by all forms of enterprises, regardless of ownership or control structures.

The Committee regularly confirms State obligations to regulate private service providers, including business enterprises, supplying core services. In particular, the Committee has said that States must ensure that privatization does not lead to discrimination affecting accessibility of services and that States should carry out impact assessments before contracting out services.

Discussions about private service providers are less common in relation to the OPSC though there are some references to preventing abuse by private adoption agencies.

8. Territorial scope

CRC

Under Art. 2(1) of the Convention, States Parties must respect and ensure the Convention rights to each child “within their jurisdiction.” The Committee believes that States Parties’ obligations may apply to children beyond their national territory who are still within their jurisdiction. What is less clear is the level of State control required to establish jurisdiction in such situations.

The Committee has also not addressed how such issues relate to commercial activities. For example, it is not yet known how it would interpret a situation where corporations act on the State’s behalf (exercising elements of governmental authority or acting under the instructions, direction or control of the State) outside the national territory, and exercise a degree of control over individuals such that, were such control exercised by State agents, the State’s Convention obligations would likely apply in full.

OPSC

The OPSC’s territorial scope is inextricably linked to the obligations it places on States to regulate both transnational and national acts. These obligations are discussed below.

9. Regulation with extraterritorial effect

The SRSG’s mandate looks specifically at the acts of transnational businesses. Thus an important question is whether a State Party has any duties under the Convention or OPSC to regulate the acts of business enterprises which interfere with the rights of children who are both outside the State’s national territory and effective control, particularly where the State has some influence over such enterprises.

CRC

Unlike the OPSC, the Convention does not explicitly require States Parties to establish jurisdiction over acts occurring abroad.

While the Committee does not appear to have recognized a *general* obligation on States Parties to protect children outside their jurisdiction from corporate abuse, it has implied support for extraterritorial regulation more generally. For example, Concluding Observations have urged use of extraterritorial jurisdiction to help combat female genital mutilation. Further, in recommending measures to prevent and punish trafficking, the Committee has called for widespread prosecution of offenders.

More guidance would be helpful on whether the Committee expects States Parties to establish jurisdiction over perpetrators of trafficking wherever the abuse occurs provided there is a recognized basis of jurisdiction, such as where the perpetrator is a national. It would then be useful to understand whether such obligations apply to other abuses and whether the Committee expects that jurisdiction should be established over legal persons.

In accordance with the Convention, the Committee has also called for “appropriate national, bilateral and multilateral measures,” including agreements, to combat acts such as illicit transfers, trafficking and other forms of sexual and economic exploitation. Further discussion would be welcome on whether such comments contemplate extraterritorial regulation where appropriate.

OPSC

The OPSC requires extraterritorial regulation of the Protocol offences, at least in relation to individuals. As noted above, Art. 3(1) requires that certain offences are covered under the State’s criminal or penal law, whether they are committed “**domestically or transnationally** or on an individual or organized basis.” (Emphasis added)

In relation to legal persons, Art. 3(4) provides that subject to national law, each State Party shall take measures where appropriate to establish legal liability for legal persons for offences under Art. 3(1). The Committee has not yet addressed if, read with Art. 3(1), such measures should apply to acts by legal persons committed “domestically or transnationally.”

Art. 4 prescribes in detail when States Parties should establish jurisdiction over offences committed abroad. Among other things, it requires measures to establish jurisdiction over the Art. 3(1) offences where the victim or **alleged offender** is a national, or when the alleged offender is present in its territory and there is no extradition. The OPSC also requires States to assist each other in investigations or criminal or extradition proceedings, and to strengthen international cooperation by multilateral, regional and bilateral arrangements to among other things, investigate, prosecute and punish offenders.

The Committee has not yet addressed whether Art. 4 requires States to establish jurisdiction over offences where the alleged offender is a legal person, assuming there is a requisite connection to the State. Even if the Committee were to emphasize such a requirement, it is unclear how one should read Art. 3(4) together with Art. (4), considering that Art. 3(4) provides discretion as to whether and how to establish legal liability for legal persons.

Further, it is unclear if Art. 9(4), which requires access to adequate procedures to seek compensation, applies to situations where the offence occurred outside the State but where the person “legally responsible” has some links to the State.

The Committee has not provided much guidance on these issues. Concluding Observations refer to States Parties’ duties to exercise extraterritorial jurisdiction but focus more on procedural aspects. While several Concluding Observations recommend

States Parties to extend their laws to legal persons, it is unclear if the Committee expects such laws to cover both domestic and transnational acts.

It is possible that further guidance may come from commentaries related to the OPAC. As stated above, the Committee has recommended that States review their laws on arms trading in order to prohibit trading with countries where persons under 18 take a direct role in hostilities. The implication is that the Committee may expect States Parties to regulate the acts of corporations domiciled in their territory to prevent them from trading with certain armed groups or regimes abroad.

8. Issues which would benefit from further elaboration

This report shows that the Committee has increasingly considered States Parties' obligations vis-à-vis corporate activities. Nevertheless, there remain several areas, set out below, which are key to the SRSG's mandate and where further discussion could assist States, business enterprises and individuals to better understand these obligations. It is acknowledged that lack of detailed guidance on these issues to date may not only be attributed to lack of information on these issues but also because they may not always be at the core of the Committee's mandate.

The issues set out below should not be considered as comprising part of any formal recommendations from the SRSG. They simply highlight areas where further guidance could help to resolve difficult questions for States Parties, businesses, and civil society.

CRC

Duty to protect:

- (1) the nature and scope of the duty to protect in relation to States preventing and punishing interference by business enterprises with enjoyment of rights, including the relevance, if any, of the concept of "due diligence" to the measures States must take to establish that they have fulfilled the duty to protect;

Other State duties:

- (2) whether the Committee's recommendations for States Parties to consider rights when entering into bilateral trade agreements and contracts with private service providers apply to all commercial agreements entered into by the State, as well as what such "consideration" might entail;
- (3) whether the Committee considers that the duty to fulfill requires States Parties to seek certain resources and contributions from private and public actors;

Reference to business enterprises:

- (4) the ways in which the Committee considers the wider business sector (apart from private service providers) can impact on rights and how the State should respond to such impacts;

Regulation:

- (5) whether the Committee interprets the Convention as requiring legislative or other measures to address business enterprises where appropriate or if it is sufficient for such measures to focus on individuals acting on behalf of an enterprise;
- (6) States' roles in encouraging or requiring corporate participation in rights-based impact assessments carried out by the State or in influencing corporations to conduct their own assessments before initiating projects likely to affect rights;

Business responsibilities:

- (7) the nature and extent of any responsibilities for corporations under the Convention, including what legal and practical consequences the Committee sees in relation to such responsibilities. Guidance would also be helpful on States' roles in relation to any such responsibilities;

Territorial scope:

- (8) when the Committee will consider a State Party to have jurisdiction under the Convention beyond its territory and whether the Committee might consider that a State could gain jurisdiction through corporations acting on the State's behalf (exercising elements of governmental authority or acting under the instructions, direction or control of the State) outside the State's national territory; and

Regulation with extraterritorial effect:

- (9) whether the Committee considers that the Convention requires States Parties to protect against abuse outside their jurisdiction by corporations domiciled in their territory, including how the Committee considers the concept of international cooperation to interrelate with regulation with extraterritorial effect, if at all.

OPSC

Regulation:

- (1) the actions States Parties should take regarding "legal persons," including the amount of discretion provided by the condition that liability may be subject to national law; whether the reference to civil, criminal and administrative measures contemplates judicial and legislative measures; and the interplay between Arts. 3(1) and (4);

Adjudication:

- (2) whether the Committee considers that Art. 9(4) regarding access to compensation procedures means that States Parties must ensure that it is possible to seek compensation from the perpetrators themselves, which could include legal persons such as business enterprises; and whether Art. 9(4) requires a right to seek compensation even where the abuse occurred abroad;
- (3) how Art. 7, regarding confiscation of assets and profits and closure of premises, might relate to a situation where company assets or premises are in issue; and

Regulation with extraterritorial effect:

- (4) whether a State Party is obliged to exercise jurisdiction over offences occurring abroad where the alleged offender is a legal person with links to the State, and whether this is dependent on how the State decides to impose liability on legal persons under Art. 3(4).

TABLE OF CONTENTS

PREFACE	2
EXECUTIVE SUMMARY	4
ABBREVIATIONS	21
INTRODUCTION	22
METHODOLOGY	23
PART 1 - THE DUTY TO PROTECT	24
A. CRC.....	25
(i) General Principles.....	25
(ii) Protection against violence	27
(iii) Protection from abuse in employment	28
(iv) Protection from harmful information.....	29
(v) Other provisions indicating the duty to protect.....	29
B. The OPSC	30
(i) Treaty provisions	30
(ii) Commentary from the Committee	31
C. Due Diligence and the duty to protect	31
D. Other duties	32
(i) Duty to respect	32
(ii) Duty to fulfill	33
PART 2 - REFERENCES TO BUSINESS ENTERPRISES	34
A. CRC.....	34
(i) Treaty provisions	34
(ii) Commentary from the Committee	34
B. OPSC.....	35
(i) Treaty provisions.....	35
(ii) Commentary from the Committee	35
PART 3 - REGULATION.....	36
A. CRC.....	36
(i) Types of measures contemplated.....	36
(ii) Legislation.....	37
(iii) Monitoring	39
(iv) Administrative measures.....	40
B. OPSC.....	42
(i) Types of measures contemplated	42
(ii) Legislation.....	42
(iii) Monitoring	43
(iv) Administrative measures.....	44
PART 4 - ADJUDICATION	44
A. CRC.....	44
(i) The right to an effective remedy	44
(ii) Complaints mechanisms and reparation	45
(iii) Sanctions and penalties	46
B. OPSC.....	46
(i) The right to an effective remedy	46
(ii) Complaints mechanisms and reparation	47

(iii) Sanctions and penalties	47
PART 5 - PROMOTIONAL MEASURES AND “BUSINESS RESPONSIBILITIES”	48
A. CRC.....	48
(i) Promotional measures.....	48
(ii) “Business responsibilities”	50
B. OPSC.....	53
(i) Promotional measures.....	53
(ii) “Business responsibilities”	53
PART 6 – SECTOR SPECIFIC INFORMATION	54
A. Media, entertainment and marketing companies	54
(i) Information flows.....	54
(ii) Economic exploitation	56
B. Employers	56
C. Pharmaceutical industry.....	59
D. Private owners of public places	59
E. Companies with the capacity to damage the environment.....	60
F. Internet Industry.....	61
G. Tourism industry.....	63
H. Financial sector	64
I. Arms companies.....	64
PART 7 - STATE-OWNED OR CONTROLLED ENTERPRISES AND PRIVATIZATION	65
A. State-owned or controlled enterprises.....	65
B. Private sector as a service provider.....	65
(i) CRC.....	65
(ii) OPSC.....	68
PART 8 - TERRITORIAL SCOPE OF THE CRC AND OPSC	68
A. CRC.....	68
(i) Treaty provisions	68
(ii) Commentary from the Committee	68
B. OPSC.....	69
PART 9 - REGULATION WITH EXTRATERRITORIAL EFFECT	69
A. CRC.....	70
(i) Treaty provisions	70
(ii) Commentary from the Committee	71
B. OPSC.....	72
(i) Treaty provisions	72
(ii) Commentary from the Committee	73
C. OPAC.....	74
PART 10 - TRENDS AND ISSUES WHICH WOULD BENEFIT FROM FURTHER ELABORATION	75
A. CRC.....	76
(i) Duty to protect	76
(ii) Other duties.....	76
(iii) References to business enterprises.....	76

(iv)	Regulation.....	77
(v)	“Business responsibilities”.....	77
(vi)	Territorial scope.....	78
(vii)	Regulation with extraterritorial effect.....	78
B.	OPSC.....	78
(i)	Regulation.....	78
(ii)	Adjudication.....	79
(iii)	Regulation with extraterritorial effect.....	79
	ANNEX 1: SUBSTANTIVE ARTICLES OF THE CRC.....	80
	ANNEX 2 – SUBSTANTIVE ARTICLES OF OPSC.....	93
	ANNEX 3 – STATES PARTIES TO THE CRC AND OPSC.....	100

ABBREVIATIONS

CAT	Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Committee against Torture
CEDAW	Convention on the Elimination of all Forms of Discrimination against Women; Committee on the Elimination of all Forms of Discrimination against Women
CERD	Committee on the Elimination of all Forms of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CMW	Committee on Migrant Workers
CRC	Convention on the Rights of the Child; Committee on the Rights of the Child
Discussion Day	Day of General Discussion on the private sector as a service provider
HRC	Human Rights Committee
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of all Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICRMW	International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families
OPAC	Optional Protocol on the involvement of children in armed conflict
OPSC	Optional Protocol on the sale of children, child prostitution and child pornography
SRSR	Special Representative of the Secretary-General

INTRODUCTION

1. This report outlines the nature of States Parties' obligations vis-à-vis corporate activities under the United Nations Convention on the Rights of the Child (CRC) as well as its Optional Protocol on the sale of children, child prostitution and child pornography (OPSC), as elaborated by the relevant treaty monitoring body, the Committee on the Rights of the Child (Committee).

2. Given that research uncovered very little commentary from the Committee in relation to State obligations to protect against corporate abuse under the Optional Protocol on the involvement of children in armed conflict (OPAC), detailed analysis of the Protocol has not been included. This does not mean that the SRSG believes the Optional Protocol is irrelevant to the issue of business and human rights. Indeed, the Committee has made some references to State duties to regulate arms companies and it is foreseeable that it may offer guidance in relation to other types of companies in the future, including private security companies. Notable references are briefly mentioned in Parts 6 and 9 of this report.

3. This report focuses on the Committee's commentary on States Parties' obligations to protect against abuse by business enterprises, with reference to broader discussions about non-State actors where parallels may be drawn in relation to business enterprises. Accordingly, it does not address in detail State obligations regarding other non-State actors who may impact children's rights such as parents and guardians; religious groups; educational institutions; and armed groups.

4. This report considers both explicit and implicit references to business enterprises by the Committee. The former includes statements mentioning terms such as business enterprises, business, companies, corporations, entities and enterprises. The latter includes references to parties which could include business enterprises, such as private actors, private bodies, non-State actors, legal persons, employers, private service providers and discussions regarding particular industries.

5. The term "business enterprise" is generally used to refer to companies, corporations or other enterprises. Use of the word "private" is not intended to denote the private/public distinction in the sense of private/proprietary companies versus publicly listed/owned companies.

6. This report focuses on **States Parties'** duties to regulate and adjudicate corporate activities - it refers to direct responsibilities for business enterprises only to the extent discussed by the Committee and is **not** intended as an examination of direct obligations for business enterprises under international law.

7. Part 1 of this report examines the Committee's discussion of the duty to protect generally while Part 2 looks at its references to business enterprises. Part 3 explores the regulatory steps that the Committee has recommended States Parties take in order to protect against harm by business enterprises while Parts 4 and 5 look at adjudicative and

promotional measures as well as the Committee's discussions about "business responsibilities."¹¹ Part 6 provides more detail on guidance from the Committee regarding specific types of corporate actors and rights. Part 7 discusses issues related to State-owned and controlled enterprises and privatization. Part 8 looks at whether States Parties' obligations may apply to situations where corporations acting on behalf of the State exercise control over individuals outside the State's national territory, while Part 9 examines whether the Committee has interpreted the CRC or OPSC as requiring a State Party to regulate the acts of business enterprises abroad. Finally, Part 10 highlights issues which would benefit from further clarification. Annexes 1 and 2 contain the substantive articles of the CRC and OPSC respectively. Annex 3 lists States Parties to both treaties.

8. Most parts of this report separately discuss the CRC and the OPSC. Discussion in relation to one treaty should not be taken as applying to the other unless expressly stated.

METHODOLOGY

9. Like the other treaty specific reports in this series, this report is based only on an examination of **primary materials** associated with the CRC and the OPSC, namely the treaty provisions themselves; General Comments by the Committee; recommendations from Days of General Discussion;¹² and Concluding Observations on States' periodic reports.¹³

10. This report focuses more on General Comments than Days of General Discussion given that the former tend to build on the latter. Thus General Comments were examined in their entirety. In relation to Days of General Discussion, only the Committee's Day of General Discussion on the private sector as a service provider (Discussion Day) was included due to resource constraints.¹⁴

11. Due to resource constraints, examination of Concluding Observations was limited to Sessions 35 through 44 of the Committee (Research Sample).¹⁵ Of the sessions

¹¹ This focus is in line with para. (b) of the SRSG's mandate: see Preface for a discussion of the understanding of "regulate" and "adjudicate" for the purposes of this report.

¹² The Committee has said that the "purpose of the Days of General Discussion is to foster a deeper understanding of the contents and implications of the Convention as they relate to specific articles or topics." Most reports on Days of General Discussion include recommendations from the Committee, which may then provide the basis for later General Comments: <http://www.ohchr.org/english/bodies/crc/workingmethods.htm#a9> (para IX). The Committee's "Decisions" were not included as part of this research sample as their subject matter was either considered of less relevance to this project or had been incorporated into a later General Comment. Decisions *usually* deal with procedural rather than substantive issues. The Committee's Decisions are available at: <http://www.ohchr.org/english/bodies/crc/decisions.htm>.

¹³ There is not yet any individual complaints mechanism under the CRC or its Optional Protocols. However, the Committee recommends that children or their representatives make use of complaints mechanisms attached to other treaty bodies and special procedures if necessary. See <http://www.ohchr.org/english/bodies/crc/workingmethods.htm#a9>, (para XI).

¹⁴ See <http://www.ohchr.org/english/bodies/crc/discussion.htm> for a list of all of the CRC's Days of General Discussion and links to their reports.

¹⁵ See <http://www.ohchr.org/english/bodies/crc/sessions.htm> for a complete list of the CRC's sessions. Time constraints prevented examination of Concluding Observations from the Committee's 45th Session

included, a search function was used to limit consideration to those Concluding Observations containing certain keywords, ranging from general terms such as “business,” “company,” “corporation,” “protect” and “private” to more specific terms once it was discovered the Committee consistently mentions particular sectors.¹⁶

12. Due to the number of Concluding Observations in the Research Sample, this report only refers to a selection of Concluding Observations rather than listing all Concluding Observations relevant to a particular subject. Further, examples tend to focus on concerns and recommendations by the Committee rather than positive feedback – readers should be aware that such recommendations are often prefaced by the Committee noting or welcoming positive steps towards protection.

13. Time and resource constraints also prevented examination of the Committee’s reporting guidelines.¹⁷ Separate to this project, the SRSG hopes to consider how reporting guidelines throughout the treaty body system could be used to encourage States to provide the treaty bodies with more information regarding issues related to business and human rights.

PART 1 - THE DUTY TO PROTECT

14. The three over-arching State duties associated with human rights treaties are the duties to respect, protect and fulfill rights. Simply stated, the duty to respect requires the State and its agents to refrain from violating rights. The duty to protect is generally defined as the duty to prevent, punish, investigate and redress harm by non-State actors.

15. For example, the Committee on Economic, Social and Cultural Rights (CESCR) has said that with respect to the right to work, the duty to protect requires States to prevent “third parties from interfering with the enjoyment of the right to work.”¹⁸ The Human Rights Committee (HRC) has said that States Parties’ positive obligations to “ensure” rights under the International Covenant on Civil and Political Rights (ICCPR) “will only be fully discharged if individuals are protected by the State, not just against violations of Covenant rights by its agents, but also against acts committed by private persons or entities that would impair the enjoyment of Covenant rights in so far as they are amenable to application between private persons or entities.”¹⁹

held between 21 May and 8 June 2007 though some Concluding Observations from this period were included where they were brought to the authors’ attention as being of particular relevance.

¹⁶ The main sources used for searching treaty documentation were the United Nations Treaty Bodies Database and the Human Rights Index of United Nations Documents, provided by the Faculty of Law – Institute of Public Law at the University of Bern.

¹⁷ See generally in relation to CRC

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.58.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.58.En?Opendocument) and

[http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CRC.C.33.En?Opendocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CRC.C.33.En?Opendocument); and in relation to the OPSC,

<http://daccessdds.un.org/doc/UNDOC/GEN/G06/450/97/PDF/G0645097.pdf?OpenElement>.

¹⁸ CECSR General Comment No. 18, ‘The Right to Work (art. 6),’ U.N. Doc HRI/GEN/1/Rev.8 (2006) 148, at para. 22 (hereinafter CESCR General Comment 18).

¹⁹ HRC General Comment No. 31, ‘The Nature of the General Legal Obligation Imposed on States Parties to the Covenant,’ U.N. Doc HRI/GEN/1/Rev.8 (2006) 233, at para. 8 (hereinafter HRC General Comment 31).

16. The duty to fulfill generally requires positive steps to *promote, facilitate* and in some cases *provide* for the enjoyment of rights.²⁰

17. Given the duty to protect focuses on preventing abuse by third parties, it is unsurprising that the Committee has focused on this duty when discussing State obligations to prevent abuse by business enterprises.

A. CRC

18. The Committee expects States to regulate and adjudicate the acts of business enterprises to protect rights. These expectations are manifested in various ways. They form part of the Committee's discussions concerning the "general principles" of the Convention. They are also present in the Committee's discussions of more specific provisions, such as those dealing with health or work rights.

(i) General Principles

19. The Convention contains four provisions which the Committee has termed "general principles." The Committee views them as threshold provisions to be considered in assessing a State's effective implementation of the Convention.²¹ They require the State to respect and ensure (1) the prohibition against non-discrimination;²² (2) the requirement that all decisions regarding children are taken with their best interests as a primary consideration;²³ (3) the right to life and the survival and development of the child;²⁴ and (4) children's rights to freely express their views.²⁵

20. General Comment 5 confirms that the general principles as well as other more specific provisions need to be implemented through a number of measures, ranging from legislative measures to monitoring mechanisms.²⁶ This is line with Art. 4, which

²⁰ See generally Henry J. Steiner & Philip Alston, *International Human Rights in Context: Law, Politics, Morals* 182 – 184 (Oxford University Press, 2nd ed. 2004).

²¹ See generally General Comment No. 5, 'General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6),' UN Doc. HRI/GEN/1/Rev.8 (2006) 387, at para. 42 (hereinafter General Comment 5).

²² Paragraph (1) of Art. 2 provides that States Parties shall "respect and ensure" the Convention rights to each child "within their jurisdiction" without discrimination. Paragraph (2) requires States Parties to take "all appropriate measures to ensure that the child is protected" against discrimination or punishment on the basis of the child's family's status, activities, expressed opinions or beliefs

²³ Art. 3(1) provides that in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, children's best interests must be a primary consideration. Art. 3(2) provides that States Parties "undertake to ensure the child such protection and care as is necessary for his or her well-being" taking into account the rights and duties of his or her parents/legal guardians etc and "to this end shall take all appropriate legislative and administrative measures." Under Art. 3(3), States must ensure conformity by institutions, services and facilities responsible for children's care or protection with standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

²⁴ Under Art. 6, States Parties recognize that every child has an inherent right to life and agree to ensure to the maximum extent possible the child's survival and development.

²⁵ Art. 12 among other things requires States Parties to assure children the right to express views freely in all matters affecting them.

²⁶ General Comment 5, *supra* note 21, at paras. 1 – 12.

provides that States Parties shall undertake “all appropriate legislative, administrative and other measures for the implementation” of rights.²⁷ Art. 4 is known as providing the “general measures of implementation.”

21. The Committee has indicated that implementation of the Convention in line with the general principles is unlikely to be effective without some regulation and adjudication of private acts, including acts by business enterprises. Indeed, it has said that a State’s “task of implementation – of making reality of the human rights of children – needs to engage all sectors of society ...”²⁸ It is clear that the Committee believes States Parties have ultimate responsibility for preventing abuse, and facilitating the promotion of rights by the private sector, including business enterprises.

22. For example, the Committee interprets the non-discrimination provision in Art. 2 as requiring action against discrimination by both State and non-State actors. In particular, General Comment 5 provides that States may be required to make changes in “legislation, administration and resource allocation, as well as educational measures to change attitudes.”²⁹ General Comment 3 on HIV/AIDS and the rights of the child mentions that discrimination on the basis of the HIV/AIDS status of a child or his or her family could lead to exclusion from information, health-care and other services. It provides that “laws, policies, strategies and practice should address all forms of discrimination that contribute to increasing the impact of the epidemics.”³⁰ The Committee also stresses that States Parties should ensure protection against mandatory HIV/AIDS testing of children in all circumstances,³¹ and suggests a role for the State in preventing inappropriate biomedical research on children, as discussed further below.

23. General Comment 7 on implementing child rights in early childhood provides that States Parties “have a responsibility to monitor and combat discrimination in whatever form it takes and wherever it occurs – within families, communities, schools or other institutions.”³² The Committee expresses particular concern about discrimination in access to quality services for young children, especially where key services such as education, health and welfare are provided by a combination of State, private and charitable organizations.

24. Concluding Observations also regularly recommend that States take steps to end *de facto* discrimination by private actors, including through affirmative measures:

²⁷ Though in relation to economic, social and cultural rights, States are only required to take such measures to the maximum extent of their available resources.

²⁸ General Comment 5, *supra* note 21, at para. 1.

²⁹ *Id.* at para. 12.

³⁰ General Comment 3, ‘HIV/AIDS and the rights of the child,’ HRI/GEN/1/Rev.8 (2006) 363, at para. 7 (hereinafter General Comment 3).

³¹ *Id.* at para. 20.

³² General Comment No. 7, ‘Implementing child rights in early childhood,’ HRI/GEN/1/Rev.8/Add.1 (2007) 2, at para. 12 (hereinafter General Comment 7).

