



CentroDerechosHumanos  
UNIVERSIDAD DIEGO PORTALES

## **Observations and input for the General Comment by the UN Committee on the Rights of the Child Regarding Child Rights and the Business Sector**

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### **Document submitted:**

*Critique of the Ruggie framework and the Guiding Principles of 2011: Paul/Schönsteiner, Corporate accountability in the framework of the Special Representative on Business and Human Rights, in: Michalowski, Sabine, Transitional justice and corporate accountability, forthcoming, Routledge 2012.*

The Human Rights Centre of the Diego Portales University welcomes the Committee's initiative to prepare a General Comment on the Rights of the Child and the Business Sector.

The author has developed the misunderstandings linked to and the limitations of the Ruggie framework and GPs in the draft attached, which is submitted to the Committee with the explicit request NOT to publish it, as this is prohibited by the editorial. The piece will appear in an edited volume soon, and the authors do not have permission to publish, distribute or reproduce it before the date of publication. In that sense, I appreciate the Committee's understanding for these restrictions. The executive summary (see next page and separate document) can be published.

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### **Executive Summary**

The Human Rights Centre of the Diego Portales University welcomes the Committee's initiative to prepare a General Comment on the Rights of the Child and the Business Sector.

It is crucial to reiterate and specify state obligations, as well as business responsibilities, in that regard, in close and clear adherence to the principles of interpretation of international human rights law and the Convention on the Rights of the Child (CRC) in particular.

This is necessary in the light of a considerable level of confusion that exists in the international community about the scope of the Guiding Principles (GPs) and the SRSG's framework on business and human rights. It is important to highlight that the Guiding Principles are conceived as a governance tool, *not* the authoritative voice of international human rights law on the issue. The GPs provide very useful reference to best practice, a consistent emphasis on the prevention principle, and the advantage of having been consulted with the business community – but **the GPs are *not* a complete, comprehensive or even entirely correct reflection of state's obligations under international law.** Less so are they a reflection of international law on the rights of the child, and specific concerns related thereto.

In that sense, it is of crucial importance that treaty bodies continue to develop state's obligations under the respective Conventions and Pacts, aware that they are the authoritative organs of treaty interpretation, and that they dispose of the independence and expertise to do so. Specifically, treaty bodies, including the Committee on the Rights of the



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Child, must spell out what the duty to protect and the duty to fulfill mean in the context of business activity impacting on human rights, and especially, the rights of the child. **Entities that are not endowed with the same authority of treaty interpretation cannot replace the Committee in this task.**

If, therefore, the GP are a collection of best practices *in the light* of human rights law, but not representing the latter – then this is **a strong reason not to treat the GP as the current “codification of law” regarding business and human rights issues, but as the governance tool the GP explicitly claim to be.** It is therefore necessary that treaty interpretation, especially by treaty bodies and international tribunals, continues to base itself on the recognized principles of interpretation, in order to develop for each treaty what state obligations and business responsibilities or obligations are concretely – taking into account the principle of the evolution of human rights law.