

Children's Rights and Business Principles Roundtable



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Cover photo: Children playing in an abandoned mine.

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Introduction

On 10 June 2015, the South African Human Rights Commission (SAHRC) hosted a roundtable on Children's Rights and Business Principles (CRBP) at the Astrotech Conference Centre in Johannesburg.

The State is obligated, in terms of the Convention on the Rights of the Child (CRC), the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography, as well as the Constitution of the Republic of South Africa,¹ to regulate the impact of business activities and operations on children's rights.²

As noted by the Committee on the Rights of the Child in General Comment No. 16 on *State Obligations Regarding the Impact of the Business Sector on Children's Rights* (Committee on the Rights of the Child General Comment No. 16):

Business can be an essential driver for societies and economies to advance in ways that strengthen the realisation of children's rights ...[but] business enterprises can also negatively impact children's rights.³

The State's obligations cover a variety of issues, given that "children are both rights-holders and stakeholders in business as consumers, legally engaged employees, future employees and business leaders and members of communities and environments in which business operates."⁴ The responsibilities on the State and the business sector, and the practical measures necessary to ensure that children's rights are respected, protected and promoted by the business sector are often unclear and inadequately understood by all role players.

1 Constitution of the Republic of South Africa, 1996.

2 United Nations Committee on the Rights of the Child (2013). *State Obligations Regarding the Impact of the Business Sector on Children's Rights*. CRC/C/GC/16. 17 April 2013.

3 United Nations Committee on the Rights of the Child (2013). *State Obligations Regarding the Impact of the Business Sector on Children's Rights*. CRC/C/GC/16. 17 April 2013, para 1.

4 United Nations Committee on the Rights of the Child (2013). *State Obligations Regarding the Impact of the Business Sector on Children's Rights*. CRC/C/GC/16. 17 April 2013, para 2.

For this reason, the SAHRC hosted a roundtable on children's rights and business principles. Representatives from government, the SAHRC, business, academia, children's rights non-governmental organisations (NGOs) and development partners came together to start laying the foundations for building a collective and collaborative platform for the identification and development of focussed, rights-based and effective solutions for the protection of children's rights in and through business. A copy of the attendance register is annexed at the end of this report.



Putrid water collecting in a hole at an unrehabilitated coal mine in Ermelo.

The objectives of this roundtable were to:

- Examine the child rights challenges resulting from the actions of the business community and possible remedial action;
- Explore the opportunities for the promotion and protection of children's rights in the workplace;
- Raise awareness of children as community members and important stakeholders of business; and
- Share avenues for information gathering and sharing for the purpose of claiming and accessing rights.

Opening remarks

Chantal Kisoona, the programme director for the day, and the acting Chief Operations Officer of the SAHRC, prefaced the meeting with a number of preliminary comments on the SAHRC's engagement on the theme of business and human rights.



Chantal Kisoona

She welcomed the participants and noted that the SAHRC has been actively working to advance the protection of human rights within the business sector since 2014. The SAHRC's involvement in the issue has ranged from its engagement with the implications of the United Nations' Guiding Principles on Business and Human Rights (UN Guiding Principles)⁵ for the South African business sector, both at the national and provincial spheres. The UN Guiding Principles were developed by the then Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and other Business Enterprises, John Ruggie.

Kisoona identified the roundtable as the next step in the SAHRC's journey, with the objective of applying the principles and knowledge from the audience to specifically further the protection of children's rights. The purpose would be achieved through examining work in progress with regard to business and human rights and assessing the application of CRBP in South Africa.

The proceedings were thereafter formally opened by Commissioner Janet Love who provided a factual and legal context for the discussions, as well as the rationale for the SAHRC's active role on the issue. Love outlined the educational, oversight and leadership mandate of the SAHRC.

⁵ See John Ruggie, Special Representative of the Secretary-General, "Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy Framework", Human Rights Council, 5, U.N. Doc. A/HRC/17/31 (2011).

She reiterated that the purpose of the collaborative discussions was to build a common understanding of the concrete steps that can be taken to ensure the realisation of children's rights in the business context.

