

## Some Considerations for Child Rights Impact Assessment (CRIAs) of Business

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Article abstract

With increasing international attention to business and human/child rights, the necessary next step must examine the monitoring of activities in order for the connection between business and child rights to be meaningful. Consequently, the essential question for this paper is whether business should use child rights impact assessments (CRIAs) and if so, what are some considerations in order to move forward? It is argued that the business must develop and carry out CRIAs in order to meet its due diligence obligations, and to identify and respond to potential and actual child rights impacts due to business activities. Business should use CRIAs as part of a broader process of supporting its organizational commitment to human rights. Other actors can also participate in this monitoring endeavour of business activities. This paper identifies some challenges and considerations of CRIAs in relation to business.

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## Some Considerations for Child Rights Impact Assessment (CRIAs) of Business\*

TARA M. COLLINS\*\* AND GABRIELLE GUEVARA\*\*\*

### ABSTRACT

*With increasing international attention to business and human/child rights, the necessary next step must examine the monitoring of activities in order for the connection between business and child rights to be meaningful. Consequently, the essential question for this paper is whether business should use child rights impact assessments (CRIAs) and if so, what are some considerations in order to move forward? It is argued that the business must develop and carry out CRIAs in order to meet its due diligence obligations, and to identify and respond to potential and actual child rights impacts due to business activities. Business should use CRIAs as part of a broader process of supporting its organizational commitment to human rights. Other actors can also participate in this monitoring endeavour of business activities. This paper identifies some challenges and considerations of CRIAs in relation to business.*

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### KEY-WORDS:

*Child rights, child rights impact assessments (CRIAs), monitoring, business.*

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\* Earlier versions of this paper were developed and presented by Tara M Collins, "A Child Rights-Based Approach: A Proposal for a New Business Model" (The Politics of International Diffusion: Regional and Global Dimensions, delivered at the Annual Conference of International Studies Association, San Francisco, CA, 3-6 April 2013) [Collins, "A Child Rights-Based Approach"]; and "Children's Rights and Business" (Bringing Children in from the Margins: Symposium on Child Rights Impact Assessments, delivered at the University of Ottawa, 15 May 2013) online: UNICEF <[http://www.unicef.ca/sites/default/files/imce\\_uploads/BLOG/collins\\_crias\\_and\\_business\\_revised\\_june\\_2013.pdf](http://www.unicef.ca/sites/default/files/imce_uploads/BLOG/collins_crias_and_business_revised_june_2013.pdf)> (Note that all online references were accessed 21 July 2014). In addition to the study participants, the authors warmly thank the peer reviewers for the valuable comments to support the development of the paper. Your generous contributions of time, knowledge and expertise are much appreciated.

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## RÉSUMÉ

*Le monde des affaires ainsi que celui des droits de la personne et de l'enfant attirent de plus en plus l'attention à l'échelle internationale. Il s'agit maintenant d'examiner les activités de surveillance afin de s'assurer que le lien entre les affaires et les droits de l'enfant ait un sens. Ainsi, la question essentielle qui sera abordée dans le présent article est de savoir si les entreprises devraient utiliser les évaluations de l'impact sur les droits de l'enfant (CRIA). Dans l'affirmative, que faut-il prendre en compte pour aller de l'avant? Nous sommes d'avis que les entreprises doivent non seulement élaborer et mettre en place des évaluations de l'impact sur les droits de l'enfant afin de respecter leurs obligations en matière de diligence raisonnable, mais elles doivent aussi répertorier et répondre aux impacts potentiels et réels de leurs activités commerciales sur les droits de l'enfant. Les entreprises devraient utiliser les évaluations de l'impact sur les droits de l'enfant dans le cadre d'un processus plus large de soutien de leur engagement organisationnel envers la protection des droits de la personne. D'autres groupes peuvent aussi participer à l'effort de surveillance des activités commerciales. Le présent article recense quelques défis et considérations inhérents aux évaluations de l'impact sur les droits de l'enfant en ce qui a trait aux entreprises.*

### MOTS-CLÉS :

*Droit de l'enfant, évaluations de l'impact sur les droits de l'enfant, contrôle, affaires.*

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## INTRODUCTION

The diffusion of international human rights law is now understood to extend beyond the traditional legal and political constituencies: states.<sup>1</sup> The human rights roles of other actors are recognized including non-governmental and international organizations<sup>2</sup> due to their influence at international and national levels. More recently, there is a growing understanding of the connection between human rights and business in international affairs. Hence, the international community has considered the implications of human rights for business in the authoritative UN Guiding Principles on Human Rights and Business, operationalizing the UN “Protect, Respect and Remedy” Framework.<sup>3</sup> The UN Human Rights Council has established the thematic mechanism of a working group on transnational corporations, which supports implementation of these Guiding Principles.<sup>4</sup>

Nevertheless, a significant lacuna of academic analysis complicates advancement of the relationship between business and child rights.<sup>5</sup> While some business actors are beginning to explore the role of child rights within their practices (as identified below), the significance of this connection is generally not yet contemplated. In particular, monitoring assesses the effects of business activities upon child rights

1. For example, article 1 of the Convention on the law of treaties refers to treaties between states; see further United Nations, *Vienna Convention on the Law of Treaties*, 23 May 1969, 1155 UNTS 331, UN Doc A/CONF. 39/26 (entered into force 27 January 1980).

2. See for example, United Nations, *Vienna Declaration and Programme of Action on Human Rights*, 1993, UN Doc A/CONF.157/24 at paras 36-39 respectively.

3. United Nations, *Report of the Special Representative of the UN Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie*, UNGAHRCOR, 17th Sess, UN Doc A/HRC/17/31 (2011) at 4 [UN, *John Ruggie*].

4. UNOHCHR, *Thematic Mandates: Working Group on the issue of human rights and transnational corporations and other business enterprises* (2014), online: OHCHR <<http://www.ohchr.org/EN/Issues/Business/Pages/WGHRandtransnationalcorporationsandotherbusiness.aspx>>.

5. Tara M Collins, “The Relationship Between Children’s Rights and Business” (2014) 18:6 *Int’l JHR* 1 <<http://dx.doi.org/10.1080/13642987.2014.944805>> [Collins (2014)].

in practice and buttresses this relationship in practice. Yet generally, neither the literature, nor practitioners consider monitoring adequately. Monitoring and child rights impact assessments (CRIAs) tend to be related to the concerns of governments and national human rights institutions.<sup>6</sup> Consequently, this paper explores the connection between business and CRIAs in order to examine whether business should use CRIAs and if so, what some considerations are in order to move forward. It is argued that CRIAs are pertinent and necessary for businesses in order to meet their due diligence obligations and to take into account and respond appropriately to potential and actual effects upon child rights from business activities. Business should use CRIAs as part of a broader process of supporting its organizational commitment to human rights. In addition, other actors including academics and non-governmental organizations (NGOs) can and should conduct such assessments to support the relationship of business and child rights.

This paper relies upon a broad definition of “business” to consider all entities in general terms “regardless of size, sector, location, ownership and structure”<sup>7</sup> that provide services or manufacturing products. This paper does not focus on any particular business sector (such as retailing or mining) in order to pursue a general approach to business activity. It is noted that this paper refers to child rights, generally outlined by the key international instrument, the *Convention on the Rights of the Child* (CRC).<sup>8</sup> As many conceptual and practical challenges continue to surround CRIAs, and due to lack of analysis in relation to business to date, this paper draws on the experiences of others including government or national human rights institutions in order to make an informed analysis since the fundamental nature and objectives of the CRIA are consistent across different actors.

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6. See further Bringing Children in from the Margins: Symposium on Child Rights Impact Assessments, *Child Rights Impact Assessment: A Tool to Focus on Children. Final Report* (University of Ottawa, 14-15 May 2013) online: UNICEF <[http://www.unicef.ca/sites/default/files/imce\\_uploads/report\\_from\\_cria\\_symposium\\_may2013\\_canada.pdf](http://www.unicef.ca/sites/default/files/imce_uploads/report_from_cria_symposium_may2013_canada.pdf)> [Symposium].

7. United Nations, *General comment No 16 (2013) on State obligations regarding the impact of the business sector on children's rights*, UNCRCOR, 62th Sess, UN Doc CRC/C/GC/16 (2013), online: OHCHR <<http://www2.ohchr.org/english/bodies/crc/docs/CRC.C.GC.16.pdf>> at 3, para 3 [UN, *General comment No 16*].

8. United Nations, *Convention on the Rights of the Child*, UNGAOR, 20 November 1989, 44th Sess, Supp No 49, UN Doc A/RES/44/25 (entered into force 2 September 1990).

The result of a broader research initiative on business and children's rights, this paper specifically focuses on the role and considerations of CRIAs and complements other analysis about the relationship between business and child rights.<sup>9</sup> In addition to a review of pertinent literature, research included over twenty qualitative research interviews with representatives from international organizations, non-governmental organizations, business and academics based in five continents. These individuals are identified only by professional categorization and country of residence where applicable in order to protect their privacy. Five qualitative focus groups were conducted with a diverse range of young people under 18 years of age, to respect the CRC's definition of a child,<sup>10</sup> in Toronto and Ottawa, Canada. The first co-author facilitated these focus groups with the support of interested child and youth-focused organizations to respect child rights, including the CRC right to participate (article 12), and involve young people in the analysis. Children are identified by their age at the time of the consultation and their own chosen pseudonym (involving one or two names) to protect their identity. Interviewees and focus group participants considered questions about business and child rights in a process approved by Ryerson University's Research Ethics Board.<sup>11</sup> As a new area of inquiry, limited knowledge about business and child rights posed a general challenge during study recruitment. Nevertheless, participant contributions to the general research process relating to CRIAs, monitoring and business accountability informed this paper's argumentation and are included throughout as appropriate.

This paper first describes the connection between child rights and business. CRIAs are then introduced before discussing the role and considerations of CRIA use by business. Various frameworks to support effective CRIAs and then the roles of other actors are discussed. The paper then turns to some issues of CRIAs in relation to business, identifying general challenges, procedural and structural considerations before concluding.

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9. See Collins (2014), *supra* note 5.

10. The CRC outlines in article 1 that "a child means every human being below the age of eighteen years unless under the law applicable to the child, majority is attained earlier."

11. Ryerson University Research Ethics Board, "Approval of REB 2013-074: The Business Case for a Child Rights-Based Approach" (17 March 2013), letter on file with first co-author.

