Seen & Heard?

Children’s Participation Rights and Corporate Responsibility

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Abstract

Scholars in the fields of sociology, child development and human rights focus on conceptualizations of children as well as the shift from viewing children as mere adjuncts to adults to distinct rights-holders. Business and management studies researchers explore the interplay of business responsibility and society in general. What remains relatively unexplored in either literature is the nexus of business and the human rights of children. In particular, participation rights - one of the four pillars of the UN Convention on the Rights of the Child - remain largely ignored. This article questions how well the participation rights of children are accounted for in business in view of the fact that the CRC is the world’s most widely ratified human rights instrument. Consultations with key informants complement a literature review and provide insights into this emerging field. The article highlights the potential offered by General Comment 16 (2013) on State obligations regarding the impact of business on children’s rights as well as the new Children’s Rights and Business Principles to meaningful engage children. The paper concludes with a call to move from well-intentioned but ad hoc measures to mainstreaming children’s participation rights in all interactions within the realm of business, particularly in this early stage of the relationship when getting rights right is critical. Finally, as the foundational document animating all recent efforts to foreground children's rights in business, the UN CRC's relevance and influence appears set to expand in the years to come.
Keywords: Convention on the Rights of the Child; General Comment No. 12; corporate social responsibility; creating shared value; UN Guiding Principles on Business and Human Rights

Introduction

What we want is a mutual benefit; as far as business wants to make money, we want development, we want you to be aware of our humanity, do not pollute our environment, do not exploit us, listen to us, accept our opinion, we want an equal treatment.

(Young Peruvian)ii

The UN Convention on the Rights of the Child (UNCRC) offers a critical framework against which to review how well States give effect to the rights of their youngest citizens; a new imperative, however, has emerged that shifts the spotlight from governments alone having responsibility to fulfill human rights obligations. Increasingly corporations are being called to account even for violations that happen down the supply chain and in countries far from head office. States retain primary responsibility for human rights but calls to use the legal frameworks already available through international instruments like the UNCRC to compel greater corporate responsibility are growing more vociferous. This paper examines the nexus of business and children’s rights, with an emphasis on participation. iii This intersection is an area that has yet to be explored in either childhood studies or management studies. Given the prominence of participation as an animating pillar of the United Nations Convention on the Rights of the Child, this is a significant omission.iv

The first part of the paper contextualizes the unprecedented and evolving international conversation about human rights and business, a discussion that is just now expanding to include the rights of children. Part II looks at the evolution of concepts of childhood from a period of dependency and lack of agency to children as rights-holders as enshrined in the UNCRC. Part III contextualizes the debate over business and human rights by briefly reviewing contemporary corporate social responsibility (CSR) and the
very recent incursion of children’s rights into the field. Finally, Part IV focuses squarely on the nexus of business and children’s rights with special attention given to participation. It looks at three pivotal and recent documents: the UN Guiding Principles on Business and Human Rights (2011), the Children’s Rights and Business Principles (2012); and the UN Committee on the Rights of the Child General Comment No. 16 (2013) on State Obligations regarding the impact of business on children’s rights.

**Part I: Human Rights and Business: A Conversation Begins**

Today we find ourselves in a period of corporate ascendency. By 2010, the planet’s thousand largest corporations employed 67 million people directly and earned combined revenue of thirty-two trillion dollars. Indeed, the world’s biggest corporations virtually control the entire global economy (Eccles and Serafeim 2012). As the corporate spheres of influence widened through the 1990s, so did calls to rein in what some observers believed was disproportionate power. Attention to the impact of corporate behavior on society is not new. Organizations such as the International Baby Food Action Network (IBFAN) have long worked to hold global corporations like Nestlé to account for harmful marketing practices. What also differentiates this period is the harnessing by civil society of information and communications technologies such as social media to monitor, critique and protest questionable business practices. A further hallmark of this unprecedented period is the focus on human rights. As Ruggie (2013) notes, the language of human rights has become a useful rallying point around which the aggrieved gather:

> As if by some dialectical force, individuals and communities adversely affected by corporate globalization began to invoke the language of human rights to express their grievances, resistance, and aspirations. Human rights discourse – affirming the intrinsic worth and dignity of every person, everywhere – became a common ground from which they began to challenge and seek redress for the human costs of corporate globalization (p. xvi).
There are various ways that corporations responded then and now to pressures to behave responsibly; these responses may be sheltered beneath “corporate social responsibility” or CSR, a term to which we shall return later in the paper.

In order to explore the overlap between the rights of children and business, it is first necessary to describe the ways in which business activity can impact children negatively and why such impacts are disproportionately more serious for them. Minujin (2012, p. 14) notes that early deprivations can affect long-term development. Exposure to environmental degradation and toxins as a result of industrial activity can lead to lifelong health complications since small bodies absorb higher levels of pollutants. While underage labour has long been a focal point for children’s rights – and remains crucially in the spotlight – the literature suggests that we are just beginning to better understand the impacts of business on children beyond labour in all countries of the world. As legal scholar Joel Bakan (2011, p.12) avers, despite earlier modern state reforms emanating from the United Nations Declaration of the Rights of the Child in 1959, the last thirty years have seen an erosion of government constraint over corporate behavior that has left children unprotected and “openly exposed to corporate predation and harm.”vi Whether we look at the marketing of unhealthy food to children, workplaces that do not offer paid maternity leave, toy manufacturers that use dangerous components, the harassment of local children by private security firms hired by mining companies, the range of the potentially deleterious impacts of business on children is now broader than commonly understood.

Although the explicit concerns of children were absent in the UN First Annual Forum on Business and Human Rights held in December 2012,vii the historic event underscored the building momentum to bring together commerce and human rights. As Navi Pillay, UN High Commissioner for Human Rights noted at the time, “The overwhelming interest in this Forum is a sign of the imperative felt by all sides, including business, to prevent and address adverse human rights impacts linked to business activities.”viii While interest in the linkages between business and human rights was considerable, it was also at a nascent stage as company representatives described the challenges of educating colleagues about the human rights impacts of business, particularly in areas where human rights implications have not been considered
While extractive sector industries are more typically in the critical NGO spotlight, new research on the hitherto less visible impacts of other industries on human rights has emerged. For instance, the first forum featured a session on the role of the financial services sector in the wake of the global financial crisis, an area of growing research attention (Dowell-Jones, 2011; Caliari et al., 2010).