In the **Concluding Observations for India**, the Committee recommended the State to “take all necessary steps to abolish the discriminatory practice of ‘untouchability,’ prevent caste- and tribe-motivated abuse, and prosecute State and private actors who are responsible for such practices or abuses ...”³³

25. General Comment 9 on the rights of children with disabilities provides that in taking efforts to prevent and eliminate all forms of discrimination against children with disabilities, States should (a) specifically prohibit discrimination on disability grounds in constitutional or legislative provisions; (b) provide for effective and easily accessible remedies where rights are violated; and (c) carry out educational campaigns “targeting the public at large and specific groups of professionals” in order to prevent and eliminate *de facto* discrimination.³⁴ Concluding Observations regularly recommend measures to combat discrimination against children with disabilities.³⁵

26. In relation to the “best interests of the child” concept, the Committee has said that Art. 3(1) in particular requires “every legislative, administrative and judicial body or institution” to consider how children’s rights may be affected by their decisions and actions. As discussed below, the Committee has emphasized this principle when calling for consideration of children’s best interests in economic and commercial decisions.³⁶

27. The Committee has also focused on the “best interests of the child” concept when discussing State duties to ensure that private service providers respect rights. As discussed further in Part 7, the Committee considers States responsible for protecting against any interference with rights by private service providers, including businesses.³⁷ General Comment 5 confirms that “the process of privatization of services can have a serious impact on the recognition and realization of children’s rights.”³⁸ It emphasizes that States Parties are legally obliged to “respect and ensure rights of children as stipulated in the Convention, which includes the obligation to ensure that non-State service providers operate in accordance with its provisions...”³⁹

(ii) Protection against violence

28. Several Convention provisions require State protection from all forms of violence and the Committee clearly expects States Parties to protect children from

³³ Concluding Observations for India, UN Doc. CRC/C/15/Add.228, 26 February 2004, at para. 28. See also Concluding Observations for Colombia, UN Doc. CRC/C/COL/CO/3, 8 June 2006, at para. 95(c); Concluding Observations for Lebanon, UN Doc. CRC/C/LBN/CO/3, 8 June 2006, at paras. 27- 28, 60(b); and Concluding Observations for Japan, UN Doc. CRC/C/15/Add.231, 26 February 2004, at para. 25.

³⁴ General Comment No. 9, ‘The rights of children with disabilities,’ HRI/GEN/1/Rev.8/Add.1 (2007) 34, at para. 9 (hereinafter General Comment 9).

³⁵ See for example, Concluding Observations for Thailand, UN Doc. CRC/C/THA/CO/2, 17 March 2006, at para. 50; and Concluding Observations for Lebanon, *supra* note 33, at para. 51.

³⁶ General Comment 5, *supra* note 21, at para. 12.

³⁷ *Id.* at paras. 42 – 44. General Comment 5 incorporates recommendations from the Discussion Day. These recommendations are set out in more detail in Parts 5 and 7.

³⁸ *Id.* at para. 42.

³⁹ *Id.* at para. 43.

violence in a wide range of State and non-State environments.⁴⁰ While the emphasis is often on preventing violence in domestic or educational settings, the Committee expects measures to prevent and punish violence in all situations, including those which could involve business enterprises.

29. For example, General Comment 8 on protection from corporal punishment and other cruel or degrading forms of punishment highlights States Parties' duties to prohibit and eliminate all forms of such abuse, including in employment contexts.⁴¹ General Comment 4 expresses the Committee's view that States should protect against any violence in the workplace, including through legislative measures as explained below.⁴²

(iii) Protection from abuse in employment

30. Other provisions have been interpreted by the Committee as requiring States to prevent and punish abuse in employment contexts, both in relation to the formal and informal labor markets. Such provisions include Art. 32 dealing with economic exploitation and Arts. 34 – 36 regarding other forms of exploitation.

31. Art. 32 recognizes “the right to be protected from economic exploitation” and from performing harmful or hazardous work. States are required to “take legislative, administrative, social and educational measures” to ensure the implementation of Art. 32. In particular, they are required to establish minimum ages for employment; provide for “appropriate regulation of the hours and conditions of employment;” and provide for “appropriate penalties and other sanctions to ensure the effective enforcement” of Art. 32.

32. Art. 34 requires protection from all forms of sexual exploitation and abuse. States must take all “appropriate national, bilateral and multinational measures to prevent” the exploitative use of children in prostitution and pornographic performances and materials. Art. 35 requires measures to prevent trafficking while under Art. 36, States must protect children against all other forms of exploitation.

33. General Comments highlight States Parties' duties to protect against economic exploitation, which could encompass wrongful acts by a wide range of employers, including business enterprises. For example, General Comment 3 strongly affirms States Parties' duties to “take bold action to protect children from sexual and economic exploitation.”⁴³ General Comment 4 urges the abolition of child labor; protection against violence in the informal labor sector; and review of national regulations to combat exploitation.⁴⁴

⁴⁰ For example, Art. 19 requires States Parties to “take all appropriate legislative, administrative, social and educational measures to protect the child” from violence while Art. 37 requires States to “ensure” that no child is subjected to torture or other cruel, inhuman or degrading treatment or punishment.

⁴¹ General Comment No. 8, ‘The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment,’ HRI/GEN/1/Rev.8/Add.1 (2007) 21, at paras. 2, 12 and 18 (hereinafter General Comment 8).

⁴² *Id.* at para. 36.

⁴³ General Comment 3, *supra* note 30, at para. 33.

⁴⁴ General comment No. 4, ‘Adolescent health and development in the context of the Convention on the Rights of the Child,’ HRI/GEN/1/Rev.8 (2006) 376, at paras. 32 and 35 (hereinafter General Comment 4).

34. Part 6 examines the numerous recommendations from Concluding Observations calling for regulation and adjudication of actions by employers.

(iv) Protection from harmful information

35. Art. 17 has been interpreted by the Committee as requiring States to protect children from harmful information. Art. 17 lists a number of actions States should take in relation to the mass media to ensure children have access to adequate information and material. In particular, paragraph (e) requires States to “encourage” the “development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.”

36. As set out in Part 6 below, the Committee regularly recommends that States “take all appropriate steps” to encourage the mass media to disseminate information and material of social and cultural benefit to children.⁴⁵ In particular, General Comment 4 urges States Parties to “protect adolescents from information that is harmful to their health and development ...”⁴⁶ To this end, the Committee urges States Parties “to regulate and prohibit information on and marketing of substances such as alcohol and tobacco, particularly when it targets children and adolescents.”⁴⁷

(v) Other provisions indicating the duty to protect

37. Numerous other provisions are worded in such a way that it would seem difficult for implementation to occur without some regulation of third parties, including business enterprises. For example, Art. 8 requires States Parties to guarantee identity rights without unlawful interference and to provide “appropriate assistance and protection” when there is interference. Art. 16 entitles children to protection of the law against arbitrary or unlawful interference with privacy or unlawful attacks on reputation.

38. Provisions focusing more on economic, social and cultural rights also suggest a need to prevent and punish private interference in contexts that could involve business enterprises. Art. 18 requires States to take “all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.” Art. 23 provides that assistance for disabled children should be designed to ensure effective access to education, training, health-care services, rehabilitation services, preparation for employment and recreation opportunities.

39. Further, Art. 24 requires States Parties “to strive to ensure that no child is deprived of his or her right of access” to health care services and Art. 31 requires States Parties to “encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.” Such provisions are often discussed as part of the Committee’s calls for States to ensure that privatized services comply with the Convention. Art. 24(2) also requires States Parties to combat disease and malnutrition, taking into consideration the dangers and risks of environmental pollution. As outlined in

⁴⁵ General Comment No. 1, ‘The aims of education,’ HRI/GEN/1/Rev.8 (2006) 349, at para. 21 (hereinafter General Comment 1).

⁴⁶ General Comment 4, *supra* note 44, at para. 21.

⁴⁷ *Id.* at para. 25.

Part 6, the Committee’s commentary in relation to combating pollution implies that regulation of business enterprises causing such pollution may be necessary.

40. Whether the Committee discusses the duty to protect in specific contexts or more generally highlights States’ obligations to secure safe conditions for children,⁴⁸ it clearly considers that States Parties are obliged to prevent and punish abuse by non-State actors, including business enterprises.

B. The OPSC

(i) Treaty provisions

41. The OPSC is designed to guide States on how to prevent and punish offences under the Protocol by both State and non-State actors. Indeed, its preamble confirms that its purpose is to set out the measures States Parties “should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography.” As suggested by the Committee’s commentary, fulfillment of the duty to protect is key to a State’s compliance with the Optional Protocol.

42. For example, Art. 3(1) requires each State Party to ensure that at least the following acts are “fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:”

- (a) Sale of children, including offering, delivering or accepting a child for: sexual exploitation, transfer of organs for profit, or engagement in forced labor; and improperly inducing consent for child adoption;
- (b) Offering, obtaining, procuring or providing a child for child prostitution; and
- (c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing child pornography.

43. Subject to a State’s national laws, Art. 3(2) says that attempts to commit such acts as well as complicity or participation should also be covered under criminal or penal law. Art. 3(3) requires Protocol offences to be “punishable by appropriate penalties that take into account their grave nature.” All of these provisions suggest a strong duty on the part of the State to regulate and adjudicate acts falling within Art. 3.

44. Art. 3(4) deals specifically with *legal persons*, suggesting that Arts. 3(1) – (3) may only apply to natural persons committing the Protocol offences, even if their acts were on an organized basis. It says that “subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the legal liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.”

⁴⁸ *Id.* at para. 35 and see General Comment 7, *supra* note 32, at para. 36.

45. While it appears that States are provided with discretion as to the type of liability for legal persons under Art. 3(4), the provision is noteworthy given it explicitly asks States to establish legal liability for legal persons, albeit subject to national law. Its significance is discussed throughout this report.

46. Art. 7 requires States, subject to their national law to (a) “take measures to provide for the seizure and confiscation, as appropriate, of: (i) goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol; (ii) proceeds derived from such offences;” (b) “execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a); and (c) take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.”

47. More generally, Art. 9(1) necessitates States to “adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent” the Protocol offences and requires particular attention to be paid to especially vulnerable children. Art. 9(4) requires States to ensure that victims have “access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.” Art. 9(5) requires appropriate measures aimed at “effectively prohibiting the production and dissemination of material advertising” the offences.

48. Several OPSC provisions deal with extraterritorial regulation, confirming that States Parties have duties to prevent and punish abuses which occur outside their territory in some situations. These provisions are explored in Part 9 below.

49. Thus States Parties to the OPSC have agreed to a detailed set of requirements to protect against abuse by third parties, including legal persons.

(ii) Commentary from the Committee

50. There are no General Comments from the Committee dealing specifically with the OPSC. However, it is clear from the Committee’s Concluding Observations on reports relating to the OPSC (OPSC Concluding Observations) that it considers States to have a duty to prevent, punish, investigate and redress violations under the Optional Protocol. Relevant OPSC Concluding Observations are referred to throughout this report.

C. Due Diligence and the duty to protect

51. The Committee expects States Parties to both treaties to take a variety of measures to protect against any interference with rights by business enterprises. However, unlike some of the other treaty bodies, the Committee has not expressly mentioned the concept of “due diligence” in relation to the duty to protect. The concept is perhaps featured most notably in General Comment 31 by the Human Rights Committee, where it provides that “there may be circumstances in which a failure to ensure Covenant rights as required by Article 2 would give rise to violations by States Parties of those rights, as a result of States Parties permitting or failing to take appropriate measures or to exercise **due diligence** to prevent, punish, investigate or redress the harm

caused by such acts by private persons or entities.”⁴⁹ Other Committees have referred to the concept in a more piecemeal way, such as in discussions focusing on the prevention of domestic violence.

52. References to “due diligence” generally imply that the State duty to protect is one of means rather than result. For instance, States will not be considered to have violated their treaty obligations simply because a private actor has abused rights — there must be some act or omission by the State that evidences a failure to exercise due diligence in fulfilling the duty to protect.

53. It does not appear that the Committee has addressed the concept. Accordingly, it is not yet known whether the Committee considers it relevant to State obligations under the Convention and OPSC.

D. Other duties

(i) Duty to respect

54. Other treaty bodies, such as CESCR, have provided that a State could breach its duty to respect if it fails to consider rights when entering into agreements with other States or multilateral entities.⁵⁰

55. The Committee has made similar statements in relation to the Convention. For example, General Comment 5 emphasizes that in accordance with the “general principles” described above, States should not only ensure that all government departments consider children’s best interests in their decisions but also open “government decision-making processes to children.”⁵¹ To this end, the Committee has recommended that States Parties pay attention to rights when entering into trade or other commercial agreements.

56. For example, in the Concluding Observations for the United Republic of Tanzania, the Committee was concerned about access to generic medicines. It recommended that the State Party “ensure that regional and other free-trade agreements” do not negatively impact children’s enjoyment of health rights, “in particular with regard to access to generic medicine.”⁵²

57. Similarly, in the Concluding Observations for Peru, the Committee discussed the impact “bilateral Trade Agreements may have on the access to affordable essential

⁴⁹ HRC General Comment 31, *supra* note 19, at para. 8. See the other individual treaty reports in this series for an examination of how the other treaty bodies deal with the concept of “due diligence,” available at: <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>.

⁵⁰ CESCR General Comment 18, *supra* note 18, at para. 33. See Part I of the ICESCR report in this series for more detail.

⁵¹ General Comment 5, *supra* note 21, at para. 12.

⁵² Concluding Observations for the United Republic of Tanzania, UN Doc. CRC/C/TZA/CO/2, 21 June 2006, at paras 44 and 45(d). See also Concluding Observations for Ecuador, UN Doc. CRC/C/15/Add.262, 13 September 2005, at para. 21; and Concluding Observations for the Philippines, UN Doc. CRC/C/15/Add.259, 21 September 2005, at paras. 58 - 59.

medicines for some individuals and groups, including antiretrovirals for people with HIV/AIDS” and recommended that the State “always take its human rights obligations into account when negotiating Trade Agreements, in particular as to the possible impact of commercial agreements on the full enjoyment of the right to health.”⁵³

58. The Concluding Observations for El Salvador recommended the State “to systematically consider the best interests of the child when negotiating trade-related intellectual property rights and implementing them into national law.”⁵⁴ It said that the State should conduct “an assessment of the impact of international intellectual property rights agreements on the accessibility of affordable generic medicines, with a view to ensuring children’s enjoyment of the highest attainable standard of health.”⁵⁵

59. These comments suggest that the Committee might take issue with a State Party entering into trade and other commercial agreements which provide extensive benefits to other States and transnational companies at the expense of rights. They also indicate that the Committee supports rights based impact assessments before States enter into such agreements.

(ii) Duty to fulfill

60. Some commentary suggests the Committee might see links between States Parties to the Convention and the private sector in relation to the duties to *facilitate* and *provide*. For example, the Committee advocates partnerships between the Government and the private sector in order to finance child services. After saying in General Comment 7 that States Parties should allocate certain resources to early childhood, the Committee says that to this end, “States Parties are encouraged to develop strong and equitable partnerships between the Government, public services, non-governmental organizations, the private sector and families to finance comprehensive services in support of young children’s rights.”⁵⁶

61. Further, as detailed in Part 6, the Committee has recommended regulation to ensure all public buildings are accessible to children with disabilities, implying that States Parties might need to mandate owners of private and public buildings and facilities to expend resources to make certain changes in order to facilitate access.⁵⁷

62. In relation to the duty to promote, the Committee clearly sees a role for States in promoting rights amongst third parties, including business enterprises. (See Part 5)

⁵³ Concluding Observations for Peru, UN Doc. CRC/C/PER/CO/3, 14 March 2006, at paras. 48 – 49. See also Concluding Observations for Thailand, *supra* note 35, at paras. 57 – 58.

⁵⁴ Concluding Observations for El Salvador, UN Doc. CRC/C/15/Add.232, 30 June 2004, at para. 48.

⁵⁵ *Id.*

⁵⁶ General Comment 7, *supra* note 32, at para. 39. Note also the following Concluding Observations which recommended that the State identify the amount of money spent on services in the public and private sectors with a view to determining the quality of services provided by the private sector: Concluding Observations for Croatia, UN Doc. CRC/C/15/Add.243, 3 November 2004, at para. 16; Concluding Observations for Kyrgyzstan, UN Doc. CRC/C/15/Add.244, 3 November 2004, at para. 17; and Concluding Observations for Panama, UN Doc. CRC/C/15/Add.233, 30 June 2004, at para. 16.

⁵⁷ General Comment 9, *supra* note 34, at para. 40.

PART 2 - REFERENCES TO BUSINESS ENTERPRISES

A. CRC

(i) Treaty provisions

63. The Convention contains several references to non-State actors who may impact rights, including “private social welfare institutions,”⁵⁸ “institutions, services and facilities responsible for the care or protection of children,”⁵⁹ and “educational institutions.”⁶⁰ However, it does not expressly refer to business enterprises or use any similar terms such as “legal persons,” “companies” or “entities.”⁶¹ The closest it gets to explicitly discussing non-State actors that are likely to include business enterprises is its reference to the “mass media” in Art. 17. There, the Convention requires States to encourage the mass media to disseminate information of social and cultural benefit to children and to have regard to the linguistic needs of children belonging to minority groups or indigenous communities.

64. Nevertheless, as indicated in Part I, several provisions deal with situations likely to involve business enterprises, such as provisions dealing with health and work rights. In interpreting these provisions, the Committee suggests that States should regulate and adjudicate the activities of business enterprises to protect against abuse.

(ii) Commentary from the Committee

65. Only General Comment 5 explicitly refers to business. In discussing the “private sector” as a service provider, the Committee defines the “private sector as including businesses, NGOs and other private associations, both for profit and not-for-profit.”⁶²

66. Other General Comments refer more generally to “private actors” or “non-State actors.” It is assumed that such discussions also relate to business enterprises unless they state otherwise or concern a context wholly unrelated to business.

67. For example, General Comment 7 discusses the right to rest, leisure and play in Art. 31 and “appeals to States parties, non-governmental organizations and private actors to identify and remove potential obstacles to the enjoyment of these rights by the youngest children, including as part of poverty reduction strategies.”⁶³ It also says that planning for towns, as well as leisure and play facilities, should consider children’s rights to express their views. These remarks not only seem to recognize that private actors may impact on the enjoyment of rights but also that States should protect against such impacts. It is thus foreseeable that the Committee might expect States to regulate business activities which could interfere with rest, leisure and play areas through commercial development projects or other activities.

⁵⁸ See Art. 3(1).

⁵⁹ See Art. 3(2) and Art. 20.

⁶⁰ See Art. 29.

⁶¹ See A/HRC/4/35/Add.1 to compare other treaties.

⁶² General Comment 5, *supra* note 21, at para 42.

⁶³ General Comment 7, *supra* note 32, at para. 34.

68. As Part 6 explains, the Committee also refers to various actors and industries engaging in commercial activities which might require regulation. It does so explicitly, such as when it refers to actors including the mass media, publishers, Internet service providers, the entertainment industry, banks, the pharmaceutical industry and employers. It also does so implicitly, such as when it discusses steps to combat child labor and economic exploitation; the need to regulate bio-medical research; increasing accessibility of public areas; and minimizing environmental harm from industrial activities.

69. Concluding Observations rarely include explicit references to companies, corporations or business. In the current sample, only Concluding Observations for one report mentioned “companies,”⁶⁴ while Concluding Observations for two reports mentioned “business” or “businesses.”⁶⁵ However, similar to the General Comments, Concluding Observations refer generally to the private sector and private actors as well as to various commercial sectors and industries. See Part 6 for more detail.

B. OPSC

(i) Treaty provisions

70. The OPSC’s Preamble expresses concern about sex tourism and the availability of child pornography on the Internet. It also stresses the importance of closer cooperation between governments and the Internet industry in combating child pornography.

71. As described above, Art. 3(4) requires States Parties to take measures, where appropriate, to establish legal liability for *legal persons* in relation to the Protocol offences. While the term “legal persons” is not defined, its ordinary meaning includes corporations.

72. Art. 9(5) may be implicitly referring to State regulation of acts by business enterprises when it requires States Parties to take appropriate measures to effectively prohibit the production and dissemination of advertising material. It is difficult to see how a State could take these measures without targeting companies engaged in such practices.

(ii) Commentary from the Committee

73. None of the OPSC Concluding Observations in the Research Sample used the terms “companies,” “businesses” or “corporations.” However, as outlined in Part 3 below, the Committee has recommended that States Parties establish legal liability for legal persons. Further, the Committee has recommended regulatory measures in relation to Internet service providers, employers and tour operators.

⁶⁴ The Concluding Observations for Samoa mentioned companies when referring to a new bill to regulate advertising for harmful substances: Concluding Observations for Samoa, UN Doc. CRC/C/WSM/CO/1, 16 October 2006, at paras. 48 – 49. (See Part 6 for more detail)

⁶⁵ See Concluding Observations for Mongolia, UN Doc. CRC/C/15/Add.264, 21 September 2005, at paras. 60 – 61; and Concluding Observations for Oman, UN Doc. CRC/C/OMN/CO/2, 29 September 2006, at para. 63.

PART 3 - REGULATION

74. This Part looks at the Committee's guidance on steps States Parties should take to regulate the activities of business enterprises in order to fulfill their duty to protect. For example, it looks at the legislative, monitoring and administrative measures the Committee encourages States Parties to take to ensure that business enterprises do not threaten the enjoyment of rights.

A. CRC

(i) Types of measures contemplated

75. Art. 4, the Convention's general implementation provision, requires States to undertake all appropriate legislative, administrative and other measures to implement the Convention rights.

76. General Comment 5 confirms that the Committee considers effective implementation through regulatory or other measures to be a vital aspect of States Parties' obligations. The Committee has said that "States Parties need to ensure, by appropriate means, that the provisions of the Convention are given legal effect within their domestic legal systems."⁶⁶

77. The Committee interprets the rest of the Convention in light of Art. 4 and the general principles described above to require a broad range of protective measures to ensure enjoyment of rights. It indicates that any regulatory measures taken to ensure rights should target both State and non-State actors, including business enterprises.

78. Other provisions call for all or some of the measures mentioned in Art. 4 but provide more guidance on what such measures should entail. For instance, Art. 19(1) requires States Parties to take "all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child." Art. 19(2) says that "such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement."

79. Art. 32 requires States to take "legislative, administrative, social and educational measures" to ensure prohibition of economic exploitation and hazardous work. As outlined above, it requires States to set a minimum age for employment; appropriately regulate working hours and conditions; and establish appropriate penalties in order to effectively enforce Art. 32.

⁶⁶ General Comment 5, *supra* note 21, at para. 19.

80. Other provisions seem to provide more discretion though they should still be read in light of Art. 4. For example, Art. 2(2) refers to States Parties taking “all appropriate measures” to protect against discrimination while Art. 3(3) speaks of actors working with or for children conforming with “standards established by competent authorities.” Art. 11 requires States Parties to “take measures” to combat illicit transfers of children. Art. 24(2) provides that States Parties “shall pursue full implementation” of the “right to the highest attainable standard of health” and “shall take appropriate measures” to, among other things, combat disease and malnutrition, “taking into consideration the dangers and risks of environmental pollution.”

81. As discussed in Part 9, some provisions refer to “national, bilateral and multilateral measures” to prohibit certain conduct. For example, Art. 34 requires States Parties to take “all appropriate national, bilateral and multilateral measures” to prevent, amongst other things, the exploitative use of children in pornographic performances and materials.

(ii) Legislation

82. The Committee has remarked that States Parties are obliged to regularly review all domestic legislation to ensure “full compliance with the Convention.”⁶⁷ Reviews should be carried out by all relevant government departments as well as by independent parties including national human rights institutions (NHRIs).⁶⁸ Other comments as featured throughout this report highlight that the Committee considers prescriptive and proscriptive legislation key to protecting against both State and non-State abuse of rights.

83. The Committee has emphasized that States Parties should ensure that “domestic law reflects the general principles in the Convention (arts. 2, 3, 6 and 12).”⁶⁹ To this end it has welcomed consolidated legislation which highlights these principles. However, the Committee has also said that “it is crucial in addition that all relevant ‘sectoral’ laws (on education, health, justice and so on) reflect consistently the principles and standards of the Convention.”⁷⁰ It becomes increasingly difficult to see how such principles could be incorporated effectively into sectoral legislation, such as health or employment laws, without measures to prevent relevant business enterprises from abusing rights.

84. More specifically, the Committee has supported the use of legislation to combat discrimination by private parties, especially in relation to health services and employment. For example, the Committee has recommended that States review existing laws or enact new ones in order to combat discrimination based on HIV/AIDS status.⁷¹

85. The Committee sees legislative reform as key in relation to preventing and eliminating all forms of violence against children, including by employers. The Committee says in General Comment 8 that when Art. 19 is read in light of Art. 4, it is

⁶⁷ *Id.* at para. 18.

⁶⁸ *Id.*

⁶⁹ *Id.* at para. 22.

⁷⁰ *Id.*

⁷¹ General Comment 3, *supra* note 30, at para. 3.

clear that “legislative as well as other measures are required to fulfill States’ obligations to protect children from all forms of violence.”⁷²

86. Indeed, in order to protect against violence, the Committee calls for legislative action going beyond general criminal assault provisions and general child protection law – it recommends (a) removal or repeal of any legislative provisions or judicial practice which justifies violence in any setting;⁷³ (b) explicit prohibition of corporal punishment and other cruel or degrading punishment in civil or criminal legislation;⁷⁴ (c) “sectoral legislation” so that legislation dealing with education, employment, the family etc “clearly prohibits” the use of violence in those settings;⁷⁵ and (d) if it is not already the case, amendments to criminal assault provisions, civil codes or family laws so that it is clear they prohibit all forms of corporal punishment.⁷⁶

87. General Comment 9 calls for legislative action to protect against discrimination based on disability.⁷⁷ As well as specific non-discrimination legislation, it recommends a “comprehensive review of all domestic laws and related regulations in order to ensure that all provisions of the Convention are applicable to all children, including children with disabilities who should be mentioned explicitly, where appropriate.”⁷⁸

88. Concluding Observations also confirm the importance of legislative measures and highlight the Committee’s view that any such measures, whether directed at State or non-State actors, should be implemented and enforced:

In the **Concluding Observations for the United Republic of Tanzania**, the Committee urged the State Party to “continue revising all its legislation in order to bring it in full compliance with article 2 of the Convention, and to ensure full implementation in practice of all legal provisions.”⁷⁹

The **Concluding Observations for Colombia** recommended that the State Party “increase its efforts to ensure implementation of existing laws guaranteeing the principle of non-discrimination and full compliance with article 2 of the Convention...”⁸⁰

⁷² General Comment 8, *supra* note 41, at para. 30. See also para 22 where the Committee “emphasizes that eliminating violent and humiliating punishment of children, through law reform and other necessary measures, is an immediate and unqualified obligation of States parties.”

⁷³ *Id.* at para. 31.

⁷⁴ *Id.* at para. 34.

⁷⁵ *Id.* at para. 35.

⁷⁶ *Id.* at para. 39.

⁷⁷ General Comment 9, *supra* note 34, at para. 9.

⁷⁸ *Id.* at para. 18.

⁷⁹ Concluding Observations for the United Republic of Tanzania, *supra* note 52, at para. 27.