## I. CONNECTION BETWEEN CHILD RIGHTS AND BUSINESS

Children and their human rights are connected to business at local, national and international levels and there is growing recognition of this relationship in international affairs.<sup>12</sup> There have been many international contributions recently to elaborate the role of business. The aforementioned Guiding Principles on Business and Human Rights specifically identify the role of impact assessments as a means to identify actual or negative effects upon human rights from their actions or their business relationships.<sup>13</sup> The Guiding Principles identify children as a vulnerable group but as a general human rights document; they rarely consider the specific issues related to children.<sup>14</sup> Hence, the Children's Rights and Business Principles (CRBPs), released in March 2012 by UNICEF, Save the Children and the Global Compact,<sup>15</sup> offer valuable international elaboration about the underappreciated connection, which is often assumed to implicate child labour only.<sup>16</sup>

In addition to outlining that children's safety should be supported in the business and in its products and services, the CRBPs advance respectful marketing, environmental practices, land use, security arrangements and emergency responses, and support the child rights efforts of community and government. These Principles identify the importance of CRIsAs and monitoring to advance child rights.<sup>17</sup> However, challenges remain to effectively implement these Principles. For instance, it remains to be seen how effective these goals will be given the general lack of awareness among business leadership about child rights.<sup>18</sup> Moreover, the voluntary Principles lack practical details

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12. See further Collins (2014), *supra* note 5.

13. UN, *John Ruggie*, *supra* note 3 at 17.

14. Children are specifically identified twice in the Guiding Principles (#3, and 12), *ibid* at 8, 14. Principles 18, 20, 26, and 27 also require businesses to consider those who may "heightened risk of vulnerability or marginalization", which are understood to be relevant to children.

15. UNICEF, Save the Children & The Global Compact, *Children's Rights and Business Principles* (2014), online: Unglobalcompact <[http://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/CRBP/Childrens\\_Rights\\_and\\_Business\\_Principles.pdf](http://www.unglobalcompact.org/docs/issues_doc/human_rights/CRBP/Childrens_Rights_and_Business_Principles.pdf)> [UNICEF, Save the Children & The Global Compact (2014)].

16. See further Collins (2014), *supra* note 5.

17. These activities are discussed further below.

18. Boston Consulting Group, *Global CEO Study on Children's Rights and Business*, Commissioned by World Child and Youth Forum (Stockholm: BCG, 2013), online: CCRCSR <[http://www.ccrsr.com/sites/default/files/BCG\\_Presentation%20at%20WCYF\\_GlobalCEOstudy2013\\_22mar13\\_1045.pdf](http://www.ccrsr.com/sites/default/files/BCG_Presentation%20at%20WCYF_GlobalCEOstudy2013_22mar13_1045.pdf)> at 6 [Boston Consulting Group, *Global CEO Study*].

about implementation and monitoring to hold businesses accountable. Hence, they depend upon business motivation to adopt children's rights as operating principles. But there have been important efforts to redress these challenges. For example, UNICEF, Global Compact, and Save the Children have produced an important report describing the results of global consultations with young people about the impact of business upon them.<sup>19</sup> This report illustrates the significance of business upon children and their human rights. These contributions informed the development of the CRBPs.<sup>20</sup> Some organizations are attempting to develop complementary guidebooks and tools<sup>21</sup> to advance and support the CRBPs in practice.

The UN Committee on the Rights of the Child has also been active on the role of business. The Committee adopted in 2013 a General Comment on business and child rights<sup>22</sup> that focuses on the necessary but under-examined role of the State in advancing the business relationship with children's rights.

Despite this flurry of recent activity, the academic community has not yet provided adequate perspectives on these issues and actors.

As the international community now recognizes, children and their human rights are affected by business in a multitude of positive and negative ways. For instance, there are issues related to children who work including, but not limited to those whose work reflects harmful exploitation and their access to education, rest and play as well as access to family. But as noted earlier, issues go beyond working children. The supply chain for business for instance, may affect children. Also relevant is whether business has maternity provisions for employees

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19. UNICEF, Global Compact & Save the Children, *How Business Affects Us: Children and young people share their perspectives on how business impacts their lives and communities* (June-August 2011), online: Unglobalcompact <[http://www.unglobalcompact.org/docs/issues\\_doc/human\\_rights/CRBP/How\\_Business\\_Affects\\_Us.pdf](http://www.unglobalcompact.org/docs/issues_doc/human_rights/CRBP/How_Business_Affects_Us.pdf)> at 8 [UNICEF, *How Business Affects Us*].

20. UNICEF, Save the Children & The Global Compact (2014), *supra* note 15 at 6.

21. UNICEF, *Children Are Everyone's Business: A practical workbook to help companies understand and address their impact on children's rights – Pilot workbook* (2012), online: UNICEF <[http://www.unicef.org/csr/css/CSR\\_Workbook\\_A4\\_LR\\_low\\_res.pdf](http://www.unicef.org/csr/css/CSR_Workbook_A4_LR_low_res.pdf)> [UNICEF, *Children Are Everyone's Business*]; Elizabeth Umlas, *CSR Working Paper: Sustainability reporting on children's rights*, online: UNICEF <[http://www.unicef.org/csr/css/UNICEF\\_WORKING\\_PAPER\\_with\\_publication\\_date\\_191212.pdf](http://www.unicef.org/csr/css/UNICEF_WORKING_PAPER_with_publication_date_191212.pdf)>; UNICEF & Child and Youth Finance International, *Beyond the Promotional Piggybank: Towards Children as Stakeholders, A Discussion Paper on Developing Child-Friendly Financial Products and Services*, online: UNICEF <[http://www.unicef.org/csr/css/UNICEF-CYFI\\_Beyond\\_the\\_Promotional\\_Piggy\\_Bank\\_FINAL.pdf](http://www.unicef.org/csr/css/UNICEF-CYFI_Beyond_the_Promotional_Piggy_Bank_FINAL.pdf)>.

22. UN, *General comment No 16*, *supra* note 7.



and advances breastfeeding and nutritional support in the community where it operates. Product safety and environmental practices can also affect children. However, human rights, especially child rights, are not yet considered a general concern of business.<sup>23</sup> According to an Egyptian community development official: "Business mostly denies the impact on children. They are afraid that they don't have any solutions and don't admit that there is a problem or a link."<sup>24</sup>

Child rights can influence numerous business activities because such processes as product or service design, product manufacturing and service provision as well as marketing can potentially affect child rights. For example, does the business rely upon harmful stereotypes in their international advertising that impact the child right to non-discrimination?<sup>25</sup> Consequently, elaboration of how the human rights framework, including child rights, can be practically applied is advanced through CRIAs.

## II. CRIAs

Due diligence measures should include human rights impact assessments (HRIAs), which are linked to, but distinct from a CRIA. In general, this undertaking allows assessment of the actual and potential impacts of business in relation to rights. Following the initial assessment, there should be an integration of findings into business core structure and operations. Then, businesses are encouraged to track their performance and communicate these results to stakeholders.<sup>26</sup> HRIAs are pertinent to business because businesses can identify how their operations and decisions impact the rights of others, both through infringement and enhancement, and take action. The HRIA aims to identify "rights that are not respected, or indications that they might not be respected in the future, so that satisfactory solutions can be found."<sup>27</sup>

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23. Boston Consulting Group, *Global CEO Study*, *supra* note 18 at 3.

24. Egyptian community development official, interview with first co-author (March 2013).

25. Collins (2014), *supra* note 5.

26. Faris Natour & Jessica Davis Pluess, *Conducting an Effective Human Rights Impact Assessment: Guidelines, Steps, and Examples* (BSR, 2013), online: BSR <[http://www.bsr.org/reports/BSR\\_Human\\_Rights\\_Impact\\_Assessments.pdf](http://www.bsr.org/reports/BSR_Human_Rights_Impact_Assessments.pdf)> at 5.

27. Rights & Democracy, *Introducing ... Human Rights Impact Assessments*, online: HRIA.Equalitie <<http://hria.equalitie.ie/pdf/en/index/Getting%20Started.pdf>> at 1.

While some businesses may attempt to respect human rights, implementing due diligence provisions has proven to be difficult particularly because the HRIA is a relatively new tool with several versions available, which makes it difficult for businesses and relevant stakeholders to critique its effectiveness.<sup>28</sup> Additionally, the specific HRIA that focuses on children, the CRIA, is less used and developed than the traditional HRIA at the detriment of the rights of children.<sup>29</sup> Moreover, the HRIA has limited value in terms of informing CRIA development and use since human rights have generally inadequately served children, inspiring the development of international child rights law to reflect the unique contexts and issues that children experience.<sup>30</sup>

The need for a business to analyze its impacts on children specifically in the context of human rights is necessary for many reasons. An assessment of impacts upon children is necessary "due to their rapid physical and psychological development, direct or indirect corporate impacts on children that may lead to deprivations ... can have irreversible effects."<sup>31</sup> For this reason, children are more vulnerable to these impacts than adults in terms of their long-term physical and mental well-being. For instance, children's employment renders them susceptible to exploitation and abuse due to challenges with speaking up against abuse or knowing their rights.<sup>32</sup> In the context of marketing and advertising, children are more susceptible to manipulation, and certain advertising may promote unsafe behaviour.<sup>33</sup> Consequently, specific attention is necessary to child rights, rather than simply human rights, in relation to business. These impacts may not only infringe the rights of children as rights-holders, but also illustrate neglect for children as stakeholders in business.<sup>34</sup>

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28. Brigitte Hamm & Christian Scheper, *Human Rights Impact Assessments for Implementing Corporate Responsibility. Conceptual Challenges and Practical Approaches*, INEF Research Paper Series on Human Rights, Corporate Responsibility and Sustainable Development 10/2012 (Duisburg: Institute for Development and Peace, University of Duisburg-Essen, 2012), online: Humanrights-business <[http://www.humanrights-business.org/files/hria\\_english\\_final\\_1.pdf](http://www.humanrights-business.org/files/hria_english_final_1.pdf)> at 7.

29. *Ibid* at 8.

30. See further Geraldine Van Bueren, *The International Law of the Rights of the Child* (Dordrecht: Martinus Nijhoff Publishers, 1998).

31. Umlas, *supra* note 21 at 13.

32. *Ibid* at 25.

33. *Ibid* at 37.

34. UNICEF & Danish Institute for Human Rights, *Children's Rights in Impact Assessments: A guide for integrating children's rights into impact assessments and taking action for children* (Geneva and Copenhagen: United Nations Children's Fund (UNICEF), 2013), online: UNICEF <[http://www.unicef.org/csr/css/Children\\_s\\_Rights\\_in\\_Impact\\_Assessments\\_Web\\_161213.pdf](http://www.unicef.org/csr/css/Children_s_Rights_in_Impact_Assessments_Web_161213.pdf)> at 6.

Nevertheless, this paper makes references to HRIAs as appropriate in order to inform discussion about CRIAs due to the longer history of implementation and analysis. It is noted that the CRIA is unique in its focus on children, taking into account issues that may have been overlooked in a regular HRIA, such as the best interest of the child and the right to expression. Even so, both models share the same fundamental objective as a mechanism used to assess and advance human rights.