Children are now making their way into the international business and human rights conversation. In 2011, the Business and Human Rights Resource Centre set up a Children’s Portal on its influential website. In 2012, the Institute for Human Rights and Business listed “putting children’s rights squarely on the business agenda” as one of that year’s top emerging issues. The Second Annual Forum on Business and Human Rights in 2013 expanded to include a special session entitled “Business Respect for the Rights of Children.” The new Children’s Rights and Business Principles and recently released Committee on the Rights of the Child General Comment No. 16 further reflect the growing interest in the nexus of children’s rights and business. Both documents remind States and non-State actors that the best interests of the child must be met. This is a crucial evolution in the human rights and business conversation but what do they offer that ensures the participation rights of children are not left out of the discussion?

PART II: Evolution of children’s rights, including to participate

Being a child continues to express more about power relationships than chronology although the two are mutually intertwined. Children’s powerlessness reflects their limited access to economic resources, the exclusion of political participation and the corresponding cultural image of childhood as a state of weakness, dependency, and incompetence. Definitions of a “child” and “childhood” entail more than a specification of an age of majority; they articulate a particular society’s values and attitude towards children. (Franklin 2002, p. 19)
How adults view children has a crucial impact on the roles children assume in society and the influence they may exert on the world around them; too often, children have been invisible across disciplines. Michael D.A. Freeman (2007, p. 17) argues that children’s rights, particularly agency rights, have been conspicuously absent from the work of both political theorists and philosophers on human rights. Even Gerwith’s consideration of agency as a source of human rights does not extend to children who, similar to people with intellectual disabilities, are said to lack full agency (as cited in Freeman 2011, pp.72-3).

The sociology of childhood claims that conventional social science has ignored childhood agency (James & Prout, 1997). Van Beuren (1998) notes that despite the 1959 Declaration on the Rights of Child, it was not until the 1970s that “children began to shed their diplomatic cloak of invisibility” (p. 25). During that decade, children’s liberationists made the controversial claim that children were entitled to make their own decisions over matters concerning them. Since then, researchers like Mayall (1994) have sought to understand how children experience and make sense of their lives; it is this more accurate information researchers can then use to inform their work around child rights (Roche 2005, p. 44). Camfield et al. (2009) note “childhood studies also recognize that children are active agents with distinctive personalities and experiences (and ‘cultures’) who play important roles in their households and societies in shaping their lives and negotiating their well-being” (p. 75). Fattore et al. (2007, p. 83) further demonstrate that engaging children’s participation for both information collection and analysis can improve the reliability of research thereby better informing policy-making and program development. By the 1980s UK law began to reflect the new conception of the child when the Gillick decision confirmed that a ‘mature minor’ of sixteen possessed decision-making authority regarding her own health.xii Certainly childhood studies played a crucial role in helping society and policymakers re-imagine children as autonomous individuals both in need of protection and entitled to human rights related to participation.

In 1989 the United Nations Convention on the Rights of the Child (UN CRC) reflected this evolving understanding of children entitled to human rights. Indeed, the
CRC is the first human rights instrument to enable a direct relationship between the state and child that is not intermediated by parents (Holmberg and Himes, 2000).

**Article 12: Participation and The Right of the Child to Be Heard**

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

*Article 12.1 UN Convention on the Rights of the Child (1989)*

Article 12 of the CRC embodies a significant shift in how children are regarded, re-casting them as autonomous, active agents with evolving capacities (Lansdown, 2005). While Krappmann (2010) notes that “the right to participate” does not actually appear in the Convention, there is an ensemble of rights concerning participation. Indeed such rights animate the entire document and constitute a crucial underpinning of the treaty. As Lansdown (2005, p. 3) observes, the implications of this concept for children’s rights are multiple and profound, challenging traditional perspectives regarding children’s capabilities and entitlements. This approach, however, does not remove the parental role in providing guidance to children under 18 years of age; instead Article 5 posits that children have *evolving capacities* and are able to express views commensurate with maturity. As the Committee on the Rights of the Child notes:

Traditionally, the child has been seen as a dependent, invisible and passive family member. Only recently has he or she become ‘seen’ and furthermore, the movement is growing to give him or her the space to be heard and respected. Dialogue, negotiation and participation have come to the forefront of common action for children (UN CRC/C/34, 1994).

The concept of children acquiring competencies with maturity is one Van Beuren (1995) describes as a new principle of international law that recognizes that the need for adult direction decreases as the child grows more responsible. It does not supplant parents and
families as some critics suggest;\textsuperscript{xv} it does, however, recognize the developing capability of children to contribute their own perspectives in matters directly affecting them.

The embedding of participation in the CRC is arguably the greatest innovation of the treaty; implementation of participation rights, however, is not widespread even when States are clearly instructed on implementation as with Committee on the Rights of the Child General Comment No. 12. According to a human rights officer with the Office of the High Commissioner for Human Rights:

\begin{quote}
Children’s participation across the 193 States Parties – with very few exceptions – is an area that is poorly understood and inadequately implemented. We have had many well-intended initiatives on the part of States Parties to have child participation in that sort of tokenistic way … … in an adult context of interaction. If one really looks at Article 12, then this scenario exemplifies the failure to meaningfully empower proper child participation in the vast majority of states. \textsuperscript{xvi}
\end{quote}

Participatory processes require considerable upfront investments in time and money and impacts are not easy to measure. In interviews with experienced children’s rights advocates at both the ILO and UNICEF, it became clear that while there is certainly moral support for children’s participation, the process can be fraught with challenges. For instance, interviewees noted that making space for children’s input carries potential risks when children’s feedback contradicts official positions on issues such as child labour. According to Benjamin Smith, Senior Officer for CSR at ILO-IPEC:

\begin{quote}
Child participation is at times a double-edged sword. There are organizations of child laborers that promote the so-called children’s right to work … This is something that will perpetuate the problem when some employers can say “Who needs international standards? Just listen to the children, they are saying they want to work.”\textsuperscript{xvii}
\end{quote}
It is important to note, however, that the challenges of realizing children’s right to be heard - and their opinions taken into account according to their level of maturity - do not render participation rights unrealizable or less important. In fact listening to children can result in policies that more accurately respond to children’s lived realities. As Smith further notes, the response to concerns articulated by working children’s groups that state a preference to work is to provide alternatives to child labour while working to eliminate it progressively. As this example demonstrates, even when participation opens up difficult or controversial debates, its value as a means by which to better understand the realities of children’s lives cannot be overstated. When policy responses reflect the actual experiences of young people, they may be said to begin to fulfill children’s right to be heard and to have their concerns make a difference. xviii