⁸⁰ Concluding Observations for Colombia, *supra* note 33, at para. 36.

In the **Concluding Observations for Lebanon**, the Committee recommended that the State “prevent and prohibit all forms of discrimination against children with disabilities and ensure equal opportunities for their full participation in all spheres of life by implementing the Law No. 220 of 2000 on the rights of persons with disabilities ...”⁸¹

89. Even where it appears the Committee is recommending that legislation should cover the acts of business enterprises, the Committee tends not to specify whether such measures should target the business enterprise itself or natural persons acting on behalf of the business. For example, it is common for the Committee to express concern about the lack of legislation in relation to the activities of Internet Service Providers.⁸² However, the Committee has not yet addressed whether it expects such legislation to target individual actors within entities providing Internet services or the entities themselves.

(iii) Monitoring

90. General Comment 2 on the role of independent NHRIs provides that “every State needs an independent human rights institution with responsibility for promoting and protecting children’s rights” and that such institutions should be “able, independently and effectively, to monitor, promote and protect children’s rights.”⁸³

91. The Committee suggests that NHRIs should be empowered to hear from all interested persons and obtain all necessary information relevant to a particular complaint.⁸⁴ It also believes NHRIs have a “duty to seek to ensure that children have effective remedies – independent advice, advocacy and complaints procedures – for any breaches of their rights.”⁸⁵ Further, it implies that NHRIs’ mandates should extend to hearing complaints concerning both State and non-State abuses - it says that NHRI powers “should include the promotion and protection of the rights of all children under the jurisdiction of the State party in relation not only to the State but to all relevant public and private entities.”⁸⁶ This implication is strengthened by the Committee’s recommendation that NHRIs “undertake investigations into any situation of violation of children’s rights, on complaint or on their own initiative, within the scope of the mandate.”⁸⁷

92. General Comment 5 highlights that while NHRIs perform a vital role in the protection and promotion of human rights, the Government should not simply delegate its monitoring functions to such institutions.⁸⁸ It says that Art. 4 requires the “establishment

⁸¹ Concluding Observations for Lebanon, *supra* note 33, at para. 51(a).

⁸² See for example Concluding Observations for Azerbaijan, UN Doc. CRC/C/AZE/CO/2, 17 March 2006, at para. 33.

⁸³ General Comment No. 2, ‘The role of independent national human rights institutions in the promotion and protection of the rights of the child,’ HRI/GEN/1/Rev.8 (2006) 356, at para. 9 (hereinafter General Comment 2).

⁸⁴ *Id.* at paras. 9 and 13.

⁸⁵ *Id.* at para. 13.

⁸⁶ *Id.* at para. 9.

⁸⁷ *Id.* at para. 19(a). See also General Comment 8, *supra* note 41, at para. 52, where the Committee underlines the importance of independent monitoring in relation to protection against violence.

⁸⁸ General Comment 5, *supra* note 21, at para. 65.

of coordinating and monitoring bodies,”⁸⁹ and in particular calls for permanent monitoring mechanisms in relation to private service providers, including businesses.⁹⁰

93. The Committee also notes in General Comment 5 that it has been “deeply concerned by the often negative effect on children of structural adjustment programmes and transition to a market economy.”⁹¹ It says that States Parties’ implementation duties under Art. 4 and other provisions “demand rigorous monitoring of the effects of such changes and adjustment of policies to protect children’s economic, social and cultural rights.”⁹² The implication is that some monitoring of the acts of market participants may be necessary to ensure the protection of rights.

94. As illustrated below in Part 6, Concluding Observations commonly recommend the strengthening of monitoring mechanisms in employment contexts.⁹³

95. Finally, it is clear that monitoring should play a key role in enforcement but also in gathering sufficient data to report to the Committee. While detailed analysis of the Committee’s reporting guidelines was outside the research capacity of this project, General Comments and Concluding Observations confirm that States should report on steps to protect rights from third party interference. For instance, the Committee says in General Comment 8 that it expects States to report on the “measures taken to prohibit and prevent all corporal punishment and other cruel or degrading forms of punishment in the family and all other settings.”⁹⁴ It also encourages NHRIs among other actors to provide it with information as to progress towards the elimination of violence.⁹⁵

(iv) Administrative measures

96. General Comment 5 notes the importance of coordination amongst Government departments in order to ensure respect for all Convention rights. It says that the Convention rights should not only be considered by departments traditionally seen as handling children’s issues such as education, health and welfare departments but also “right across Government, including for example departments concerned with finance,

⁸⁹ *Id.* at para. 10.

⁹⁰ *Id.* at para. 44. See also General Comment 8, *supra* note 41, at para. 43 where the Committee calls for monitoring of the disciplinary systems and treatment of children in private and public institutions. See also for example Concluding Observations for Guyana, UN Doc. CRC/C/15/Add.224, 26 February 2004, at para. 361; and Concluding Observations for India, UN Doc. CRC/C/15/Add.228, 26 February 2004, at para. 20.

⁹¹ General Comment 5, *supra* note 21, at para. 52.

⁹² *Id.*

⁹³ While not a focus of this report, it is worth noting that Concluding Observations also regularly recommend monitoring in relation to alternative care institutions to ensure that such institutions are safeguarding children’s rights. See for example, Concluding Observations for Lebanon, *supra* note 33, at paras. 43-44; Concluding Observations for Mexico, UN Doc. CRC/C/MEX/CO/3, 8 June 2006, at paras. 37 – 38 which specifically calls for oversight of institutions managed by the private sector; Concluding Observations for Algeria, UN Doc. CRC/C/15/Add.269, 12 October 2005, at para. 42; Concluding Observations for the Philippines, *supra* note 52, at paras. 39, 42; and Concluding Observations for Japan, *supra* note 33, at paras. 33 – 36.

⁹⁴ General Comment 8, *supra* note 41, at para. 53.

⁹⁵ *Id.*

planning, employment and defence, and at all levels.”⁹⁶ Thus it appears that departments dealing with business enterprises should be just as concerned about child rights.

97. To this end, General Comment 5 calls for a “continuous process of child impact assessment (predicting the impact of any proposed law, policy or budgetary allocation which affects children and the enjoyment of their rights) and child impact evaluation (evaluating the actual impact of implementation).”⁹⁷ Indeed, the Committee “commends certain States which have adopted legislation requiring the preparation and presentation to parliament and/or the public of formal impact analysis statements.”⁹⁸ Further, as mentioned in Part 1, the Committee has called for impact assessments before States enter into bilateral trade or other commercial agreements. Calls for such assessments imply that where laws or policies facilitate commercial projects which could impact child rights, the State might need to encourage or mandate reporting from relevant business participants to learn about the likely impacts of such projects.

98. Similarly, the Committee says in General Comment 7 that all legal and policy decision-making affecting children should take into account the best interests of the child. It says that this principle should be considered not only in decisions directly affecting children such as those regarding education but also those which “indirectly impact on young children (e.g. related to the environment, housing or transport).”⁹⁹ It is difficult to see how such decision-making could take into account best interests without information as to how non-State actors, including business enterprises, who are involved in such activities might impact rights.

99. The Committee has also called for administrative measures which promote coordination between the Government and the private sector. For example, General Comment 9 encourages the establishment of “multisectoral coordinating mechanisms” which include private and public organizations delivering services to children with disabilities.¹⁰⁰ The Committee suggests that such mechanisms could reduce overlaps in services and prompt greater protection of rights.¹⁰¹ Concluding Observations also call for national policies and programmes to promote rights and for the private sector to be involved in their creation.¹⁰²

100. Finally, the Committee clearly supports the establishment of strong administrative bodies in order to protect rights. For example, Concluding Observations have urged States Parties to strengthen institutions which protect against child labor.¹⁰³

⁹⁶ General Comment 5, *supra* note 21, at para. 37.

⁹⁷ *Id.* at para. 45.

⁹⁸ *Id.* at para 47.

⁹⁹ General Comment 7, *supra* note 32, at para. 13(b).

¹⁰⁰ General Comment 9, *supra* note 34, at para. 21.

¹⁰¹ *Id.*

¹⁰² See for example, Concluding Observations for Dominica, CRC/C/15/Add.238, 30 June 2004, at paras. 7

-8.

¹⁰³ See Part 6 for more detail.

B. OPSC

(i) Types of measures contemplated

101. The OPSC provides less latitude to States Parties in deciding how to regulate private acts, especially offences by individuals. It requires that certain offences be covered under a State's criminal or penal law; that such offences are punishable by appropriate penalties; that measures be taken to seize goods or profits used in or gained by the offences; and that victims have access to procedures to seek compensation.

102. As discussed below, there is more latitude regarding liability for legal persons as States may establish such liability through criminal, civil or administrative measures.

(ii) Legislation

103. As explained in Part 1, the OPSC requires that certain crimes are covered under States Parties' criminal or penal laws. Significant detail is provided as to the types of offences which must be included as a minimum and the OPSC also confirms that such laws should cover secondary liability such as attempt and complicity.

104. Art. 9(1) also confirms the importance of legislation, saying that States should adopt or strengthen, implement and disseminate laws to prevent the Protocol offences.

105. Concluding Observations highlight the need for strong legislative measures in order to criminalize the offences. The Committee often assesses whether relevant laws cover all of the offences and recommends ways to strengthen protection.

In the **Concluding Observations for Qatar**, the Committee was concerned that applicable laws did not include all of the offences in Art. 3(1).¹⁰⁴ The Committee recommended that the State continue its efforts to amend its laws in line with the OPSC – particularly including offences for the transfer of child organs for profit and minimizing gender disparities.¹⁰⁵

In the **Concluding Observations for Costa Rica**, the Committee recommended that the State Party ensure that its criminal law covers possession of child pornography.¹⁰⁶ It said that such a crime “should include the possession of child pornography in a computer system or on a computer-data storage medium.”¹⁰⁷

¹⁰⁴ Concluding Observations for Qatar, UN Doc. CRC/C/OPSC/QAT/CO/1, 2 June 2006, at para. 21.

¹⁰⁵ *Id.* at para. 22. See also Concluding Observations for Andorra, UN Doc. CRC/C/OPSC/AND/CO/1, 17 March 2006, at para. 13; Concluding Observations for Kazakhstan, UN Doc. CRC/C/OPSC/KAZ/CO/1, 17 March 2006, at para. 15; Concluding Observations for China, UN Doc. CRC/C/OPSC/CHN/CO/1, 24 November 2005, at para. 11; and Concluding Observations for UN Doc. Viet Nam, CRC/C/OPSC/VNM/CO/1, 17 October 2006, at paras. 25 – 26 which recommended legislative measures to prosecute and punish “all persons” involved in adoptions who do not comply with international instruments, including intermediaries.

¹⁰⁶ Concluding Observations for Costa Rica, UN Doc. CRC/C/OPSC/CRI/CO/1, 2 May 2007, at paras. 14 - 15

¹⁰⁷ *Id.* at para. 15.

106. Art. 3(4) provides that in relation to *legal persons*, States may establish their legal liability through criminal, civil or administrative measures. It is unclear if the choice here is between legislative and administrative measures or whether judicial measures are also contemplated.

107. The Committee clearly supports States establishing liability for legal persons. It has expressed concern at situations where “legal persons may not be held liable for offences established in article 3, paragraph (1) of the Optional Protocol” and has encouraged States to “extend liability” for those offences to “legal persons.”¹⁰⁸ As discussed more in Part 6, the Committee often recommends States to ensure that relevant legislation covers the activities of Internet service providers. While not expressly stated, the presumption is that such legislation should cover the acts of companies providing these services. For example, the Committee has recommended that States introduce legislative provisions to combat the dissemination of child pornography, “including the full mandatory cooperation of Internet providers in this regard.”¹⁰⁹

108. Readers should note the proviso in Art. 3(4) that measures taken regarding the liability of legal persons shall be subject to the State Party’s national law. The Committee has not yet addressed what this proviso might mean in practice, including whether States Parties are absolved from establishing legal liability where it is not permitted by their national law.

109. The OPSC requires that liability for the Art. 3(1) offences be imposed whether the offences were committed on an “individual or organized basis,” as well for primary or secondary involvement. Thus it appears that the Protocol could lead to more legislation against corporate officers or employees engaged directly or indirectly in such offences, even if the State has not created civil or criminal liability for the business enterprise.

(iii) Monitoring

110. The OPSC does not explicitly mention monitoring but Concluding Observations regularly recommend States to establish effective, widespread monitoring mechanisms to ensure compliance. The implication is that such mechanisms should monitor compliance by both State and non-State actors, including business enterprises.

The **Concluding Observations for Turkey** noted that there was a government body with responsibility for monitoring and implementation of the Optional Protocol. However, it remained concerned “that the coordination and monitoring activities undertaken are insufficient.”¹¹⁰ The Committee encouraged the State to “strengthen the coordination and

¹⁰⁸ Concluding Observations for Iceland, UN Doc. CRC/C/OPSC/ISL/CO/1, 21 June 2006, at paras. 13 and 14(d). See also Concluding Observations for Andorra, *supra* note 105, at paras. 12 and 13; and Concluding Observations for Kazakhstan, *supra* note 105, at para. 15.

¹⁰⁹ Concluding Observations for Kazakhstan, *supra* note 105, at para. 16(b); see also Concluding Observations for Norway, UN Doc. CRC/C/OPSC/NOR/CO/1, 21 September 2005, at para. 17.

¹¹⁰ Concluding Observations for Turkey, UN Doc. CRC/C/OPSC/TUR/CO/1, 9 June 2006, at para. 5.

monitoring activities, at both central and local levels, in order to create a systematic and coherent approach to address the issues covered by the Optional Protocol ...”¹¹¹

In the **Concluding Observations for Morocco**, the Committee was concerned about “the lack of mechanisms for the collection, monitoring and reporting of instances of child exploitation and abuse.”¹¹² The Committee recommended “that the State party establish a monitoring and reporting system on all cases of exploitation and abuse of children along with a mechanism for follow-up ...”¹¹³

(iv) Administrative measures

111. Art. 3(4) of the OPSC provides States Parties with discretion as to whether legal liability for legal persons is established through criminal, civil or administrative measures. Art. 9(1) also provides that States Parties should adopt or strengthen, implement and disseminate administrative measures to prevent the Protocol offences.

112. Concluding Observations recommend a wide range of administrative measures to ensure prevention and punishment of the OSPC offences, including the creation and implementation of national plans of action.¹¹⁴

PART 4 - ADJUDICATION

113. This Part examines guidance from the Committee on the steps States should take to adjudicate the acts of business enterprises which may have interfered with rights, including whether States are obliged to ensure that compensation is available for such violations or that individuals acting on the enterprise’s behalf, or even the enterprise itself, are brought to justice.

A. CRC

(i) The right to an effective remedy

114. The Convention does not have an article explicitly requiring a right to an effective remedy equivalent to Art. 2(3) of the ICCPR.¹¹⁵ Nevertheless, as described above, several provisions require appropriate legislative measures to protect rights and some call for penalties, judicial action and measures to promote recovery after harm.

¹¹¹ *Id.* at para. 6.

¹¹² Concluding Observations for Morocco, UN Doc. CRC/C/OPSC/MAR/CO/1, 17 March 2006, at para. 21.

¹¹³ *Id.* at para. 22.

¹¹⁴ See for example, Concluding Observations for Syrian Arab Republic, UN Doc. CRC/C/OPSC/SYR/CO/1, 31 October 2006, at para. 26; Concluding Observations for Iceland, *supra* note 108, at para 7; Concluding Observations for Kazakhstan, *supra* note 105, at para. 14; and Concluding Observations for Turkey, *supra* note 110, at paras. 7 – 12.

¹¹⁵ Art. 2(3) of the ICCPR provides *inter alia* that each State Party to the Covenant undertakes to ensure that “any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity.”

115. For example, Art. 32(2) dealing with economic exploitation requires States Parties to “provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.” Art. 19(2) refers to judicial involvement in relation to violence against children and Art. 39 requires that States “take all appropriate measures” to promote physical and psychological recovery and social reintegration following harm such as neglect or exploitation.

116. In General Comment 5, the Committee considers that “for rights to have meaning, effective remedies must be available to redress violations.”¹¹⁶ It says that the right to an effective remedy is implicit in the Convention. Further, the Committee says that where a violation is found, “there should be appropriate reparation, including compensation, and, where needed, measures to promote physical and psychological recovery, rehabilitation and reintegration, as required by article 39.”¹¹⁷ The implication throughout the Committee’s commentaries is that appropriate reparation should follow violations by both State and non-State actors, including business enterprises.

(ii) Complaints mechanisms and reparation

117. The Committee supports independent complaints mechanisms in numerous General Comments. General Comment 8 says that children in all institutions should have access to complaints procedures “and ultimately to the courts.”¹¹⁸ General Comment 9 urges States Parties to “establish an accessible, child-sensitive complaint mechanism and a functioning monitoring system based on the Paris Principles ...”¹¹⁹ As already discussed, General Comment 2 highlights the Committee’s view that NHRIs should be able to consider a broad spectrum of complaints under the Convention.

118. General Comment 5 suggests the Committee’s support for recourse to the courts for Convention violations. It provides that States must “give particular attention to ensuring that there are effective, child-sensitive procedures available to children and their representatives” and that such procedures should include “access to independent complaints procedures and to the courts with necessary legal and other assistance.”¹²⁰

119. General Comment 5 also welcomes incorporation into domestic law and says that it should provide the opportunity to directly invoke Convention provisions before the courts.¹²¹ The implication is that giving domestic legal effect to the Convention provisions should entitle individuals to complain about breaches by both State and non-State actors, including business enterprises.

¹¹⁶ General Comment 5, *supra* note 21, at para. 24.

¹¹⁷ *Id.* In relation to recover and rehabilitation, see also General Comment 8, *supra* note 41, at para. 37 and General Comment 9, *supra* note 34, at para. 43(i).

¹¹⁸ General Comment 8, *supra* note 41, at para. 43.

¹¹⁹ General Comment 9, *supra* note 34, at para. 43(g).

¹²⁰ General Comment 5, *supra* note 21, at para. 24.

¹²¹ *Id.* at para. 18.

120. Concluding Observations also highlight the need for effective complaints procedures, particularly in relation to economic exploitation and violence.¹²²

121. Apart from the remarks in General Comment 5 that appropriate reparation should be provided, including compensation, following a finding of a violation, the research did not uncover any other significant comments regarding compensation.

(iii) Sanctions and penalties

122. General Comments discuss sanctions and penalties most often in relation to prosecution for violence against children. For example, General Comment 8 provides that prosecution of violence against children outside the home “may be a reasonable response” and suggests that there should also be other deterrents such as the threat of other disciplinary action, including dismissal.¹²³

123. In General Comment 8, the Committee recommends publicizing any prohibitions and associated punishments relating to violence,¹²⁴ as well requiring institutions to report and review violent incidents.¹²⁵ While these comments seem to focus on violence in private or public welfare institutions, they could have broader application to situations more likely to involve business enterprises, including employment settings, especially considering General Comment 8 requires States to act against all forms of violence.

124. Concluding Observations recommend prosecution and penalties for violence against children and trafficking.¹²⁶ They also call for prosecution of private actors, including employers, in relation to economic exploitation and discrimination.¹²⁷

B. OPSC

(i) The right to an effective remedy

125. The OPSC refers to compensation for victims and to penalties for perpetrators. It also requires recovery and reintegration measures for victims.

¹²² In relation to economic exploitation, see Part 6 for more detail. In relation to the prohibition against violence, see for example, Concluding Observations for the United Republic of Tanzania, *supra* note 52, at para. 41. See also Concluding Observations for Dominica, *supra* note 102, at para. 29(d).

¹²³ General Comment 8, *supra* note 41, at para. 43.

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ While State duties to prevent violations in armed conflict is largely beyond the scope of this report, it is worth noting the Concluding Observations for Colombia, which recommended strong State action to protect children from violence from private and State armed groups. The Committee highlighted that the State could incur responsibility under the Convention for both action (where it directly violates rights) and inaction (where it fails to prevent violations by others). It requested that investigations into violations by armed groups be carried out independently and impartially. See Concluding Observations for Colombia, *supra* note 33, at paras. 41 – 45, 51, 80 – 81, 94 – 95. See also paras. 86 – 87 in relation to trafficking. See also Concluding Observations for Lebanon, *supra* note 33, at para. 81 – 82; and Concluding Observations for Algeria, *supra* note 93, at para. 79.

¹²⁷ See for example Concluding Observations for Mexico, *supra* note 93, at para. 62 – 65.

(ii) Complaints mechanisms and reparation

126. Art. 9(5) requires that all victims of Protocol offences have “access to adequate procedures to seek, without discrimination, compensation for damages **from those legally responsible.**” It does not appear that the Committee has addressed the issue of compensation under Art. 9(5). Accordingly, it would be helpful to gain further insight into whether a plain reading suggests that States Parties must not only ensure compensation is provided but that it is possible to seek compensation from the perpetrators themselves, which could include legal persons such as business enterprises.

127. Art. 9(3) requires States to take all feasible measures to ensure all appropriate assistance to victims, including facilitating reintegration and recovery. Art. 8 requires a variety of steps to protect child victims and witnesses in proceedings against perpetrators.

128. Concluding Observations have called for effective complaints mechanisms as well as measures to ensure reintegration and recovery for victims. In relation to the former, the Committee considers that such mechanisms should be independent and accessible to children.¹²⁸

(iii) Sanctions and penalties

129. Art. 3(3) requires States Parties to make the offences punishable by appropriate penalties that consider the grave nature of the offences. It seems that Art. 3(3) may only apply to individuals committing the offences given that Art. 3(4) separately discusses legal persons. However, considering that Art. 3(1) confirms that a prohibited act may qualify as an offence under the Protocol whether it was committed “on an individual or organized basis,” it appears that company officers or employees could be caught by any legislation developed by States Parties in line with the Protocol.

130. Concluding Observations recommend strong measures to ensure that Protocol offences are investigated and punished effectively.¹²⁹ The Committee has *welcomed* legislative measures to increase penalties for Protocol offences and has also *recommended* such measures in some situations.¹³⁰ These discussions tend to speak generally of “perpetrators,” “offenders” or prosecuting “those responsible” rather than discussing whether individuals or entities should be punished.¹³¹ However, as provided above, the Committee does call for States to establish legal liability for legal persons.

131. The Committee has expressed concern at reducing penalties where compensation is available – it has called for separation between reparation and penalties to ensure perpetrators are held to account. For example, in the Concluding Observations

¹²⁸ See for example, Concluding Observations for Turkey, *supra* note 110, at para. 22.

¹²⁹ In relation to sale of children and child prostitution, see for example Concluding Observations for Kazakhstan, *supra* note 105, at paras. 23 – 24. See also Part 6 for more detail.

¹³⁰ See for example, Concluding Observations for Iceland, *supra* note 108, at para 4; Concluding Observations for Viet Nam, *supra* note 105, at paras. 10 -11; and Concluding Observations for Andorra, *supra* note 105, at para. 17.

¹³¹ See for example Concluding Observations for Denmark, UN Doc. CRC/C/OPSC/DNK/CO/1, 17 October 2006, at paras. 31 – 32. See Part 6 for more detail.

for Viet Nam, the Committee was concerned that the Penal Code allowed offenders to obtain a reduction of sentence if s/he offered compensation which was accepted by the victim or his/her family.¹³² The Committee recommended that the State reconsider the relevant provisions “in order to make a clear distinction between the sanction that can be imposed on the perpetrator and the reparation which can be claimed by the victim.”¹³³

132. Subject to national law, Art. 7 contemplates measures such as confiscation of assets and profits and the closing of premises used to commit offences. None of the Concluding Observations in the Research Sample addressed Art. 7 and further guidance would be helpful on how the Committee would interpret a situation where company assets or premises were at issue.

PART 5 - PROMOTIONAL MEASURES AND “BUSINESS RESPONSIBILITIES”

133. This Part looks at the promotional measures expected of States Parties in order to increase business awareness of human rights. It also looks at any guidance from the Committee on whether business enterprises have any particular responsibilities under the treaties, separate from any indirect duties they might have by virtue of State regulation.

A. CRC

(i) Promotional measures

134. Under Art. 42 of the Convention, States Parties undertake to make the Convention’s provisions “widely known, by appropriate and active means, to adults and children alike.” Thus it is unsurprising that the Committee sees promotional measures as vital in informing State and non-State actors of the optimum ways to protect the Convention rights. Indeed, it has emphasized that effective protection necessitates promotional measures in addition to other implementation measures. For example, General Comment 8 notes that prohibition alone of corporal punishment and other cruel or degrading forms of punishment is unlikely to change attitudes and that awareness-raising is crucial amongst all persons who may work with or for children.¹³⁴

135. The Committee “proposes that States should develop a comprehensive strategy for disseminating knowledge of the Convention throughout society.”¹³⁵ For example, the Committee foresees a role for NHRIs in promoting rights amongst private actors. In General Comment 2, the Committee recommends that NHRIs advise “public and private bodies in construing and applying the Convention.”¹³⁶ It also says that NHRIs should “work closely with the media” in order to “promote public understanding and awareness

¹³² Concluding Observations for Viet Nam, *supra* note 105, at para. 10.

¹³³ *Id.* at para. 11.

¹³⁴ General Comment 8, *supra* note 41, at para. 45. Also note that numerous Concluding Observations recommend awareness-raising to change community attitudes towards corporal punishment and other forms of violence. See for example Concluding Observations for Lebanon, *supra* note 33, at para. 42.

¹³⁵ General Comment 5, *supra* note 21, at para. 67.

¹³⁶ General Comment 2, *supra* note 83, at para. 19(e).

of the importance of children’s rights.”¹³⁷ Finally, it says that NHRIs should “assist in the formulation of programmes” for the “integration of children’s rights” in “professional circles.”¹³⁸

136. General Comment 5 emphasizes States Parties’ duties to develop training for “all those working with and for children,” calling for education of actors including “those working in the media.”¹³⁹ It recommends both systematic and ongoing training. The Committee “expects to see the Convention reflected in professional training curricula, codes of conduct and educational curricula at all levels,”¹⁴⁰ implying the State should take a lead role in educating private parties and encouraging them to include rights in their own training material and guidelines. The Committee also believes States should periodically evaluate whether training is contributing to enjoyment of rights,¹⁴¹ and that both periodic reports and Concluding Observations should be widely disseminated.¹⁴²

137. As set out below, the Committee sees the media as key in the promotion of rights. The Committee alternates between addressing the media directly to encourage it to engage in certain activities, and advising States to encourage certain promotional acts by the media. Examples of the former are set out in section (ii) below. Examples of the latter include General Comment 9, where the Committee encourages States Parties to use the “mass media to foster positive attitudes towards children with disabilities.”¹⁴³ The Committee also suggests media personnel should be trained accordingly.¹⁴⁴ The Committee’s most recent General Comment, on children’s rights in juvenile justice, provides that States should seek the media’s “active and positive involvement” in improving awareness about rights-based approaches to dealing with juvenile delinquents as well as minimizing the proliferation of negative stereotypes.¹⁴⁵

138. Concluding Observations regularly call for promotion of the Convention’s rights amongst all members of society, including through widespread participation in formulating national policies as explained above. There were no specific examples of calls to promote rights amongst the business community as a whole, though as set out

¹³⁷ *Id.* at para. 19(l).