Drawing on the SAHRC's work thus far, such as the development of a Human Rights and Business Country Guide for South Africa, she highlighted a number of defined areas of concern which require collective thought and action. For example, the need to minimise potential exploitation and harm to children through advertising and use of dangerous products.



Commissioner Janet Love

Love stressed the importance of all responsible role players, including businesses and government, to fulfil their duties towards the protection and promotion of children's rights in and through business. This requires, *inter alia*, the correction of the view often held by businesses that government is the primary duty-bearer. In addition to businesses being bound by the Constitution, the CRC and other human rights instruments to respect children's rights, businesses' active involvement in supporting children's rights through their activities and relationships is of particular importance. Significantly, this is a matter of practical necessity as government acting alone cannot fully secure children's rights.

Love concluded with the observation that, given children's vulnerability, there is an urgent need to draw on South Africa's political and economic power to make sure that children's rights become a priority on government's and the business sector's agenda.

The legal framework for Children's Rights and Business Principles

Five child rights experts provided an overview of the legal framework, and associated rights and responsibilities of various role players, as well as insights into how these may be fulfilled in day-to-day business policies and practices.

Richard Montsho, Save the Children South Africa: **Overview of Children's Rights and Business Principles**

Richard Montsho, Programme Manager for Save the Children South Africa's Child Rights Governance Programme, provided an overview of the CRBP. The CRBP is a document developed by Save the Children, the United Nations Children's Fund (UNICEF) and the UN Global Compact which provides a comprehensive framework for understanding and addressing the impact of business on the rights and well-being of children.

Richard Montsho



The CRBP provides a comprehensive framework for addressing children's rights in business.

The CRBP publication was developed in response to the lack of clarity on the responsibilities of business and other role players. It aims to provide guidance to businesses on how to engage in child rights-sensitive practices. It was developed pursuant to a consultative meeting hosted by the three author organisations in 2011 attended by more than six hundred representatives from business, government and civil society.

The CRBP is essentially a rights-based document which is grounded in instruments such as the CRC, the International Labour Organization's Convention No. 138 on Minimum Age and No. 182 on Worst Forms of Child Labour, the UN Global Compact's 10 Principles of Human Rights, the UN Guiding Principles and the Committee on the Rights of the Child's General Comment No. 16.

The CRBP seeks to articulate the governing legal principles and translates these into concrete steps that should be taken by businesses and other role players in fulfilling their respective responsibilities. It further promotes collaboration among role players.

CRBP Principles and key messages

There are 10 principles organised under three areas, namely: the Workplace; the Marketplace; and the Community and the Environment.

Principle 1: Child rights integration across all business operations

The central and first principle is that all businesses must meet their responsibilities to children through the integration of children's rights across their operations.

Principle 1: Integration of child-rights across all business operations.

Principle 1 applies to all companies. Governments are obligated to care for and protect children in their interaction with businesses. However, the realisation of these responsibilities in the world of business depends on companies taking steps to respect, protect and promote the rights of children in their interactions with them in the workplace, the marketplace, community and the environment.

Companies should commit to support children's rights through their business activities and relationships, or become a champion for children's rights by being a responsible employer, providing goods and services responsibly and being an active force to advocate for and promote children's rights in parallel to existing structures of government and civil society.

Principle 2: Eliminate child labour in all business activities and relationships

Companies can create value for children and build sustainable communities by preventing and mitigating child labour.

Principle 2: Eliminate child labour in all business activities.

All companies, especially those operating in developing countries, should adopt clear policies not to employ under-age children, not to let young workers carry out hazardous tasks; and to let all employees, including young workers, know about their rights.

Principle 3: Provide decent work for young workers, parents and caregivers

All businesses should ensure that the working conditions of all employees, including young workers, are acceptable; that the working environment is responsible to their vulnerabilities, and that they are protected from violence, harassment, and hazardous tasks; and should inform them of their rights as employees.

Principle 3: Provide a safe and protective work environment that is responsible to vulnerabilities.