While acknowledging the challenges of implementing meaningful participatory processes, ix the UN Special Rapporteur on Extreme Poverty and Human Rights Magdalena Sepúlveda emphasizes that such efforts are not an option for governments. Indeed, she notes that all branches of States are legally obliged to “implement inclusive, meaningful and non-discriminatory participatory processes and mechanisms, and to engage constructively with the outcomes” (UNGA 2013, p. 11). Some of the more salient examples of such processes include participatory budgeting, slum surveys, community scorecards, social monitors, citizen juries and environmental decision-making (UNGA 2013, p. 19). She further cautions against pro forma participatory activities which may be more accurately described as tokenistic rather than meaningful xx and notes that participatory processes limited to only giving or extracting information from communities may actually disempower people and reinforce existing power structures. As a policy analyst with UNICEF notes, while a needs assessment done by an expert through a survey or other qualitative data collection tool is useful, it is not the same as a truly participatory approach that involves people in both assessment and follow up stages. xxi Moreover, as leading CSR scholar Utting xxii observes, such a conception of participation has been eviscerated of its potential to challenge power structures. The human rights-based approach to participation necessitates a move beyond stakeholder dialogues where one’s opinion may or may not be taken into account depending solely on the needs and whims of the ones holding the consultation.
**PART III: Business Responsibility and Human Rights**

*Corporate Social Responsibility and Participation*

Corporate social responsibility lacks a single definition. However as Blowfield and Murray (2011) suggest,

the idea that companies have a purpose other than simply to make money – that, at the very least, they should consider not only profitability, but also the way in which profits are made – is central to understanding corporate responsibility in terms of business’ relationship to society (p. 19).

Jane Nelson, Director of the CSR Initiative at Harvard University adds:

Corporate social responsibility encompasses not only what companies do with their profits, but also how they make them. It goes beyond philanthropy and compliance, and addresses how companies manage their economic, social, and environmental impacts, as well as their relationships in all key spheres of influence: the workplace, the marketplace, the supply chain, the community and the public policy realm.xxiii

However the term is defined, the key idea underpinning CSR is that society expects business to earn a social license to operatexxiv within the communities its operations affect. Companies demonstrate responsible citizenship in a variety of ways such as sponsoring school breakfast programs, volunteering staff time, instituting gender-parity policies, sharing expertise with community organizations and making in-kind donations. In short, the corporate responsibility approach as exemplified in CSR efforts views business as part of the solution to the excesses of economic globalization. A plethora of voluntary codes and initiatives guide CSR including the UN Global Compact,xxv OECD Guidelines for Multinational Enterprises, The ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, ISO 26000, and the Principles for Responsible Investment (PRI). A hallmark of these codes is the emphasis on
“stakeholder” and it is here that an opportunity presents itself to expand the definition to include children who through their parents and otherwise experience myriad impacts of business activities that are both positive and negative.

A more recent evolution in the business and society relationship is the concept known as Creating Shared Value (CSV). According to Porter and Kramer (2011), shared value “is not social responsibility, philanthropy, or even sustainability, but a new way to achieve economic success” through the simultaneous promotion of economic and social conditions wherever companies operate. Proponents of CSV argue that it differs from the simple notion of shared values because rather than being propelled by what stakeholders care about, it places both economic and societal interests at the centre of business. CVS now counts among its supporters major international companies such as Nestlé, Intel, Coca Cola and Unilever.

CSR in any form as a business approach and practice, however, is not without its critics from within business and outside business. Blowfield and Murray (2011, 314) note four key areas of criticism: 1. civil society imposes CSR on business thereby decreasing wealth creation; 2. business dominates CSR according to its own agenda; 3. CSR leaves out many important issues; and 4. CSR needs greater innovation and rigour to meet its objectives. CSR skeptics also argue such measures are designed to distract from more questionable business activities and deflect calls for greater regulation. Civil society critics often claim that voluntary CSR measures are mere window dressing or ‘greenwash’ (Greer and Bruno, 1996; International Forum on Globalization, 2002; Klein, 2000). In his influential book, “The Market for Virtue”, David Vogel (2005) suggests that the positive impacts of CSR are overstated. Organizations such as Human Rights Watch (Albin-Lackey, xxvii 2013) and Amnesty International openly criticize CSR, clearly favouring a more regulatory approach to business and human rights. According to Amnesty’s Head, Business and Human Rights:

We see CSR as largely voluntary approaches undertaken by particular companies… How they operationalize CSR is completely voluntary, arbitrary, whereas we see our agenda as uniform, looking at corporate accountability, focusing on laws, policies, conformity, corporate respect for human rights and
access to remedy ... accountability for illegal acts as well as for economic social and cultural rights. xxix

Utting xxx notes a further weakness in the voluntary approach regarding the tendency to monitor only what goes on in the upper tiers of supply chains despite the structural trend of more complex and lengthening supply chains. The new Creating Social Value approach to corporate responsibility is also not immune to similar critiques including claims that it is naïve about business compliance and based on a shallow conception of the role of corporations in society (Crane et al., 2014) xxxi A further criticism of conventional CSR comes from a lack of impact measurements and enforcement polices. Indeed, as Utting contends, a lot of the progress to date in the sphere of business and human rights has occurred due not to voluntary codes but “to activist pressures, naming and shaming tactics, and the involvement of multiple actors including civil society and governments in standard setting.” xxxii

A company may be a CSR leader in one area but face criticism for rights violations in other areas. For instance, in a report entitled “Why Corporate Social Responsibility is failing children,” Doane and Holder (2007) examine three well-known, international CSR measures and find the results belie the ability of CSR to respect children’s rights. Analysis of the International Code on Marketing of Breast milk Substitutes (the Code), The Extractive Industries Transparency Initiative (EITI) and the Ethical Trading Initiatives (ETI), challenge the extent to which CSR can promote the best interests of children. The researchers conclude that voluntary efforts work best only where there is strong government legislation.