A CRIA is a non-legal instrument that embodies child rights as enunciated in such international human rights instruments as the CRC and *Convention on the Rights of Persons with Disabilities*.<sup>35</sup> This tool is typically described as providing the means for “a systematic analysis of potential or realized outcomes of a public policy, a program or project proposal, and other types of decisions.”<sup>36</sup> CRIAs are undertaken before any new policy or program comes into effect as part of the planning process in order to identify any potential significance for child rights.<sup>37</sup> Such exercises are useful to understand the status of rights as part of the on-going monitoring process where the aim is “to improve implementation of children’s rights and the well-being of children.”<sup>38</sup>

CRIAs are important, as Sylwander highlights, and are not simply undertaken for form, compensating for the little political power that children have, directly or indirectly, in society.<sup>39</sup> Consistent with a child rights approach, Swedish experience demonstrates that these assessments require long-term development with appropriate systems and support; the task cannot be the responsibility of one individual within a department or organisation.<sup>40</sup>

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35. The Convention has a specific provision in relation with children and another on monitoring; *Convention on the Rights of Persons with Disabilities*, 13 December 2006, [2008] UNTSer 123, UNGAOR, UN Doc # A/RES/61/106 (entered into force 3 May 2008) [CRPD].

36. UNICEF-Canada, *Child Rights Impact Assessment: Discussion Paper, Prepared to support participant dialogue in Bringing Children in from the Margins: Symposium on Child Rights Impact Assessments* (University of Ottawa, 14-15 May 2013), online: UNICEF <[http://www.unicef.ca/sites/default/files/imce\\_uploads/TAKE%20ACTION/ADVOCATE/DOCS/child\\_rights\\_impact\\_assessment\\_discussion\\_paper.pdf](http://www.unicef.ca/sites/default/files/imce_uploads/TAKE%20ACTION/ADVOCATE/DOCS/child_rights_impact_assessment_discussion_paper.pdf)> at 1.

37. Louise Sylwander, *Child Impact Assessments: Swedish Experience of Child Impact Analyses as a Tool for Implementing the UN Convention on the Rights of the Child* (Stockholm: Ministry of Health and Social Affairs & Ministry for Foreign Affairs, Sweden, 2001) at 20 [emphasis in original].

38. Symposium, *supra* note 6 at 2.

39. Thomas Hammarberg, “Preface” in Sylwander, *supra* note 37, 5 at 7.

40. Sylwander, *supra* note 37 at 22.

Governments and such independent human rights institutions as child advocates are the traditional users of this tool.<sup>41</sup> They utilize CRIAs in order to anticipate the impact of proposed laws, policies, budgetary allocations or administrative practices on children and young people.<sup>42</sup> But as this paper explores, CRIAs have significance beyond the State for such influential actors as business.

CRIAs should be undertaken regularly in order to determine the rights impact of new or different business practices or processes whether direct or indirect, negative and/or positive, for children within or affected by the business.<sup>43</sup> However, the gap of knowledge about CRIAs in relation to business is a major obstacle.

CRIAs will support the identification of the multitude of ways business operations affect or may influence child rights positively and negatively. Examples of business impact include: complicity in harmful exploitation; operating in a way that affects children's access to education, rest, and play or that inhibits parental support of their children; as well as through product safety and environmental practices.<sup>44</sup> Due to the wide scope of influence of businesses, CRIAs are a necessary tool to monitor their relationship with child rights.<sup>45</sup> Indeed, this analysis is necessary as Thanya, a sixteen year-old girl noted, because businesses are: "just more goal-driven, and they don't see what they're doing; they just see what they want."<sup>46</sup> CRIAs help businesses understand the effects and significance

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41. Sweden has pioneering experience as Sylwander explains: Sylwander, *ibid*. The United Kingdom and Flanders, Belgium have led on national CRIA efforts. See Children's Legal Centre & National Children's Bureau, *Child Impact Statement* (2006), online: NCB <[http://www.ncb.org.uk/media/179931/tribunals\\_enforcement\\_bill\\_lords200611.pdf](http://www.ncb.org.uk/media/179931/tribunals_enforcement_bill_lords200611.pdf)> and Lisa Payne, *CRIA: The NGO Perspective* (2013), online: UNICEF <[http://www.unicef.ca/sites/default/files/imce\\_uploads/BLOG/1.\\_payne\\_lisa\\_unicefukingdom.pdf](http://www.unicef.ca/sites/default/files/imce_uploads/BLOG/1._payne_lisa_unicefukingdom.pdf)>; and Ellen Desmet, *The Child and Youth Impact Report (JoKER) in Flanders* (2013), online: UNICEF <[http://www.unicef.ca/sites/default/files/imce\\_uploads/BLOG/3.\\_desmet\\_dr.ellen\\_ghentuniversity\\_universityofantwerp.pdf](http://www.unicef.ca/sites/default/files/imce_uploads/BLOG/3._desmet_dr.ellen_ghentuniversity_universityofantwerp.pdf)>, both presented at Symposium, *supra* note 6. The Canadian province of New Brunswick recently introduced a CRIA tool to better inform decision-making as a government: Hubert Cormier, "Child Rights Impact Assessment (CRIA) in New Brunswick – A New Experience", *ibid*, online: UNICEF <[http://www.unicef.ca/sites/default/files/imce\\_uploads/BLOG/1.\\_cormier\\_hubert\\_provinceofnewbrunswick.pdf](http://www.unicef.ca/sites/default/files/imce_uploads/BLOG/1._cormier_hubert_provinceofnewbrunswick.pdf)>, slide 3.

42. Payne, *supra* note 41.

43. UNICEF, *Children's Rights in Impact Assessment for Companies* (nd), online: UNICEF <<http://www.unicef.org/csr/156.htm>>.

44. Tara M Collins, "Business and Children's Rights: The Role of Children's Rights Impact Assessments (CRIAs)", Symposium, *supra* note 6, online: UNICEF <[http://www.unicef.ca/sites/default/files/imce\\_uploads/BLOG/collins\\_crias\\_and\\_business\\_revised\\_june\\_2013.pdf](http://www.unicef.ca/sites/default/files/imce_uploads/BLOG/collins_crias_and_business_revised_june_2013.pdf)>.

45. *Ibid*.

46. Tara M Collins, Focus group on Business and Child Rights (Toronto: 27 August 2013).

of their activities upon others not only as a form of risk management, which involve legal and business related-risks, but also to respect human rights as Ruggie's Guiding Principles outline. Consequently, CRIAs reflect good business practice and appropriate attention to business risks specifically in relation to how they affect young people. Use of CRIAs can also support the corporate social responsibility (CSR) agenda with the focus on corporate citizenship in society as well as advancement and protection of the rights of children.

Accordingly, various tools exist to elaborate the significance of human rights and business. For instance, the Danish Institute for Human Rights has developed a national guide for businesses interested in, or involved in other countries.<sup>47</sup> It encourages companies to consider the impact of their choices and activities upon human rights, thereby raising awareness and reinforcing the important connection between business and human as well as child rights. The UNICEF "Children Are Everyone's Business" workbook is a useful example, which supports business efforts to advance child rights.<sup>48</sup> It identifies a range of relevant considerations for CRIAs including child rights in the workplace, safe products and services, responsible marketing and advertising, sustainable and child-friendly business operations, helping children affected by emergencies, and supporting government and community efforts. This publication identifies various business measures to mitigate adverse effects, create positive outcomes for children, and mentions which contexts and industries are most at risk.<sup>49</sup> Such guidance is helpful in order to appreciate how business decisions affect children and their human rights. UNICEF and the Danish Institute for Human Rights released a CRIA tool in December 2013 with 58 criteria for assessment of company policies and practices.<sup>50</sup> Such a useful tool makes a valuable contribution to understanding and use of CRIAs of business activities. Such efforts are needed as the business and other sectors noted the gap of knowledge and understanding among actors in order to respect and implement human rights to business practices at a recent national conference.<sup>51</sup>

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47. Danish Institute for Human Rights, *Human Rights and Business Country Guide* (2014), online: BGHR <<http://www.bghr.org/>>.

48. UNICEF, *Children are Everyone's Business*, *supra* note 21 at 114-15.

49. *Ibid.*

50. UNICEF & Danish Institute for Human Rights, *supra* note 34.

51. Numerous participants at a Ryerson University conference on 8 May 2014 identified this as a significant issue; see further, online: Ryerson University <<http://www.ryerson.ca/csrinstitute/business-humanrights/>>.

Thus, CRIAs are significant since they allow the business sector to collect, analyse and report its potential and actual impacts upon child rights. They support due diligence of business in its activities and decision-making.

### III. VARIOUS FRAMEWORKS TO SUPPORT DEVELOPMENT OF EFFECTIVE CRIAs

In addition to the role of monitoring, several frameworks exist to support the development and utilization of CRIAs by business including the theory of change,<sup>52</sup> the Ruggie Guiding Principles, two international documents on business and child rights, Crane and Kazmi's seven core responsibilities,<sup>53</sup> and a child rights-based approach.

#### A. Monitoring

Monitoring should take place on a consistent basis to determine the situation of child rights in relation to a particular context, population or jurisdiction.<sup>54</sup> This activity involves a wide range of actors including states, international organizations, non-governmental organizations (NGOs), and the private sector.<sup>55</sup> Monitoring is necessary to ascertain the relationship between child rights and business activities and an important step towards child rights progress. For instance, monitoring efforts of suppliers, typically understood to reflect CSR, can also reflect child rights in the process and results. In essence, both CRIAs and monitoring aim to determine the contributions to, as well as adverse effects of business upon child rights. Both activities reflect the responsibility of involved actors to child rights, and the desire for the best outcome for children. Negative publicity may also provide strong motivation for businesses to focus on child rights and avoiding scandals in the future.<sup>56</sup> One business representative noted for example,

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52. Stuart Rieky, "Learning from Gender Equality – Assessing Impact", Symposium, *supra* note 6, online: UNICEF <[http://www.unicef.ca/sites/default/files/imce\\_uploads/BLOG/2.\\_stuart\\_rieky\\_genderatwork.pdf](http://www.unicef.ca/sites/default/files/imce_uploads/BLOG/2._stuart_rieky_genderatwork.pdf)>, slide 2.

53. Andrew Crane & Bahar Ali Kazmi, "Business and Children: Mapping Impacts, Managing Responsibilities" (2010) 91:4 J Bus Ethics 567.

54. See further Tara M Collins, *The Monitoring of the Rights of the Child: A Child Rights-Based Approach* (PhD dissertation (Law), Queen Mary & Westfield College, University of London, UK, 2007) [unpublished] [Collins, PhD dissertation].

55. *Ibid.*

56. See further Collins (2014), *supra* note 5.

that if business does not follow a prevention approach, it may discover its engagement of exploitative and dangerous child labour down the supply chain.<sup>57</sup> For example, the global brand, Nike experienced an enormous public relations disaster from negative global media coverage when the company and the world learned about the existence of child labour in its production of shoes in the mid-1990s.<sup>58</sup> Thus, monitoring experiences of various actors can support the creation and utilisation of CRIAs. It is noted however, in light of lessons learned about CRIA use to date,<sup>59</sup> that greater understanding and utilization of CRIAs are needed.

## B. Theory of Change

While the CRC supports the collection of information that may be overlooked, it also demands a fundamental shift in views and understandings of children from objects or victims to subjects and participants in society. This shift is one of the most important considerations by businesses, since the lens in which institutions view child rights and CRIAs determine how effective efforts will be. Stuart Rieky identifies the framework of the “theory of change” to include:

[W]hat should change as well as how you believe the change will occur.