¹³⁸ *Id.* at para. 19(n). See also General Comment 9, *supra* note 34, at para. 24 on the role the Committee foresees for NHRIs in monitoring the treatment of children with disabilities. The Committee believes NHRIs should be empowered to receive, investigate and address complaints relating to such treatment.

¹³⁹ General Comment 5, *supra* note 21, at para. 53. See also General Comment 4, *supra* note 44, at para. 29, which discusses training for health personnel on adolescents’ rights to privacy; confidentiality; information about planned treatment; and informed consent. See also General Comment 7, *supra* note 32, at para. 41 which encourages State to train all parties involved with early childhood, including health personnel and social workers. It also urges States to “conduct awareness-raising campaigns for the public at large.”

¹⁴⁰ General Comment 5, *supra* note 21, at para 53.

¹⁴¹ *Id.* at para 55.

¹⁴² *Id.* at para. 72.

¹⁴³ General Comment 9, *supra* note 34, at para. 26.

¹⁴⁴ As with numerous other General Comments, the Committee also calls for training of any professionals working with or for children, including educators, health workers, social workers etc. See in particular paras. 26 – 27.

¹⁴⁵ General Comment No. 10, ‘Children’s rights in Juvenile Justice,’ HRI/GEN/1/Rev.8/Add.1 (2007) 56, at para. 32.

below, General Comments as well as the Committee's recommendations from the Discussion Day call for awareness-raising amongst private sector service providers. Concluding Observations have also recommended "cooperation" with the media and Internet service providers and "collaboration" with tour operators suggesting the Committee encourages awareness-raising amongst such groups. (See Part 6)

(ii) "Business responsibilities"

139. While the Committee indicates that only States are ultimately accountable under the Convention, it also suggests that businesses may have certain responsibilities in respecting and ensuring the Convention rights.¹⁴⁶

140. For example, General Comment 5 highlights that "implementation is an obligation for States parties, but needs to engage all sectors of society, including children themselves."¹⁴⁷ The Committee "recognizes that responsibilities to respect and ensure the rights of children extend in practice beyond the State and State-controlled services and institutions to include children, parents and wider families, other adults and non-State services and organizations."¹⁴⁸ It then concurs with the following remarks from CESCR's General Comment 14 on the right to health:

"While only States are parties to the Covenant and thus ultimately accountable for compliance with it, all members of society - individuals, including health professionals, families, local communities, intergovernmental and non-governmental organizations, civil society organizations, as well as the private business sector - have responsibilities regarding the realization of the right to health. States parties should therefore provide an environment which facilitates the discharge of these responsibilities."¹⁴⁹

141. As mentioned above, the Committee also advocates respect for Convention rights in codes of conduct, professional training curricula etc, suggesting it not only expects States Parties to take a lead role in educating private actors but also expects private actors to incorporate rights into their guiding documents.¹⁵⁰ For example, in relation to protection against violence, the Committee notes the value of professional codes of conduct and rules or charters to "emphasize the illegality of corporal punishment

¹⁴⁶ The Committee also regularly discusses duties/responsibilities owed by parents, legal guardians and family members. Such remarks are considered outside the scope of this report.

¹⁴⁷ General Comment 5, *supra* note 21, at para. 56.

¹⁴⁸ *Id.*

¹⁴⁹ See CESCR General Comment No. 14 'The right to the highest attainable standard of health,' HRI/GEN/1/Rev.8 (2006) 86, at para. 42 (hereinafter CESCR General Comment 14). See paras 83 – 87 of the ICESCR report in this series for more information, available at <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>. See also recommendation 6 from the Discussion Day which essentially contains the same remarks as para. 56 of General Comment 5: CRC, Report on its thirty-first session, September-October 2002, Day of General Discussion on "The private sector as service provider and its role in implementing child rights", paras. 630-653, available at (<http://www.unhchr.ch/html/menu2/6/crc/doc/days/service.pdf>) (hereinafter referred to as Discussion Day Recommendations).

¹⁵⁰ General Comment 5, *supra* note 21, at para. 53.

and other cruel or degrading forms of punishment.”¹⁵¹ The Committee in General Comment 7 “appeals” to “private actors” as well as other parties to identify and remove obstacles to children enjoying their rights to rest, leisure and play.¹⁵²

142. As well as speaking generally about responsibilities for private actors, the Committee has focused on the media and businesses providing core government services. For example, in General Comment 1, the Committee says that the media have a “central role to play, both in promoting the values and aims reflected in article 29(1) and in ensuring that their activities do not undermine the efforts of others to promote those objectives.”¹⁵³ General Comment 5 discusses the “crucial role” the media can play in disseminating the Convention and the Committee “encourages their voluntary engagement in the process, which may be stimulated by governments and by NGOs.”¹⁵⁴ General Comment 8 notes the valuable role the media can play in awareness-raising in relation to protection against violence.¹⁵⁵ General Comment 9 says that where sporting events take place for children with disabilities, “the media must play its role responsibly by giving the same attention as it does to sports for children with no disabilities.”¹⁵⁶

143. In relation to private service providers, General Comment 4 notes that health-care providers “have an obligation to keep confidential medical information concerning adolescents, bearing in mind the basic principles of the Convention.”¹⁵⁷

144. Further, in its Discussion Day the Committee specifically addressed a broader class of private service providers, including businesses. After recommending to States Parties that they take steps to ensure that private service providers comply with the Convention (see Part 7), the Committee extended the following recommendations to **private service providers**:

- (a) Calls on all non-State service providers to respect the Convention and recommends that they consider the Convention’s provisions “when conceptualizing, implementing and evaluating their programmes, including when sub-contracting other non-state service providers...”¹⁵⁸
- (b) Encourages non-State service providers to act in accordance with international standards and to “develop self-regulation mechanisms which would include a system of checks and balances.”¹⁵⁹
- (c) Recommends that when developing such mechanisms, the “following criteria” are “included in the process:” adopting a Code of Ethics which reflects the Convention and which is developed collectively amongst stakeholders; establishing a system to monitor code implementation as well as a system of

¹⁵¹ General Comment 8, *supra* note 41, at para. 35.

¹⁵² General Comment 7, *supra* note 32, at para. 34.

¹⁵³ General Comment 1, *supra* note 45, at para. 21.

¹⁵⁴ General Comment 4, *supra* note 44, at para. 70.

¹⁵⁵ General Comment 8, *supra* note 41, at para. 48.

¹⁵⁶ General Comment 9, *supra* note 34, at para. 72.

¹⁵⁷ General Comment 4, *supra* note 44, at para. 7.

¹⁵⁸ Discussion Day Recommendations, *supra* note 148, at recommendation no. 16.

¹⁵⁹ *Id.* at recommendation no. 17.

transparent reporting; developing indicators and benchmarks to measure progress and establish accountability, including allowing partners to challenge each other's compliance; developing effective complaints mechanisms.¹⁶⁰

- (d) Encourages non-State service providers, “particularly for-profit service providers, as well as the media” to continually consult and collaborate with the communities in which they operate.¹⁶¹

145. The Committee's recommendations from the Discussion Day also address “organizations and donors providing financial support to service deliverers.”¹⁶² It says such actors should comply with the Convention and ensure their “partners” also comply.¹⁶³ It is unclear if by “organizations and donors” the Committee also includes business enterprises such as banks and other financial institutions. Regardless, banks are specifically discussed in the next recommendation, where the Committee encourages States parties, international financial institutions and banks “to take carefully into account the rights of children, as enshrined in the Convention and other relevant international instruments when negotiating loans or programmes.”¹⁶⁴

146. Importantly, the recommendations from the Discussion Day also note that the Committee has been asked to “elaborate a model statement for non-state actors so as to encourage and facilitate their expressing commitment to respect the rights of the child as enshrined in the Convention, irrespective of their relationship with the State and whether for profit or not-for-profit.”¹⁶⁵ It does not appear that this statement had been created or circulated at the time of writing this report.

147. General Comments subsequent to the Discussion Day other than General Comment 5 also directly address private service providers. For example, General Comment 7 “calls on all non-State service providers (“for profit” as well as “non-profit” providers) to respect the principles and provisions of the Convention ...”¹⁶⁶ However, it also reminds States of their “primary obligation” to ensure implementation.¹⁶⁷

148. Concluding Observations tend to address States Parties rather than private actors, which is unsurprising considering such observations respond to State reports. However, Concluding Observations have directly addressed private financial institutions.¹⁶⁸

¹⁶⁰ *Id.*

¹⁶¹ *Id.* at recommendation no. 18.

¹⁶² *Id.* at recommendation no. 20.

¹⁶³ *Id.*

¹⁶⁴ *Id.* at recommendation no. 21. See also Concluding Observations for Ecuador, *supra* note 52, at para. 21 where the Committee calls on international and private financial institutions to support efforts by the State to reschedule payments on external and internal debts in order to invest more in implementing rights.

¹⁶⁵ Discussion Day Recommendations, *supra* note 148, at recommendation no. 25.

¹⁶⁶ General Comment 7, *supra* note 32, at para. 32.

¹⁶⁷ *Id.*

¹⁶⁸ See for example, Concluding Observations for Ecuador, *supra* note. 52, at para. 21.

149. As discussed in Part 10, questions arise regarding the Committee’s expectations of States and business enterprises regarding any “business responsibilities” under the Convention. The Committee has not yet addressed in detail what the legal effect is, if any, of the responsibilities discussed as well as the State’s role in facilitating fulfillment of such responsibilities.

B. OPSC

(i) Promotional measures

150. The OPSC strongly advocates the use of public awareness tools to prevent the Protocol offences. It notes in its Preamble that efforts are needed to “raise public awareness” in order to “reduce consumer demand for the sale of children, child prostitution and child pornography.”

151. Art. 9(1) requires the dissemination of social policies and programmes to prevent the Protocol offences while Art. 9(2) necessitates awareness raising “in the public at large” through “information by all appropriate means, education and training.”

152. Concluding Observations highlight that promotional steps, including the formulation and publication of public policies, are needed to encourage prevention and thereby complement legislation which prohibits abuse.

The **Concluding Observations for China** noted the State’s measures in mainland China to punish Protocol offences but was concerned that “insufficient attention” was being paid to preventing offences.¹⁶⁹ The Committee recommended that the State Party “pay increased attention to the prevention of the sale of children, child prostitution and child pornography, inter alia through ... public-awareness campaigns ...”¹⁷⁰

153. Concluding Observations also recommend coordination between the government, civil society and private organizations in order to promote rights. For example, the Concluding Observations for Qatar recommended the State Party to “continue to bring together Government bodies, civil society organizations and private institutions in order to promote the full implementation of the Optional Protocol throughout the country.”¹⁷¹ Several Concluding Observations, as outlined in Part 6, speak of collaboration between the State and tour group operators to stop sex tourism, including through codes of conduct for the tourism industry.

(ii) “Business responsibilities”

154. The OPSC’s Preamble stresses the importance of “closer cooperation and partnership between Governments and the Internet industry.”

¹⁶⁹ Concluding Observations for China, *supra* note 105, at para. 16.

¹⁷⁰ *Id.* at para. 17. See also Concluding Observations for Kazakhstan, *supra* note 105, at paras. 27 – 28.

¹⁷¹ Concluding Observations for Qatar, *supra* note 104, at para. 12.

155. However, the Committee’s recommendations do not tend to directly address the Internet industry or other industries or entities. As Part 6 illustrates, it is more common for the Committee to direct States to prevent or punish abuse by such actors.

PART 6 – SECTOR SPECIFIC INFORMATION

156. In suggesting measures to ensure protection against abuse by business enterprises, the Committee has focused on some types of businesses and rights more than others. This section outlines those trends. It should not be interpreted as restricting in any way the application of either treaty to other types of businesses or to situations where businesses affect other types of rights. This section is **not** divided into separate sections on the CRC and OPSC. Readers should assume that references relate to the Committee’s discussion of the CRC unless otherwise stated.

A. Media, entertainment and marketing companies

(i) Information flows

157. Art. 17 of the Convention recognizes the “important function performed by the mass media” and requires States Parties to encourage the mass media to disseminate socially and culturally beneficial information and to consider the linguistic needs of indigenous children or those belonging to minorities. Thus it is unsurprising that the Committee regularly speaks of action States should or could take in relation to the media and other parties involved in information flows, including those marketing or publishing information.¹⁷² As mentioned above, it has also addressed the media directly.

158. General Comment 1 provides that States are obliged under Art. 17 “to take all appropriate steps” to encourage the mass media to disseminate information and material of social and cultural benefit to children.¹⁷³ General Comment 7 notes that “early childhood is a specialist market for publishers and media producers, who should be encouraged to disseminate material” that is beneficial to children’s interests.¹⁷⁴ It also refers to the risks of harmful material being made available in increasingly accessible modern technologies, including “Internet-based media” and urges States Parties “to regulate media production and delivery in ways that protect young children ...”¹⁷⁵

159. General Comment 9 implies necessary regulation of the media or other groups disseminating information when it considers that States Parties are “required to protect all children, including children with disabilities from harmful information, especially pornographic material and material that promotes xenophobia or any other form of discrimination and could potentially reinforce prejudices.”¹⁷⁶

¹⁷² Throughout these discussions, there is a sense that the State should undertake these activities while balancing rights relating to freedom of expression and freedom of thought.

¹⁷³ General Comment 1, *supra* note 45, at para. 21.

¹⁷⁴ General Comment 7, *supra* note 32, at para. 35.

¹⁷⁵ *Id.*

¹⁷⁶ General Comment 9, *supra* note 34, at para. 38.

160. Concluding Observations also suggest measures to minimize publication of harmful information, although they more often refer to “cooperation” with the media than regulation of its activities.

The **Concluding Observations for Latvia** expressed concern about harmful materials being published in the media.¹⁷⁷ The Committee recommended that the State “cooperate” with radio and television broadcasters in order to “monitor and to improve the quality and sustainability of media programming produced primarily for children.”¹⁷⁸

The **Concluding Observations for Costa Rica** recommended the State to call on the media to strengthen its role in disseminating information related to the Convention, and to reduce the amount of sensationalist news regarding children, “for example by duly regulating the activities of mass media and the Internet with a view to preventing the dissemination of harmful information and by promoting the training of professionals working for mass media on the adequate treatment of child issues, in conformity with the provisions of the Convention and on the guidelines on reporting on children adopted by the International Federation of Journalists.”¹⁷⁹

161. The Committee has also discussed marketing activities. For example, General Comment 4 urges States Parties to “protect adolescents from information that is harmful to their health and development ...”¹⁸⁰ To this end, the Committee urges States Parties “to regulate and prohibit information on and marketing of substances such as alcohol and tobacco, particularly when it targets children and adolescents.”¹⁸¹

162. It is difficult to understand how marketing companies, as well as owners of companies selling substances such as alcohol and tobacco, could escape scrutiny as part of such regulation. In fact, Concluding Observations have noted regulation of advertising companies as well as other measures to curb marketing of harmful substances.

In the **Concluding Observations for Thailand**, the Committee said that it appreciated that advertising for alcohol and tobacco was prohibited.¹⁸²

¹⁷⁷ Concluding Observations for Latvia, UN Doc. CRC/C/LVA/CO/2, 28 June 2006, at para. 28.

¹⁷⁸ *Id.* at para. 29. See also Concluding Observations for Thailand, *supra* note 35, at paras. 37 – 381; Concluding Observations for Australia, UN Doc. CRC/C/15/Add.268, 20 October 2005, at paras. 33-34; Concluding Observations for Finland, UN Doc. CRC/C/15/Add.272, 20 October 2005, at para. 25; Concluding Observations for Lithuania, UN Doc. CRC/C/LTU/CO/2, 17 March 2006, at para. 36; Concluding Observations for Austria, UN Doc. CRC/C/15/Add.25, 31 March 2005, at para. 31; and Concluding Observations for Luxembourg, UN Doc. CRC/C/15/Add.250, 31 March 2005, at para. 31.

¹⁷⁹ Concluding Observations for Costa Rica, UN Doc. CRC/C/15/Add.266, 21 September 2005, at para. 28.

¹⁸⁰ General Comment 4, *supra* note 44, at para. 21

¹⁸¹ *Id.* at para. 25.

¹⁸² Concluding Observations for Thailand, *supra* note 35, at para. 53.

In the **Concluding Observations for Togo**, the Committee recommended that the State protect children from “harmful misinformation through comprehensive restrictions on tobacco advertising.”¹⁸³

In the **Concluding Observations for Ireland**, the Committee recommended stronger efforts to address alcohol consumption by children, such as implementing a strategy which, among other things, prohibits “advertising that targets children.”¹⁸⁴

In the **Concluding Observations for Samoa**, the Committee noted that “the Tobacco Control Bill provides a minimum age of 21 for the sale of tobacco products, and limits advertising and sponsorship by companies,”¹⁸⁵ but was still concerned about high levels of substance abuse and recommended that the State expedite the bill’s enactment.¹⁸⁶

163. Concluding Observations also suggest some regulation is necessary in relation to the marketing of breast milk substitutes.¹⁸⁷

164. Art. 9(5) of the OPSC seems to contemplate regulation of marketing companies when it requires appropriate measures to effectively prohibit the production and dissemination of material advertising the Protocol offences. Concluding Observations have not yet explicitly mentioned marketing companies in relation to the OPSC but have urged States Parties to strengthen measures to ensure compliance with Art. 9(5).¹⁸⁸

(ii) Economic exploitation

165. The Committee also mentions the media and entertainment industry in expressing concern about economic exploitation. For example, General Comment 7 provides that “exploitation of young children in the entertainment industry, including television, film, advertising and other modern media, is also a cause for concern.”¹⁸⁹ It indicates that the prevention of economic exploitation should be incorporated into “all legislation, policies and interventions to promote physical and psychological recovery ...”¹⁹⁰ The implication is that regulation of such industries is necessary to combat economic exploitation.

B. Employers

166. Similar to the other treaty bodies, the Committee clearly considers that States should regulate employers to protect against discrimination, hazardous working conditions and other forms of abuse. For example, General Comment 7 recognizes that

¹⁸³ Concluding Observations for Togo, UN Doc. CRC/C/15/Add.255, 31 March 2005, at para. 67.

¹⁸⁴ Concluding Observations for Ireland, UN Doc. CRC/C/IRL/CO/2, 29 September 2006, at para. 49.

¹⁸⁵ Concluding Observations for Samoa, *supra* note 64, at para. 48.

¹⁸⁶ *Id.* at para. 49.

¹⁸⁷ Concluding Observations for Turkmenistan, UN Doc. CRC/C/TKM/CO/1, 2 June 2006, at para. 52. See also Concluding Observations for the Republic of the Congo, UN Doc. CRC/C/COG/CO/1, 20 October 2006, at para. 59.

¹⁸⁸ Concluding Observations for Iceland, *supra* note 108, at para. 22.

¹⁸⁹ General Comment 7, *supra* note 32, at para. 36(e).

¹⁹⁰ *Id.* at para. 37.

“States parties have particular responsibilities in relation to extreme forms of hazardous child labor identified in the Worst Forms of Child Labor Convention, 1999 (No. 182) of the ILO.”¹⁹¹

167. General Comment 4 urges the abolition of child labor and review of national regulations to combat exploitation. The Committee urges States Parties to “take all necessary measures to abolish all forms of child labor ... to continuously review national regulations on minimum ages for employment with a view to making them compatible with international standards, and to regulate the working environment and conditions for adolescents who are working (in accordance with article 32 of the Convention, as well as ILO Convention Nos. 138 and 182), so as to ensure that they are fully protected and have access to legal redress mechanisms.”¹⁹²

168. General Comment 9 also recommends ratification of ILO Convention No.182 as well as Convention No. 138 on minimum age for employment.¹⁹³ It then says that when implementing these conventions, States Parties should “pay special attention to the vulnerability and needs of children with disabilities.”¹⁹⁴

169. Further, the Committee highlights that it expects States Parties to protect against any violence in the workplace, including through legislative measures. In General Comment 8, the Committee reiterates that States need to establish and enforce safeguards to protect children from hazardous work.¹⁹⁵ It also “emphasizes that it is essential that the prohibition of corporal punishment and cruel or degrading forms of punishment must be enforced in any situations in which children are working.”¹⁹⁶

170. Concluding Observations express concern at economic exploitation of children, particularly those from vulnerable groups including indigenous children and those living in rural areas.¹⁹⁷ In some cases, it has highlighted risks in relation to particular sectors. The message, either explicit or implicit, is that States should take steps to regulate the actions of all employers, including business enterprise, to safeguard rights.¹⁹⁸

¹⁹¹ *Id.* at para. 36(e).

¹⁹² General Comment 4, *supra* note 44, at para. 14. See also para. 32 which requires States Parties to protect against violence in the informal labor sector and para. 35 which again provides that States Parties must abolish child labor and regulate working environments consistent with international standards.

¹⁹³ General Comment 9, *supra* note 34, at para. 75.

¹⁹⁴ *Id.* Note that the Committee also calls for criminalization of certain forms of economic exploitation, including using children with disabilities for begging or inflicting disabilities on children for begging purposes. The Committee asks that perpetrators of such acts be brought to justice: see para. 76.

¹⁹⁵ General Comment 8, *supra* note 41, at para. 36.

¹⁹⁶ *Id.*

¹⁹⁷ See for example, Concluding Observations for Colombia, *supra* note 33, at para. 35; Concluding Observations for Costa Rica, *supra* note 179, at paras. 47-48; and Concluding Observations for Yemen, UN Doc. CRC/C/15/Add.267, 21 September 2005, at paras. 65-66.

¹⁹⁸ Readers should note that many of the Concluding Observations featured in these examples include the Committee noting or expressing encouragement for positive initiatives by the States Parties to protect children from exploitation. Such remarks are not included here because the focus is on the Committee’s recommendations for improvement.

In the **Concluding Observations for Colombia**, the Committee was alarmed that large numbers of children were “exposed to dangerous and/or degrading work such as **agricultural labor in coca plantations and mining**.”¹⁹⁹ The Committee regretted that current legislation was not sufficiently protecting children and recommended legislative reform, taking into account relevant ILO Conventions.²⁰⁰

The **Concluding Observations for Lebanon** noted with concern that “many children work in hazardous work conditions in the informal sector, including **agriculture, metalwork and crafts, fishing, rock-cutting and tobacco cultivation**.”²⁰¹ The Committee recommended, among other things, effective implementation of domestic labor laws; improved labor inspection systems; and empowerment of the system to ensure reporting on domestic and rural labor by children.²⁰²

In the **Concluding Observations for Thailand**, the Committee was concerned that labor laws did not cover children in the informal sector, including those working in **agriculture, small-scale family enterprises and domestic service**.²⁰³ It recommended measures to ensure “children engaged in labor continue to have access to education, training and recreation.”²⁰⁴

171. Other Concluding Observations have expressed concern about child labor in the tobacco industry;²⁰⁵ the horse racing industry;²⁰⁶ and in cotton harvesting.²⁰⁷

172. The OPSC’s preamble considers the Convention’s prohibition against economic exploitation and hazardous work. Further, Art. 3(1) requires States Parties to ensure that offences such as offering, delivering or accepting a child for forced labor are fully covered by their criminal or penal laws. Accordingly, the Committee has called for States

¹⁹⁹ See for example, Concluding Observations for Colombia, *supra* note 33, at para. 82. See also Concluding Observations for Nigeria, UN Doc. CRC/C/15/Add.257, 13 April 2005, at para. 73.

²⁰⁰ See for example, Concluding Observations for Colombia, *supra* note 33, at para. 83. (Emphasis added) See also para. 88 where the Committee said it was “seriously concerned over the manufacture and the export of drugs from Colombia, which affects children who are pickers of coca leaves (*raspachines*), as well as children forced or lured into trafficking drugs, including within their bodies (*mulas*).”

²⁰¹ See for example, Concluding Observations for Lebanon, *supra* note 33, at para. 79. (Emphasis added)

²⁰² *Id.* at para. 80.

²⁰³ Concluding Observations for Thailand, *supra* note 35, at para. 70. (Emphasis added) See also Concluding Observations for Costa Rica, *supra* note 179, at para. 50 where the Committee recommended steps to combat child labor, particularly in the “informal market.”

²⁰⁴ Concluding Observations for Thailand, *supra* note 35, at para. 71. See also Concluding Observations for Algeria, *supra* note 93, at para. 8 where the Committee was concerned about economic exploitation of minors working in the private and agricultural sectors; Concluding Observations for Oman, *supra* note 65, at paras. 63 – 64 where the Committee noted with concern the situation of children working in the informal sector, including in “agriculture, fishing and small family businesses;” and Concluding Observations for Jordan, UN Doc. CRC/C/JOR/CO/3, 29 September 2006, at para. 89 which recommended legislative amendments to protect children in the informal sector.

²⁰⁵ Concluding Observations for the Philippines, *supra* note 52, at paras. 79 - 80.

²⁰⁶ See Concluding Observations for Mongolia, *supra* note 65, at paras. 60 – 61.

²⁰⁷ Concluding Observations for Uzbekistan, UN Doc. CRC/C/UZB/CO/2, 2 June 2006, at paras. 64 – 65.

Parties to implement legislation in order prevent the sale of children or trafficking for the purposes of economic exploitation, again discussing certain industries in some instances.