When we look at some of the key CSR instruments, we see further limitations related to the invisibility of children in policymaking and reporting. For instance, corporate codes of conduct may look at child labour but not the other ways business affects children. In a report for UNICEF, business and human rights expert Umlas (2012) details several key gaps and trends related to reporting and disclosure on children’s rights. Her review of more than 100 corporate sustainability reports reveals “reporting and disclosure on children’s rights-related issues is, with few exceptions, significantly underdeveloped” (Umlas, pp. 6-7). In addition to an over-emphasis on charity and
inattention to systemic problems related to children’s rights, the paper argues that the scant reporting on children’s rights that does exist tends to capture only positive impacts and looks solely at policies or performance (Umlas, pp. 6-7). This reporting bias underscores a key weakness in CSR, namely that businesses can pick and choose what issues they want to include or highlight. The selection process does not leave room for stakeholder involvement generally, let alone for the meaningful participation of children who have little power politically or economically.

These limitations notwithstanding, it is important to note that CSR is not a static proposition; arguably, there is room for innovation in favour of human rights. Noting the emergence of a more nuanced understanding of the role of corporations in governance and development, Utting and Marques (2010) observe the emergence of “a more comprehensive notion of ‘corporate accountability,’ one which implies moving beyond ad hoc voluntary initiatives, top-down ‘do-gooding’ and very selective forms of stakeholder engagement” (p. 5).

The development of grievance mechanisms for negatively-impacted stakeholders, for instance, can “involve more meaningful forms of participation, reconnecting CSR and public policy or law, and finding ways in which voluntary and legalistic approaches can be mutually reinforcing (Utting and Marques, pp. 5-6). An example of this more nuanced approach to CSR, particularly related to children’s rights, may be found in the work of the International Programme for the Elimination of Child Labour (IPEC) at the International Labour Organization (ILO). According to Benjamin Smith,xxxiii the organization is developing a guidance toolxxxiv that will help companies respect the rights enshrined in ILO Convention No. 138 concerning the minimum age of employment and Convention No. 182 on the worst forms of child labour. The goal is to help companies deal with children who have a grievance by first helping businesses identify the ways in which children can be involved on the far ends of a long supply chain. As Smith (2013) cautions, the generic approach to grievance mechanisms fails children:

To expect a child of his or her own volition to raise an issue up a supply chain so that they can have remedy is not a realistic expectation … there are challenges around literacy, confidence, and if they know their rights.xxxv
As the ILO-IPEC and other organizations that work with business using a rights-based approach are demonstrating, CSR has the potential to prioritize children’s rights at a level hitherto not seen.

In spring 2011, UNICEF started a new CSR unit to work with companies to report on the implementation of children’s rights. Crucially, the UNICEF definition of CSR explicitly includes children. The organization describes CSR as “encompassing efforts towards positively changing business behavior and practices as they affect children in collaboration with a range of stakeholders including companies, government, civil society, children and young people.”xxxvi The organization is currently developing a guidance tool to support the new Children’s Rights and Business Principles and to align these with the Global Reporting Initiative (GRI), an international sustainability reporting framework. The emphasis is on regular monitoring, and data collection related to children.

Doubtless criticisms of voluntary initiatives will persist but CSR remains the most significant entry point for companies into the discussion about human rights and remains the key instrument through which businesses large and small channel their engagement with society. As of July 2013, the world’s largest corporate responsibility initiative, the UN Global Compact,xxxvii had that year alone added 646 new members who commit to regularly report progress on implementing the Compact’s Ten Principlesxxxviii as well as support UN development goals. Hence, while the literature suggests a perceptible shift in emphasis to greater corporate accountability, voluntary corporate social responsibility seems set to endure at least into the near future and remains, therefore, an important conduit for the consideration of human rights.
**Guiding Principles on Business and Human Rights**

“The Council’s endorsement establishes the Guiding Principles as the authoritative global reference point for business and human rights … They will also provide civil society, investors and others the tools to measure real progress in the daily lives of people.”

*Professor John Ruggie, Secretary-General’s Special Representative for Business and Human Rights*

The UN Guiding Principles on Business and Human Rights (GPs) join a panoply of non-binding CSR guidance documents such as the OECD Guidelines for Multinational Enterprises, the UN Global Compact, the Ethical Trading Initiative and the Global Reporting Initiative Guidelines. Various declarations and agreements also underpin the GPs including the Universal Declaration of Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work, the UN Convention Against Corruption and the Rio Declaration on Environment and Development (UNICEF, 2010, p. 22). The Guiding Principles were drawn up by Professor John Ruggie as a way to implement the UN’s ‘Protect, Respect and Remedy’ framework by which States are exhorted to protect human rights, business are encouraged to respect human rights, and remedy is sought for victims of business-related abuse (OHCHR HR/PUB/12/02).

Developed in the wake of the highly divisive UN Norms that sought mandatory human rights obligations for business, the GPs represent a significant achievement in consensus-building at the end of six years of extensive consultation. Academics such as Bilchitz (2010) argue, however, that the resulting compromises reduced obligations to the less demanding “responsibility to respect.” Several children’s NGOs were also disappointed and argued that the Special Representative had failed “to give special attention to persons belonging to vulnerable groups, in particular children” as instructed by the Human Rights Council.