Define the relationships that will be important to make the change happen.

A well-articulated theory of change is a powerful organizing and management tool.

Use comparative data to establish where change is happening and to encourage emulation.<sup>60</sup>

The theory of change illustrates the need for the personal perspectives of individuals in business to change in order for larger institutions to act accordingly. Businesses can use this theory, along with other

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57. Multinational corporation representative (Asia), interview with first co-author (29 July 2013).

58. Max Nisen, “How Nike Solved its Sweatshop Problem”, *Business Insider* (9 May 2013) online: Business Insider <<http://www.businessinsider.com/how-nike-solved-its-sweatshop-problem-2013-5>>.

59. See further for example, UNICEF, *How Business Affects Us*, *supra* note 19.

60. Rieky, *supra* note 52, slide 8.

tools, to facilitate the necessary paradigm shift within the business organization and its actors in order to understand children as assets rather than simply dependents. Then, the value and role of CRIAs and their effective utilization can be advanced and realized.

### C. Ruggie Guiding Principles

The Ruggie Guiding Principles on Business and Human Rights are useful in clarifying the role of governments and businesses with respect to human rights. While the State has a duty to protect, businesses have the responsibility to respect human rights including through the use of due diligence measures including impact assessments.

It is necessary to distinguish between business due diligence and human rights due diligence. The older concept of business due diligence refers to the actions a business takes to prevent the occurrence of any legal negligence. Human rights due diligence, as Ruggie defines, involves: "the steps a company must take to become aware of, prevent and address adverse human rights impacts."<sup>61</sup> The business due diligence obligation can be carried out in four ways: "(1) a corporate policy statement on human rights; (2) a human rights risk assessment; (3) integration of policies and assessment protocols into corporate governance systems; and (4) ongoing tracking and reporting of performance."<sup>62</sup>

These preventative measures go beyond the law, based on UN human rights instruments and guidance. In addition, Graetz and Franks identify that human rights due diligence involves a different and wider audience as well as the use of various frameworks of analysis than corporate due diligence.<sup>63</sup>

Thus, the Guiding Principles offer a valuable framework to inform CRIAs.

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61. Geordan Graetz & Daniel Franks, "Incorporating Human Rights into the Corporate Domain: Due Diligence, Impact Assessment and Integrated Risk Management" (2013) 31:2 *Impact Assessment and Project Appraisal* 97 at 99 and UNGAHRCOR, 8th Sess, Doc UN A/HRC/8/5 (2008), online: HRC <<http://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/128/61/pdf/G0812861.pdf?OpenElement>> at 17, para 56.

62. Graetz & Franks, *supra* note 61 at 100.

63. Further discussion of due diligence is below; *ibid* at 101.



## D. International Documents on Child Rights and Business

CRIAs should be drafted and carried out consistently with the two essential aforementioned international documents related to children's rights and business: the Children's Rights and Business Principles (CRBPs) and the UN Committee's General Comment 16 on business and child rights. These two documents recognize the influence of both business and the State in relation to child rights and business. Thus, CRIAs should not only recognize the complex connections between business and child rights, but be constructed to support the identification of unintended consequences and gaps in reporting, which often reflect a lacuna in practice.<sup>64</sup> For example, the first principle in the CRBPs outlines the business responsibility to respect child rights. As Umlas outlines, measures to fulfill this responsibility include: having a policy commitment, taking due diligence measures and putting in place child-sensitive remediation processes. Yet in practice, similar to governments during self-reporting about rights,<sup>65</sup> companies disclose more on policies and process rather than performance or impact.<sup>66</sup> Relevant reporting gaps include: human trafficking and preventative measures taken, labour violations at the far end of the supply chain, and further disclosures on the treatment of young workers.<sup>67</sup> Such issues should be recognized in CRIAs.

These two documents can influence CRIAs. The CRBPs also recognize the positive contributions of business in relation to children's rights. Hence, CRIA should not only be concerned about negative impacts but should also capture such support child rights where appropriate. The second document, the UN Committee's General Comment, elaborates the state role in regulating and supporting business in relation to the CRC. It provides a valuable framework in terms of how the CRC is relevant to business and how business and the State should collaborate to support child rights. These components should also be reflected in the development and use of a CRIA. Thus, the CRIA should identify the spectrum of impacts and relationships that influence business and child rights to support evidence-based decision-making.

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64. Umlas, *supra* note 21 at 19.

65. See further Tara M Collins, "Canada's Review by the United Nations Committee on the Rights of Children, September 2012", *Commentary*, (2013) 34 *Child and Youth Services* 314.

66. Umlas, *supra* note 21 at 42-43.

67. *Ibid* at 18.

## E. Crane and Kazmi's Seven Core Responsibilities

Crane and Kazmi's identification of seven core responsibilities provides another tool to support the development of effective CRIAs. Although this framework explicitly considers business impact upon children, there is no consideration of child rights. This gap is problematic in how the authors present child-related issues. For example, children are referred to as a reputation risk to firms, an area of opportunity, source of revenue and growth, and a vulnerable stakeholder,<sup>68</sup> rather than human beings with rights that should be respected. Nevertheless, the article highlights the range of impacts that influence and infringe child rights. For example, businesses may sell products that are inherently dangerous such as tobacco,<sup>69</sup> which infringe CRC articles 6 (Survival and development) and 19 (protection from all forms of violence). Without explicitly stating so, these authors appear to support CRIA development by business due to their analysis that highlights the various ways in which businesses can affect children including physical protection, moral protection, social and cultural protection, economic well-being, education and employability, parental employment and family life, and various charitable activities.<sup>70</sup> Their work recognizes the various positive, negative, indirect and direct impacts of businesses upon children. Consequently, these seven responsibilities of business and the various ways in which operations can affect children can be useful as a framework. These responsibilities support the identification of potential or actual impacts upon children and the avoidance of unintended consequences for a CRIA.

## F. Child Rights-Based Approach (CRBA)

Business should also develop and use CRIAs as part of a broader process of supporting its organizational commitment to human rights, and CRIAs would support a child rights-based approach (CRBA) to business activities. Human rights, including child rights, are not simply a legal concern. Human rights provide a framework to interpret evidence, implement findings, and assess business processes based on established and accepted norms with both international and domestic

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68. Crane & Kazmi, *supra* note 53 at 574.

69. *Ibid.*

70. *Ibid.*

dimensions.<sup>71</sup> Robinson views a rights-based approach (RBA) as “describing situations not in terms of human needs, or areas for development, but in terms of the obligation to respond to the rights of individuals ...”<sup>72</sup> Similar argumentation is relevant for a child rights-based approach (CRBA) in order to focus on young people.

While binding in international law, the CRC has inspired much progress beyond the legal sphere for and with those under the age of 18 in relation to civil, political, economic, social and cultural rights. The CRC guides a CRBA to support improved understandings of children, the people and the contexts around them. This approach:<sup>73</sup> aims to implement human rights; provides an analytical tool; facilitates measurement of progress; and advances efforts that can be more effective. While there is no single one RBA, the approach relies on rights to support understanding and analysis of issues and situations or populations.

Accordingly, CRIAs would reflect part of a CRBA to business. For instance: “To ensure a rights-based approach,” as UNICEF and Child and Youth Finance International outline, “it is essential for financial institutions to assess the impact of their products and services” so that a financial product addresses the needs of children and does not place them at risk.<sup>74</sup> CRIA use would rely on child rights to monitor business activities, decisions and results. A CRBA would involve CRIAs to ensure some degree of accountability through record keeping and publication by the business to protect children’s rights.

These various frameworks influence the development of CRIAs and their use in relation to business.

#### IV. ROLES OF OTHER ACTORS

Various actors have roles to play in relation to business and CRIAs. This paper now briefly discusses the roles of the State, NGOs and international organizations, business, and young people.

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71. See Collins, PhD dissertation, *supra* note 54.

72. Mary Robinson, “Foreword” in Marta Santos Pais, *A Human Rights Conceptual Framework for UNICEF* (Florence: UNICEF International Child Development Centre, 1999) iv.

73. Collins, PhD dissertation, *supra* note 54 at 3.

74. UNICEF & Child and Youth Finance International, *supra* note 21 at 13.

## A. States

While there have been some positive efforts by some states and at least one treaty body supporting this direction,<sup>75</sup> states must generally do more to reflect their explicit commitment to child rights and business in accordance with CRC article 4.<sup>76</sup> The UN Committee's General Comment identifies the State's various obligations to regulate and enforce different measures in relation to business. State activities and responses to human rights across different international, national and sub-national levels influence legislative, regulatory, adjudicative, and policy and programming measures. In essence: "What is the government saying about business and children's rights? Sometimes business needs a push."<sup>77</sup> The absence or inadequate state regulation and enforcement in relation to business activities in their jurisdictions have resulted in various problems for children. For example, continued weak infant formula regulation has obvious implications for child rights to adequate standard of living, health and maximum survival and development.<sup>78</sup> In another illustration, the UN Committee recommends that Canada establish and implement its international human rights obligations in relation to business including a clear regulatory framework, monitoring and assessments.<sup>79</sup> The State's role is clear in relation to child rights.

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75. For example, some state activity related to due diligence is confirmed by Guáqueta, a member of the UN Working Group on Business and Human Rights, in Dr Alexandra Guáqueta, "Global Trends in the Implementation of the UN Guiding Principles on Business and Human Rights: Remarks for the First UN Annual Forum on Business and Human Rights" (Geneva: Palais des Nations, 4 December 2012), online: OHCHR <<http://www.ohchr.org/EN/Issues/Business/Pages/StatementsduringForum.aspx>>. See UN, *General comment No 16*, *supra* note 7.

76. CRC article 4 provides:

States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.

77. Legal commentator (Canada), interview with first co-author (25 July 2013).

78. Charlotte Faircloth, "A Weak Formula for Legislation: How Lopholes in the Law Are Putting Babies at Risk" (London, UK: UNICEF, National Childbirth Trust and Save the Children, 2007), online: CRIN <<http://www.crin.org/docs/Weakformula.pdf>>.

79. See further respectively UN, *Consideration of reports submitted by States parties under article 44 of the Convention, Concluding observations: Canada*, UNRCOR, 61st Sess, UN Doc CRC/C/CAN/CO/3-4 (2012) at 6, para 29 [UNRC, *Concluding observations: Canada*].

Due to these issues and others,<sup>80</sup> states must legislate explicitly the requirement of due diligence,<sup>81</sup> in accordance with the Guiding Principles on Human Rights and Business, by the business sector in both national and international activities.<sup>82</sup> This should include the requirement of CRIAs as part of monitoring of various business activities. States should also support research to the development and utilization of CRIA and HRIA tools.

There is a challenge relating to state regulation of business. Greater understanding of the distinction between public and private spheres is needed as it relates to human/child rights and the private sector's activities.<sup>83</sup> In general, complications exist for several reasons. For instance, states continue to avoid clarifying the responsibilities of the parties involved and do not provide remedies or provide only inadequate remedies which are contrary to what is required in the third pillar of the Ruggie framework.<sup>84</sup> Furthermore, the differences between dualistic and monistic legal systems of countries mean that the former countries treat international human rights law as separate from, and less relevant to, the domestic system unless legislation is adopted for the specific international provisions.<sup>85</sup> These issues demand greater attention in light of international human rights commitments and the growing understanding of the state role in relation to business.