The **Concluding Observations for Qatar** welcomed new laws banning employment, training and participation of children in camel racing.²⁰⁸ However, it also recommended all necessary measures to implement the law and for the State to “carry out regular unannounced inspections in camel races.” Further, it recommended that all persons responsible for employing children as jockeys be prosecuted in line with Art. 3(1).²⁰⁹

C. Pharmaceutical industry

173. The Committee discusses the pharmaceutical industry in General Comment 3 – while it does not explicitly call for regulation of the industry, it does say that “States parties should **negotiate** with the **pharmaceutical industry** in order to make the necessary medicines available at the lowest costs possible at local level.”²¹⁰ As noted in Part 1, several Concluding Observations call for impact assessments when entering into trade related agreements concerning access to medicine, implying that in concluding such agreements with other States and pharmaceutical companies, States are expected to consider the impacts of such agreements on children’s rights, particularly health rights.²¹¹

174. The Committee notes ethical concerns regarding biomedical research and says that “children have been subjected to unnecessary or inappropriately designed research with little or no voice to either refuse or consent to participation.”²¹² Accordingly, the Committee has asked States to ensure that children do not participate in research trials until “an intervention has been thoroughly tested on adults.”²¹³ States must also ensure full and informed consent when testing occurs as well as protection of children’s privacy rights.²¹⁴ Such recommendations suggest that the Committee may expect States to take steps to regulate actors conducting such trials, including business enterprises.

D. Private owners of public places

175. The Committee appears to suggest regulation of private and public owners of large public facilities such as shopping areas and recreational facilities in order to secure access for children with disabilities. In General Comment 9, the Committee says that “all new public buildings should comply with international specifications for access of persons with disabilities and existing public buildings, including schools, health facilities, government buildings, shopping areas, undergo necessary alterations that make them as accessible as possible.”²¹⁵ These comments indicate that the Committee may expect States Parties to introduce regulation making it mandatory for public and private business owners to make such alterations if necessary.

²⁰⁸ Concluding Observations for Qatar, *supra* note 104, at para. 6.

²⁰⁹ *Id.* at para. 36.

²¹⁰ General Comment 3, *supra* note 30, at para. 25. (Emphasis added)

²¹¹ See for example Concluding Observations for El Salvador, *supra* note 54, at para. 48.

²¹² General Comment 3, *supra* note 30, at para. 26.

²¹³ *Id.*

²¹⁴ *Id.*

²¹⁵ General Comment 9, *supra* note 34, at para. 40.

176. The Committee has not yet addressed whether it views States' duties to ensure all new buildings undergo necessary alterations as being part of the duty to protect or as somehow linked to the duty to fulfill, as any associated regulation would presumably require building owners to outlay resources to make buildings accessible.

177. Concluding Observations also suggest some regulation might be necessary for private owners of public facilities.

The **Concluding Observations for the United Republic of Tanzania** recommended the State Party to “pay more attention .. to making the physical environment, including schools, sports and leisure facilities and all other public areas, accessible for children with disabilities.”²¹⁶ The Committee also recommended more generally that the State take measures “to improve children’s access to, and the quality of, sports facilities, cultural activities and other leisure facilities.”²¹⁷

E. Companies with the capacity to damage the environment

178. Art. 24(2)(c) requires States to take appropriate measures to combat disease and malnutrition, including within the framework of primary health care, taking into consideration the dangers and risks of environmental pollution. The Committee’s associated discussions suggest that widespread regulation is needed to combat such pollution.

179. For example, in General Comment 9, the Committee notes that “hazardous environment toxins” may cause disabilities and that toxins, such as lead, mercury and asbestos, are found in many countries.²¹⁸ It then says that “countries should establish and implement policies to prevent dumping of hazardous materials and other means of polluting the environment.”²¹⁹ It also recommends States to establish “strict guidelines and safeguards... to prevent radiation accidents.”²²⁰ It seems that to be effective, such policies or guidelines might need to target any business enterprises engaged in activities likely to cause pollution or accidents.

180. Concluding Observations also implicitly call for regulation of companies creating industrial waste or threatening the environment in other ways. In particular, calls for “rights-based environmental and social impact assessments” of mining projects suggest that some regulation of extractives companies would be necessary to obtain the required access and information to undertake the assessments. Some examples follow:

In the **Concluding Observations for Jordan**, the Committee reiterated concerns about environmental health problems caused by environmental pollution and contamination, including through inadequate practices in handling industrial waste.²²¹ The Committee

²¹⁶ Concluding Observations for the United Republic of Tanzania, *supra* note 52, at para. 43.

²¹⁷ *Id.* at para. 58.

²¹⁸ General Comment 9, *supra* note 34, at para. 54.

²¹⁹ *Id.*

²²⁰ *Id.* at para. 24.

²²¹ Concluding Observations for Jordan, *supra* note 204, at para. 69.

recommended that the State “take appropriate measures including through international cooperation, to prevent and combat the damaging effects of environmental pollution and contamination.”²²² It also recommended expedition of implementation of the Environment Protection Law.²²³

In the **Concluding Observations for Peru**, the Committee was concerned about environmental health issues arising from, among other things, “contamination by extractive industries.”²²⁴ The Committee reiterated a recommendation from the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, “that the State party carry out **independent, rights-based environmental and social impact assessments** prior to the setting up of **all mining or other industrial projects** that may have harmful impacts on the right to health of children.”²²⁵

F. Internet Industry

181. The preamble to the OPSC provides that States Parties are “concerned about the growing availability of child pornography on the Internet and other evolving technologies.” It recalls the conclusion from the 1999 International Conference on Combating Child Pornography on the Internet to call for criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography. It also stresses the importance of “closer cooperation and partnership between Governments and the Internet industry.”

182. In OPSC Concluding Observations, the Committee has encouraged legislation to combat crimes facilitated through the Internet, particularly child pornography. As set out below, the Committee has called for regulation ensuring the “mandatory cooperation” of Internet service providers. Further, even when the Committee does not explicitly mention Internet service providers, its calls for legislation to cover all individuals and entities involved in the production, distribution, dissemination etc of child pornography on the Internet suggest some necessary regulation of actors within the Internet industry.

In the **Concluding Observations for Turkey**, the Committee encouraged the State to “consider amending existing legislation and/or adopting specific legislation, to strengthen the provisions regarding crimes on the Internet so as to also include direct references to child pornography.”²²⁶

²²² *Id.* at para. 70.

²²³ *Id.* See also Concluding Observations for Thailand, *supra* note 35, at paras. 55 – 56 where the Committee was concerned about environmental degradation and air pollution caused by factors such as shortcomings in industrial waste management.

²²⁴ Concluding Observations for Peru, *supra* note 53, at para. 50.

²²⁵ *Id.* at para. 51. (Emphasis added)

²²⁶ Concluding Observations for Turkey, *supra* note 110, at paras. 17 and 18.

The **Concluding Observations for Kazakhstan** recommended the State to “conduct a thorough study of the use of the Internet for the dissemination of child pornography or other forms of sexual exploitation (e.g. recruitment for prostitution) and introduce specific legal provisions to combat these phenomena, including the full mandatory cooperation of Internet providers in this regard.”²²⁷

The **Concluding Observations for Norway** “encouraged” the State to “consider adopting specific legislation on the obligations of Internet service providers in relation to child pornography on the Internet.”²²⁸ The Committee also encouraged the State to continue to “strengthen the capacity of the criminal police” to deal with crimes related to child pornography on the Internet.”²²⁹

The **Concluding Observations for Costa Rica** recommended continued measures to combat cybercrime, including “ensuring and monitoring the full implementation of the regulations governing the control and regulation of premises providing public Internet services.”²³⁰ The Committee also recommended legislation requiring “Internet providers to prevent (to the extent possible) the dissemination of and access to child pornography on the Internet.”²³¹

183. The Committee has also discussed the Internet industry in relation to the Convention, alternating between calling for cooperation with the Internet industry and suggesting stronger regulatory measures.

In the **Concluding Observations for Azerbaijan**, the Committee expressed concern “about the lack of legislation regarding Internet service providers to combat exposure to violence, racism and pornography through the Internet.”²³² Accordingly, it recommended that the State “continue to take all appropriate measures, including the adoption of appropriate legislation, to protect children effectively from being exposed to violence, racism and pornography through mobile technology, video movies, games and other technologies, including the Internet.”²³³

The **Concluding Observations for Latvia** was concerned about harmful materials to children being made available via the Internet. It recommended the State to take “all necessary legal, educational and other measures,” including “cooperation” with Internet service providers to protect children from exposure to such material.²³⁴

²²⁷ Concluding Observations for Kazakhstan, *supra* note 105, at para. 16.

²²⁸ Concluding Observations for Norway, *supra* note 109, at para. 17.

²²⁹ *Id.* at para. 24.

²³⁰ Concluding Observations for Costa Rica, UN Doc. CRC/C/OPSC/CRI/CO/1, 2 May 2007, at para. 25.

²³¹ *Id.* at para. 25.

²³² Concluding Observations for Azerbaijan, *supra* note 82, at para. 33. Note that Azerbaijan is also a party to the OPSC.

²³³ *Id.* at para. 34.

²³⁴ Concluding Observations for Latvia, *supra* note 177, at para. 29. See also Concluding Observations for Benin, UN Doc. CRC/C/BEN/CO/2, 20 October 2006, at para. 38; Concluding Observations for Ghana, UN Doc. CRC/C/GHA/CO/2, 17 March 2006, at paras. 34 – 35; Concluding Observations for Thailand,

The **Concluding Observations for Denmark** welcomed the establishment of a “special IT Investigation Unit” investigating criminal offences committed via the Internet but was deeply concerned that child pornography continued to feature on the Internet.²³⁵ The Committee recommended that stronger efforts to prevent commercial sexual exploitation of children and the adoption of “adequate measures to combat child pornography,” including criminalizing the distribution of erotic images featuring children.²³⁶

G. Tourism industry

184. In the OPSC’s Preamble, States Parties provide that they are “deeply concerned at the widespread and continuing practice of sex tourism...” The Committee has made various recommendations in relation to tour operators and other actors within the tourism industry. Such comments suggest that States should take steps to cooperate with, as well as regulate, the tourism industry in order to safeguard rights.

In the **Concluding Observations for Italy**, the Committee noted with appreciation recent legislation obliging tour operators to inform their customers of the punishments for offences related to child prostitution and child pornography, even if committed abroad.²³⁷ The Committee also recommended the State to “undertake necessary measures, including long-term public information and awareness-raising campaigns, in collaboration with tour operators and the civil society, on the growing phenomenon of sex tourism, in order to reduce and eliminate consumer demand.”²³⁸

In the **Concluding Observations for Denmark**, the Committee recommended increased efforts to combat child sex tourism, including prosecuting “offenders” for crimes abroad and more cooperation with the tourist industry.²³⁹

In the **Concluding Observations for Costa Rica**, the Committee noted with appreciation strict controls concerning the “tourist sector” as well as partnerships with “hotel owners, networks of taxi drivers and other stakeholders” to prevent Protocol offences.²⁴⁰ It also welcomed the “2003 Code of Conduct for the Protection of Children and Adolescents from Commercial Sexual Exploitation in Tourism, an intersectoral project focused on responsible and sustainable tourism aimed at service providers, customers and entrepreneurs in the public and the private sectors.”²⁴¹ However, to further address

supra note 35, at paras. 37 – 38; Concluding Observations for Denmark, UN Doc. CRC/C/DNK/CO/3, 23 November 2005, at para. 29; Concluding Observations for Australia, *supra* note 178, at paras. 33-34; Concluding Observations for Austria, *supra* note 178, at paras. 31, 41 – 42; and Concluding Observations for Luxembourg, *supra* note 178, at para. 31.

²³⁵ Concluding Observations for Denmark, *supra* note 234, at para. 56.

²³⁶ *Id.* at para. 57. See also Concluding Observations for Trinidad and Tobago, UN Doc.

CRC/C/TTO/CO/2, 17 March 2006, at paras. 69 - 70, where the Committee recommended the State to immediately adopt a bill that would prohibit the possession of pornography, including on the Internet.

²³⁷ Concluding Observations for Italy, UN Doc. CRC/C/OPSC/ITA/CO/1, 21 June 2006, at para. 26.

²³⁸ *Id.* at para. 27.

²³⁹ Concluding Observations for Denmark, *supra* note 131, at para. 32.

²⁴⁰ Concluding Observations for Costa Rica, *supra* note 230, at para. 22.

²⁴¹ *Id.*

exploitation, the Committee recommended awareness-raising campaigns as well as measures to prohibit advertising of sexual services from children.²⁴²

185. In relation to the Convention, the Committee regularly recommends regulation of the “commercial” sex industry and the need to protect children from sex tourism. In fact, the Concluding Observations for Austria recommended that the State “promote and support the implementation of the Code of Conduct for the protection of children from sexual exploitation in tourism.”²⁴³ The Concluding Observations for Ecuador recommended legislation criminalizing sex tourism.²⁴⁴ Further, the Concluding Observations for the Philippines urged the State to consider risks for commercial sexual exploitation, including growing sex tourism and to therefore “continue to collaborate with the Department of Tourism and tourism service providers.”²⁴⁵

H. Financial sector

186. While the Committee has directly addressed financial institutions, including banks, as detailed in Part 5 above, there were no examples from the Research Sample of the Committee recommending *States Parties* to regulate activities by private financial institutions in order to protect rights.

I. Arms companies

187. While a detailed study of the OPAC was beyond the scope of this report, readers should note that some Concluding Observations relating to the Optional Protocol implicitly refer to arms companies. For example, the Concluding Observations for Belgium noted that the manufacture and export of small arms and light weapons occurs within Belgium. The Committee recommended that Belgium “review its domestic law on small arms trade with a view to abolishing a trade on war material with countries where persons who have not attained the age of 18 take a direct part in hostilities as members of their armed forces or armed groups that are distinct from the armed forces of a State.”²⁴⁶

188. Further, the Concluding Observations for Canada recommended that the State “ensure that its domestic legislation and practice prohibit in any case the trade of small

²⁴² *Id.* at para. 23.

²⁴³ Concluding Observations for Austria, *supra* note 178, at para. 52. In relation to prevention of abuse arising in relation to “commercial sexual exploitation” or acts by the “commercial sex industry,” see for example Concluding Observations for The Bahamas, UN Doc. CRC/C/15/Add.253, 31 March 2005, at para. 58; Concluding Observations for Costa Rica, *supra* note 179, at para. 50; Concluding Observations for Ghana, *supra* note 234, at paras. 67 – 68; Concluding Observations for Kiribati, UN Doc. CRC/C/KIR/CO/1, 29 September 2006, at paras. 60 – 61; and Concluding Observations for Jordan, *supra* note 204, at paras. 92-93.

²⁴⁴ Concluding Observations for Ecuador, *supra* note 52, at paras. 69 -70.

²⁴⁵ Concluding Observations for the Philippines, *supra* note 52, at para. 87(e). For similar remarks, see also Concluding Observations for Thailand, *supra* note 35, at para. 75.

²⁴⁶ Concluding Observations for Belgium, UN Doc. CRC/C/OPAC/BEL/CO/1, 9 June 2006, at paras. 20 – 21. See also Concluding Observations for Sweden, CRC/C/OPAC/SWE/CO/1, 6 July 2007, at para. 17; Concluding Observations for Kyrgyzstan, CRC/C/OPAC/KGZ/CO/1, 2 May 2007, at paras. 8 and 9; Concluding Observations for the Czech Republic, CRC/C/OPAC/CZE/CO/1, 21 June 2006, at para. 19; and Concluding Observations for Switzerland, UN Doc. CRC/C/OPAC/CHE/CO/1, 17 March 2006, at para. 5.

arms and light weapons to countries where persons who have not attained the age of 18 may take a direct part in hostilities as members of their armed forces or armed groups that are distinct from the armed forces of a State.”²⁴⁷ It is difficult to see how States could follow such recommendations without regulating the practices of arms companies.

PART 7 - STATE-OWNED OR CONTROLLED ENTERPRISES AND PRIVATIZATION

189. The SRSG’s mandate asks him to elaborate on States’ roles in effectively regulating and adjudicating the role of both transnational corporations and “other business enterprises” with regard to human rights. Accordingly, this Part maps the Committee’s comments on States Parties’ duties in relation to activities by State-owned or controlled enterprises as well as private companies, often newly privatized, carrying out core government services.

A. State-owned or controlled enterprises

190. While the research did not uncover any separate discussions of State-owned or controlled enterprises, the Committee’s commentary as discussed above suggests that it considers the State responsible for preventing and punishing abuse by all forms of enterprises, regardless of ownership structures or control arrangements. More guidance on this subject would be helpful.

B. Private sector as a service provider

(i) CRC

191. The Committee has said that “the process of privatization of services can have a serious impact on the recognition and realization of children’s rights.”²⁴⁸ As mentioned above, the Committee has held a Day of General Discussion on the private sector as a service provider. General Comment 5 draws States Parties’ attention to the recommendations from that day and highlights that States Parties must ensure that non-State service providers, including businesses, act in accordance with the Convention.²⁴⁹ It is clear that the Committee believes that States Parties’ obligations do not lessen when services are provided by private parties. It refers to Article 3(3) in particular as support for the need to rigorously monitor private service providers to ensure compliance. To this end, it proposes “that there should be a permanent monitoring mechanism or process aimed at ensuring that all State and non-State service providers respect the Convention.”²⁵⁰

192. At the Discussion Day, the Committee emphasized that “while it was entirely conscious that the business sector could impact on children’s rights in a wide variety of ways, it had chosen to focus on exploring the various issues emerging from privatization and the assumption by non-governmental organizations or businesses of traditional state

²⁴⁷ Concluding Observations for Canada, UN Doc. CRC/C/OPAC/CAN/CO/1, 9 June 2006, at para. 14.

²⁴⁸ General Comment 5, *supra* note 21, at para. 42.

²⁴⁹ *Id.* at para. 43.

²⁵⁰ *Id.* at para. 44.

functions, i.e. in the health and the education sector, in the provision of institutional care, legal assistance, treatment of victims etc.. given the high relevance of this trend to the work of the Committee.”²⁵¹

193. The Committee’s recommendations addressed both States Parties and private service providers. This section focuses on recommendations to States Parties.²⁵² First, as reflected in General Comment 5, the Committee recognized that States Parties are legally obliged to ensure that non-State service providers comply with the Convention. It specified that States Parties retain primary responsibility for all of their obligations under the Convention even when services are contracted out.²⁵³ Among other legal obligations, it said States Parties must ensure that privatization does not lead to discrimination affecting accessibility of services,²⁵⁴ and that States Parties should include information in their periodic reports on the accessibility, quality and effectiveness of private services.²⁵⁵

194. The Committee’s specific recommendations to States Parties included:

- (a) recommending that States Parties take appropriate legislative measures and establish monitoring mechanisms to ensure that non-State service providers respect the Convention;²⁵⁶
- (b) encouraging States to establish independent monitoring bodies, and where appropriate, to make judicial recourse available to complain about violations. The Committee also encouraged States Parties to provide effective remedies where violations are established;²⁵⁷
- (c) recommending States Parties provide a supportive environment enabling compliance with the Convention by non-State actors;²⁵⁸
- (d) recommending impact assessments prior to contracting services to a non-State provider. Such assessments should especially look at any likely effects on availability, accessibility, acceptability and quality of the services. Further “similar assessments should also be carried out for services provided by non-state service providers that may not have been specifically contracted by States parties.”²⁵⁹ Assessments should address both financial and non-financial issues and should therefore include actors such as a wide range of Government ministries as well as NHRIs, non-governmental organizations and corporations;²⁶⁰
- (e) recommending assessment of how trade liberalization affects rights;²⁶¹

²⁵¹ Discussion Day Recommendations, *supra* note 148, at p. 1.

²⁵² See Part 5 for recommendations addressed to private service providers.

²⁵³ Discussion Day Recommendations, *supra* note 148, at recommendations nos. 1 and 2.

²⁵⁴ *Id.* at recommendation no. 4.

²⁵⁵ *Id.* at recommendation no. 7.

²⁵⁶ *Id.* at recommendation no. 8.

²⁵⁷ *Id.* at recommendation no. 9.

²⁵⁸ *Id.* at recommendation no. 10.

²⁵⁹ *Id.* at recommendation no. 11.

²⁶⁰ *Id.* at recommendation no. 12.

²⁶¹ *Id.* at recommendation no. 13.

- (f) recommending detailed contracts with private service providers as well as independent monitoring of the providers' compliance with the Convention;²⁶²
- (g) reminding States Parties of its previous guidance that "in any decentralization or privatization process, the Government retains clear responsibility and capacity for ensuring respect of its obligations under the Convention;"²⁶³
- (h) recommending that States Parties "effectively address" corruption risks when contracting to non-State providers;²⁶⁴ and
- (i) recommending that States Parties take measures to "prevent the establishment of monopolies by non-State service providers."²⁶⁵

195. The Committee has not yet indicated whether it would support similar recommendations for businesses not providing core government services. However, the above recommendations further affirm the Committee's general view that States Parties are ultimately responsible for protecting against abuse by non-State actors, including business enterprises.

196. As noted in Part 5, the Committee's recommendations also directly addressed private service providers. Further, there is a joint recommendation to both States Parties and non-State service providers to continually review their experiences, consider best practices and explore "the impact of different types of providers in specific service sectors on children's rights."²⁶⁶

197. More recent General Comments also discuss private service providers. For example, General Comment 7 discusses the need to monitor and regulate the quality of services in order to protect rights.²⁶⁷ General Comment 9 provides that States have "ultimate responsibility" to place "strict guidelines" on privatized services.²⁶⁸

198. Concluding Observations have recommended that States Parties take into account the recommendations from the Discussion Day; that they provide guidelines consistent with the Convention to both "for profit" and "not for profit" organizations providing government services; that they enter into detailed agreements with such service providers; and that they ensure effective monitoring.²⁶⁹

²⁶² *Id.* at recommendation no. 14.

²⁶³ *Id.* at recommendation no. 15.

²⁶⁴ *Id.* at recommendation no. 22.

²⁶⁵ *Id.*

²⁶⁶ *Id.* at recommendation no. 18.

²⁶⁷ General Comment 7, *supra* note 32, at para. 32. See generally also para. 22 dealing with rights-based, multisectoral policies; para. 23 on professional training for persons working with children; and para. 27 on health-care provision.

²⁶⁸ General Comment 9, *supra* note 34, at para. 20.

²⁶⁹ See for example, Concluding Observations for Lebanon, *supra* note 33, at para. 22. See also Concluding Observations for Benin, *supra* note 234, at para. 24; Concluding Observations for Oman, *supra* note 65, at para. 21; Concluding Observations for Mauritius, UN Doc. CRC/C/MUS/CO/2, 17 March 2006, at para. 25; and Concluding Observations for India, *supra* note 33, at para. 20

(ii) OPSC

199. The Committee most often discusses privatization in the context of adoption agencies. Such comments are in line with Art. 3(5) of the OPSC, which provides that “States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.”

200. Concluding Observations have recommended the introduction and implementation of national legislation regulating adoption, including setting “strict criteria” for national agencies permitted to carry out both domestic and inter-country adoptions.²⁷⁰ They have also recommended the establishment of monitoring mechanisms to ensure all agencies comply with regulations.

The **Concluding Observations for Costa Rica** recommended the State to “take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.”²⁷¹ It also recommended the State to “collect information on and investigate the activities of the agencies and/or individuals acting as facilitators and mediators in the adoption procedures and punish those violating national and international legislation.”²⁷²

PART 8 - TERRITORIAL SCOPE OF THE CRC AND OPSC

201. The treaty bodies generally consider that States Parties must respect and ensure the rights of individuals within their jurisdiction even if such individuals are situated outside a State’s national territory.²⁷³ This Part looks at the Committee’s commentary on this issue as well as the implications of this concept for State obligations vis-à-vis corporate activities. For example, are there situations where a State may be said to have jurisdiction outside its national territory through the acts of a company acting on the State’s behalf and if so, what are the practical and legal implications?

A. CRC

(i) Treaty provisions

202. Under Art. 2(1) of the Convention, States Parties shall respect and ensure the Convention rights to each child “within their jurisdiction.”

(ii) Commentary from the Committee

203. The Committee has confirmed that “State obligations apply to each child within the State’s territory and to all children subject to its jurisdiction.”²⁷⁴ It considers that

²⁷⁰ See for example, Concluding Observations for Guatemala, UN Doc. CRC/C/OPSC/GTM/CO/1, 6 July 2007, at para. 27.

²⁷¹ Concluding Observations for Costa Rica, *supra* note 230, at para. 29.

²⁷² *Id.*

²⁷³ See each individual report in this series.

²⁷⁴ General Comment No. 6, ‘Treatment of unaccompanied and separated children outside their country of origin,’ U.N. Doc HRI/GEN/1/Rev.8 (2006) 407, at para. 12.

States cannot limit such obligations by simply defining certain areas as being outside their territory or jurisdiction.

204. Thus the Committee believes that States Parties' obligations apply to any child within their jurisdiction even if the child is outside their national territory.²⁷⁵ It is unclear how the Committee might apply this principle in the context of corporate activities. For example, the Committee has not yet addressed how it would interpret a situation where corporations act on the State's behalf (exercising elements of governmental authority or acting under the instructions, direction or control of the State) outside the national territory, and exercise a degree of control over individuals such that, were such control exercised by State agents, the State's Convention obligations would likely apply in full.

205. More guidance from the Committee would be helpful in relation to this issue, including when a State is considered to have "effective control" over individuals through its agents or others acting on its behalf to the extent that it is viewed as having "jurisdiction" over certain individuals.²⁷⁶

B. OPSC

206. The territorial scope of the OPSC is inextricably linked to the obligations it places on States to regulate both transnational and national acts. Thus, unlike the Convention and other human rights treaties, the territorial scope is not limited to protecting a certain class of persons within the State's territory or jurisdiction. Instead, the OPSC focuses on the prohibition of certain acts within the domestic legal system, wherever they occur. See below for more detail.

PART 9 - REGULATION WITH EXTRATERRITORIAL EFFECT

207. The SRSG's mandate looks specifically at the acts of transnational businesses. Thus an important question is whether a State Party has any duties under the Convention or OPSC to regulate the acts of business enterprises which interfere with the rights of children who are both outside the State's national territory and effective control, particularly where the State has some influence over such enterprises. Such regulation is generally labeled "prescriptive extraterritorial jurisdiction" – i.e. the regulation of persons or activities outside a State's territory, usually through legislation. A related question is whether the Committee has encouraged or indicated that such regulation is at least permissible under the Convention or OPSC.

208. As noted in the SRSG's March 2007 report to the Human Rights Council, prescriptive extraterritorial jurisdiction is generally permissible under international law

²⁷⁵ *Id.* at para. 78.

²⁷⁶ See Part 7 of both the ICCPR and ICESCR reports in this series for the ways other committees have dealt with this issue, available at <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>. For example, the Human Rights Committee deems a State Party to have jurisdiction over individuals outside its territory where it exercises "power or effective control" over those individuals, including through its agents.

provided there is a recognized basis of jurisdiction: where the perpetrator or victim is a national; where the acts have substantial adverse effects on the State; or where specific international crimes are involved.²⁷⁷ An overall reasonableness test must also be met, which includes non-intervention in other States' internal affairs.²⁷⁸

A. CRC

(i) Treaty provisions

209. Unlike the OPSC, the CRC does not explicitly require States Parties to establish jurisdiction over acts occurring abroad.