The Child Right’s International Network (CRIN) evaluation of the draft Guiding Principles captures other essential criticisms from a child rights perspective related to how children’s meaningful participation may be incorporated. Representing
2,100 members in more than 150 countries, the organization’s submission to Professor Ruggie observed the near absence altogether of children in the draft document:

In relation to business enterprises, children's situation is especially precarious. While corporations are readily recognized as full legal persons in jurisdictions around the world, children almost universally are not. Unlike corporations, children cannot bring lawsuits, sign contracts, or even make simple financial transactions on their own. Because children are not empowered to speak out against violations of their rights, and in recognition of the fact that children do not operate on a level playing field when engaging with business enterprises, CRIN believes that children's rights must be given far greater attention in the draft Guiding Principles.xliv

While children appear fleetingly and only in the subsequently published Commentary to the Guiding Principles, States are exhorted to advise corporations to consider children along with indigenous peoples, women, various minorities, migrant workers and people with disabilities (Ruggie, 2011; p. 5). Further, the document encourages business enterprises to consider human rights standards such as the CRC on top of the central ILO Conventions and the International Bill of Human Rights when dealing with vulnerable groups. It does not, as noted, expressly account for children’s distinct human rights, let alone their participation rights. In fact, the word “children” appears only twice in the lengthy Interpretive Guide for the GPs and “participation” not at all. While arguably neither children nor participation receive their due in the Guiding Principles, it would be unfair to ignore the presence of the term “stakeholders” which appears throughout the document even if a child-specific focus is absent.

One of the hallmarks of the Guiding Principles is the emphasis on due diligence regarding the human rights impacts of companies’ own business operations as well as in their business relationships. Principle 18 encourages companies to carry out human rights risk assessments prior to and during all operations. “Stakeholders” and “experts” should be fully consulted; however, despite being the best experts on their lives, children are not typically viewed this way. On page 33, the Interpretive Guide states: “the key to human rights due diligence is the need to understand the perspective of potentially affected
individuals and groups. Where possible … this should involve direct consultation with those who may be affected or their legitimate representatives.” While the strong promotion of human rights risk assessments are a welcome innovation of the GPs, child-focused approaches that recognize the unique needs of children as articulated by children do not appear in the document. Regarding this absence, CRIN notes that “the policy-making procedure … does not seem to contemplate the participation of children in the process or the delivery of finalized policies into children’s hands… this would necessarily include discussions of corporate human rights policies that will undoubtedly impact their lives” (op. cit., p. 2). Further, on the topic of children as “relevant stakeholders,” CRIN notes that Article 17 of the CRC requires information to be made intelligible to children (ibid). Indeed, experienced child rights advocates interviewed for this paper echo the importance of age-appropriate materials. Monica Lindvall of Save the Children Sweden notes that successful children’s participation should be a transparent, honest process using child friendly, accessible information so that children are adequately prepared before undertaking the exercise. As Ruggie notes (2013; 178), however, the Guiding Principles crucially inform other international initiatives linking business and human rights including the Children’s Rights and Business Principles.

PART IV: The Nexus of Children’s Rights & Business

Children’s Rights and Business Principles

“Do not take advantage of us, we ask you to be responsible, do not support us because you feel pity for us, instead support us because we deserve it, we purchase your products and services, but we ask you to invest in our development. We do not want gifts, we want you to be responsible.”

(Young Peruvian)

With a clear focus on children, the new Children’s Rights and Business Principles address some of the criticisms of the Guiding Principles. Developed in
consultation with children, business, trade unions, national human rights institutions, civil society, academics, investors and governments, the resulting document is an explicit articulation of the ways in which business - via its own operations and business relationships - impacts the human rights of children in the workplace, the marketplace, and in the community and the environment. In this manner, the content of the Children’s Principles clearly reflects the Protect, Respect and Remedy framework that underpins the GPs; indeed the first principle calls for policy commitment, human rights due diligence and remediation vis-à-vis children. Developed collaboratively by Save the Children, UNICEF and the UN Global Compact, the new Children’s Principles do not engender new legal obligations; in fact, most of their content already appears in international agreements including, inter alia, the UN CRC and its Optional Protocols as well as ILO Convention No. 182 on the Worst Forms of Child Labour and No. 138 on Minimum Age. What is novel and innovative about the CRBP is that they bind earlier guidance to corporations and jurisprudence together in a single strategic framework (Confino, 2012).

But what do the Children’s Rights and Business Principles promote and does children’s participation factor into the efforts companies are encouraged to undertake? Like many other voluntary CSR measures, the Principles comprise a list of actions businesses are encouraged to follow. Employing a children’s rights framework, the CRBPs comprise ten statements meant to provide proactive guidance over a variety of areas around which children’s rights issues and business coalesce. Child labour is an obvious and crucial inclusion but other issues and areas are also covered including the provision of decent work for other family members, product safety, marketing and advertising, environmental and land acquisition, the impacts on children of security arrangements, emergencies and finally, government and community work to realize children’s rights. For the purposes of this study, I have looked for the place of participation in UNICEF CSR’s pilot workbook Children are Everyone’s Business.\textsuperscript{1}

Intended to serve as a guide to incorporating children rights into CSR, the workbook is designed to help businesses implement the Children’s Principles. The publication departs from the Guiding Principles in clearly referring to the four core principles of the Convention on the Rights of the Child (2012, p. 20). The Children’s
Rights and Business Principles also specifically refer to children as stakeholders and underscore the importance of their “meaningful participation.” In a separate box on the same page, the document highlights the following characteristics of child participation: voluntary; transparent and informative; respectful; relevant; child-friendly; inclusive; safe and sensitive to risk; and accountable (UNICEF 2012. Under the section “Consulting with children: A few pointers”, the workbook states:

For valuable information about impacts on children, consult the best experts: children themselves. Children know best their own situations and can assist a company in identifying impact and risks not considered by adults. Under the CRC, children have the right to a voice in matters that concern them and to have their opinions be given due weight based on their capacity and level of maturity (34).

Earlier in the workbook the rationale behind a human rights-based approach includes two sections on participation: one concerning children’s lack of public voice and the other about how children are not often consulted (p. 15) in business policymaking and practice. Although references to children’s participation pepper the document, participation rights are chiefly articulated in the opening chapter which reflects the first of the ten principles, “Integrating children’s rights into core business practice.”

Certainly, by virtue of both an explicit foregrounding of children and the emphasis on the full spectrum of business impacts on children, the CRBPs mark a significant improvement over previous CSR efforts from which children were wholly absent.

In some ways the Children’s Rights and Business Principles are a leap of faith; research to date suggests that the connection between children’s rights and business responsibility remains outside the bailiwick of most CSR initiatives. According to business and human rights researcher Elizabeth Umlas, “we are starting to see company awareness of the need to pay attention to stakeholders but I think children figure pretty far down, outside of child labour … children are mentioned in some company reports … but I don’t think there is great awareness on the part of most companies about what children’s rights are.”