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80. Tara M Collins, "The Business of Child Rights", a submission to the UN Committee on the Rights of the Child on its Child Rights and Business General Comment (May 2012), online: OHCHR <<http://www2.ohchr.org/english/bodies/crc/docs/CallSubmissionBusinessSector/LandonPearsonResourceCentre.pdf>> at 7 [Collins, "The Business of Child Rights"].

81. As the Inter-American Court outlines, due diligence is:

172. An illegal act which violates human rights and which is initially not directly imputable to a State (for example, because it is the act of a private person or because the person responsible has not been identified) can lead to international responsibility of the State, not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention.

174. The State has a legal duty to take reasonable steps to prevent human rights violations and to use the means at its disposal to carry out a serious investigation of violations committed within its jurisdiction, to identify those responsible, to impose the appropriate punishment and to ensure the victim adequate compensation.

*Velásquez Rodríguez Case* (1988), Inter-Am Ct HR (Ser C) No 4, online: University of Minnesota <[http://www1.umn.edu/humanrts/iachr/b\\_11\\_12d.htm](http://www1.umn.edu/humanrts/iachr/b_11_12d.htm)> at paras 172-173.

82. UN, *John Ruggie*, *supra* note 3 at 16.

83. Examples include: Andrew Clapham, *Human Rights in the Private Sphere* (Oxford: Clarendon Press, 1996); and Christine Chinkin, "A Critique of the Public/Private Dimension" (1999) 10:2 EJIL 387.

84. Collins, "A Child Rights-Based Approach", *supra* note \* at 9.

85. *Ibid.*

States have an important role in regulating corporate behaviour and activities. Legislation should be adopted to require corporations to have effective disclosure and financial rules.<sup>86</sup> For instance, the United States are more proactive in demanding disclosure including the US Securities Commission, which has enacted a rule in Congress to require any business involved in diamonds production or manufacturing to verify whether they come from conflict zones.<sup>87</sup> Financial rules are another avenue. While Europe and Canada require companies to make financial disclosure, otherwise there are civil sanctions, an interviewed academic outlines that no social disclosure is required.<sup>88</sup> However, if there is evidence of human rights violations in a country due to business activities where it profits from violations, for example in Burma, corporations should be required by law to make social disclosures.<sup>89</sup> Hence, states should require disclosure in order to advance ethical and socially responsible manners.<sup>90</sup> In this way, states can support a respectful relationship between business and human/child rights.

As argued elsewhere,<sup>91</sup> states should avoid piecemeal approaches to legislate and regulate the relationship between business and child/human rights at the national level as they are time-consuming and inefficient.<sup>92</sup> Since the issues involved are similar, new legislation in terms of child or human rights should not focus on one issue or any one industry, such as mining, but should rather affect the whole business sector within a State.<sup>93</sup>

Even where state legislation is in place, it may not be enforced in such countries as Egypt and India.<sup>94</sup> Many reasons exist for this non-implementation: laws may be inappropriate; labour inspectors know

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86. Academic focusing on corporate law, interview with first co-author (26 March 2013).

87. US, Securities and Exchange Commission, 17 CFR PARTS 240 and 249b [Release No 34-67716; File No 57-40-10] RIN 3235-AK84 CONFLICT MINERALS, 13 November 2012, online: [sec.gov <http://www.sec.gov/rules/final/2012/34-67716.pdf>](http://www.sec.gov/rules/final/2012/34-67716.pdf).

88. Academic focusing on corporate law, *supra* note 86.

89. *Ibid.*

90. *Ibid.*

91. Collins, "The Business of Child Rights", *supra* note 80 at 6-7.

92. Penny Collette & students of CML 4107, *A New International Corporate Reality: The Business of Human Rights course* (Faculty of Law, University of Ottawa, 2012).

93. *Ibid.*

94. International development practitioner involved with small business development and working children/child rights, interview with first co-author (March 2013).

that the children who are working have no other options; law enforcement officials can supplement their low rates of pay by taking payments for not enforcing laws.<sup>95</sup> Moreover, there is often a significant power imbalance between multinational companies and countries with weak governance systems. For instance, retired Supreme Court of Canada justice Ian Binnie has identified a gap in the rule of law in those situations in various countries abroad. He explains that where multinationals are conducting business activities abroad, local people may bear the brunt of the costs without receiving the benefits, whether it be extractives, other resources or goods, and often no fora exists for the pursuit of their grievances; hence, he argues that it is a gap in the rule of law that requires rectification.<sup>96</sup> States must redress such gaps and do what they can to enforce human/child rights standards in relation to business activities including the extraterritorial activities of their domicile companies.

States have an important role in advancing a respectful relationship between business and children's rights. Indeed: human rights "... cannot be ensured solely by the operation of legislation if this is not effectively applied and rigorously supervised ..."<sup>97</sup> The Council of Europe affirms: "The most effective strategy for reconciling private business goals and public social purposes remains what it has always been, namely effective government regulation ... CSR should not be regarded as a long-term substitute for the rule of law."<sup>98</sup> Enforcement of laws should also be considered a priority by states in their own jurisdictions as well as supporting such implementation in other countries. Hence, the state role in relation to business must be emphasized.

Nonetheless, there has been much debate about the role of the State in relation to business. Economist Friedman famously argues that the State should not get involved in business and interfere with the business preoccupation of making money for the business and by

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95. *Ibid.*

96. The Honourable Ian Binnie, "Human Rights and Corporate Behaviour" (Lecture organized by the Canadian Centre for Ethics and Corporate Policy, Toronto, 14 May 2013), online: Ethics Centre <[http://ethicscentre.ca/EN/events/past\\_events.cfm/numRec10/currPg1](http://ethicscentre.ca/EN/events/past_events.cfm/numRec10/currPg1)>.

97. Council of Europe, ed, *Complaint No 1/1998: International Commission of Jurists against Portugal*, Human Rights Social Charter Monographs – No 9 (Strasbourg: Council of Europe, 2001) at 159.

98. David Vogel, "The Limits of the Market for Virtue" in Deborah Doane & Alison Holder, *Why Corporate Social Responsibility Is Failing Children* (London, UK: Corporate Responsibility & Save the Children, UK, 2007) at 1.

extension society.<sup>99</sup> Yet, others argue that the State has an important role to maintain societal priorities due to the increasing role, authority and impact of the corporation.<sup>100</sup> Since then, the discourse seems to have evolved to recognize such polarization is not fruitful.<sup>101</sup> Moreover, if the State retreats or has a very limited or non-existent role in society, there are serious implications for children's rights. In certain situations, some companies attempt to fill the societal gaps.<sup>102</sup>

This gap illustrates the role and opportunities of other actors to contribute to the realization of human rights. While states are duty bearers in international human rights law, there is growing understanding of responsible actors including businesses and others that can protect and/or promote rights.<sup>103</sup>

## B. Non-Governmental Organizations (NGOs) and International Organizations

In addition to states, international organizations and NGOs can continue to support assessment of business impacts on child rights including through the understanding and use of CRIAs. Several examples already exist including: UNICEF, Save the Children, and The Global Compact's production of the Children's Rights and Business Principles,<sup>104</sup> and the UN Committee on the Rights of the Child, which is the first UN treaty body to produce a General Comment on children's rights and business. Moreover, this UN Committee supports attention to the role of business through its concluding observations about CRC implementation. For instance, the Committee recommends that Canada establish and implement a clear regulatory framework,

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99. See further for example, Milton Friedman, *Capitalism and Freedom* (Chicago: University of Chicago Press, 1962).

100. For example, see Joel Bakan, *The Corporation: The Pathological Pursuit of Profit and Power* (Toronto: Penguin, 2004); and Joel Bakan, *Childhood Under Siege: How Big Business Targets Children* (New York: Free Press, 2011).

101. For instance, conservative John Snobelen (former Provincial Minister and MPP) defended a critiqued lecture in his editorial: "Responsible capitalism", *Toronto Sun* (23 February 2013) online: *Toronto Sun* <<http://www.torontosun.com/2013/02/22/responsible-capitalism#>>.

102. For example, multinational corporation representative, interview with first co-author (20 March 2013).

103. International development practitioner involved with small business development and working children/child rights, interview with first co-author (March 2013).

104. UNICEF, Save the Children & The Global Compact (2014), *supra* note 15 at 7.



monitoring and assessments as noted earlier, because the absence or inadequate state regulation and enforcement that fail to take into account numerous risks, in relation to various business activities in its jurisdictions, have resulted in various problems for children.<sup>105</sup> Other organizations are influential and support this work. For example, the OECD recognizes that today, companies are more globally integrated, with worldwide supply chains, companies working in countries outside of their customer base, and “aggressive tax positions.”<sup>106</sup> Consequently, the OECD recognizes that “[t]hese developments have opened up opportunities for MNEs to greatly minimise their tax burden”, which harm countries’ tax bases, individual citizens who do not have adequate government supports, and the reputations of businesses.<sup>107</sup> Thus, while it is too early to assess the impact of these efforts, this international activity does much to raise awareness of the relationship between children’s rights and business.

In addition, NGOs have had great influence upon business in various ways, including monitoring, exposing activities, and supporting human/child rights. NGOs, including Christian Aid<sup>108</sup> for example, support consumer awareness and are advancing governance issues in relation to business. Such efforts have an impact on business since research has found, for example, that one in three people in Great Britain chooses to boycott companies that avoid their share of UK tax.<sup>109</sup> Academics Spar and La Mure note that firms manage this NGO pressure in different ways including pre-emption, resistance and capitulation.<sup>110</sup> Consequently, NGOs can be significant in supporting the relationship between business and human/child rights.

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105. UNCRRC, *Concluding observations: Canada*, *supra* note 79.

106. OECD, *Action Plan on Base Erosion and Profit Shifting* 2013, online: OECD Publishing <<http://dx.doi.org/10.1787/9789264202719-en>> at 8.

107. *Ibid.*

108. Christian Aid, *No More Shifty Business: A Response to the OECD’s Base Erosion and Profit Shifting Report on Tax* (February 2013), online: Christian Aid, UK <[http://www.christianaid.org.uk/Images/No-more-shifty-business-response-to-OECD\\_tcm15-68250.pdf](http://www.christianaid.org.uk/Images/No-more-shifty-business-response-to-OECD_tcm15-68250.pdf)>.

109. ComRes survey in Christian Aid, Press Release, “One in three are voting with their wallet following tax revelations” (1 March 2013), online: Christian Aid, London, UK <<http://www.christianaid.org.uk/pressoffice/pressreleases/march-2013/one-in-three-are-voting-with-their-wallet-following-tax-revelations.aspx>>.

110. Debora L Spar & Lane T La Mure, “The Power of Activism: Assessing the Impact of NGOs on Global Business” in Christine Garsten & Tor Hernes, eds, *Ethical Dilemmas in Management* (New York: Routledge, 2009) 79.