Young workers (children of legal working age) are more vulnerable to safety and health risks. According to the CRC, all children have the right to leisure and recreation. By proactively providing decent work conditions, companies can create employee satisfaction resulting in increased employee retention.

Principle 4: Ensure the protection and safety of children in all business activities and facilities

Principle 4: Make sure that children are protected in and through business operations and facilities.

All business should ensure that their operations, and the operations of suppliers within their sphere of influence do not result in, or contribute to the abuse, exploitation of harm to children and that young workers do not engage in hazardous tasks. In addition, they should raise awareness among employees about the importance of child protection.

Principle 4 applies in many circumstances, including cases where companies employ young workers in production or where children visit or live with parents on company premises, or where company premises are accessible during non-working hours.

In many countries, children are not protected from violence, whether such violence is perpetrated by parents, caregivers or other adults. Companies can create safety for children by preventing, monitoring and mitigating the risk of abuse.

Principle 5: Ensure that products and services are safe and support children's rights

Principle 5: All companies should ensure their services are safe and accessible to all children.

All businesses should ensure the safety and promotion of children's rights in the production and marketing of their products by testing and researching products in line with international standards; producing child-friendly products or services and restrict access if necessary; and strive not to discriminate against any groups of children in the provision of products and/or services.

Companies should build a child-friendly and inclusive service or product brand. All companies, not just those providing products or services directly for children, are responsible for the safety of children. Children are direct and indirect consumers of many goods and services. Children may also come to harm as a result of exposure to certain products or services, even if they are not the intended consumers.

In the case of all products, businesses should strive to prevent or avoid the production of goods or the delivery of services that are unhealthy (e.g. certain foods and beverages), that promote violence or stereotypes (e.g. certain toys or entertainment), that cause addiction (e.g. certain entertainment or foods and beverage), or facilitate criminal acts (e.g. regulate services that are associated with child prostitution, such as travels or online services).

Principle 6: Use marketing and advertising that respect and support children's rights

Principle 6: Ensure that marketing messages and practices do not create a risk of harm for children.

All companies should ensure that, in the marketing of their products or services, they use messages that do not have an adverse impact on children's rights, and they ensure compliance with the World Health Assembly's standards for marketing and health.

Companies can benefit from a "child-friendly" brand if communicating in a responsible way. Particular attention should be paid to marketing that reinforces discrimination, enhances stereotypes, portrays unrealistic or sexualized body images, romanticizes violence, persuades rather than informs, and that creates a risk of unhealthy lifestyles.

Principle 7: Respect and support children's rights in relation to the environment and land acquisition and use

Principle 7: Business operations must respect and ensure a health environment and not engage in exploitative use of land in surrounding communities.

Businesses should ensure that their operations, and the operations of suppliers within their sphere of influence minimize pollution or other adverse impacts on the local community's air, land or water, and do not exploit land without proper consultations with, and compensation to the local community.

Children are more vulnerable to certain pollutants that can come from heavy transports or production plants. Children may lose access to necessary resources such as water, food, forest when companies carry out operations. Companies can create value for children and build sustainable communities by securing a healthy environment for children through their business operations.

Principle 8: Respect and support children's rights in security arrangements

Principle 8: Companies should limit the risk of abuse of children by their security personnel.

Companies should ensure that their operations, and the operations of suppliers within their sphere of influence, inform and enforce a zero-violence policy for all hired or contracted security staff, and engage the local community in reporting incidents of violence against children. For your operations and suppliers within your sphere of influence:

Corporate security staff pose a particular risk to children because of abuse of their authority, access to weapons, and status, and the vulnerability of children. Where abuse takes place, children do not always report security personnel.

Principle 9: Help protect children affected by emergencies

Companies should design an emergency preparedness plan describing how the company will assist the local government and community in the case of an emergency.

Principle 9: Companies should prepare an emergency preparedness plan.