210. However, the Convention does contain several references to international cooperation, to which the Committee has referred when discussing State efforts to influence third party acts abroad.²⁷⁹ Other provisions, such as those dealing with trafficking and the illicit transfer or sale of children, refer to national, bilateral and multilateral measures to prevent these activities. They are worded in such a way that it appears States might be required to take steps to prevent such activities wherever they occur.

211. For example, Arts. 34 and 35 require the State to take “all appropriate national, bilateral and multilateral measures” to prevent sexual exploitation, sexual abuse and the sale or trafficking of children. Art. 36 is a catch-all provision which requires States Parties to protect children from all other forms of exploitation. Art. 11 requires States Parties to “take measures to combat the illicit transfer and non-return of children abroad” and to this end requires States Parties to promote new bilateral or multilateral agreements or accession to existing agreements. Art. 21 requires safeguards in relation to inter-country adoptions, including taking measures to ensure that those facilitating such adoptions do not receive improper financial gain.²⁸⁰

²⁷⁷ Under the principle of “universal jurisdiction” States may be obliged to exercise jurisdiction over individuals within their territory who allegedly committed certain international crimes. It is unclear whether and how such obligations extend jurisdiction over juridical persons, including corporations. See A/HRC/4/35/Add.2 and A/HRC/4/35, para. 15

²⁷⁸ The entire human rights regime may be seen to challenge the classical view of non-intervention. The debate here hinges on what is considered coercive. For more detail, see A/HRC/4/35/Add. 2, and Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press, 2006), 98.

²⁷⁹ Readers should note that the principle of international cooperation is only examined here so far as it relates to the Committee's views on extraterritorial regulation. Briefly, the Convention refers to international cooperation in relation to awareness raising, information exchanges and other resource exchanges. For example, international cooperation is mentioned in Arts. 23 and 28 as a means to encourage awareness and development in relation to health and education. Art. 24 requires States to promote and encourage international cooperation in order to progressively achieve the full realization of the right to health. Art. 4 provides that in relation to economic, social and cultural rights, States will take measures for implementation within the framework of international cooperation. Art. 17 encourages the use of international cooperation in the dissemination of socially beneficial information to children from a diverse range of sources. Art. 22(2) speaks of cooperation in the context of parent and family tracing.

²⁸⁰ In relation to “private adoption houses,” note the Concluding Observations for Colombia, in which the Committee was “particularly concerned that the practice of private “Adoption Houses” increases the risk of profit-making in conjunction with adoptions and contravenes article 21 of the Convention.” It recommended that all adoptions be administered through a central authority as required by Art. 21 of the

(ii) Commentary from the Committee

212. The Committee does not appear to have recognized any *general* obligation on States Parties to regulate the overseas actions of corporations in order to protect the rights of children outside their jurisdiction. It has referred to the principle of *non-refoulement* when saying that “States shall not return a child to a country where there are substantial grounds for believing that there is a real risk of irreparable harm to the child.”²⁸¹ The Committee confirms that such obligations exist even where the threat to the child abroad is posed by non-State actors.²⁸² However, such comments concern situations where the child is under the jurisdiction of a State Party; they do not shed light on any obligations which States Parties may have as regards children outside their jurisdiction, even where the State may influence their situation.

213. Only the Concluding Observations for Ireland in the sample specifically referred to the use of “extraterritorial jurisdiction” and then not in relation to a context likely to involve business. In those Concluding Observations, the Committee urged the State to prohibit female genital mutilation by law, “including the possibility of extraterritorial jurisdiction.”²⁸³ Such comments highlight the Committee’s support for such measures and at least suggest that it does not believe the Convention prohibits regulation with extraterritorial effect.

214. The Committee’s discussions concerning international cooperation do not directly discuss extraterritorial regulation but do support information exchanges and other steps to strengthen capacity-building as well as the formulation of international agreements to combat certain types of acts.²⁸⁴

215. In relation to the latter, Concluding Observations have simultaneously called for criminalization of all forms of trafficking and urged States Parties to establish bilateral and multilateral agreements with other States to “prevent the sale of and trafficking of children.”²⁸⁵ There are countless Concluding Observations which recommend stronger

Convention and other international agreements. See Concluding Observations for Colombia, *supra* note 33, at paras. 56 – 57. See also Concluding Observations for Costa Rica, *supra* note 179, at paras. 35 – 36 and the Concluding Observations for the Russian Federation, UN Doc. CRC/C/RUS/CO/3, 23 November 2005, at paras. 42 – 43, which recommended a system for accrediting and controlling foreign adoption agencies.

²⁸¹ General Comment 6, *supra* note 274, at para. 27. The concept of non-refoulement is a principle of international law, codified in Art. 33 of 1951 Convention on the Status of Refugees. Art. 33 prohibits States Parties from returning a refugee to a place where “his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.”

²⁸² *Id.*

²⁸³ Concluding Observations for Ireland, *supra* note 184, at para. 55.

²⁸⁴ For an example of the Committee’s remarks on international assistance, see General Comment 7, *supra* note 32, at para. 42; and General Comment 9, *supra* note 34, at paras. 22 – 23. In particular, the Committee at para. 22 says that voluntary contributions from private sources to financial and technical assistance should be encouraged.

²⁸⁵ Concluding Observations for Lebanon, *supra* note 33, at paras. 82(b) and (e). See also Concluding Observations for Nigeria, *supra* note 199, at para. 77.

legislative and investigative measures to prevent trafficking, including measures to ensure perpetrators are prosecuted with appropriate penalties.²⁸⁶

216. More guidance would be helpful on whether these comments indicate that the Committee expects States Parties, where there is a recognized basis of jurisdiction, to establish jurisdiction over all perpetrators of trafficking, regardless of where it occurs. However, even if this is the case, it is unclear whether such expectations would apply to other violations of the Convention more likely to involve business enterprises, such as abuse of work or health rights. Only the Concluding Observations for Jordan mentioned international cooperation in light of the need to protect against environmental health problems but the Committee did not say what type of cooperation was required and the Concluding Observations seemed to focus on steps Jordan should take to prevent pollution and contamination within its jurisdiction.²⁸⁷

B. OPSC

(i) Treaty provisions

217. The OPSC requires extraterritorial regulation of the Protocol offences, at least in relation to individual offenders. Indeed, the Preamble highlights the international aims of the Protocol - it states its grave concern at the increase in the international traffic in children; recalls conclusions from the 1999 International Conference on Combating Child Pornography on the Internet regarding global criminalization of, among other things, the transmission and advertising of child pornography; and expresses its belief in global partnerships as well as improving national law enforcement.

218. The Protocol's operative provisions confirm wide ranging duties regarding regulation with extraterritorial effect. First, as noted above, Art. 3(1) requires that certain offences be covered under the State's criminal or penal law, whether they are committed "**domestically or transnationally** or on an individual or organized basis." Art. 3(5) requires States Parties to take all appropriate legal and administrative measures to ensure that "all persons" involved in adoptions conform with applicable international instruments, suggesting necessary regulation or at least influence over public and private adoption agencies.

219. In relation to legal persons more generally, Art. 3(4) requires States Parties, subject to their national law, to establish liability of legal persons for the offences

²⁸⁶ See for example, Concluding Observations for Latvia, *supra* note 177, at para. 59; Concluding Observations for Albania, UN Doc. CRC/C/15/Add.249, 31 March 2005, at para. 17; Concluding Observations for Togo, *supra* note 183, at paras. 72 – 73; Concluding Observations for the Philippines, *supra* note 52, at para. 88; Concluding Observations for Mongolia, *supra* note 65, at para. 65; Concluding Observations for Algeria, *supra* note 93, at para. 79; Concluding Observations for Finland, *supra* note 178, at paras. 52 – 53; Concluding Observations for China, UN Doc. CRC/C/CHN/CO/2, 24 November 2005, at para. 88; Concluding Observations for Saudi Arabia, UN Doc. CRC/C/SAU/CO/2, 17 March 2006, at para. 72; and Concluding Observations for Mexico, *supra* note 93, at para. 65: note that the Committee also recommended multi-disciplinary and multi-sectoral approaches to prevent and combat trafficking and sexual exploitation.

²⁸⁷ Concluding Observations for Jordan, *supra* note 204, at para. 70.

described in Art. 3(1). What is less clear is whether, read with Art. 3(1), such measures should apply to acts by the legal person committed “domestically or transnationally.”

220. Art. 4 prescribes in detail when States Parties should establish jurisdiction over offences committed abroad. Art. 4(2) requires the State to take measures as necessary to establish jurisdiction over the offences where the victim is a national, or where the **alleged offender** is a national or a person with habitual residence in the State’s territory. Art. 4(3) also requires the State to take the necessary measures to establish its jurisdiction when the alleged offender is present in its territory and it does not extradite him/her because the offence has been committed by one of its nationals. Art. 4(4) provides that the Protocol does not exclude any criminal jurisdiction exercised according to internal law.

221. What is not immediately clear is whether Art. 4 applies only to individual offenders or also to legal persons. In other words, it is uncertain whether States Parties should establish jurisdiction over such acts where the legal person can be viewed as a “national” or as “present” in the State’s territory, or whether, given Art. 3(4), States have more discretion in relation to establishing liability for legal persons.

222. Other provisions focus on the types of support that may be necessary to ensure compliance with Art. 4. For example, Art. 6 necessitates States Parties to assist each other in relation to investigations or criminal or extradition proceedings, including evidence gathering. Such assistance should conform with any preexisting bilateral or multilateral arrangements or in the absence of such treaties, States should provide assistance in accordance with their domestic law. Art. 10 refers to strengthening international cooperation by multilateral, regional and bilateral arrangements to prevent, detect, investigate, prosecute and punish those responsible for the sale of children, child prostitution, child pornography and child sex tourism. States Parties should also promote cooperation between their authorities as well as cooperate to assist victims’ recovery and reintegration.

223. Under Art. 9(4) States Parties must ensure that all child victims of the Protocol offences have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible. It is unclear if Art. 9(4) applies to situations where the offence occurred outside the State’s jurisdiction – for example, assuming the provision may require access to procedure to seek compensation from both natural and legal persons, should a child from State Party A that has suffered from offences by a legal person with the nationality of State Party B be able to seek compensation from that legal person in State Party B where it is not possible to do so in State Party A?

(ii) Commentary from the Committee

224. The Committee’s commentary does not provide much guidance on these issues. Concluding Observations regularly refer to States Parties’ duties to establish extraterritorial jurisdiction, including requesting more information about cases where

jurisdiction has been exercised.²⁸⁸ However, these remarks focus on procedural issues rather than whether States should establish jurisdiction over legal persons.

In the **Concluding Observations for Iceland**, the Committee was concerned that Iceland prevented the exercise of extraterritorial jurisdiction where the act was not punishable in the country in which it was committed.²⁸⁹ The Committee recommended that Iceland amend its laws “in order to abolish the requirement of double criminality for prosecution in Iceland of offences committed abroad.”²⁹⁰

In the **Concluding Observations for Andorra**, the Committee noted with appreciation that the State had established extraterritorial jurisdiction under its Criminal Code in relation to sexual offences against children.²⁹¹ However, the Committee was “concerned at the fact that some of the sexual crimes do not carry a maximum penalty of more than six years.”²⁹² It was also concerned that the provisions did not cover offences committed abroad by permanent residents.²⁹³ Accordingly, the Committee recommended that the State review the existing legislative provisions “with a view to increasing the maximum penalties possible and to strengthening its extraterritorial jurisdiction and thereby the international protection of children against prostitution and pornography.”²⁹⁴

225. As discussed above, several Concluding Observations recommend States Parties to extend liability to legal persons, but it is unclear if the Committee expects that liability should cover both domestic and transnational acts.

C. OPAC

226. It is possible that further guidance on this issue may come from commentaries related to the OPAC.

227. First, while the OPAC does not require an exercise of extraterritorial jurisdiction in the same way as the OPSC, the CRC has recommended establishing extraterritorial jurisdiction over offences where either the victim or the perpetrator is a national.²⁹⁵

²⁸⁸ Concluding Observations for Viet Nam, *supra* note 105, at para. 13.

²⁸⁹ Concluding Observations for Iceland, *supra* note 108, at para 15.

²⁹⁰ *Id.* at para 16. See also Concluding Observations for Qatar, *supra* note 104, at paras. 23 – 24; Concluding Observations for Andorra, *supra* note 105, at paras. 14 – 15; Concluding Observations for Kazakhstan, *supra* note 105, at paras. 17 – 18; and Concluding Observations for China, *supra* note 105, at paras. 12 – 13.

²⁹¹ See also Concluding Observations for Andorra, *supra* note 105, at para. 16.

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Id.* at para. 17.

²⁹⁵ See for example, Concluding Observations for El Salvador, UN Doc. CRC/C/OPAC/SLV/CO/1, 2 June 2006, at para. 5; Concluding Observations for Iceland, UN Doc. CRC/C/OPAC/ISL/CO/1, 21 June 2006, at para. 7; Concluding Observations for Belgium, *supra* note 246, at para. 13; Concluding Observations for Canada, *supra* note 247 at para. 7; and Concluding Observations for Switzerland, *supra* note 246 at paras. 7 -8.

228. Second, as stated above, the Concluding Observations for Belgium recommended that the State review its domestic law on small arms trading in order to prohibit trading with countries where persons under 18 take a direct role in hostilities.²⁹⁶ The Committee also welcomed the State's prohibition of trade in war material to countries with child soldiers and invited the State to report on "the number of sales that were halted as a result of the implementation of the amended law ..."²⁹⁷

229. The Concluding Observations for Kyrgyzstan similarly recommended that the State "review its domestic law with a view to abolishing trade of small arms and light weapons to countries with current or recent armed conflict that may involve children ..." It also recommended that the State "indicate, in its next periodic report, what changes to the domestic law have been made and how the implementation of these changes has contributed to halting sales of small arms to those countries."²⁹⁸

230. The recent Concluding Observations for Sweden recommended that the State "ensure that its domestic laws, guidelines and practice on exports of arms and other military equipment explicitly prohibit the direct and indirect export of arms and military equipment to countries" where child soldiers are used.²⁹⁹

231. The implication from such Concluding Observations is that the Committee may expect States Parties to regulate all relevant participants in the arms trade, including business enterprises domiciled in their territory, to prevent them from doing business with certain armed groups or regimes abroad.

PART 10 - TRENDS AND ISSUES WHICH WOULD BENEFIT FROM FURTHER ELABORATION

232. This report shows that the Committee has increasingly considered the issue of States Parties' duties regarding corporate activities and has provided guidance in relation to a number of different industries and sectors. However, questions remain as to the Committee's expectations in terms of preventing and punishing corporate abuse. It is acknowledged that some of these questions may be attributed to the fact that the Committee has not received sufficient information from States and other relevant stakeholders regarding this issue. It is also understood that these issues may not always be at the core of the Committee's mandate and as a result may not have been addressed in much detail.

233. Nevertheless, this Part identifies several areas which are key to the SRSG's mandate and where further discussion by the Committee could assist States, business enterprises and individuals to better understand State obligations vis-à-vis corporate activities. No judgment is made as to whether and how the Committee should consider all

²⁹⁶ See Concluding Observations for Belgium, *supra* note 246, at paras. 20 – 21. Concluding Observations for the Czech Republic, *supra* note 246, at para. 19; Concluding Observations for Canada, *supra* note 247, at para. 14; and Concluding Observations for Switzerland, *supra* note 246, at para. 5.

²⁹⁷ See Concluding Observations for Belgium, *supra* note 246, at paras. 20 -21.

²⁹⁸ See also Concluding Observations for Kyrgyzstan, *supra* note 246, at paras. 8 and 9;

²⁹⁹ Concluding Observations for Sweden, *supra* note 246, at para. 17.

or some of these issues and this Part should not be considered as containing formal recommendations from the SRSG. It simply points out areas which could pose difficult questions for States Parties, businesses, individuals and civil society.

A. CRC

(i) Duty to protect

234. The Committee's commentary strongly suggests that it recognizes a duty to protect against third party interference with rights, including by business enterprises. Nevertheless, more discussion would be helpful on the scope and content of this duty. In particular, it would be useful to understand whether, like some of the other treaty bodies, the Committee sees the concept of "due diligence" as relevant to the duty to protect.

(ii) Other duties

235. The Committee has recommended that States Parties consider rights, particularly rights related to health, when entering into bilateral trade agreements, including how related "commercial agreements" could affect rights. It is unclear if such remarks apply only to bilateral trade agreements or also to any agreement the State enters into with a corporation, such as host government agreements. Similarly, the Committee has not yet addressed whether its recommendations to take care when entering into agreements with private service providers also apply to agreements with corporations not providing core services.

236. Accordingly, it would be helpful to understand whether the Committee considers that the duty to respect entails assessing the impacts of all commercial agreements the State enters into as well as taking action to terminate such agreements where rights are threatened.

237. More guidance would also be useful on whether the Committee considers that the duty to fulfill requires States Parties to seek certain resources and contributions from private and public actors.

(iii) References to business enterprises

238. The Committee's outline for the Discussion Day noted that the discussion would focus only on private service providers even though the Committee was "entirely conscious that the business sector could impact on children's rights in a wide variety of ways."³⁰⁰ As this report highlights, the Committee has provided guidance in relation to a number of different industries, though often without the extent of detail provided in relation to private service providers. Thus more guidance would be useful on the ways in which the Committee considers the wider business sector can impact on rights and how States Parties should respond to such impacts.

³⁰⁰ Discussion Day Recommendations, *supra* note 148, at p. 1.

(iv) Regulation

239. When the Committee discusses regulatory or adjudicative measures in relation to corporate activities, it tends not to specify whether such measures should apply to natural or legal persons or both. Accordingly, it would be helpful to understand whether the Committee interprets the Convention as requiring legislative or other measures to address legal persons, such as business enterprises, where appropriate or if it is sufficient for States to prosecute or ensure a right to seek reparation from individuals acting on behalf of such enterprises.

240. Of course, States Parties have a certain degree of discretion when implementing the Convention but further discussion on this issue could consider what the remedial options of victims of corporate abuse should be, and what liabilities States should impose on business enterprises.

241. The Committee has discussed impact assessments and evaluations in relation to new laws, budget decisions and policies. It has also recommended that States undertake “rights-based environmental and social impact assessments” before proceeding with mining and other industrial projects.

242. Further, it has recommended impact assessments prior to contracting services to a non-State provider. Such assessments should especially look at any likely effects on availability, accessibility, acceptability and quality of the services. Assessments should also address both financial and non-financial issues.

243. It would be helpful to further understand what roles the Committee sees for States in encouraging or requiring corporate participation in such assessments or in influencing business enterprises to conduct their own assessments. More guidance would also be useful on the contexts in which the Committee considers impact assessments are required under the Convention.

(v) “Business responsibilities”

244. The Committee has noted that while States are ultimately accountable for rights abuses by third parties, business enterprises may have some responsibilities to respect and ensure rights. Indeed, it has directly addressed private actors in recommending certain behavior such as the creation of codes of conduct and refraining from acts which might jeopardize rights. It most often addresses the media, private service providers and banks though there are also some general statements about private bodies and entities.

245. The nature and extent of these responsibilities remains unclear. In particular, the Committee has not yet addressed what legal and practical consequences it sees in relation to any business responsibilities, particularly in light of its confirmation that only States are ultimately accountable under the Convention.

246. Thus more discussion about such responsibilities, including whether they apply to all business enterprises, even if they are not providing core services, would be helpful. It would also be useful to know whether the Committee intends to take up the suggestion,

mentioned during the Discussion Day, to draft a model statement for non-State actors regarding any relevant responsibilities.

247. Guidance would also be helpful on what the Committee considers States are required to do in order to facilitate private actors to fulfill any responsibilities that exist. Some comments suggest that at the very least, States should promote rights amongst such actors, including through steps to ensure codes of conduct accord with rights, but further clarification would be useful.

(vi) Territorial scope

248. The Committee has not discussed in detail when it will consider a State to have jurisdiction beyond its territory – i.e. whether jurisdiction in this context equates to “power or effective control” as it does in relation to some of the other treaties.

249. The Committee has also not yet addressed whether a State could gain jurisdiction through corporations acting on its behalf (exercising elements of governmental authority or acting under the instructions, direction or control of the State) outside its national territory. More guidance would be helpful on whether, in such a situation, the State’s Convention obligations could apply in full.

(vii) Regulation with extraterritorial effect

250. It would be useful to gain further insight into whether the Committee considers that the Convention requires States Parties to protect against abuses occurring outside their jurisdiction, particularly where the abuse is committed by their nationals, including corporations. The most guidance on this issue so far relates to prosecuting crimes such as trafficking, and even then it is not always clear if the Committee considers that the Convention requires or simply encourages the use of extraterritorial regulation.

251. It would also be helpful to learn more about the Committee’s thoughts on any links between the concept of international cooperation and extraterritorial regulation. For example, could States be seen as violating their international cooperation commitments if they fail to regulate abuse abroad over which they have some influence?

B. OPSC

(i) Regulation

252. Numerous questions arise in relation to actions States Parties are required to take in relation to “legal persons.”

253. Art. 3(4) provides that any legal liability a State establishes for legal persons will be “subject to the provisions of its national law.” The Committee has not yet addressed what this proviso might mean in practice, including whether States Parties are absolved from establishing legal liability where it is not permitted by their national law. Further, Art. 3(4) provides that subject to a State’s legal principles, liability for legal persons may be “criminal, civil or administrative.” It is unclear if the choice is between legislative and administrative measures or if judicial measures are also contemplated.

254. It would also be helpful to better understand the inter-play between paragraphs (1) and (4) of Art. 3. For example, does the Committee envisage that Art. 3(1) requires certain offences to be established under the penal or criminal law in relation to *individuals* but that there is a choice between criminal, civil or administrative measures in relation to legal persons? As set out below, the answer could help clarify whether the obligations under Art. 4 concerning extraterritorial jurisdiction apply to legal persons.

(ii) Adjudication

255. Art. 9(4) of the OPSC requires States to ensure that all victims of Protocol offences have “access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.” More guidance would be helpful on whether the Committee considers that States Parties must not only ensure compensation is provided but that it is possible to seek compensation from the perpetrators themselves, which could include legal persons such as business enterprises.

256. Subject to national law, Art. 7 contemplates confiscation of assets and profits and the closing of premises used to commit offences. More guidance would be helpful on when such measures may be necessary in relation to goods or premises owned by business enterprises, including where an individual is being prosecuted. For instance, it would be useful to understand the amount of discretion provided by the words “subject to national law” as well as whether the Art. 7 measures should be used when the liability of a legal person, rather than an individual, is in question.

(iii) Regulation with extraterritorial effect

257. The OPSC clearly requires a State Party to establish jurisdiction over individuals committing the Protocol offences abroad where the victim or individual is a national or where the individual is present on the State’s territory and the State does not intend to extradite him/her. Thus it is foreseeable that a State Party would need to ensure that it is possible to prosecute company officers and employees with such connections who commit OPSC offences, including where such individuals are complicit.

258. It is less clear whether States Parties are obliged to exercise jurisdiction over legal persons (including business enterprises) committing offences abroad, where such persons may be said to have the “nationality” of the State Party. More guidance would be helpful on this issue, including whether Art. 3(4) read with Art. 3(1) and Art. 4 requires States Parties to ensure that if they do impose legal liability on legal persons, such liability should extend to abuse committed abroad.

259. As mentioned above, it is also unclear if compensation provisions such as Art. 9(4) require States Parties to facilitate actions against those “legally responsible,” even if the abuse occurred outside the State.

260. The Committee has exhibited a willingness to discuss both extraterritorial jurisdiction and legal persons in relation to the OPSC. It would be helpful to understand the Committee’s views on the interplay of these two subjects, including a discussion on any State Party obligations to exercise extraterritorial jurisdiction over legal persons.

ANNEX 1: SUBSTANTIVE ARTICLES OF THE CRC³⁰¹

Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of 20 November 1989

Entry into force 2 September 1990, in accordance with article 49

Preamble

The States Parties to the present Convention,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Bearing in mind that the peoples of the United Nations have, in the Charter, reaffirmed their faith in fundamental human rights and in the dignity and worth of the human person, and have determined to promote social progress and better standards of life in larger freedom,

Recognizing that the United Nations has, in the Universal Declaration of Human Rights and in the International Covenants on Human Rights, proclaimed and agreed that everyone is entitled to all the rights and freedoms set forth therein, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status,

Recalling that, in the Universal Declaration of Human Rights, the United Nations has proclaimed that childhood is entitled to special care and assistance,

Convinced that the family, as the fundamental group of society and the natural environment for the growth and well-being of all its members and particularly children, should be afforded the necessary protection and assistance so that it can fully assume its responsibilities within the community,

Recognizing that the child, for the full and harmonious development of his or her personality, should grow up in a family environment, in an atmosphere of happiness, love and understanding,

Considering that the child should be fully prepared to live an individual life in society, and brought up in the spirit of the ideals proclaimed in the Charter of the United Nations, and in particular in the spirit of peace, dignity, tolerance, freedom, equality and solidarity,

Bearing in mind that the need to extend particular care to the child has been stated in the Geneva Declaration of the Rights of the Child of 1924 and in the Declaration of the Rights of the Child adopted by the General Assembly on 20 November 1959 and recognized in the Universal Declaration of Human Rights, in the International Covenant on Civil and Political Rights (in particular in articles 23 and 24), in the International Covenant on Economic, Social and Cultural Rights (in particular in article 10) and in the statutes and relevant instruments of specialized agencies and international organizations concerned with the welfare of children,

Bearing in mind that, as indicated in the Declaration of the Rights of the Child, "the child, by reason of his physical and mental immaturity, needs special safeguards and care, including appropriate legal protection, before as well as after birth",

Recalling the provisions of the Declaration on Social and Legal Principles relating to the Protection and Welfare of Children, with Special Reference to Foster Placement and Adoption Nationally and

³⁰¹ Note that all procedural Articles have been taken out of this version, leaving only the substantive Articles that are referred to in the report. Text sourced from the official site of the UN Office of the High Commissioner for Human Rights as at May 2007. See <http://www.ohchr.org/english/law/crc.htm>.