The recently released Global CEO Study 2013 – Children’s Rights and Business underscores the lower prioritization of children’s rights as a key
area of sustainability. Furthermore, CEOs describe “immature strategies” on children’s rights that are implemented on an “ad hoc” basis. Most respondents also call for guidance over the upcoming years in addressing children’s rights and cite best-practice examples as offering the greatest help followed by informational fora and networks (29).

Indeed, as Adam Adrien-Kirby,lv of ILO-IPEC notes, “At a policy level, once businesses understand that there is child labour in their supply chain and children are impacted, it is more likely to appear as a separate section in their corporate social responsibility policy.” While raising the issue of children’s rights is important and guidance to the business sector crucial,lvi critics of both the Guiding Principles and the Children’s Principles note a lack of implementation mechanisms. According to Human Rights Watch, both sets of principles are helpful but “certain key issues affecting child rights, including extraterritorial obligations and responsibilities, the need for more effective regulation, the right to remedy and the need for accountability, require further elaboration” (2012).

The Children’s Rights and Business Principles also represent a significant shift from philanthropic approaches that have dominated CSR particularly regarding children. As Chris Averylvii of the Business and Human Rights Resource Centre notes:

Times have changed and philanthropy is no longer enough. Now that the United Nations has explicitly recognized corporate responsibility to respect human rights, companies must take steps to ensure that they are also respecting children’s rights in their direct operations, in their supply chain and in communities they impact (Umlas/UNICEF, 2012; p. 9).

Recent IPSOS-Mori (2013) research into CSR among UK companieslviii indicates that while two-thirds of respondents have heard of the Guiding Principles, fewer than a quarter have embedded them into daily operations and decision-making.

As the first large-scale effort to guide businesses on how to use human rights due diligence to mitigate and prevent child-related violations throughout the supply and value chains, the Children’s Rights and Business Principles highlight a perceptible broadening of the human rights and business conversation to include children. As the nexus of children’s rights and business becomes more apparent, we have the unique opportunity to make sure participation rights are mainstreamed in the process – moving from ad hoc
efforts into the mainstream of policy-making and program planning, design, implementation, monitoring and evaluation in all organizations whose work impacts children. Whether due to the “shadow of regulation,” perceived business advantage or genuine commitment to ethical practices, corporations have never been more interested in the human rights impacts of their policies and operations. The UN Global Compact’s nearly 12,000 members may seem small in the context of 70,000 transnational corporations, but an increasing membership underscores a rapidly growing business interest in corporate responsibility and, increasingly, accountability. Indeed, CSR seems set to open the door to greater business involvement in human rights but it is unlikely that companies can take the conversation beyond words without support from States.

**CRC General Comment No. 16**

There was a general consensus among young participants that governments should involve children’s groups, child-led groups, NGOs, and media and social organizations to create awareness about how business is directly involved with children and their rights. These initiatives could include public campaigns through television, newspapers, rallies, photo exhibitions and theatre shows.

*Children’s contributions to draft GC 16 (Wilson 2012, p. 17)*

Released in February 2013, General Comment No. 16 on State obligations regarding the impact of the business sector on children’s rights complements both the Guiding Principles (GPs) and the Children’s Rights and Business Principles (CRBPs). While both soft law instruments focus on business, the emphasis of GC 16 is on the obligations of States Parties. Based on twenty years of collective jurisprudence of the Committee on the Rights of the Child, GC 16 advances the nexus of children’s rights and business within international human rights law and also guides business enterprises to implement suitable policies. Indeed, as Gerber et al. (2013) underscore, the development of the CRC’s General Comment embodies Ruggie’s vision of progression for human rights and business and is essential for children’s rights in business (p. 21). As the authors further point out, GC 16 is the first time that a treaty body has focused clearly on the
nexus of business and the rights of a specific category of rights-holders. As we shall see, GC 16 not only reinforces the importance of participation rights generally but also underscores the value of child rights impact assessment (CRIA) and significance of extra-territorial obligations (ETO) vis-à-vis the realization of children’s rights.

In the UN CRC’s General Comment No. 16 (2013) on State obligations regarding the impact of business on children’s rights, we have a pointed elaboration on the business and human rights connection and a clear articulation of extra-territoriality. We also have a reminder of the foundational principles underpinning a treaty with the moral and legal heft of near universal ratification. While interviews with child rights researchers and practitioners underscore the challenges of implementing participatory processes, not a single person believes they were not entirely necessary. While Gerber et al. (2013, p. 31) argue that the Committee on the Rights of the Child should have more clearly elucidated the requirements of state and non-state actors, the GC 16 does move past a sole emphasis on state obligations (Gerber et al, fn 188).

In the opening paragraph, the General Comment clearly recognizes that the business sector’s influence has increased under globalization and that the State has decentralized with deleterious impacts on children’s rights. GC 16 is careful to reinforce the importance of the UN Convention on the Rights of the Child’s foundational principles, including the right to participate: “Children are often politically voiceless and lack access to relevant information…. In the process of decision-making, States may not adequately consider the impact on children of business-related laws and policies, while, conversely, the business sector often exerts a powerful influence on decisions without reference to children’s rights” (UNGA, 2013; para. 4.b).

Regarding corporate responsibility measures, the Committee observes that voluntary measures to advance children’s rights can be of some use and thus supported by States; however, voluntary approaches can neither substitute for State regulation of business according to the CRC and its protocols nor for business to meet their responsibilities regarding the rights of children (para. 9). By reinforcing both the right of children to be heard and State obligations regarding business responsibility, GC 16 offers great potential to help realize children’s rights, particularly vis-à-vis participation.
General Comment No. 16 on State obligations regarding the impact of the business sector on children’s rights is unique within the UN system not only in its clear emphasis on the intersection of corporate activity and children’s rights but also for the scope it provides for extra-territoriality. Articles 38-46 clearly articulate the basis for extra-territorial obligations (ETO) in the CRC and the Optional Protocol on the sale of children, child prostitution and child pornography. The Committee reminds States that “liability for offences … should be established for legal persons, including business enterprises” and contends that States have obligations of international co-operation to realize rights beyond their own borders and that near universal ratification renders these obligations of great significance, particularly in view of the fact that 193 States Parties must submit reports and go before the Committee every 4-5 years.