This is particularly pertinent for companies that have business activities in areas subject to natural disasters. However, emergencies also occur in situations of armed conflict, and in these and other emergency cases, children are at a greater risk of separation from their parents, physical harm and abuse, and failure to access basic and essential services such

as water, sanitation, health care and education. Companies can play any number of roles to mitigate these risks, including safeguarding facilities, helping build communities, and creating goodwill by helping children in emergency contexts.

Principle 10: Reinforce community and government efforts to protect and fulfil children's rights

Principle 10: Companies should support and reinforce government and NGO efforts to protect children's rights.

Companies should ensure that they do not undermine government efforts to protect and fulfil children's rights, for example, by not paying taxes, and should engage in dialogue with NGOs, trade unions and other members of civil society to encourage and reinforce efforts to protect children's rights in and through business.



A child playing close to a pit at an open cast mine.

The CRC spells out government's responsibilities to children, including in the business context. Where governments fulfil their responsibilities by regulating business activities and imposing taxes, it is the business sector's responsibility to operate within the regulatory framework. Where governments have not adequately regulated or provided for the

protection and well-being of children, companies can play a concrete role in augmenting the framework and empowering communities through supporting governments and advocating that they take the necessary remedial and regulatory steps, and the development of strategic social investment programs. This is particularly true for companies with operations in developing countries and other countries where governments are less engaged in children’s rights.

Relevance of principles to different companies

Montsho stressed that the different principles may hold more importance to different sectors and provided a useful summary, depicted below, of the companies most affected by the different principles.

ALL BUSINESS SHOULD →→→	1	Meet their responsibility to respect children's rights and commit to supporting the human rights of children	All companies regardless of industry
	2	Contribute to the elimination of child labour, including in all business activities and business relationships	
	3	Provide decent work for young workers, parents and caregivers	Companies with labor-intensive production, primarily manufacturing, service or extracting and cultivating
	4	Ensure the protection and safety of children in all business activities and facilities	
	5	Ensure that products and services are safe, and seek to support children's rights through them	Companies that produce and/or market consumer products and services (or parts of)
	6	Use marketing and advertising that respect and support children's rights	Companies that market consumer products and services
	7	Respect and support children's rights in relation to the environment and to land acquisition and use	Primarily companies within the areas of manufacturing, transportation, extraction and cultivation
	8	Respect and support children's rights in security arrangements	Primarily companies within the areas of manufacturing, transportation, extraction and cultivation
	9	Help protect children affected by emergencies	Companies with production and/or sales in areas subject to risk of armed conflict or natural disasters
	10	Strengthen community and government efforts to protect and fulfil children's rights	Primarily companies with operations in developing countries

Figure 1: Analysis of relevance of CRBP principles to different companies. Source: UNICEF

Save the Children’s role in supporting the business sector apply the principles

Save the Children has sought to support companies know about, understand and implement the CRBP principles.

It has developed a model (depicted in figure 2 below) to guide companies in navigating the way ahead, to support companies identify the areas most relevant to them, and to identify where and how they can make the

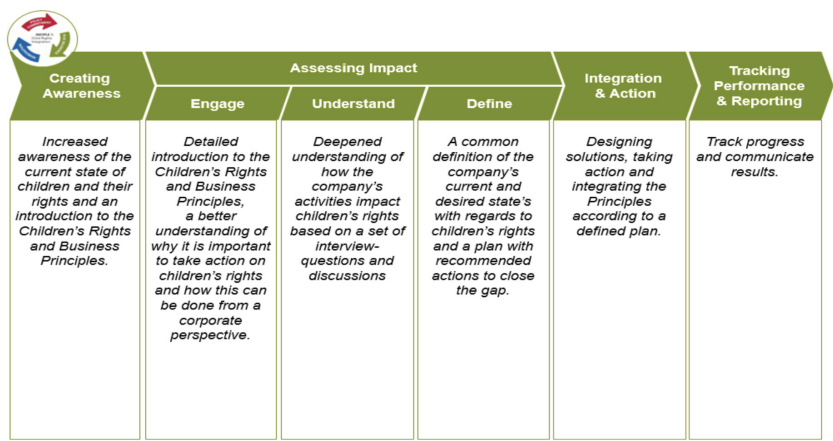


Figure 2: Save the Children's CRBP Support Model – Overview.

