

COMMENTS ON THE 'CHILDREN'S RIGHTS & BUSINESS PRINCIPLES INITIATIVE'

IBFAN, in association with public interest groups and individuals, while supporting the idea that the UN should adopt a set of principles on children's rights and business, and understand that this initiative is a genuine attempt to scale up action in this important area, are worried that the CRBPI as formulated, has such fundamental flaws that it will result in more harm than good.

We are concerned that the current Children's Rights & Business Principles Initiative (CRBPI) is being instigated in partnership with the Global Compact Office (GCO) which has been shown to be ineffective, lacking accountability and transparency. Like the Global Compact (GC), this initiative focuses on self-assessed voluntary measures rather than on State Parties' obligations to regulate the impact of business on child rights. Moreover, the development of the CRBPI at this time pre-empts the forthcoming Committee on the Right of the Child (CRC Committee) General Comment on Business and Children's Rights which should underpin and guide all action on children's rights in this area.

We call on UNICEF and Save the Children, for who the Convention on the Rights of the Child should be the backbone of their work, to:

- 1. Disengage from collaborating with the Global Compact Office (GCO) unless and until specific reforms, recommended by the UN Joint Inspection Unit, are put in place. It is not acceptable to support a process that essentially serves only the needs of business, and that has proved to damage UN reputation while showing no clear results.**
- 2. Support the development of the forthcoming general comment by the CRC Committee, expected in 2012, and rely on it as the unifying framework on children's rights and business, as the general comment will guide state parties in establishing regulatory frameworks that protect child rights.**
- 3. Promote an initiative on children's rights and business that integrates strong accountability measures, including independent monitoring of business practices, and does not rely on voluntary commitments.**

Until these fundamental steps are taken, we feel that the CRBPI is unacceptable. Any initiative in this area must rely upon the authoritative interpretation of CRC Committee and must learn from the many failures of the GC venture. It must include accountability as a core principle, with robust independent monitoring mechanisms and support rather than undermine the adoption of comprehensive legislative frameworks that protect child rights.

RECOMMENDATION 1

UNICEF and Save the Children should disengage from collaborating with the Global Compact Office (GCO) unless and until specific reforms, recommended by the UN Joint Inspection Unit, are put in place. It is not acceptable to support a process that essentially serves only the needs of business, and that has proved to damage UN reputation while showing no clear results.

The fundamental flaws of the GC are exposed in the evaluation by the Joint Inspection Unit (JIU) of the UN System in 2010¹ (see Box). The lack of accountability measures in the GC allows companies that are violating UN requirements to enhance their reputation through image transfer. This evaluation spoke clearly: *“unless improved, the GC may damage UN reputation”*. The UN General Assembly should guide the GCO and ensure a clear mandate and democratic governance of this initiative.

The GC is used by corporations for public relations purposes to divert attention from more effective measures that would improve corporate accountability. IBFAN and partners have been pursuing a complaint against Nestlé for its unethical practices under the Integrity Measures of the GC for over two years. The GCO has refused to carry out a review or to exclude the company which has been a GC member since 2002. IBFAN’s last monitoring report shows that Nestlé continues to be the biggest violator of the International Code of Marketing of Breastmilk Substitutes and subsequent relevant WHA Resolutions.² Despite the fact that Nestlé refuses to take appropriate action, its reports have been promoted by the GCO and the company was allowed to be a patron sponsor of the Global Compact 10th anniversary celebrations³.

[Box] Summary of the main findings from JIU on the GCO

The GCO has no clear mandate and lacks a long term strategy and clear targets. There are no clear entry criteria and no screening of members.

There is a lack of transparency and of an effective monitoring system. The reporting mechanism consists in a self-assessment exercise and it does not provide effective monitoring and verification of the principles.

The GC has drawn reputational risks for the United Nations organizations involved in it because of the risks associated with the use of the UN brand by companies that may benefit from the partnership without proving their conformity with UN core values.

The Inspectors recommend that Member States should be involved and that the UN General Assembly needs to guide the Secretary General in better delineating a clear mandate for the GCO, “so as to prevent a situation whereby external actors may divert attention from agreed strategic goals to promote interests that may damage the reputation of the United Nations”.

¹ “United Nations Corporate Partnerships: The Role and Functioning of the Global Compact” (JIU/REP/2010/9): http://www.unjiu.org/data/reports/2010/JIU.REP.2010.9_For%20Printing_17%20January%202011.pdf (Accessed on June 18th 2011)

² ICDC, *Breaking the Rules: Stretching the Rules 2010*, <http://www.ibfan.org/news-2010-1224.html> (Accessed on 19th June 2011)

³ <http://info.babymilkaction.org/pressrelease/pressrelease23jun10>

 RECOMMENDATION 2

Support the development of the forthcoming general comment by the CRC Committee, expected in 2012, and rely on it as the unifying framework on children’s rights and business, as the general comment will guide state parties in establishing regulatory frameworks that protect child rights.

This CRC general comment will assist all stakeholders (governments, legislators, academia, etc.) to better understand child rights. For this reason it should guide every initiative on business and children’s rights. The general comment will outline State Parties’ obligations, as the duty bearers of children’s rights, to regulate the impact of business on children. It is the state’s obligation to protect, respect and fulfill children’s rights, while the primary obligation of private actors is to respect these rights.

By promoting voluntary business initiatives as the “*unifying framework for existing and future initiatives*” the CRBPI will pre-empt and undermine the work of the CRC on the general comment. In particular, principle 7 of the CRBPI poses a great risk as it may be used to justify the private sector’s co-option of governments’ responsibilities in fulfilling their human rights obligations.