Another feature of General Comment No. 16 particularly germane to the question of whether business accounts for children’s participation rights is the section on child-rights impact assessment or CRIA. According to the Committee on the Rights of the Child (General Comments No. 2 and No. 5), the Convention obliges signatories to use these assessments when developing public policy that may have a direct impact on children. Although there is no clear consensus as to the form and content of CRIAs, GC 16 promotes such assessments as a way to predict the impact of business activities and policies on children. The Committee also encourages States Parties to ensure that all such assessments reflect the four principles of the CRC including participation. The Committee also notes that impact assessments “may be based upon input from children, civil society and experts.” While it would be preferable that all CRIAs include children’s perspectives, child-focused assessment offers the potential to truly encourage the meaningful inclusion of children’s participation from the outset of proposed business policies and practice. In its children’s rights-based focus on the reinforcement of participation and attention to extra-territorial obligations, General Comment No. 16 represents the state-of-the art of international human rights jurisprudence at the juncture of business and human rights. General Comment No. 16 and the Children’s Rights and Business Principles, therefore, constitute an important step forward in advancing children’s rights within the ambit of global business.
CONCLUSION

I don’t think a whole new set of standards is required but a thorough uptake of the GPs and the CRBPs is required … If you really take up the principle of meaningful engagement and measuring the impact on rights holders it would be obvious that children are left out… their voicelessness adds to their powerlessness and their vulnerability.

Elizabeth Umlas

In the current flurry of activity around business and human rights, I wondered how well children’s rights are accounted for in corporate social responsibility. Through a review of seminal and leading-edge academic research and gray literature, this paper reminds us of the moral and legal imperatives to listen to the voices of children and incorporate their feedback into all aspects of development. The paper also offers original research by incorporating the perspectives of various experts and practitioners working right now at the nexus of business and children’s rights, and in particular their participation rights. The June 2013 report of the UN Special Rapporteur on Extreme Poverty and Human Rights focuses squarely on how lack of participation is both a cause and a consequence of poverty. Her work re-states a link that, while missing in the literature, many people living in poverty have long known: lack of control over one’s life is a violation of the right to a life of dignity. Moreover, lack of agency impacts the ability to realize many other rights. And it is children – by virtue of their physiological development as well as their relative voicelessness – who suffer both poverty and lack of participation the most. Whether we look at child labour in the garment sector or exposure to mercury in children’s artisanal mining, the need for corporate respect for children’s rights has never been more urgent.

There is room for cautious optimism particularly as CSR incorporates greater accountability practices. In a recent survey of 400 global CEOs, business leaders agreed that more extensive legislation regarding children’s rights would be good despite costs associated with it (Boston Consulting Group 2013, p. 30). Moreover, most respondents
claim government and corporations are “equally responsible” for protecting children’s rights (p. 16). This implied equivalency suggests good partnership prospects between corporations and governments to work together to promote greater respect for children’s rights.

The UN Convention on the Rights of the Child as the foundational document informing both the Children’s Rights and Business Principles and CRC General Comment No. 16 remains as powerful and relevant as ever; indeed, the nexus of children’s rights and business arguably expands that Convention’s authority and influence in what is fast becoming one of the most important of contemporary conversations: the overlap of international human rights and business. The UN Guiding Principles and the Children’s Rights and Business Principles are still new, still gaining traction. While their voluntary nature and lack of enforcement mechanisms disappoint some children’s rights advocates, the fact of their existence and growing promotion suggests a genuine if nascent paradigm shift from philanthropic responses to children’s needs to increased accountability for human rights on the part of both state and non-state actors.

While the Children’s Principles – as private effort – lack the authority of General Comments (Gerber et al., 2013), they clearly represent the concerted efforts of leading children’s rights advocates to lay the groundwork for more meaningful engagement at the intersection of children and business. During the research period of June and July 2013, UNICEF, in collaboration with other children’s advocacy organizations, was in the midst of developing a suite of guidance tools to help companies implement the Children’s Rights and Business Principles. When it comes to participation rights, the development of a comprehensive toolkit for monitoring and evaluating children’s participation was likewise in progress. Innovative approaches to CSR, such as the CRBPs, auger well for the future if companies embrace them fully. Perhaps, after all, we might boldly imagine that one day soon the business of business will include the support and promotion of children’s rights, including to meaningful participation. If business can make space for its most vulnerable stakeholders, the future of CSR as a credible complement to state intervention and regulation for the protection of children and the promotion of their human rights appears promising.
Notes

i Partial funding for fieldwork came from a research grant from the Centre for the Study of Human Rights at the London School of Economics. The author was awarded an MSc. Human Rights in December 2013.

ii Comment made during children’s consultation, Children’s Participation in CSR (Kapell 2010)

iii In addition to a review of scholarly and gray literature, the research methodology included in-depth in-person interviews in Geneva with individuals working directly in the areas of enquiry covered in this paper. Key informants are from UNICEF CSR, the ILO’s CSR section of the International Programme on the Elimination of Child Labour (IPEC), the Office of the High Commissioner for Human Rights (OHCHR), a leading CSR expert at UNRISD, and an independent expert consultant on business and human rights and the UN Special Rapporteur on Human Rights and Extreme Poverty (via Skype). Where requested, participant feedback has been anonymised and comments made in a personal capacity noted. In London, I interviewed the Head of Business and Human Rights with Amnesty International’s International Secretariat. Regrettably, while I have included children’s perspectives on CSR based on various consultations, direct interviews with children were not possible during the field research period of June and July 2013.

iv For an accessible elaboration of the importance of children’s participation in international development, see UNICEF (2002).

v Launched in 1979, IBFAN focuses on commercial marketing practices that promote infant formula at the expense of breastfeeding and is thus a violation of the right to health, adequate food and nutrition. See www.ibfan.org.

vi For more on the impact of neoliberalism on social interests, see David Harvey’s book “Brief History of Neoliberalism,” New York, Oxford University Press, 2005.

vii December 4-5 2012, United Nations, Geneva. I attended the conference as a volunteer with the OHCHR and the UN Global Compact.

viii See www.ohchr.org

ix This was a sentiment I overhead repeatedly during attendance at the conference.

x The resource centre’s website is a useful resource for the latest information on business and human rights and posts both NGO commentary and corporate responses. It also hosts Ruggie’s mandate portal. See www.business-humanrights.org/ChildrenPortal/Home.


xiii The word “participation” does appear in Article 23.1 in relation to children with disabilities.

xiv Other participation rights in the UN CRC included Articles 4 and 12-17.

xv Some American Christian groups have argued that the Convention undermines parental influence.
Comments provided by the Human Rights Officer in a personal capacity during an interview conducted June 2013.