### C. Business

Some businesses already have an active role in relation to child rights or support social responsibility generally; however, greater efforts are needed to demonstrate this commitment. Over 290 companies worldwide have now adopted a formal human rights policy as the Business and Human Rights Resource Centre has documented.<sup>111</sup> Other companies should make human rights a business priority in the same way. Nevertheless, in order to ensure progress with this commitment, it is essential that such policies be monitored to ensure their relevance and impact.<sup>112</sup> To this end, the development and use of CRIAs would be most helpful.

Yet, a significant problem is the general lack of awareness and understanding of children and their rights as well as the lack of leadership on these issues.<sup>113</sup> Moreover, despite success with some codes of conduct, including the global *Code of Conduct for the Protection of Children from Sexual Exploitation in Travel and Tourism*,<sup>114</sup> there is much evidence of weak/limited influence of voluntary guidelines.<sup>115</sup> Voluntary codes consistently lack concrete details about implementation and accountability, and reflect weak or negligible enforcement, which questions not only their significance but also the effort involved in developing, promoting and upholding them.<sup>116</sup> Consequently, more businesses need to expand their efforts beyond voluntary codes of conduct to reflect accountability to child rights through the use of CRIAs and other tools. Business must be encouraged to improve their awareness and understanding of child rights, their importance, and how CRIAs should relate to their structures, processes and results.

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111. Business and Human Rights Resource Centre, *Company Policy Statements on Human Rights*, online: Business Human Rights Resource Centre <<http://www.business-humanrights.org/Documents/Policies>> and Business & Human Rights – *A Brief Introduction*, online: Business Human Rights Resource Centre <<http://www.business-humanrights.org/GettingStartedPortal/Intro>>.

112. Collins (2014), *supra* note 5.

113. Legal commentator (Canada), interview with first co-author (Ottawa: 25 July 2013).

114. See further The Code, online: Thecode.org <<http://www.thecode.org/>>; and Avaaz.org, News Release, “Hilton Worldwide Responds to Avaaz Campaign, Joins Fight Against Sex Trafficking” (8 November 2010) online: <[https://secure.avaaz.org/act/media.php?press\\_id=219](https://secure.avaaz.org/act/media.php?press_id=219)>.

115. Doane & Holder, *supra* note 98 at v.

116. For further discussion, see Collins (2014), *supra* note 5.

## D. Young People

Business not only affects young people in positive and negative ways to varying degrees, children also contribute to business.<sup>117</sup>

Children are not only rights holders, but they are also stakeholders in business through their daily interactions as workers, consumers and community members.<sup>118</sup> The impacts of business are clearly revealed for instance, by young people who were consulted during the development of the Business and Children's Rights Principles, when over 400 children from 7 to 17 years of age were engaged in 9 countries (Brazil, Argentina, Philippines, Zambia, Bangladesh, Ethiopia, Senegal, Paraguay and Peru).<sup>119</sup> "Despite this, children have not been adequately considered by business."<sup>120</sup>

Misunderstandings or incorrect assumptions may adversely affect the relationship between young people and business.<sup>121</sup> As evidenced in the results of the research focus groups, young people have much to offer in exploring the relationship with business. Further work is needed to respect their right to express their views in accordance with CRC article 12 and to improve CRIA development and implementation.

Through greater understanding and cooperative efforts with these various actors, much more progress is possible. Then, as a community development worker outlines, business "will be increasingly willing to try to improve the situation. This is better than denying the relationship. If you are giving the business hope and willing to help them, you find that it works."<sup>122</sup>

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117. *Ibid.*

118. UN, *General comment No 16*, *supra* note 7 at 3.

119. Some of the children's contributions about the role of business are included throughout this paper. UN Global Compact, "Development of the Children's Rights and Business Principles" (31 January 2012), online: UN Global Compact <[http://www.unglobalcompact.org/Issues/human\\_rights/childrens\\_principles/development.html](http://www.unglobalcompact.org/Issues/human_rights/childrens_principles/development.html)>.

120. UNICEF & Danish Institute for Human Rights, *supra* note 34 at 6.

121. See Collins (2014), *supra* note 5.

122. Egyptian community development official, interview with first co-author (March 2013).

## V. SOME CONSIDERATIONS OF CRIAs IN RELATION TO BUSINESS

CRIAs should be developed and carried out in relation to business but, in order to do so effectively, analysis of numerous issues is required. As discussed below, there are general challenges but some assets and best practices are already established in relation to procedural and structural considerations for CRIAs.

### A. Challenges in Relation to CRIAs

Use of CRIAs in connection with business is impeded by numerous challenges including: lack of child rights awareness; absence of CRIA knowledge; and lack of resources.

A significant issue is the lack of expertise and understanding about child rights among business actors. For example, while anecdotal, two compliance and auditing officers from different industries who were interviewed indicated no familiarity or discussion in their work about human or child rights.<sup>123</sup> Most businesses that focus on manufacturing products or providing services are unlikely to have human/child rights expertise and generally lack human/child rights knowledge. Although larger businesses are beginning to involve human rights personnel within operations, in-house child rights expertise is less prominent. Business hiring practices focus on obtaining employees that can fulfill roles relevant to specific business activities. Consequently, as one academic highlights, “there’s still massive, massive work to be done” in order to advance understanding of the concept of child rights among business actors.<sup>124</sup> She highlighted “a real learning curve, and to be fair, their bread and butter isn’t looking at the intricacies of the legal framework around children’s rights or human rights. Their bread and butter is making money, selling chocolate, or selling other products, doing that kind of thing.”<sup>125</sup> Awareness-raising is particularly problematic where external advice and training are limited.<sup>126</sup>

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123. Multinational corporation representative and multinational corporate auditing officer, interviews with first co-author (20 March and 22 April 2013 respectively).

124. Business academic, UK, interview with first co-author (18 June 2013).

125. *Ibid.*

126. Goretti Horgan, “Making Children Visible in Policy Making in Northern Ireland” (Ottawa, 2013), online: UNICEF <[http://www.unicef.ca/sites/default/files/imce\\_uploads/BLOG/4.\\_horgan\\_goretti\\_universityofulster.pdf](http://www.unicef.ca/sites/default/files/imce_uploads/BLOG/4._horgan_goretti_universityofulster.pdf)>.

Moreover, while HRIAs are available<sup>127</sup> and theoretical support for CRIAs exists in the literature,<sup>128</sup> there continues to be a gap in the public domain about CRIAs in practical terms and also in relation to business. Both constraints hinder businesses from producing and utilizing effective CRIAs. A contributing factor is the lack of existence of a single internationally agreed CRIA model.<sup>129</sup> A single model would aid businesses to appreciate the requirements and expectations of an effective CRIA with clear benchmarks for good practice. Such a model could be adapted for a specific business context and requirements such as supply chain concerns. Despite current obstacles regarding access to knowledge relevant to CRIAs, businesses can make the most out of the resources available. This includes harnessing knowledge from child experts, parents, teachers, child welfare workers, UN agencies, civil society organizations and most importantly, children themselves.<sup>130</sup> These actors can support the development and identification of: “clear terms of reference, clear expectations, details of the process to be followed, identification of persons responsible for each stage in the process, and a plan for follow-up and evaluation.”<sup>131</sup>

Another challenge relates to the fact that due to lack of awareness and thus, political will, resources may not be available for CRIAs. Lack of resources including finances, staff, technical expertise, time and available data is a real issue pertinent to most businesses.<sup>132</sup> Businesses must consider their decisions from an economic feasibility perspective. In the case of a small business, it is likely one does not have the financial means to conduct a meaningful CRIA. However, if business makes

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127. See for example, Equalit.ie, “Human Rights Impact Assessment Tool”, online: Equalit.ie <<https://equalit.ie/portfolio/the-human-rights-impact-assessment-tool>>.

128. As examples, see Nic Mason & Kristen Hanna, *Undertaking Child Impact Assessments in Aotearoa New Zealand Local Authorities: Evidence, Practice, Ideas* (Auckland: Office of the Children’s Commissioner, supported by UNICEF New Zealand, 2009), online: IPP <[http://www.ipp.auct.ac.nz/\\_data/assets/pdf\\_file/0020/110369/child-impact-assessment.pdf](http://www.ipp.auct.ac.nz/_data/assets/pdf_file/0020/110369/child-impact-assessment.pdf)>; and Rachel Hodgkin, “Effective Government Structures for Children” (1997) 11:1 *Children & Society* 60; and Rachel Hodgkin & Peter Newell, eds, *UK Review of Effective Government Structures for Children 2001: A Gulbenkian Foundation Report* (London, UK: Calouste Gulbenkian Foundation, 2001).

129. Rana Noeva, “CRIAs in Development Cooperation Programming” (Ottawa: 2013), online: UNICEF <[http://www.unicef.ca/sites/default/files/imce\\_uploads/BLOG/noeva\\_rada\\_unicefhq-genderandrightswkshp.pdf](http://www.unicef.ca/sites/default/files/imce_uploads/BLOG/noeva_rada_unicefhq-genderandrightswkshp.pdf)>.

130. *Ibid.*

131. Symposium, *supra* note 6 at 3.

132. Carmel Corrigan, “Child Rights Impact Assessments: Issues and Challenges” (Ottawa, 2013), online: UNICEF <[http://www.unicef.ca/sites/default/files/imce\\_uploads/BLOG/2.\\_corrigan\\_carmel\\_independentresearcher.pdf](http://www.unicef.ca/sites/default/files/imce_uploads/BLOG/2._corrigan_carmel_independentresearcher.pdf)>.

an organizational commitment, it illustrates good business practice and an economic investment. For example, if a business were to unintentionally violate child rights, great costs due to legal penalties may be involved. CRIAs could help avoid such expensive errors in decision-making. For instance, this is the approach of the government of the Canadian province of New Brunswick, which “is facing serious fiscal challenges, [but] has nonetheless adopted a CRIA process in order to improve the efficacy of governmental decision-making and to avoid costly mistakes.”<sup>133</sup> Consequently, it is in a business’ interest to implement CRIAs—with or without the presence of financial difficulties. But political will and leadership are needed in order to establish and maintain CRIAs.

Despite these general challenges, assets already exist in business to support CRIAs. As identified earlier, some actors including UNICEF, Save the Children and others are committed to developing understanding of the relationship between business and child rights as well as creating necessary practical tools. Some businesses already recognize a commitment to child rights including IKEA in its sustainability strategy,<sup>134</sup> and international travel company KUONI has a statement of commitment on human rights including child protection.<sup>135</sup> Moreover, KUONI is a business leader in piloting a CRIA as part of study of their Kenyan operations<sup>136</sup> where, for instance, it found the linkage between poverty and the commercial sexual exploitation of children.<sup>137</sup> Nevertheless, these businesses tend to be exceptions, since most businesses tend not to consider children’s rights, as the Institute for Human Rights and Business has found.<sup>138</sup> Consequently, these assets must be maximized and supported by other actors including states, NGOs and other actors including young people. In addition, it is critical that businesses themselves communicate their lessons

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133. Symposium, *supra* note 6 at 10.