Advancing CRBP in South Africa

Since the development of the principles, Save the Children has taken a strategic decision to work towards the integration of the principles into the workplace. There are ongoing discussions between Save the Children, UNICEF and the UN Global Compact to formally launch the CRBP principles in South Africa.

The starting point for this process will be a study to assess business' receptiveness to, and understanding of the CRBP. This will be followed by a series of workshops to sensitize businesses as to their responsibilities to respect, promote and protect children's rights in and through business. After the workshops, individual businesses will be identified for further in-depth engagements.

Khanya Mncwabe, Business and Human Rights Resource Centre: CRBP case studies - beyond child labour

Khanya Mncwabe from the Business and Human Rights Resource Centre presented a number of case studies on children's rights and business. The studies showcased both positive and harmful business practices, clearly showing that businesses can have a positive impact on children's rights where there is a clear commitment to supporting children's rights.

Khanya Mncwabe



These cases were analysed and presented within a rights-based framework, premised on the founding principle that all companies have an overarching responsibility to respect, protect and promote the rights of children. As a minimum, this requires that companies adopt policies which commit to upholding children's rights.

Child-rights promoting case studies

The Norwegian multinational telecommunications company Telenor's operations in Myanmar provide a good example of company policies and practices contributing to the elimination of child labour. The case study provides insights into how it is possible to balance the often socio-economically-driven needs for lawful child-labour with children's rights such as education and recreation.

The company adopted a policy which obliged all its vendors to sign a contract in terms of which they would not employ children below the legal age of employment, and would ensure access to non-formal education for the children in their employ.

The company supported the realisation of the latter undertaking by piloting a project that provided mobile classrooms to facilitate access to education by the targeted children.

A case closer to home which provides an example of innovative company practices that benefited children and their caregivers is that of the Lonmin mining company's employment practices after the recent Marikana labour tragedy which resulted in the loss of workers' lives. In recognition of the fact that the loss of lives and that the workers' families were affected, Lonmin employed relatives of the deceased workers so as to ensure the continuity of an income to those affected families and breadwinners. Furthermore, Lonmin also established long term education funds and social packages to assist the families of affected miners.

Corporate responses to the Ebola outbreak in West Africa provide an excellent example of companies concentrating their resources and efforts to provide large-scale support to victims in emergency situations. Support was not only provided by pharmaceutical businesses. Companies also ensured that educational opportunities were provided for children while schools were closed and that food was provided to affected communities.

Acid mine drainage at Robinson Lake in Randfontein, Gauteng.



Harmful company policies and practices

There are numerous examples of company policies and practices that, in the absence of adequate oversight, accountability and regulation, have resulted in immediate and long-term harm to children.

An extreme example is the case of the pharmaceutical company Pfizer, which in 1996 tested an antibiotic on two hundred Nigerian children during a meningitis outbreak without complying with adequate trials and regulatory requirements. As a result, 11 children died and many more suffered health consequences.

More recent examples are the cases of Nestlé in India and an infant milk formula supplier in China which, despite regulations, distributed noodles and infant formula which, in the case of the former, contained harmful levels of lead, and in the case of the latter, resulted in the hospitalisation of children that had ingested tainted milk.

These few cases of production and marketing practices that have resulted in direct harm to children illustrate the need for, not only legislative regulation, but also the wholesale integration of CRBP and the embedding of appropriate practices in company policies and practices to give effect to the principles.

The impact of company policies can, however, be more indirect. In that regard, companies remain equally liable for their actions and responsible for preventing consequential harm to children as a result of their actions or those of their agents.