Interview June 27th 2013 in Geneva at the ILO.

For a recent collection of case studies of children’s participation that resulted in policy change, see the following youth-led resource: Youth Participation in Development: A Guide for Development Agencies and Policy Makers. Published by the DFID-CSO Youth Working Group, 2010.

Children’s participation researcher/practitioner Harry Shier notes that participation is not about a one-off event but about a lifelong process whereby children learn to how to participate in their communities (Wheeler 2010; p. 468).

See Hart (1992) for an influential typology of children’s genuine participation based on the earlier work of Sherry Arnstein and the ladder of adult participation. Hart differentiates manipulative, tokenistic and decorative attempts at participation from genuinely participatory processes.


Interview with Dr. Peter Utting, Deputy Director, United Nations Research Institute for Social Development, Geneva, June 26th, 2013

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http://www.hks.harvard.edu/m-rcbg/CSRI/init_define.html

The term “social license to operate” was created in the nineties by Canadian mining executive Jim Cooney. See Prno (2013)

With its first of 10 principles a clear articulation of business responsibility vis-à-vis human rights, the world’s key CSR organization is at the vanguard of the business and human rights discussion.


Senior Researcher, Business and Human Rights, Human Rights Watch.


Email communication with Dr. Peter Utting, August 16, 2013.

For a four-point critique of Porter and Kramer’s shared value concept, see “Contesting the Value of “Creating Shared Value” see Crane et al. (2014)

Email communication with Dr. Peter Utting, August 16, 2013.

Interview with Benjamin Smith, Senior Officer, CSR for ILO-IPEC, Geneva, June 27th, 2013.

The new grievance tool will be released mid 2015.

Email communication August 16th, 2013.

www.unicef.org/csr/

According to Ursula Wynhoven, General Counsel at the UNGC, there are 11,687 participants (email communication August 18, 2013). It is important to note that the Global Compact regularly expels
participants who fail to communicate their progress on implementation. More than 2,000 have been expelled to date.

xxxviii The UN Global Compact’s Ten Principles on CSR begin with two principles on supporting and respecting human rights as articulated in the Declaration of Human Rights and other key documents and in avoiding complicity in human rights violations. www.unglobalcompact.org.

www.ohchr.org/Documents/Publications/GuidingPrinciplesHR_EN.pdf

xl United Nations Norms on the Responsibilities of Transnational Corporations and Other Business Enterprises with Regard to Human Rights, 2003 was intended to ascribe the same human rights obligations on companies that states had accepted in treaties.

xli For a behind-the-scene look at the process behind the GPs, see John Ruggie’s recent book “Just Business: Multinational Corporations and Human Rights”

xlit The London-based CRIN disseminates publications, research and information related to the implementation of the UN CRC to more than 2,100 organizations in 150 countries. See www.crin.org

xlii While CRIN’s feedback was based on the draft version of the GPs, many of their criticisms remain applicable to the final version.

xliv CRIN submission January 2011, online www.crin.org

xiv Email communication with Monica Lindvall, Senior Advisor, Section for Thematic Support, International Programme, Save the Children Sweden, June 10, 2013.

xlvi Participant in Save the Children’s consultation with children. See Kapell (2010).

xlvii See www.childrenandbusiness.org, the central hub for business, civil society organizations

xlviii See Kapell (2013) for reference to the child-friendly version.

xlix The lineage of the CRBPs also includes the UN Global Compact’s Ten Principles, CEDAW (1979), CRPD (2006), UN DRIP (2007) and the UN Study on Violence against Children (2006)

Subsequent to the research period, UNICEF and Save the Children released a suite of CSR-related tools. An updated version of the “Children are Everyone’s Business” was released in December 2013. The latest version is “Children are Everyone’s Business 2.0.”

Subsequent to the research period, “A Toolkit for Monitoring and Evaluating Children’s Participation” was published by Save the Children. It is a suite of booklets representing a collaboration between various children’s organizations including Unicef, World Vision, Plan, the Concerned for Working Children and Save the Children. The authors are Gerison Lansdown and Claire O’Kane, 2014.

This was also my observation while attending the First Forum on Business and Human Rights, Geneva, December 3-5, 2013. Certain sectors in particular – such as the financial services sector – were unclear as to how their operations related to human rights.

The aim of the study was greater insight into the business perspective on children’s rights. Surveys and interviews took place with 400 CEOs of global companies of various sizes and industries. The Global CEO Study 2013 was a collaboration between the World Child and Youth Forum (Sweden) and the Boston Consulting Group.

Technical Officer, CSR, ILO-IPEC. Interview comments made in his personal capacity. June 2013.

Nine out of ten companies indicated it was “appropriate” for UNICEF to guide companies on child-focused CSR.

Founding Executive Director, Business and Human Rights Resource Centre

Commissioned by UNICEF.

This section reflects an interview with Kevin Koh, Human Rights Officer, at OHCHR in Geneva, June 28th, 2013 in his personal capacity.

See also the 2011 Maastricht Principles that reconcile economic globalization with the human rights obligations of states. GC 16 reflects the MPs work on ETO.

Subsequent to the research period, UNICEF and the Danish Institute of Human Rights published “Children’s Rights in Impact Assessments.”

BHR independent researcher, author UNICEF CSR Working Paper, Sustainability reporting on children’s rights (2011)

References


into practice (pp. 77-92). Stockholm: Save the Children and UNICEF Regional Office for South Asia.


U.N. Committee on the Rights of the Child General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights (17 April 2013) UN Doc CRC/C/GC16. Retrieved from:

http://www2.ohchr.org/english/bodies/crc/docs/.../CRC-C-GC-16_en.doc