134. IKEA, *People & Planet Positive IKEA Group Sustainability Strategy for 2020*, online: IKEA <[http://www.ikea.com/ms/en\\_GB/pdf/people\\_planet\\_positive/People\\_planet\\_positive.pdf](http://www.ikea.com/ms/en_GB/pdf/people_planet_positive/People_planet_positive.pdf)> at 9.

135. Kuoni, *Annual Report 2012: Corporate Responsibility: Human Rights* (2012), online: Kuoni Group <<http://2012.kuoni-annualreport.com/en/corp-responsibility/human-rights/1>>.

136. International organization official, interview with first co-author (March 2013).

137. Kuoni, *Assessing Human Rights Impacts: Kenya Pilot Project Report* (November 2012), online: Kuoni Group <[http://www.kuoni.com/docs/assessing\\_human\\_rights\\_impacts\\_0.pdf](http://www.kuoni.com/docs/assessing_human_rights_impacts_0.pdf)> at 18.

138. Institute for Human Rights and Business, “Review of How Child Rights Are Addressed in Selected Companies’ Human Rights Policies and Practices” [nd], [unpublished paper on file with first co-author].

learned about CRIAs to other businesses and the general public so understanding and growth can occur.

## B. CRIA Procedural Considerations

There are various procedural elements to examine in relation to business and CRIAs. They include: CRIA stages of implementation; contextual analysis; use of indicators; CRIA participation; and which actors implement CRIAs.

### *CRIA Stages of Implementation*

As there is no internationally agreed upon process on how CRIAs should be conducted, actors have much discretion in creating and utilizing a CRIA but many procedural considerations should be taken into account. In past experience, the most effective CRIAs have taken a multi-staged approach involving:

- (1) initial screening to determine the need for and scope of a CRIA;
- (2) clarification of the problem and objective of the proposal, and possible options for addressing them;
- (3) data-gathering, analysis and consultation with young people and civil society, as appropriate;
- (4) development of recommendations for decision-makers;
- and (5) plans for follow-up and evaluation.<sup>139</sup>

Stages should consider the relevance of both direct and indirect impacts upon child rights and unintended consequences through the process of providing services or manufacturing products. This multi-step process can enable thorough assessment of business decisions and activities.

One multi-step CRIA that has been proven to be effective is the one used by the government of New Brunswick in relation to every legislative proposal. This CRIA includes such questions as: "Will the project impact different groups of children? Which Articles of the United Nations *Convention on the Rights of the Child* (UNCRC) are relevant? And does the CRIA have gaps in information, data collection or expertise?"<sup>140</sup>

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139. Symposium, *supra* note 6 at 6.

140. Government of New Brunswick, "Children's Rights Impact Assessment (CRIA)" (Fredericton: Government of New Brunswick, 2013), online: UNICEF <[http://www.unicef.ca/sites/default/files/imce\\_uploads/BLOG/new\\_brunswick\\_cria\\_form\\_-\\_eng.pdf](http://www.unicef.ca/sites/default/files/imce_uploads/BLOG/new_brunswick_cria_form_-_eng.pdf)> at 2-4.

As noted above, in light of the current gaps in business CRIA development, businesses may find CRIA models from governments helpful to support their efforts, by selecting and removing criteria as appropriate to their own context.

### *Contextual Analysis*

CRIAs should have several components, not only considering the potential impact of products or services that have not yet been introduced to the market but also those that already are available.<sup>141</sup> Some businesses conduct various forms of monitoring, such as risk management practices and compliance assessments to manage legal and business risk that generally ignore child rights considerations. Some businesses do various forms of monitoring but not necessarily in relation to child rights as forms of risk management or compliance assessment in relation to codes of conduct or even to respect the UN Global Compact commitment.<sup>142</sup>

As UNICEF and the Child and Youth Finance International outline, efforts should investigate: the context of the market in terms of its risks and opportunities, and significant political, economic, social and other pertinent trends and their impact on children; internal strengths and weaknesses within the business to support child rights; as well as the potential or actual impact of the specific product or service in terms of suitability and respecting child rights.<sup>143</sup> Thus, it is clear that a product or service cannot be examined in isolation. Indeed, consulted young people highlight the importance of context. For instance, 13-year-old Marie stated: "... they kind of have to know what the region needs and what's important to that area."<sup>144</sup> As Bronfenbrenner highlights in his ecological model, influences at various levels around a child affect him/her and should be examined.<sup>145</sup> Similarly, CRIAs must also include attention to contextual analysis in relation to where a business operates.

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141. UNICEF & Child and Youth Finance International, *supra* note 21 at 13.

142. See such efforts as PWC, *United Nations Global Compact PWC Communication on Progress 2012*, online: PWC <[http://www.pwc.com/en\\_GX/gx/corporate-responsibility/pdf/UNGC\\_COP\\_2012.pdf](http://www.pwc.com/en_GX/gx/corporate-responsibility/pdf/UNGC_COP_2012.pdf)>.

143. UNICEF & Child and Youth Finance International, *supra* note 21 at 13-16.

144. Tara M Collins, Focus Group on Business and Child Rights (Ottawa: 16 October 2013) [Collins, Focus group].

145. Urie Bronfenbrenner & Pamela A Morris, "The Ecology of Developmental Processes" in William Damon, ed, *Handbook of Child Psychology*; Richard M Lerner, ed, Volume 1, *Theoretical Models of Human Development*, 5th ed (Hoboken (NJ): John Wiley & Sons, 1998) at 993.



Consequently, CRIAs must consider such factors as weak legal systems, policies and institutions, economic, social and environmental pressure, migration, and patterns of discrimination, conflict and disease.<sup>146</sup> These considerations affect business practices, processes and results as well as impact child rights and should be taken into account in CRIAs. With some awareness-raising, CRIAs could be incorporated smoothly into regular business practices. Whether it becomes significant commitment as part of a larger human rights commitment, with follow-up and communications considerations, remains to be seen.

### *Use of Indicators*

Indicators are favoured in much monitoring and assessment activities to focus attention on specific issues or concerns, but they must be analyzed carefully.<sup>147</sup> Although indicators can be useful, reason explains that they are only “one way of illustrating reality.”<sup>148</sup> Businesses must consider the subjective nature of indicators and how indicators may not reveal changes over time due to “a complex web of factors” influencing the situation.<sup>149</sup> Moreover, uncertainty surrounds the use of quantitative indicators in CRIAs. Businesses should record and report various types of information describing the context. Such qualitative information can describe the reasons for the quantitative information from indicators. For example, in relation to child labour, UNICEF recommends that companies report the following: “the age of workers, a snapshot of what was found in audits, a standardized, abbreviated root cause analysis, citing regional factors such as endemic poverty or the prevalence of child labour instances in certain seasons.”<sup>150</sup> This question of context leads one company representative to affirm the use of narrative in order to explain the circumstances behind a company’s operations.<sup>151</sup> Overall, reporting can allow

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146. UNICEF, *Children are Everyone's Business*, *supra* note 21 at 114-15.

147. See further analysis about indicators in Tara M Collins, “The Significance of Different Approaches to Monitoring: A Case Study of Child Rights” (2008) 12:2 *Int'l JHR* 159 [Collins, “A Case Study of Child Rights”].

148. Vincent Greason, “Looking at the Use of Indicators in the Fight Against Poverty” (Ottawa, 2013), online: UNICEF <[http://www.unicef.ca/sites/default/files/imce\\_uploads/BLOG/3.\\_greason\\_vincent\\_tablerondedesovepdeloutaouais.pdf](http://www.unicef.ca/sites/default/files/imce_uploads/BLOG/3._greason_vincent_tablerondedesovepdeloutaouais.pdf)>, slide 10. Also Vincent Greason, “Poverty as a Human Rights Violation” (*Table ronde des OVEP de l'Outaouais*, 16 June 2013), online: SSRN <[http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2279838](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2279838)>.

149. Symposium, *supra* note 6 at 6.

150. Umlas, *supra* note 21 at 17.

151. *Ibid* at 17.

a company to recognize patterns, which could potentially be more useful than a single indicator.

### *CRIA Participation*

Stakeholder engagement in the CRIA is a crucial human rights component in order to make people aware of, and enable them to claim their fundamental right of expression.<sup>152</sup> Ruggie outlines the requirement of “meaningful consultation with potentially affected groups and other relevant stakeholders.”<sup>153</sup> This participation also gives businesses the relevant information needed to enhance or refrain from violating their rights in their business activities. Participation is a fundamental human rights principle that is a general principle in the CRC. Yet, participation is a complex challenge in CRIAs. Hamm and Scheper point out that the goal of identifying the issues and the human rights requirement of “stakeholder participation is generally underexposed,” due to the challenges of engaging others.<sup>154</sup> However, such participation is necessary as these authors point out “since possible problems and potentials in the interests of the rights holders can ultimately only be identified with their participation.”<sup>155</sup> Young people consulted as part of this research also confirm the importance of this participation. For example, Maralyn, Arianna, Sophie, and Britney (12 and 13 years of age) outlined that business “should take surveys and talk to people.”<sup>156</sup> Other girls the same age, namely Rocky, Aria, Mavin, and Caroline Cooper, confirmed that businesses “should assess their impact by sending out surveys to their child employees and based on the data collected they can strategically improve their attitude and the working environment for their younger employees.”<sup>157</sup> Hence, UNICEF has identified criteria for meaningful child participation in CRIAs. Participation should: be voluntary so that children have the choice whether to participate or not; be transparent where children have all necessary information about their rights and the issues discussed; involve respectful treatment of children’s views; and

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152. Sébastien Mena et al, “Advancing the Business and Human Rights Agenda: Dialogue, Empowerment, and Constructive Engagement” (2010) 93:1 J Bus Ethics 161 at 162.

153. UN, *John Ruggie, supra* note 3 at 17.

154. Hamm & Scheper, *supra* note 28 at 17.

155. *Ibid.*

156. Collins, Focus group, *supra* note 144.

157. *Ibid.*

be accountable in order to provide children with feedback on how their participation has made an impact.<sup>158</sup>

Participation is a critical element for any CRIA to be effective and meaningful in order to ascertain the actual or potential impacts of decision-making upon children.

### *Actors Implementing CRIsAs*

As noted earlier, various actors are relevant to advancing CRIsAs; this is also the case in terms of carrying out CRIsAs. The question of who undertakes the impact assessment is an important one. Ruggie identifies “internal and/or independent external human rights expertise” to support impact assessments.<sup>159</sup> Research demonstrates that the best approach is to have both internal and independent perspectives to support CRIsAs.<sup>160</sup> For instance, an internal expert or corporate officer may be mandated by a code of conduct to monitor compliance.<sup>161</sup> Businesses do not always appreciate the role and significance of internal monitoring of their structures, processes and results. Negative publicity in relation to human rights abuses may potentially spur a commitment to monitoring but then again, such experience may only inspire a short-term public relations exercise to rebrand the business. Hence, businesses that are large enough to have a larger, diversified workforce should consider the inclusion of employees with the responsibility of monitoring the respect of human/child rights. Internal compliance officers ensure that the business is aware and responds to its human rights and other policy commitments to codes of conduct and so on.