A case which illustrates the former point is that of Shell in the Niger Delta. Shell was providing support to the Nigerian government, including gunboats, helicopters, vehicles, food, accommodation, satellite phones, and stipends to government forces to manage the conflict in the Delta region. In 2009, as communities gathered for an annual festival, the Nigerian military launched large-scale attacks using helicopter gunships and a land offensive against the base of a militant leader. After several weeks of attacks, the impact on local residents was severe, with

reports of “tens of thousands of persons either displaced or losing their livelihoods”.⁶ A number of children interviewed after the incident indicated that they still suffered nightmares as a result of the attacks. Shell’s material support to the armed forces exposed it to liability for the rights-transgressions perpetrated by the latter.

Moreover, companies should consider the impact of their business and develop and implement protective and remedial measures that will address the full implications, and not just the immediate financial consequences of their actions. Monetary compensation is often inadequate and fails to recognise the scope and scale of the negative impact on children, their families and communities. Companies tend to fixate on the monetary value of restitution, particularly where displacement is involved. Many have failed to recognise that the loss and harm is more than financial, that there is often a breakdown in the community and cultural fabric. They fail to take into account that displacing people is more than just finding them alternative accommodation - it is about preserving a community.

The following quote from a displaced person illustrates the complexity of the impact that business has on rights and the equally complex nature of the responses required by companies to address the problem:

We used to be rich. We used to slaughter cattle for every occasion. But now our cattle have gone. We receive two thousand rands compensation annually for our losses of agricultural fields, but whereas it now takes twenty thousand rands per year to feed my family, I now have a gap of eighteen thousand rands. Before I did not pay a dime. I had land to grow my vegetables, but we now fight to access water. I now have to scrounge to find temporary jobs. My children, my son now works as a herd boy, my daughter works at a Chinese textile factory in the capital, where pay and working conditions are not the best.

6 United States Department of State: Human Rights Report, Nigeria (2009) accessible at <<http://www.state.gov/j/drl/rls/hrrpt/2009/af/135970.htm>>.

Advocacy and legal regulation: Key to strengthening company policies and practices

Role players other than the companies themselves can play a leading role in ensuring the adoption of child-rights protective policies and practices. On the one hand, civil society organisations have played an effective advocacy role, and there is a need for governments to play an equally critical regulatory role in ensuring company policies and practices advance the well-being and rights of children and their families.

For example, the Treatment Action Campaign's advocacy for the universal roll-out of antiretroviral treatment for people with HIV and AIDS resulted in an agreement with SIPRO to lower the price of drugs, without which treatment would have remained out of reach for the majority of families and their children in South Africa.

A related observation which calls for similarly targeted advocacy activities is the fact that the price to fully vaccinate a child is sixty-eight times higher today than it was a decade ago. This calls for strong advocacy so that large pharmaceutical companies adopt a more ethical and rights-based approach to the costing of drugs that are essential to the survival and well-being of children.

On the regulatory front, there have been positive changes brought about in the marketing and advertising of harmful substances such as alcohol and tobacco, particularly where the health of children is concerned.

What is clear from the case studies presented is that companies are key to reinforcing community and government efforts to protect and fulfil children's rights. Companies can achieve better results through acknowledging that they are part of a community and that they have a positive role to play, rather than deferring sole responsibility for the protection of children's rights to the government.

Ann Skelton, Centre for Child Law: Procurement and children's rights - not business as usual

Ann Skelton of the Centre for Child Law (CCL)'s presentation focused on the application of child rights principles to the business practice of procurement. Her presentation provided concrete guidance on how businesses may make children's rights part of their policies and practices through integration of the "best interests principle" into all processes and decisions, and illustrated how procurement failures can impact negatively on children's rights.

Ann Skelton



Procurement is defined as the acquisition of goods, services or works from an external source. In South Africa, many goods and services that are required for children are obtained through this process. South African law requires that procurement processes comply with legal requirements and that such procurement be carried out in a fair, equitable, transparent competitive and cost effective manner.⁷

To ensure that there is proper accountability and transparency, procurement by government departments over a certain amount must be done through tenders. However, frequently these tenders become disputed and are the subject of court applications (usually by the losing bidder).

General remedies a court may grant when a finding has been made that a tender was unlawful include setting the tender aside, or ordering the tender to be re-advertised, or re-running it from a certain stage.