Internationally; the United Nations Standard Minimum Rules for the Administration of Juvenile Justice (The Beijing Rules); and the Declaration on the Protection of Women and Children in Emergency and Armed Conflict, Recognizing that, in all countries in the world, there are children living in exceptionally difficult conditions, and that such children need special consideration,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Recognizing the importance of international co-operation for improving the living conditions of children in every country, in particular in the developing countries,

Have agreed as follows:

PART I

Article 1

For the purposes of the present Convention, a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier.

Article 2

1. States Parties shall respect and ensure the rights set forth in the present Convention to each child within their jurisdiction without discrimination of any kind, irrespective of the child's or his or her parent's or legal guardian's race, colour, sex, language, religion, political or other opinion, national, ethnic or social origin, property, disability, birth or other status.

2. States Parties shall take all appropriate measures to ensure that the child is protected against all forms of discrimination or punishment on the basis of the status, activities, expressed opinions, or beliefs of the child's parents, legal guardians, or family members.

Article 3

1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

2. States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures.

3. States Parties shall ensure that the institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision.

Article 4

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention. With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international co-operation.

Article 5

States Parties shall respect the responsibilities, rights and duties of parents or, where applicable, the members of the extended family or community as provided for by local custom, legal guardians

or other persons legally responsible for the child, to provide, in a manner consistent with the evolving capacities of the child, appropriate direction and guidance in the exercise by the child of the rights recognized in the present Convention.

Article 6

1. States Parties recognize that every child has the inherent right to life.
2. States Parties shall ensure to the maximum extent possible the survival and development of the child.

Article 7

1. The child shall be registered immediately after birth and shall have the right from birth to a name, the right to acquire a nationality and, as far as possible, the right to know and be cared for by his or her parents.
2. States Parties shall ensure the implementation of these rights in accordance with their national law and their obligations under the relevant international instruments in this field, in particular where the child would otherwise be stateless.

Article 8

1. States Parties undertake to respect the right of the child to preserve his or her identity, including nationality, name and family relations as recognized by law without unlawful interference.
2. Where a child is illegally deprived of some or all of the elements of his or her identity, States Parties shall provide appropriate assistance and protection, with a view to re-establishing speedily his or her identity.

Article 9

1. States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child. Such determination may be necessary in a particular case such as one involving abuse or neglect of the child by the parents, or one where the parents are living separately and a decision must be made as to the child's place of residence.
2. In any proceedings pursuant to paragraph 1 of the present article, all interested parties shall be given an opportunity to participate in the proceedings and make their views known.
3. States Parties shall respect the right of the child who is separated from one or both parents to maintain personal relations and direct contact with both parents on a regular basis, except if it is contrary to the child's best interests.
4. Where such separation results from any action initiated by a State Party, such as the detention, imprisonment, exile, deportation or death (including death arising from any cause while the person is in the custody of the State) of one or both parents or of the child, that State Party shall, upon request, provide the parents, the child or, if appropriate, another member of the family with the essential information concerning the whereabouts of the absent member(s) of the family unless the provision of the information would be detrimental to the well-being of the child. States Parties shall further ensure that the submission of such a request shall of itself entail no adverse consequences for the person(s) concerned.

Article 10

1. In accordance with the obligation of States Parties under article 9, paragraph 1, applications by a child or his or her parents to enter or leave a State Party for the purpose of family reunification shall be dealt with by States Parties in a positive, humane and expeditious manner. States Parties shall further ensure that the submission of such a request shall entail no adverse consequences for the applicants and for the members of their family.

2. A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances personal relations and direct contacts with both parents. Towards that end and in accordance with the obligation of States Parties under article 9, paragraph 1, States Parties shall respect the right of the child and his or her parents to leave any country, including their own, and to enter their own country. The right to leave any country shall be subject only to such restrictions as are prescribed by law and which are necessary to protect the national security, public order (ordre public), public health or morals or the rights and freedoms of others and are consistent with the other rights recognized in the present Convention.

Article 11

1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements.

Article 12

1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.

2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law.

Article 13

1. The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.

2. The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others; or

(b) For the protection of national security or of public order (ordre public), or of public health or morals.

Article 14

1. States Parties shall respect the right of the child to freedom of thought, conscience and religion.

2. States Parties shall respect the rights and duties of the parents and, when applicable, legal guardians, to provide direction to the child in the exercise of his or her right in a manner consistent with the evolving capacities of the child.

3. Freedom to manifest one's religion or beliefs may be subject only to such limitations as are prescribed by law and are necessary to protect public safety, order, health or morals, or the fundamental rights and freedoms of others.

Article 15

1. States Parties recognize the rights of the child to freedom of association and to freedom of peaceful assembly.

2. No restrictions may be placed on the exercise of these rights other than those imposed in conformity with the law and which are necessary in a democratic society in the interests of national security or public safety, public order (*ordre public*), the protection of public health or morals or the protection of the rights and freedoms of others.

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.

2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

1. States Parties shall use their best efforts to ensure recognition of the principle that both parents have common responsibilities for the upbringing and development of the child. Parents or, as the

case may be, legal guardians, have the primary responsibility for the upbringing and development of the child. The best interests of the child will be their basic concern.

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. States Parties shall take all appropriate measures to ensure that children of working parents have the right to benefit from child-care services and facilities for which they are eligible.

Article 19

1. States Parties shall take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation, including sexual abuse, while in the care of parent(s), legal guardian(s) or any other person who has the care of the child.

2. Such protective measures should, as appropriate, include effective procedures for the establishment of social programmes to provide necessary support for the child and for those who have the care of the child, as well as for other forms of prevention and for identification, reporting, referral, investigation, treatment and follow-up of instances of child maltreatment described heretofore, and, as appropriate, for judicial involvement.

Article 20

1. A child temporarily or permanently deprived of his or her family environment, or in whose own best interests cannot be allowed to remain in that environment, shall be entitled to special protection and assistance provided by the State.

2. States Parties shall in accordance with their national laws ensure alternative care for such a child.

3. Such care could include, inter alia, foster placement, kafalah of Islamic law, adoption or if necessary placement in suitable institutions for the care of children. When considering solutions, due regard shall be paid to the desirability of continuity in a child's upbringing and to the child's ethnic, religious, cultural and linguistic background.

Article 21

States Parties that recognize and/or permit the system of adoption shall ensure that the best interests of the child shall be the paramount consideration and they shall:

(a) Ensure that the adoption of a child is authorized only by competent authorities who determine, in accordance with applicable law and procedures and on the basis of all pertinent and reliable information, that the adoption is permissible in view of the child's status concerning parents, relatives and legal guardians and that, if required, the persons concerned have given their informed consent to the adoption on the basis of such counselling as may be necessary;

(b) Recognize that inter-country adoption may be considered as an alternative means of child's care, if the child cannot be placed in a foster or an adoptive family or cannot in any suitable manner be cared for in the child's country of origin;

(c) Ensure that the child concerned by inter-country adoption enjoys safeguards and standards equivalent to those existing in the case of national adoption;

(d) Take all appropriate measures to ensure that, in inter-country adoption, the placement does not result in improper financial gain for those involved in it;

(e) Promote, where appropriate, the objectives of the present article by concluding bilateral or multilateral arrangements or agreements, and endeavour, within this framework, to ensure that the placement of the child in another country is carried out by competent authorities or organs.

Article 22

1. States Parties shall take appropriate measures to ensure that a child who is seeking refugee status or who is considered a refugee in accordance with applicable international or domestic law and procedures shall, whether unaccompanied or accompanied by his or her parents or by any other person, receive appropriate protection and humanitarian assistance in the enjoyment of applicable rights set forth in the present Convention and in other international human rights or humanitarian instruments to which the said States are Parties.

2. For this purpose, States Parties shall provide, as they consider appropriate, co-operation in any efforts by the United Nations and other competent intergovernmental organizations or non-governmental organizations co-operating with the United Nations to protect and assist such a child and to trace the parents or other members of the family of any refugee child in order to obtain information necessary for reunification with his or her family. In cases where no parents or other members of the family can be found, the child shall be accorded the same protection as any other child permanently or temporarily deprived of his or her family environment for any reason, as set forth in the present Convention.

Article 23

1. States Parties recognize that a mentally or physically disabled child should enjoy a full and decent life, in conditions which ensure dignity, promote self-reliance and facilitate the child's active participation in the community.

2. States Parties recognize the right of the disabled child to special care and shall encourage and ensure the extension, subject to available resources, to the eligible child and those responsible for his or her care, of assistance for which application is made and which is appropriate to the child's condition and to the circumstances of the parents or others caring for the child.

3. Recognizing the special needs of a disabled child, assistance extended in accordance with paragraph 2 of the present article shall be provided free of charge, whenever possible, taking into account the financial resources of the parents or others caring for the child, and shall be designed to ensure that the disabled child has effective access to and receives education, training, health care services, rehabilitation services, preparation for employment and recreation opportunities in a manner conducive to the child's achieving the fullest possible social integration and individual development, including his or her cultural and spiritual development

4. States Parties shall promote, in the spirit of international cooperation, the exchange of appropriate information in the field of preventive health care and of medical, psychological and functional treatment of disabled children, including dissemination of and access to information concerning methods of rehabilitation, education and vocational services, with the aim of enabling States Parties to improve their capabilities and skills and to widen their experience in these areas. In this regard, particular account shall be taken of the needs of developing countries.

Article 24

1. States Parties recognize the right of the child to the enjoyment of the highest attainable standard of health and to facilities for the treatment of illness and rehabilitation of health. States Parties shall strive to ensure that no child is deprived of his or her right of access to such health care services.

2. States Parties shall pursue full implementation of this right and, in particular, shall take appropriate measures:

(a) To diminish infant and child mortality;

(b) To ensure the provision of necessary medical assistance and health care to all children with emphasis on the development of primary health care;

(c) To combat disease and malnutrition, including within the framework of primary health care, through, inter alia, the application of readily available technology and through the provision of adequate nutritious foods and clean drinking-water, taking into consideration the dangers and risks of environmental pollution;

(d) To ensure appropriate pre-natal and post-natal health care for mothers;

(e) To ensure that all segments of society, in particular parents and children, are informed, have access to education and are supported in the use of basic knowledge of child health and nutrition, the advantages of breastfeeding, hygiene and environmental sanitation and the prevention of accidents;

(f) To develop preventive health care, guidance for parents and family planning education and services.

3. States Parties shall take all effective and appropriate measures with a view to abolishing traditional practices prejudicial to the health of children.

4. States Parties undertake to promote and encourage international co-operation with a view to achieving progressively the full realization of the right recognized in the present article. In this regard, particular account shall be taken of the needs of developing countries.

Article 25

States Parties recognize the right of a child who has been placed by the competent authorities for the purposes of care, protection or treatment of his or her physical or mental health, to a periodic review of the treatment provided to the child and all other circumstances relevant to his or her placement.

Article 26

1. States Parties shall recognize for every child the right to benefit from social security, including social insurance, and shall take the necessary measures to achieve the full realization of this right in accordance with their national law.

2. The benefits should, where appropriate, be granted, taking into account the resources and the circumstances of the child and persons having responsibility for the maintenance of the child, as well as any other consideration relevant to an application for benefits made by or on behalf of the child.

Article 27

1. States Parties recognize the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development.

2. The parent(s) or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

3. States Parties, in accordance with national conditions and within their means, shall take appropriate measures to assist parents and others responsible for the child to implement this right and shall in case of need provide material assistance and support programmes, particularly with regard to nutrition, clothing and housing.

4. States Parties shall take all appropriate measures to secure the recovery of maintenance for the child from the parents or other persons having financial responsibility for the child, both within the State Party and from abroad. In particular, where the person having financial responsibility for the child lives in a State different from that of the child, States Parties shall promote the accession to international agreements or the conclusion of such agreements, as well as the making of other appropriate arrangements.

Article 28

1. States Parties recognize the right of the child to education, and with a view to achieving this right progressively and on the basis of equal opportunity, they shall, in particular:

- (a) Make primary education compulsory and available free to all;
- (b) Encourage the development of different forms of secondary education, including general and vocational education, make them available and accessible to every child, and take appropriate measures such as the introduction of free education and offering financial assistance in case of need;
- (c) Make higher education accessible to all on the basis of capacity by every appropriate means;
- (d) Make educational and vocational information and guidance available and accessible to all children;
- (e) Take measures to encourage regular attendance at schools and the reduction of drop-out rates.

2. States Parties shall take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention.

3. States Parties shall promote and encourage international cooperation in matters relating to education, in particular with a view to contributing to the elimination of ignorance and illiteracy throughout the world and facilitating access to scientific and technical knowledge and modern teaching methods. In this regard, particular account shall be taken of the needs of developing countries.

Article 29

1. States Parties agree that the education of the child shall be directed to:

- (a) The development of the child's personality, talents and mental and physical abilities to their fullest potential;
- (b) The development of respect for human rights and fundamental freedoms, and for the principles enshrined in the Charter of the United Nations;
- (c) The development of respect for the child's parents, his or her own cultural identity, language and values, for the national values of the country in which the child is living, the country from which he or she may originate, and for civilizations different from his or her own;

(d) The preparation of the child for responsible life in a free society, in the spirit of understanding, peace, tolerance, equality of sexes, and friendship among all peoples, ethnic, national and religious groups and persons of indigenous origin;

(e) The development of respect for the natural environment.

2. No part of the present article or article 28 shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principle set forth in paragraph 1 of the present article and to the requirements that the education given in such institutions shall conform to such minimum standards as may be laid down by the State.

Article 30

In those States in which ethnic, religious or linguistic minorities or persons of indigenous origin exist, a child belonging to such a minority or who is indigenous shall not be denied the right, in community with other members of his or her group, to enjoy his or her own culture, to profess and practise his or her own religion, or to use his or her own language.

Article 31

1. States Parties recognize the right of the child to rest and leisure, to engage in play and recreational activities appropriate to the age of the child and to participate freely in cultural life and the arts.

2. States Parties shall respect and promote the right of the child to participate fully in cultural and artistic life and shall encourage the provision of appropriate and equal opportunities for cultural, artistic, recreational and leisure activity.

Article 32

1. States Parties recognize the right of the child to be protected 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.

2. States Parties shall take legislative, administrative, social and educational measures to ensure the implementation of the present article. To this end, and having regard to the relevant provisions of other international instruments, States Parties shall in particular:

(a) Provide for a minimum age or minimum ages for admission to employment;

(b) Provide for appropriate regulation of the hours and conditions of employment;

(c) Provide for appropriate penalties or other sanctions to ensure the effective enforcement of the present article.

Article 33

States Parties shall take all appropriate measures, including legislative, administrative, social and educational measures, to protect children from the illicit use of narcotic drugs and psychotropic substances as defined in the relevant international treaties, and to prevent the use of children in the illicit production and trafficking of such substances.

Article 34

States Parties undertake to protect the child from all forms of sexual exploitation and sexual abuse. For these purposes, States Parties shall in particular take all appropriate national, bilateral and multilateral measures to prevent:

- (a) The inducement or coercion of a child to engage in any unlawful sexual activity;
- (b) The exploitative use of children in prostitution or other unlawful sexual practices;
- (c) The exploitative use of children in pornographic performances and materials.

Article 35

States Parties shall take all appropriate national, bilateral and multilateral measures to prevent the abduction of, the sale of or traffic in children for any purpose or in any form.

Article 36

States Parties shall protect the child against all other forms of exploitation prejudicial to any aspects of the child's welfare.

Article 37

States Parties shall ensure that:

- (a) No child shall be subjected to torture or other cruel, inhuman or degrading treatment or punishment. Neither capital punishment nor life imprisonment without possibility of release shall be imposed for offences committed by persons below eighteen years of age;
- (b) No child shall be deprived of his or her liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time;
- (c) Every child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person, and in a manner which takes into account the needs of persons of his or her age. In particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so and shall have the right to maintain contact with his or her family through correspondence and visits, save in exceptional circumstances;
- (d) Every child deprived of his or her liberty shall have the right to prompt access to legal and other appropriate assistance, as well as the right to challenge the legality of the deprivation of his or her liberty before a court or other competent, independent and impartial authority, and to a prompt decision on any such action.

Article 38

1. States Parties undertake to respect and to ensure respect for rules of international humanitarian law applicable to them in armed conflicts which are relevant to the child.
2. States Parties shall take all feasible measures to ensure that persons who have not attained the age of fifteen years do not take a direct part in hostilities.
3. States Parties shall refrain from recruiting any person who has not attained the age of fifteen years into their armed forces. In recruiting among those persons who have attained the age of

fifteen years but who have not attained the age of eighteen years, States Parties shall endeavour to give priority to those who are oldest.

4. In accordance with their obligations under international humanitarian law to protect the civilian population in armed conflicts, States Parties shall take all feasible measures to ensure protection and care of children who are affected by an armed conflict.

Article 39

States Parties shall take all appropriate measures to promote physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration shall take place in an environment which fosters the health, self-respect and dignity of the child.

Article 40

1. States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society.

2. To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that:

(a) No child shall be alleged as, be accused of, or recognized as having infringed the penal law by reason of acts or omissions that were not prohibited by national or international law at the time they were committed;

(b) Every child alleged as or accused of having infringed the penal law has at least the following guarantees:

(i) To be presumed innocent until proven guilty according to law;

(ii) To be informed promptly and directly of the charges against him or her, and, if appropriate, through his or her parents or legal guardians, and to have legal or other appropriate assistance in the preparation and presentation of his or her defence;

(iii) To have the matter determined without delay by a competent, independent and impartial authority or judicial body in a fair hearing according to law, in the presence of legal or other appropriate assistance and, unless it is considered not to be in the best interest of the child, in particular, taking into account his or her age or situation, his or her parents or legal guardians;

(iv) Not to be compelled to give testimony or to confess guilt; to examine or have examined adverse witnesses and to obtain the participation and examination of witnesses on his or her behalf under conditions of equality;

(v) If considered to have infringed the penal law, to have this decision and any measures imposed in consequence thereof reviewed by a higher competent, independent and impartial authority or judicial body according to law;

(vi) To have the free assistance of an interpreter if the child cannot understand or speak the language used;

(vii) To have his or her privacy fully respected at all stages of the proceedings.

3. States Parties shall seek to promote the establishment of laws, procedures, authorities and institutions specifically applicable to children alleged as, accused of, or recognized as having infringed the penal law, and, in particular:

(a) The establishment of a minimum age below which children shall be presumed not to have the capacity to infringe the penal law;

(b) Whenever appropriate and desirable, measures for dealing with such children without resorting to judicial proceedings, providing that human rights and legal safeguards are fully respected. 4. A variety of dispositions, such as care, guidance and supervision orders; counselling; probation; foster care; education and vocational training programmes and other alternatives to institutional care shall be available to ensure that children are dealt with in a manner appropriate to their well-being and proportionate both to their circumstances and the offence.

Article 41

Nothing in the present Convention shall affect any provisions which are more conducive to the realization of the rights of the child and which may be contained in:

(a) The law of a State party; or

(b) International law in force for that State.

PART II

Article 42

States Parties undertake to make the principles and provisions of the Convention widely known, by appropriate and active means, to adults and children alike.

ANNEX 2 – SUBSTANTIVE ARTICLES OF OPSC³⁰²

Adopted and opened for signature, ratification and accession by General Assembly
resolution A/RES/54/263
of 25 May 2000
entered into force on 18 January 2002

The States Parties to the present Protocol,

Considering that, in order further to achieve the purposes of the Convention on the Rights of the Child and the implementation of its provisions, especially articles 1, 11, 21, 32, 33, 34, 35 and 36, it would be appropriate to extend the measures that States Parties should undertake in order to guarantee the protection of the child from the sale of children, child prostitution and child pornography,

Considering also that the Convention on the Rights of the Child recognizes the right of the child to be protected 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,

Gravely concerned at the significant and increasing international traffic in children for the purpose of the sale of children, child prostitution and child pornography,

Deeply concerned at the widespread and continuing practice of sex tourism, to which children are especially vulnerable, as it directly promotes the sale of children, child prostitution and child pornography,

Recognizing that a number of particularly vulnerable groups, including girl children, are at greater risk of sexual exploitation and that girl children are disproportionately represented among the sexually exploited,

Concerned about the growing availability of child pornography on the Internet and other evolving technologies, and recalling the International Conference on Combating Child Pornography on the Internet, held in Vienna in 1999, in particular its conclusion calling for the worldwide criminalization of the production, distribution, exportation, transmission, importation, intentional possession and advertising of child pornography, and stressing the importance of closer cooperation and partnership between Governments and the Internet industry,

Believing that the elimination of the sale of children, child prostitution and child pornography will be facilitated by adopting a holistic approach, addressing the contributing factors, including underdevelopment, poverty, economic disparities, inequitable socio-economic structure, dysfunctioning families, lack of education, urban-rural migration, gender discrimination, irresponsible adult sexual behaviour, harmful traditional practices, armed conflicts and trafficking in children,

Believing also that efforts to raise public awareness are needed to reduce consumer demand for the sale of children, child prostitution and child pornography, and believing further in the importance of strengthening global partnership among all actors and of improving law enforcement at the national level,

³⁰² Note that all procedural Articles have been taken out of this version, leaving only the substantive Articles that are referred to in the report. Text sourced from the official site of the UN Office of the High Commissioner for Human Rights as at May 2007. See <http://www.ohchr.org/english/law/crc-sale.htm>.

Noting the provisions of international legal instruments relevant to the protection of children, including the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption, the Hague Convention on the Civil Aspects of International Child Abduction, the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children, and International Labour Organization Convention No. 182 on the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour,

Encouraged by the overwhelming support for the Convention on the Rights of the Child, demonstrating the widespread commitment that exists for the promotion and protection of the rights of the child,

Recognizing the importance of the implementation of the provisions of the Programme of Action for the Prevention of the Sale of Children, Child Prostitution and Child Pornography and the Declaration and Agenda for Action adopted at the World Congress against Commercial Sexual Exploitation of Children, held in Stockholm from 27 to 31 August 1996, and the other relevant decisions and recommendations of pertinent international bodies,

Taking due account of the importance of the traditions and cultural values of each people for the protection and harmonious development of the child, Have agreed as follows:

Article 1

States Parties shall prohibit the sale of children, child prostitution and child pornography as provided for by the present Protocol.

Article 2

For the purposes of the present Protocol:

(a) Sale of children means any act or transaction whereby a child is transferred by any person or group of persons to another for remuneration or any other consideration;

(b) Child prostitution means the use of a child in sexual activities for remuneration or any other form of consideration;

(c) Child pornography means any representation, by whatever means, of a child engaged in real or simulated explicit sexual activities or any representation of the sexual parts of a child for primarily sexual purposes.

Article 3

1. Each State Party shall ensure that, as a minimum, the following acts and activities are fully covered under its criminal or penal law, whether such offences are committed domestically or transnationally or on an individual or organized basis:

(a) In the context of sale of children as defined in article 2:

(i) Offering, delivering or accepting, by whatever means, a child for the purpose of:

a. Sexual exploitation of the child;

b. Transfer of organs of the child for profit;

c. Engagement of the child in forced labour;

(ii) Improperly inducing consent, as an intermediary, for the adoption of a child in violation of applicable international legal instruments on adoption;

(b) Offering, obtaining, procuring or providing a child for child prostitution, as defined in article 2;

(c) Producing, distributing, disseminating, importing, exporting, offering, selling or possessing for the above purposes child pornography as defined in article 2.

2. Subject to the provisions of the national law of a State Party, the same shall apply to an attempt to commit any of the said acts and to complicity or participation in any of the said acts.

3. Each State Party shall make such offences punishable by appropriate penalties that take into account their grave nature.

4. Subject to the provisions of its national law, each State Party shall take measures, where appropriate, to establish the liability of legal persons for offences established in paragraph 1 of the present article. Subject to the legal principles of the State Party, such liability of legal persons may be criminal, civil or administrative.

5. States Parties shall take all appropriate legal and administrative measures to ensure that all persons involved in the adoption of a child act in conformity with applicable international legal instruments.

Article 4

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, when the offences are committed in its territory or on board a ship or aircraft registered in that State.

2. Each State Party may take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 3, paragraph 1, in the following cases:

(a) When the alleged offender is a national of that State or a person who has his habitual residence in its territory;

(b) When the victim is a national of that State.

3. Each State Party shall also take such measures as may be necessary to establish its jurisdiction over the aforementioned offences when the alleged offender is present in its territory and it does not extradite him or her to another State Party on the ground that the offence has been committed by one of its nationals.

4. The present Protocol does not exclude any criminal jurisdiction exercised in accordance with internal law.

Article 5

1. The offences referred to in article 3, paragraph 1, shall be deemed to be included as extraditable offences in any extradition treaty existing between States Parties and shall be included as extraditable offences in every extradition treaty subsequently concluded between them, in accordance with the conditions set forth in such treaties.

2. If a State Party that makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may consider the present Protocol to be a legal basis for extradition in respect of such offences. Extradition shall be subject to the conditions provided by the law of the requested State.

3. States Parties that do not make extradition conditional on the existence of a treaty shall recognize such offences as extraditable offences between themselves subject to the conditions provided by the law of the requested State.

4. Such offences shall be treated, for the purpose of extradition between States Parties, as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 4.

5. If an extradition request is made with respect to an offence described in article 3, paragraph 1, and the requested State Party does not or will not extradite on the basis of the nationality of the offender, that State shall take suitable measures to submit the case to its competent authorities for the purpose of prosecution.

Article 6

1. States Parties shall afford one another the greatest measure of assistance in connection with investigations or criminal or extradition proceedings brought in respect of the offences set forth in article 3, paragraph 1, including assistance in obtaining evidence at their disposal necessary for the proceedings.

2. States Parties shall carry out their obligations under paragraph 1 of the present article in conformity with any treaties or other arrangements on mutual legal assistance that may exist between them. In the absence of such treaties or arrangements, States Parties shall afford one another assistance in accordance with their domestic law.

Article 7

States Parties shall, subject to the provisions of their national law:

(a) Take measures to provide for the seizure and confiscation, as appropriate, of:

(i) Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;

(ii) Proceeds derived from such offences;

(b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a);

(c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.