Business may not consider the value of independent monitoring in order to assess efforts and results. However, similar to the challenges of governments that self-report to UN treaty bodies, it is inadequate to rely upon self-assessments for a full understanding of the situation of rights since it can be difficult to reflect objective analysis.<sup>162</sup> In general, there is a need for better assessment as one international commentator noted:

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158. UNICEF, *Children Are Everyone's Business*, *supra* note 21.

159. UN, *John Ruggie*, *supra* note 3 at 17.

160. Collins (2014), *supra* note 5.

161. Academic focusing on corporate law, interview with first co-author (26 March 2013).

162. For discussion, see Collins, PhD dissertation, *supra* note 54, Chapter Two.

We really do need to move towards first of all, a commitment to evidence base. It is going to people who are very good at collecting evidence and doing it very efficient. And secondly, after collecting the evidence, it is analyzing it. And that demands a certain amount of space for analysis. I think everybody should have one or more external people working on it. There is nothing wrong with having internal, evaluation people as they help you work these things through. But to expect all the facts to come out of that is probably not a good idea.<sup>163</sup>

Thus, effective assessment demands not simply an organizational commitment with dedicated staff, but also resources for independent, or alternative perspectives in light of different approaches to monitoring and their implications for both the processes and results<sup>164</sup> in order to obtain a comprehensive and credible picture of the situation of rights. Thus, CRIAs must be part of a broader process of supporting human rights as well as a strong commitment to both internal and independent monitoring.

Even if this balanced approach to information gathering and assessment is in place, businesses must consider whether or not to keep CRIAs for internal use or to publicize their findings. Both public use and private use have their advantages and disadvantages. For instance, governments have noted that an internal process would allow for more openness than it would if the results were published.<sup>165</sup> As a result, maintaining the confidentiality of the process would facilitate potentially more meaningful and effective CRIA process and results. In contrast, CRIA findings available to the public may allow for child rights to be enhanced through public scrutiny and pressure as well as competition with other businesses, especially if the original business decided to ignore CRIA results. Hence, it would be valuable for business to undertake honest assessments that impact the entire business process as well as engage publicly with the community, whether local, national or international, in order to support its relationship with child rights.

In sum, there are numerous procedural considerations about CRIAs that should be examined including the various methodological steps,

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163. International academic (USA), interview with first co-author (26 March 2013).

164. Collins, "A Case Study of Child Rights", *supra* note 147.

165. Symposium, *supra* note 6.

indicator use, stakeholder engagement, independent review and other criteria for success. CRIAs require that certain conditions be in place as part of an overall commitment to human/child rights. These include awareness and respect of child rights, understanding the CRC and the obligations of duty-bearers in its implementation, adequate human, financial and time resources, and commitment to CRIA results by decision-makers to effective follow up.<sup>166</sup> New Brunswick recognizes, for example, that training on child rights and CRIAs, review and evaluation of practices as well as partnerships are needed in order for CRIAs to be effective.<sup>167</sup> Hence, businesses should ensure these conditions of success are present when conducting CRIAs in order to produce optimal results. These issues must be resolved in relation to business in the development and utilisation of CRIAs.

### C. CRIA Structural Considerations

The establishment and maintenance of CRIAs involve attention to several considerations: formal policies, important CRIA elements, and follow-up.

#### *Formal Human/Child Rights Policies*

CRIAs can play an important role to ascertain the reality of the business commitment to child rights in practice. Companies are increasingly recognizing human rights, including child rights in relation to their organizational structures. For example, multinational H&M corporation's human rights policy identifies its "responsibility" and commitment to children's and women's rights, and specifically the CRC and the Business and Children's Rights Principles.<sup>168</sup> A child-focused company, Lego, outlines that its Global Compact commitment has led to a "special focus on the rights of children," not only referencing the CRC, but also to the Business and Children's Rights Principles as part of business responsibility to children as "respectful collaboration."<sup>169</sup> Nonetheless, such formal policies should have structural implications, not

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166. *Ibid* at 4.

167. Cormier, *supra* note 41, slide 4.

168. H&M, "Human Rights Policy" (2012), online: H&M <<http://about.hm.com/en/About/Sustainability.html>>.

169. Lego, "Human Rights", online: Lego <<https://aboutus.lego.com/en-us/sustainability/human-rights>>.

only identifying this priority but also outlining how this commitment is realized across the business. In practice however, as noted earlier, too few businesses support a structural commitment to human/child rights since only just over 290 companies around the world have adopted a formal human rights policy according to the Business and Human Rights Resource Centre.<sup>170</sup> More companies should not only outline this important structural dimension for the entire business but should also have clear implementation strategies for their rights policies, including consistent monitoring and CRIA use, in order to ensure their relevance over time.

This commitment to human rights demands more than simply rhetoric or human rights policies and requires follow-up. For example, Nestlé has long provoked the ire of human rights activists due to aggressive marketing campaigns of their formulas to replace breast milk.<sup>171</sup> Yet, it is encouraging that Nestlé, in partnership with the respected Danish Institute for Human Rights, recently released a white paper in accordance with the company's "Human Rights Due Diligence Program," which includes HRIAs.<sup>172</sup> The company outlines: country-specific assessments; ascertaining both actual and potential rights impacts; responding appropriately to the findings; and following responses in a timely manner and communicating how impacts are monitored.<sup>173</sup> Such detailed approaches with impact assessments, country-specific considerations, dedicated response, monitoring, and communication mechanisms are important elements of a business approach to human rights that should include child rights.

### *Important CRIA Elements*

A commitment to rights must involve attention to assessment and accountability in order to be meaningful. In determining how a CRIA

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170. Business and Human Rights Resource Centre, *supra* note 111 and Business & Human Rights, *supra* note 111.

171. See for instance, Ethical Consumer, "Boycott Nestlé Profile" [nd], online: Ethical Consumer <<http://www.ethicalconsumer.org/boycotts/boycottlist/nestleboycottprofile.aspx>>.

172. Tulika Bansal (The Danish Institute for Human Rights) & Yann Wyss (Nestlé), *Talking the Human Rights Walk: Nestlé's Experience Assessing Human Rights Impacts in its Business Activities* (2013), online: Nestlé <[www.nestle.com/asset-library/documents/library/documents/corporate\\_social\\_responsibility/nestle-hria-white-paper.pdf](http://www.nestle.com/asset-library/documents/library/documents/corporate_social_responsibility/nestle-hria-white-paper.pdf)>.

173. *Ibid* at 7.

should be established, businesses must consider the need to strike a balance between maintaining quality and formalism.<sup>174</sup> "When CRIA is part of the system, there is a risk that it becomes just another requirement to be fulfilled with a minimum amount of effort, limited impact on the policy outcomes and often no transparency."<sup>175</sup> While businesses must adhere to formal standards in developing and carrying out CRIAs, flexibility is an important tool in gathering relevant information pertaining to child rights.

Businesses must be informed by past experiences and avoid the checklist approach when gathering information.

Checklists tend to reduce the process to a technical, formulaic one that cannot address issues in depth, often miss indirect impacts and possible unintended consequences, and have limited impact on raising awareness of children's rights.<sup>176</sup>

One of the most vital lessons learned in relation to CRIAs is the importance of incorporating the Convention in the use and development of CRIAs.

The checklist approach would involve missed risks and opportunities whereas using CRC principles as an analytical lens has been found to be effective in identifying unintended consequences and consider the impacts on different groups of children.<sup>177</sup>

Lastly, CRIAs should be created with acknowledgement that both negative and positive results will be found. Many companies reflect a lack of balance in reporting as illustrated by a tendency to focus exclusively on positive impacts, which lacks credibility.<sup>178</sup> Consequently, as noted earlier, reporting should balance the outcomes from independent and internal monitoring efforts.

Thus, there are numerous important structural elements to be included in the establishment of CRIAs.

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174. Desmet, *supra* note 41, slide 14.

175. Symposium, *supra* note 6 at 8.

176. *Ibid* at 6.

177. *Ibid*; and Collins, PhD dissertation, *supra* note 54.

178. Umlas, *supra* note 21 at 42.

### *Importance of Follow-Up*

Follow-up to CRIA results is essential. Young people consulted in focus groups identified and confirmed the importance of responding appropriately to information about the status of rights. For instance, Annabeth (12 years old) outlines businesses should not only pay attention to the people who work in their factories and what they need:

They should go, and they shouldn't just like pay more attention like if it's bad they shouldn't approve it. They should actually do something about it and not just like say, it's bad and not do anything ... Also just to make sure that like, the building structure—like to make sure that it's good. Like the thing that happened in Bangladesh, like they knew that the building was in bad condition but they didn't do anything about it. So they should definitely make sure that if it is in a bad condition it's fixed.<sup>179</sup>

CRIAs are not meant to overburden business but should be an essential business structural commitment to ensure attention to child rights in the development of, or as part of their on-going human rights, social responsibility and sustainability activities. While there is some debate, some actors argue that such business undertakings actually improve business processes as well as results.<sup>180</sup>

Therefore, various structural components should be considered in the development and use of CRIAs in relation to business.

## CONCLUSION

While CRIAs tend to be favoured by governments and independent organizations, this paper outlines that CRIAs are relevant for business as part of a broader commitment to human rights. After all, it is inadequate for business to commit to human or child rights, and then not actually carry out such practices as CRIAs. Furthermore, CRIAs require a broader rights-based process that identify issues and respond appropriately in order to advance an overall goal of progress for rights.<sup>181</sup>

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179. Collins, Focus Group on Business and Child Rights (Ottawa: 15 October 2013).

180. For discussion, see further Collins (2014), *supra* note 5.

181. See further Collins, PhD dissertation, *supra* note 54.



Much work remains to be done in order to bring greater clarity and guidance about CRIAs and monitoring more generally in relation to business. For instance, analysis must be conducted of various tools developed by international organizations and management consultancies in relation to business. In addition, CRIA development is necessary. Hence, new research aims to develop a new CRIA tool to reinforce the relationship between business and child rights. This tool will not only be practical, but also improve awareness of children's rights among business actors and others.

It is critical that CRIAs are considered part of a larger process of commitment to human rights. The CRIA symposium in May 2013 outlined:

CRIA is one tool in the toolbox of methods to advance children's rights. It is an important one. It can be an effective one. Success is more likely when CRIA complement other measures and systems in place to advance the rights of children. Using CRIA by itself is unlikely to be sufficient to advance children's rights and it can become a formulaic process with limited real change.<sup>182</sup>

Thus, progress should be the goal including, but not limited to, the development and use of CRIAs to analyse business impacts upon child rights. In summary, young people consulted agreed that businesses should do more to support child rights and their assessment. In sum, 12- and 13-year olds Sarah, Arianna, Eliza, and Amy outline businesses "should broaden their views on children's rights and try and help support them and see what's actually happening."<sup>183</sup>

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182. Symposium, *supra* note 6 at 3.

183. Collins, Focus Group, *supra* note 144.