⁷ See section 217(1) of the Constitution.

Generally the goods/services are then not delivered until the whole process is completed.

In a few recent cases, the courts have shown that when it comes to children, courts can sometimes be persuaded to take a different approach to the mainstream. This is premised on a balancing of rights – the rights of children to receive public goods and services against the rights of the public and businesses to fair and just procurement processes.

The first illustrative case is that of *Freedom Stationery (Pty) Ltd v MEC for Education, Eastern Cape and Another*.⁸ In 2010, the Department of Education in the Eastern Cape (Department) advertised a tender for the manufacture and supply of school stationery. The process resulted in a tender dispute which culminated in an application for an interdict to stop the award of the tender and for an order that the tender process be started afresh. This inevitably meant that the actual delivery of the stationery would be delayed.

The CCL joined the case as *amicus curiae* (friend of the court). It argued that the court was obliged to consider the interests of the children in balancing the competing rights of parties to the dispute, and to consider that the requested order would frustrate the constitutionally-protected right to education for the 688 482 children who would not receive stationery if the interdict was granted by the court.

The CCL requested that the application for the interdict be dismissed or that the Department appoint one of the bidders in the interim. Whilst the court decided not to elevate the rights of the children above the other parties, it was influenced by the need to take into account the best interests of the children. It granted the order requested by the applicants, but set short timeframes for the re-running of the tender in order to limit the deprivation of the children's rights. Thus, whilst this case did not have the outcome sought by the CCL, it was nonetheless a pioneering case.

⁸ *Freedom Stationery (Pty) Ltd v MEC for Education, Eastern Cape and Another* (280/2011) [2013] ZAECHC 10.

The second illustrative case is that of *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others*.⁹ This case related to a R10 billion contract for the payment of social grants. A company named *Cash Paymaster Services (Pvt) Ltd (CPS)* won the tender, and AllPay Consolidated Investment Holdings (Pty) Ltd (AllPay) challenged the award of the tender in court. In the High Court, the tender process was declared to have been unfair, unlawful and unreasonable (contrary to s 217 of the Constitution). However, in the Supreme Court of Appeal the tender was declared to be lawful. The case then proceeded to the highest court, the Constitutional Court. Throughout the proceedings, the CCL reminded the courts that, of the 16 million beneficiaries paid each month, over 11 million of those were children. It further argued that whatever order is granted, it should not result in the interruption of payments to beneficiaries, and the courts should favour a solution that minimised that risk.

In the High Court, the court held that:

*‘[O]ver 10 million children will be adversely affected by any interruption in payments of grants. Therefore any order that the court grants must take into account that the best interests of children are of paramount importance in every matter concerning them’.*¹⁰

On appeal to the Supreme Court of Appeal, that court stated that:

‘We need no evidence to know the immense disruption that would be caused, with dire consequences to millions of the elderly, children and the poor, if this contract were to be summarily set aside. The prospect of that occurring has prompted the Centre for Child Law to intervene as amicus curiae in the case.

9 *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* 2015 (6) BCLR 653 (CC).

10 *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* [2012] ZAGPPHC 185 para 73.

We value the contribution they have made but they had no cause for concern. It is unthinkable that that should occur.’¹¹

The Constitutional Court took more of a middle ground approach, noting that:

‘The Centre for Child Law made submissions in relation to the appropriate remedy in order to protect the rights of child grant beneficiaries. Part of the submissions dealt with the constitutional obligation that Cash Paymaster may have to continue with the current system even if the tender award is set aside, until a new system is in place. These considerations raise difficult factual and legal issues. The information currently before us is outdated and inadequate...It would be inappropriate to make a decision on a just and equitable remedy in the absence of further information and argument on these issues. Our order will thus contain directions requiring further submissions and a hearing on the issue of a just and equitable remedy before a final decision is made.’¹²

In its second judgment, following the Constitutional Court’s order for further submissions, the court stated that:

‘The Centre submitted that the interests of children are of particular importance. A significant proportion of social-grant beneficiaries are children. This means that any assessment of the possible disruption in the payment process should be the subject of even greater scrutiny where the rights of children are at stake.’¹³ The court declared the tender invalid and ordered the South African Social Security Agency to run a new tender process but emphasised that there must be no disruptions to payment of grants.