Article 8

1. States Parties shall adopt appropriate measures to protect the rights and interests of child victims of the practices prohibited under the present Protocol at all stages of the criminal justice process, in particular by:

(a) Recognizing the vulnerability of child victims and adapting procedures to recognize their special needs, including their special needs as witnesses;

- (b) Informing child victims of their rights, their role and the scope, timing and progress of the proceedings and of the disposition of their cases;
 - (c) Allowing the views, needs and concerns of child victims to be presented and considered in proceedings where their personal interests are affected, in a manner consistent with the procedural rules of national law;
 - (d) Providing appropriate support services to child victims throughout the legal process;
 - (e) Protecting, as appropriate, the privacy and identity of child victims and taking measures in accordance with national law to avoid the inappropriate dissemination of information that could lead to the identification of child victims;
 - (f) Providing, in appropriate cases, for the safety of child victims, as well as that of their families and witnesses on their behalf, from intimidation and retaliation;
 - (g) Avoiding unnecessary delay in the disposition of cases and the execution of orders or decrees granting compensation to child victims.
2. States Parties shall ensure that uncertainty as to the actual age of the victim shall not prevent the initiation of criminal investigations, including investigations aimed at establishing the age of the victim.
 3. States Parties shall ensure that, in the treatment by the criminal justice system of children who are victims of the offences described in the present Protocol, the best interest of the child shall be a primary consideration.
 4. States Parties shall take measures to ensure appropriate training, in particular legal and psychological training, for the persons who work with victims of the offences prohibited under the present Protocol.
 5. States Parties shall, in appropriate cases, adopt measures in order to protect the safety and integrity of those persons and/or organizations involved in the prevention and/or protection and rehabilitation of victims of such offences.
 6. Nothing in the present article shall be construed to be prejudicial to or inconsistent with the rights of the accused to a fair and impartial trial.

Article 9

1. States Parties shall adopt or strengthen, implement and disseminate laws, administrative measures, social policies and programmes to prevent the offences referred to in the present Protocol. Particular attention shall be given to protect children who are especially vulnerable to such practices.
2. States Parties shall promote awareness in the public at large, including children, through information by all appropriate means, education and training, about the preventive measures and harmful effects of the offences referred to in the present Protocol. In fulfilling their obligations under this article, States Parties shall encourage the participation of the community and, in particular, children and child victims, in such information and education and training programmes, including at the international level.
3. States Parties shall take all feasible measures with the aim of ensuring all appropriate assistance to victims of such offences, including their full social reintegration and their full physical and psychological recovery.

4. States Parties shall ensure that all child victims of the offences described in the present Protocol have access to adequate procedures to seek, without discrimination, compensation for damages from those legally responsible.

5. States Parties shall take appropriate measures aimed at effectively prohibiting the production and dissemination of material advertising the offences described in the present Protocol.

Article 10

1. States Parties shall take all necessary steps to strengthen international cooperation by multilateral, regional and bilateral arrangements for the prevention, detection, investigation, prosecution and punishment of those responsible for acts involving the sale of children, child prostitution, child pornography and child sex tourism. States Parties shall also promote international cooperation and coordination between their authorities, national and international non-governmental organizations and international organizations.

2. States Parties shall promote international cooperation to assist child victims in their physical and psychological recovery, social reintegration and repatriation.

3. States Parties shall promote the strengthening of international cooperation in order to address the root causes, such as poverty and underdevelopment, contributing to the vulnerability of children to the sale of children, child prostitution, child pornography and child sex tourism.

4. States Parties in a position to do so shall provide financial, technical or other assistance through existing multilateral, regional, bilateral or other programmes.

Article 11

Nothing in the present Protocol shall affect any provisions that are more conducive to the realization of the rights of the child and that may be contained in:

(a) The law of a State Party;

(b) International law in force for that State.

Article 12

1. Each State Party shall, within two years following the entry into force of the present Protocol for that State Party, submit a report to the Committee on the Rights of the Child providing comprehensive information on the measures it has taken to implement the provisions of the Protocol.

2. Following the submission of the comprehensive report, each State Party shall include in the reports they submit to the Committee on the Rights of the Child, in accordance with article 44 of the Convention, any further information with respect to the implementation of the present Protocol. Other States Parties to the Protocol shall submit a report every five years.

3. The Committee on the Rights of the Child may request from States Parties further information relevant to the implementation of the present Protocol.

Article 13

1. The present Protocol is open for signature by any State that is a party to the Convention or has signed it.
2. The present Protocol is subject to ratification and is open to accession by any State that is a party to the Convention or has signed it. Instruments of ratification or accession shall be deposited with the Secretary- General of the United Nations.

Article 14

1. The present Protocol shall enter into force three months after the deposit of the tenth instrument of ratification or accession.
2. For each State ratifying the present Protocol or acceding to it after its entry into force, the Protocol shall enter into force one month after the date of the deposit of its own instrument of ratification or accession.

Article 15

1. Any State Party may denounce the present Protocol at any time by written notification to the Secretary- General of the United Nations, who shall thereafter inform the other States Parties to the Convention and all States that have signed the Convention. The denunciation shall take effect one year after the date of receipt of the notification by the Secretary-General.
2. Such a denunciation shall not have the effect of releasing the State Party from its obligations under the present Protocol in regard to any offence that occurs prior to the date on which the denunciation becomes effective. Nor shall such a denunciation prejudice in any way the continued consideration of any matter that is already under consideration by the Committee on the Rights of the Child prior to the date on which the denunciation becomes effective.

Article 16

1. Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly of the United Nations for approval.
2. An amendment adopted in accordance with paragraph 1 of the present article shall enter into force when it has been approved by the General Assembly and accepted by a two-thirds majority of States Parties.
3. When an amendment enters into force, it shall be binding on those States Parties that have accepted it, other States Parties still being bound by the provisions of the present Protocol and any earlier amendments they have accepted.

Article 17

1. The present Protocol, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited in the archives of the United Nations.
2. The Secretary-General of the United Nations shall transmit certified copies of the present Protocol to all States Parties to the Convention and all States that have signed the Convention.

ANNEX 3 – STATES PARTIES TO THE CRC AND OPSC³⁰³

A. CRC

Last update: 19 April 2007
Entry into force: 2 September 1990, in accordance with article 49 (1).
Registration: 2 September 1990, No. 27531.
Status: Signatories: 140 ,Parties: 193.
Text: United Nations, *Treaty Series* , vol. 1577, p. 3 ; depositary notifications C.N.147.1993.TREATIES-5 of 15 May 1993 [amendments to article 43 (2)] [1](#); ; and C.N.322.1995.TREATIES-7 of 7 November 1995 [amendment to article 43 (2)].

Note: The Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, was adopted by resolution 44/25 [2](#) of 20 November 1989 at the Forty-fourth session of the General Assembly of the United Nations. The Convention is open for signature by all States at the Headquarters of the United Nations in New York.

Participant	Signature	Ratification, Acceptance (A), Accession (a), Succession (d)
Afghanistan	27 Sep 1990	28 Mar 1994
Albania	26 Jan 1990	27 Feb 1992
Algeria	26 Jan 1990	16 Apr 1993
Andorra	2 Oct 1995	2 Jan 1996
Angola	14 Feb 1990	5 Dec 1990
Antigua and Barbuda	12 Mar 1991	5 Oct 1993
Argentina	29 Jun 1990	4 Dec 1990
Armenia	.	23 Jun 1993 a
Australia	22 Aug 1990	17 Dec 1990
Austria	26 Aug 1990	6 Aug 1992
Azerbaijan	.	13 Aug 1992 a
Bahamas	30 Oct 1990	20 Feb 1991
Bahrain	.	13 Feb 1992 a
Bangladesh	26 Jan 1990	3 Aug 1990
Barbados	19 Apr 1990	9 Oct 1990

³⁰³ As at 19 May 2007 – note that list officially updated as at 19 April 2007. Sourced from the official site of the UN Office of the High Commissioner for Human Rights. See <http://www.ohchr.org/english/countries/ratification/11.htm> (CRC) and http://www.ohchr.org/english/countries/ratification/11_c.htm (OPSC). Numbers next to State names refer to notes contained on the webpage.

Belarus	26 Jan 1990	1 Oct 1990
Belgium	26 Jan 1990	16 Dec 1991
Belize	2 Mar 1990	2 May 1990
Benin	25 Apr 1990	3 Aug 1990
Bhutan	4 Jun 1990	1 Aug 1990
Bolivia	8 Mar 1990	26 Jun 1990
Bosnia and Herzegovina 3	.	1 Sep 1993 d
Botswana	.	14 Mar 1995 a
Brazil	26 Jan 1990	24 Sep 1990
Brunei Darussalam	.	27 Dec 1995 a
Bulgaria	31 May 1990	3 Jun 1991
Burkina Faso	26 Jan 1990	31 Aug 1990
Burundi	8 May 1990	19 Oct 1990
Cambodia	.	15 Oct 1992 a
Cameroon	25 Sep 1990	11 Jan 1993
Canada	28 May 1990	13 Dec 1991
Cape Verde	.	4 Jun 1992 a
Central African Republic	30 Jul 1990	23 Apr 1992
Chad	30 Sep 1990	2 Oct 1990
Chile	26 Jan 1990	13 Aug 1990
China 4 , 5	29 Aug 1990	2 Mar 1992
Colombia	26 Jan 1990	28 Jan 1991
Comoros	30 Sep 1990	22 Jun 1993
Congo	.	14 Oct 1993 a
Cook Islands	.	6 Jun 1997 a
Costa Rica	26 Jan 1990	21 Aug 1990
Côte d'Ivoire	26 Jan 1990	4 Feb 1991
Croatia 3	.	12 Oct 1992 d
Cuba	26 Jan 1990	21 Aug 1991
Cyprus	5 Oct 1990	7 Feb 1991
Czech Republic 6	.	22 Feb 1993 d
Democratic People's Republic of Korea	23 Aug 1990	21 Sep 1990
Democratic Republic of the Congo	20 Mar 1990	27 Sep 1990
Denmark	26 Jan 1990	19 Jul 1991
Djibouti	30 Sep 1990	6 Dec 1990
Dominica	26 Jan 1990	13 Mar 1991

Dominican Republic	8 Aug 1990	11 Jun 1991
Ecuador	26 Jan 1990	23 Mar 1990
Egypt	5 Feb 1990	6 Jul 1990
El Salvador	26 Jan 1990	10 Jul 1990
Equatorial Guinea	.	15 Jun 1992 a
Eritrea	20 Dec 1993	3 Aug 1994
Estonia	.	21 Oct 1991 a
Ethiopia	.	14 May 1991 a
Fiji	2 Jul 1993	13 Aug 1993
Finland	26 Jan 1990	20 Jun 1991
France	26 Jan 1990	7 Aug 1990
Gabon	26 Jan 1990	9 Feb 1994
Gambia	5 Feb 1990	8 Aug 1990
Georgia	.	2 Jun 1994 a
Germany Z	26 Jan 1990	6 Mar 1992
Ghana	29 Jan 1990	5 Feb 1990
Greece	26 Jan 1990	11 May 1993
Grenada	21 Feb 1990	5 Nov 1990
Guatemala	26 Jan 1990	6 Jun 1990
Guinea	.	13 Jul 1990 a
Guinea-Bissau	26 Jan 1990	20 Aug 1990
Guyana	30 Sep 1990	14 Jan 1991
Haiti	26 Jan 1990	8 Jun 1995
Holy See	20 Apr 1990	20 Apr 1990
Honduras	31 May 1990	10 Aug 1990
Hungary	14 Mar 1990	7 Oct 1991
Iceland	26 Jan 1990	28 Oct 1992
India	.	11 Dec 1992 a
Indonesia	26 Jan 1990	5 Sep 1990
Iran (Islamic Republic of)	5 Sep 1991	13 Jul 1994
Iraq	.	15 Jun 1994 a
Ireland	30 Sep 1990	28 Sep 1992
Israel	3 Jul 1990	3 Oct 1991
Italy	26 Jan 1990	5 Sep 1991
Jamaica	26 Jan 1990	14 May 1991

Japan	21 Sep 1990	22 Apr 1994
Jordan	29 Aug 1990	24 May 1991
Kazakhstan	16 Feb 1994	12 Aug 1994
Kenya	26 Jan 1990	30 Jul 1990
Kiribati	.	11 Dec 1995 a
Kuwait	7 Jun 1990	21 Oct 1991
Kyrgyzstan	.	7 Oct 1994 a
Lao People's Democratic Republic	.	8 May 1991 a
Latvia	.	14 Apr 1992 a
Lebanon	26 Jan 1990	14 May 1991
Lesotho	21 Aug 1990	10 Mar 1992
Liberia	26 Apr 1990	4 Jun 1993
Libyan Arab Jamahiriya	.	15 Apr 1993 a
Liechtenstein	30 Sep 1990	22 Dec 1995
Lithuania	.	31 Jan 1992 a
Luxembourg	21 Mar 1990	7 Mar 1994
Madagascar	19 Apr 1990	19 Mar 1991
Malawi	.	2 Jan 1991 a
Malaysia	.	17 Feb 1995 a
Maldives	21 Aug 1990	11 Feb 1991
Mali	26 Jan 1990	20 Sep 1990
Malta	26 Jan 1990	30 Sep 1990
Marshall Islands	14 Apr 1993	4 Oct 1993
Mauritania	26 Jan 1990	16 May 1991
Mauritius	.	26 Jul 1990 a
Mexico	26 Jan 1990	21 Sep 1990
Micronesia (Federated States of)	.	5 May 1993 a
Monaco	.	21 Jun 1993 a
Mongolia	26 Jan 1990	5 Jul 1990
Montenegro ^b	.	23 Oct 2006 d
Morocco	26 Jan 1990	21 Jun 1993
Mozambique	30 Sep 1990	26 Apr 1994
Myanmar	.	15 Jul 1991 a
Namibia	26 Sep 1990	30 Sep 1990
Nauru	.	27 Jul 1994 a
Nepal	26 Jan 1990	14 Sep 1990

Netherlands 8	26 Jan 1990	6 Feb 1995 A
New Zealand 9	1 Oct 1990	6 Apr 1993
Nicaragua	6 Feb 1990	5 Oct 1990
Niger	26 Jan 1990	30 Sep 1990
Nigeria	26 Jan 1990	19 Apr 1991
Niue	.	20 Dec 1995 a
Norway	26 Jan 1990	8 Jan 1991
Oman	.	9 Dec 1996 a
Pakistan	20 Sep 1990	12 Nov 1990
Palau	.	4 Aug 1995 a
Panama	26 Jan 1990	12 Dec 1990
Papua New Guinea	30 Sep 1990	2 Mar 1993
Paraguay	4 Apr 1990	25 Sep 1990
Peru	26 Jan 1990	4 Sep 1990
Philippines	26 Jan 1990	21 Aug 1990
Poland	26 Jan 1990	7 Jun 1991
Portugal 5	26 Jan 1990	21 Sep 1990
Qatar	8 Dec 1992	3 Apr 1995
Republic of Korea	25 Sep 1990	20 Nov 1991
Republic of Moldova	.	26 Jan 1993 a
Romania	26 Jan 1990	28 Sep 1990
Russian Federation	26 Jan 1990	16 Aug 1990
Rwanda	26 Jan 1990	24 Jan 1991
Saint Kitts and Nevis	26 Jan 1990	24 Jul 1990
Saint Lucia	30 Sep 1990	16 Jun 1993
Saint Vincent and the Grenadines	20 Sep 1993	26 Oct 1993
Samoa	30 Sep 1990	29 Nov 1994
San Marino	.	25 Nov 1991 a
Sao Tome and Principe	.	14 May 1991 a
Saudi Arabia	.	26 Jan 1996 a
Senegal	26 Jan 1990	31 Jul 1990
Serbia 3	.	12 Mar 2001 d
Seychelles	.	7 Sep 1990 a
Sierra Leone	13 Feb 1990	18 Jun 1990
Singapore	.	5 Oct 1995 a
Slovakia 6	.	28 May 1993 d

Slovenia 3	.	6 Jul 1992 d
Solomon Islands	.	10 Apr 1995 a
Somalia	9 May 2002	.
South Africa	29 Jan 1993	16 Jun 1995
Spain	26 Jan 1990	6 Dec 1990
Sri Lanka	26 Jan 1990	12 Jul 1991
Sudan	24 Jul 1990	3 Aug 1990
Suriname	26 Jan 1990	1 Mar 1993
Swaziland	22 Aug 1990	7 Sep 1995
Sweden	26 Jan 1990	29 Jun 1990
Switzerland	1 May 1991	24 Feb 1997
Syrian Arab Republic	18 Sep 1990	15 Jul 1993
Tajikistan	.	26 Oct 1993 a
Thailand	.	27 Mar 1992 a
The Former Yugoslav Republic of Macedonia 3 , 10	.	2 Dec 1993 d
Timor-Leste	.	16 Apr 2003 a
Togo	26 Jan 1990	1 Aug 1990
Tonga	.	6 Nov 1995 a
Trinidad and Tobago	30 Sep 1990	5 Dec 1991
Tunisia	26 Feb 1990	30 Jan 1992
Turkey	14 Sep 1990	4 Apr 1995
Turkmenistan	.	20 Sep 1993 a
Tuvalu	.	22 Sep 1995 a
Uganda	17 Aug 1990	17 Aug 1990
Ukraine	21 Feb 1990	28 Aug 1991
United Arab Emirates	.	3 Jan 1997 a
United Kingdom of Great Britain and Northern Ireland 4 , 11	19 Apr 1990	16 Dec 1991
United Republic of Tanzania	1 Jun 1990	10 Jun 1991
United States of America	16 Feb 1995	.
Uruguay	26 Jan 1990	20 Nov 1990
Uzbekistan	.	29 Jun 1994 a
Vanuatu	30 Sep 1990	7 Jul 1993
Venezuela	26 Jan 1990	13 Sep 1990
Viet Nam	26 Jan 1990	28 Feb 1990
Yemen 12	13 Feb 1990	1 May 1991
Zambia	30 Sep	6 Dec 1991

	1990	
Zimbabwe	8 Mar 1990	11 Sep 1990

B. OPSC

Last update: 19 April 2007

Entry into force: 18 January 2002, in accordance with article 14 (1).

Registration: 18 January 2002, No. 27531.

Status: Signatories: 115, Parties: 119.

Doc. A/RES/54/263; C.N.1032.2000.TREATIES-72 of 14 November 2000 [rectification of the the original of the Protocol (Arabic, Chinese, English, French, Russian and Spanish authentic texts)];

Text: C.N.1008.2002.TREATIES-42 of 17 September 2002 (proposal of corrections to the original chinese text) and C.N.1312.2002.TREATIES-49 of 16 December 2002 [rectification of the original of the Protocol (Chinese authentic text)].

Note: The Optional Protocol was adopted by resolution A/RES/54/263 of 25 May 2000 at the fifty-fourth session of the General Assembly of the United Nations. In accordance with its article 13 (1), the Optional Protocol will be open for signature by any State that is a party to the Convention or has signed it.

Participant	Signature	Ratification, Accession (a), Succession (d)
Afghanistan	.	19 Sep 2002 a
Algeria	.	27 Dec 2006 a
Andorra	7 Sep 2000	30 Apr 2001
Angola	.	24 Mar 2005 a
Antigua and Barbuda	18 Dec 2001	30 Apr 2002
Argentina	1 Apr 2002	25 Sep 2003
Armenia	24 Sep 2003	30 Jun 2005
Australia	18 Dec 2001	8 Jan 2007
Austria	6 Sep 2000	6 May 2004
Azerbaijan	8 Sep 2000	3 Jul 2002
Bahrain	.	21 Sep 2004 a
Bangladesh	6 Sep 2000	6 Sep 2000
Belarus	.	23 Jan 2002 a
Belgium 1	6 Sep 2000	17 Mar 2006
Belize	6 Sep 2000	1 Dec 2003
Benin	22 Feb 2001	31 Jan 2005
Bhutan	15 Sep 2005	.
Bolivia	10 Nov 2001	3 Jun 2003
Bosnia and Herzegovina	7 Sep 2000	4 Sep 2002
Botswana	.	24 Sep 2003 a
Brazil	6 Sep 2000	27 Jan 2004
Brunei Darussalam	.	21 Nov 2006 a
Bulgaria	8 Jun 2001	12 Feb 2002
Burkina Faso	16 Nov	31 Mar 2006

	2001	
Cambodia	27 Jun 2000	30 May 2002
Cameroon	5 Oct 2001	.
Canada	10 Nov 2001	14 Sep 2005
Cape Verde	.	10 May 2002 a
Chad	3 May 2002	28 Aug 2002
Chile	28 Jun 2000	6 Feb 2003
China 2	6 Sep 2000	3 Dec 2002
Colombia	6 Sep 2000	11 Nov 2003
Comoros	.	23 Feb 2007 a
Costa Rica	7 Sep 2000	9 Apr 2002
Croatia	8 May 2002	13 May 2002
Cuba	13 Oct 2000	25 Sep 2001
Cyprus	8 Feb 2001	6 Apr 2006
Czech Republic	26 Jan 2005	.
Democratic Republic of the Congo	.	11 Nov 2001 a
Denmark 3	7 Sep 2000	24 Jul 2003
Djibouti	14 Jun 2006	.
Dominica	.	20 Sep 2002 a
Dominican Republic	.	6 Dec 2006 a
Ecuador	6 Sep 2000	30 Jan 2004
Egypt	.	12 Jul 2002 a
El Salvador	13 Sep 2002	17 May 2004
Equatorial Guinea	.	7 Feb 2003 a
Eritrea	.	16 Feb 2005 a
Estonia	24 Sep 2003	3 Aug 2004
Fiji	16 Sep 2005	.
Finland	7 Sep 2000	.
France	6 Sep 2000	5 Feb 2003
Gabon	8 Sep 2000	.
Gambia	21 Dec 2000	.
Georgia	.	28 Jun 2005 a
Germany	6 Sep 2000	.
Ghana	24 Sep 2003	.
Greece	7 Sep 2000	.
Guatemala	7 Sep 2000	9 May 2002
Guinea-Bissau	8 Sep 2000	.
Haiti	15 Aug 2002	.
Holy See	10 Oct 2000	24 Oct 2001
Honduras	.	8 May 2002 a
Hungary	11 Mar 2002	.
Iceland	7 Sep 2000	9 Jul 2001
India	15 Nov 2004	16 Aug 2005
Indonesia	24 Sep 2001	.
Ireland	7 Sep 2000	.

Israel	14 Nov 2001	.
Italy	6 Sep 2000	9 May 2002
Jamaica	8 Sep 2000	.
Japan	10 May 2002	24 Jan 2005
Jordan	6 Sep 2000	4 Dec 2006
Kazakhstan	6 Sep 2000	24 Aug 2001
Kenya	8 Sep 2000	.
Kuwait	.	26 Aug 2004 a
Kyrgyzstan	.	12 Feb 2003 a
Lao People's Democratic Republic	.	20 Sep 2006 a
Latvia	1 Feb 2002	22 Feb 2006
Lebanon	10 Oct 2001	8 Nov 2004
Lesotho	6 Sep 2000	24 Sep 2003
Liberia	22 Sep 2004	.
Libyan Arab Jamahiriya	.	18 Jun 2004 a
Liechtenstein	8 Sep 2000	.
Lithuania	.	5 Aug 2004 a
Luxembourg	8 Sep 2000	.
Madagascar	7 Sep 2000	22 Sep 2004
Malawi	7 Sep 2000	.
Maldives	10 May 2002	10 May 2002
Mali	.	16 May 2002 a
Malta	7 Sep 2000	.
Mauritius	11 Nov 2001	.
Mexico	7 Sep 2000	15 Mar 2002
Micronesia (Federated States of)	8 May 2002	.
Moldova	8 Feb 2002	12 Apr 2007
Monaco	26 Jun 2000	.
Mongolia	12 Nov 2001	27 Jun 2003
Montenegro 4	.	23 Oct 2006 d
Morocco	8 Sep 2000	2 Oct 2001
Mozambique	.	6 Mar 2003 a
Namibia	8 Sep 2000	16 Apr 2002
Nauru	8 Sep 2000	.
Nepal	8 Sep 2000	20 Jan 2006
Netherlands 5	7 Sep 2000	23 Aug 2005
New Zealand 6	7 Sep 2000	.
Nicaragua	.	2 Dec 2004 a
Niger	27 Mar 2002	26 Oct 2004
Nigeria	8 Sep 2000	.
Norway	13 Jun 2000	2 Oct 2001
Oman	.	17 Sep 2004 a
Pakistan	26 Sep 2001	.
Panama	31 Oct 2000	9 Feb 2001
Paraguay	13 Sep 2000	18 Aug 2003
Peru	1 Nov 2000	8 May 2002

Philippines	8 Sep 2000	28 May 2002
Poland	13 Feb 2002	4 Feb 2005
Portugal	6 Sep 2000	16 May 2003
Qatar	.	14 Dec 2001 a
Republic of Korea	6 Sep 2000	24 Sep 2004
Romania	6 Sep 2000	18 Oct 2001
Rwanda	.	14 Mar 2002 a
Saint Vincent and the Grenadines	.	15 Sep 2005 a
San Marino	5 Jun 2000	.
Senegal	8 Sep 2000	5 Nov 2003
Serbia	8 Oct 2001	10 Oct 2002
Seychelles	23 Jan 2001	.
Sierra Leone	8 Sep 2000	17 Sep 2001
Slovakia	30 Nov 2001	25 Jun 2004
Slovenia	8 Sep 2000	23 Sep 2004
South Africa	.	30 Jun 2003 a
Spain	6 Sep 2000	18 Dec 2001
Sri Lanka	8 May 2002	22 Sep 2006
Sudan	.	2 Nov 2004 a
Suriname	10 May 2002	.
Sweden	8 Sep 2000	19 Jan 2007
Switzerland	7 Sep 2000	19 Sep 2006
Syrian Arab Republic	.	15 May 2003 a
Tajikistan	.	5 Aug 2002 a
Thailand	.	11 Jan 2006 a
The Former Yugoslav Republic of Macedonia	17 Jul 2001	17 Oct 2003
Timor-Leste	.	16 Apr 2003 a
Togo	15 Nov 2001	2 Jul 2004
Tunisia	22 Apr 2002	13 Sep 2002
Turkey	8 Sep 2000	19 Aug 2002
Turkmenistan	.	28 Mar 2005 a
Uganda	.	30 Nov 2001 a
Ukraine	7 Sep 2000	3 Jul 2003
United Kingdom of Great Britain and Northern Ireland	7 Sep 2000	.
United Republic of Tanzania	.	24 Apr 2003 a
United States of America	5 Jul 2000	23 Dec 2002
Uruguay	7 Sep 2000	3 Jul 2003
Vanuatu	16 Sep 2005	.
Venezuela (Bolivarian Republic of)	7 Sep 2000	8 May 2002
Viet Nam	8 Sep 2000	20 Dec 2001
Yemen	.	15 Dec 2004 a