The CRBPI will assist companies that wish to oppose and resist legislation at the country level and to divert attention away from the need for compliance with UN treaties, resolutions and standards. The 2008 Euromonitor International Report⁴ on baby food marketing, which provides intelligence to business internationally, shows clearly that “companies are fighting a rearguard action against regulation on a country-by-country basis.”⁵

 RECOMMENDATION 3

Promote an initiative on children’s rights and business that integrates strong accountability measures, including independent monitoring of business practices, and does not rely on voluntary commitments.

The CRBPI lacks focus on accountability and has no “teeth.” The draft principles promote the corporate social responsibility approach without any mention of accountability.

The preamble states that: “*Integrating children’s rights into business culture and management systems makes sound business sense. It can enhance reputation, attract investment, improve the recruitment, retention and motivation of the workforce and contribute to a sustainable and stable future.*” The CRBPI is clearly an incentive-driven initiative with no sanctions for failure to comply with the core principles and provisions. All carrot with no stick. Furthermore, the WHO Framework

⁴ Euromonitor International, 2008, *Global Packaged Foods: Market Opportunities for Baby Food to 2013*.

⁵ In 2007, the Philippines became a major battleground, with formula manufacturers attempting to block a government ban on advertising in the courts. The huge disparity in the retail value of milk formula sales between China and India is mainly due to the significant differences between their official regulatory regimes. *Idem*.

Convention on Tobacco Control defines Corporate Social Responsibility (CSR) as a marketing and public relations strategy that falls within the FTC's definition of advertising and sponsorship.

CRBPI is based on the empirically unsupported assumption that private companies will collaborate to advance the public interest and human rights. This is in contrast with evidence that the self-assessed voluntary initiative approach, promoted by the CRBPI, is inadequate in the protection of human rights. As the JIU evaluation states: "*The reporting mechanism consists in a self-assessment exercise and it does not provide effective monitoring and verification of the principles.*" As currently presented, the CRBPI will be another opportunity for business to improve its image by its association with the UN system, without any real strategy proposed by the UN to ensure that children's rights are protected.

THE CONTENT AND SCOPE OF THE CRBPI

In addition to the 3 recommendations, IBFAN and allies have also some specific suggestions on the content and scope of CRBPI. We list these below. However, we wish to underscore that these amendments would be meaningful in strengthening the initiative **only** if the 3 key recommendations were full taken on board.

We hope that UNICEF and Save the Children will accept and implement these recommendations and suggestions. The signatories to these comments would be then very interested to engage further with the initiative.

1. The CRBPI, calls on businesses to "respect and support" children's rights - expanding their role while failing to address the "respect" dimension.

Business must respect and comply with existing laws, norms and standards in relation to children's rights, both at national and international level. The CRBPI should call on business to abide by the highest international standards already set out in different international instruments (e.g. UN human rights conventions, ILO Conventions, and WHO Resolutions and standards, etc.).

In certain contexts, the safest way for business' to respect child rights is to abstain from certain activities. For example, in relation to infant and young child feeding, businesses must comply with standards set in the International Code of Marketing of Breastmilk Substitutes and subsequent relevant WHA resolutions and Codex Alimentarius and abstain from other pro-active promotional activities.

2. Principle 4 (Use of marketing and advertising that advances children's rights) fails to mention marketing practices that have an impact on babies and young children. For example companies' obligation to comply the *International Code of Marketing of Breastmilk Substitutes* and subsequent relevant WHA Resolutions or WHO's Recommendations on the Marketing of Foods and Non-alcoholic Beverages to Children. The role of business in relation to infant and young

child feeding has been clearly defined in the *Global Strategy on Infant and Young Child Feeding*⁶. Yet, there is no mention of it in the draft principles.

3. **Principle 5** expands and could provide UN endorsement to the role of businesses in areas that are inappropriate and not their responsibility such as education and the creation of 'child friendly environments.' It is essential that this principle is not used to legitimize indirect marketing and promotional activities to and for children, e.g. through inappropriate sponsorship of education.
4. **Principle 2/f** (*Provide decent working conditions that also support women and men workers in their roles as parents or caregivers*) while calling on business to provide decent working conditions that support women during pregnancy and breastfeeding, fails to make specific mention of the ILO Convention 183 and the Recommendation 191 on maternity protection. In order to fully support and respect children's rights, business should comply with the minimum protection for maternity as stipulated by this Convention: 14 weeks of maternity leave and the other relevant conditions.

In line with the spirit of International Code of Marketing of Breastmilk Substitutes and the subsequent relevant WHA resolutions, principle 2 should call on companies not to use incentives to sale of breastmilk substitutes and other baby foods.

5. **Principle 6** (*Help protect children affected by emergencies*) fails to call on business to comply with existing guidelines and standards that apply in emergencies. More specifically, in relation to infant and young child feeding, there is no mention neither of the *Global Strategy on Infant and Young Child Feeding*, nor of the *Operational Guidelines for Infant Feeding in Emergencies*⁷. This example illustrates how the principles fail to develop the duty of business to respect children's rights.

⁶ Refer in particular to paragraph 44.- WHO, 2002, *Global Strategy on Infant and Young Child Feeding*, http://www.who.int/nutrition/topics/global_strategy/en/index.html (Accessed 19th June 2011)

⁷ <http://www.wpro.who.int/internet/files/eha/toolkit/web/Technical%20References/Nutrition/Infant%20and%20Young%20Child%20Feeding%20in%20Emergencies.pdf> (Accessed on 19th June 2011)