11 *AllPay Consolidated Investment Holdings & others v The Chief Executive Officer of the South African Social Security Agency & Others* [2013] ZASCA 29 para 99.

12 *Allpay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* 2014 (1) SA 604 (CC) para 96.

13 *AllPay Consolidated Investment Holdings (Pty) Ltd and Others v Chief Executive Officer of the South African Social Security Agency and Others* 2015 (6) BCLR 653 (CC).

While the tender was re-run, CPS (current service providers) were to continue with the distribution of grants.

The third case discussed was *Rickshaw Trade & Invest 49 (Pty) Ltd v MEC Education Eastern Cape*¹⁴ which involved a tender for the delivery of school furniture worth millions of rands. The CCL joined the case as *amicus curiae* to prevent the setting aside of the tender. Unfortunately, this case had a disappointing outcome as the court declared the tender invalid and the delivery of furniture was delayed.

These cases serve to illustrate an increasing awareness in the legal sector and a growing trend in our courts to apply child rights principles to the determination of procurement disputes and practices.

Thus, when it comes to procurement and children's rights, it is not just 'business as usual' anymore and business should heed these principles in their procurement decisions and processes.

**Yulia Krieger and André Viviers,
UNICEF South Africa: Children's
Rights and Business Principles -
an application for South Africa**

Yulia Krieger, UNICEF South Africa's deputy country representative, and André Viviers, UNICEF South Africa's education specialist, gave a presentation on the application of children's rights and business principles in South Africa.

Yulia Krieger



¹⁴ *Rickshaw Trade & Invest 49 (Pty) Ltd v Member of the Executive Council For Education, Eastern Cape Provincial Government and Others* [2014] ZAECHC 4.

In essence, the presentation focused on how South African stakeholders can, through their engagement and commentary on various rights-instruments, ensure that business practices are scrutinised through a child-rights lens. Such an approach would strengthen the recognition and support for the realisation of children's rights in business practices.

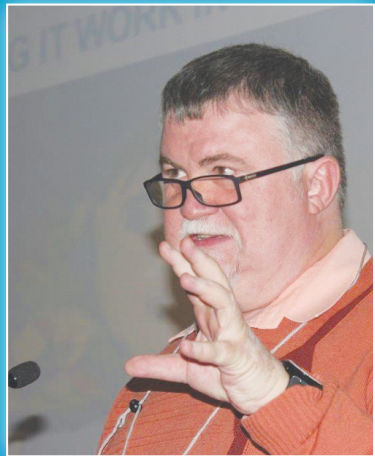
The legal foundations of the CRBP

Krieger provided a brief overview of the CRBP. She reiterated that the rationale for the development of the CRBP was primarily because the broader overarching UN Guiding Principles addressing human rights in business do not focus on children's rights. The CRBP places the spotlight directly on children's rights in business practices. She further reiterated that the CRBP had been developed through extensive consultations with all stakeholders, including the business sector.

Krieger emphasised the legal foundations of the CRBP which is based on three legal pillars: the CRC, the UN Guiding Principles and various International Labour Organisation (ILO) conventions. The CRBP incorporate the articles from the CRC that are most relevant to business. The UN Guiding Principles provide the operational framework of the CRBP and the ILO conventions inform the principles governing children in the workplace. In short, the CRBP operationalise the CRC, UN Guiding Principles and ILO conventions for children.

The CRBP places the rights and responsibilities contained in the CRC in a business context.

Andre Viviers



The CRBP implementation framework follows the same structure as the UN Guiding Principles. It obliges all companies to assess and identify the actual and potential impact of their business practices on children, and to take action to prevent any negative impacts, and to take further action to strengthen and accelerate their positive impact.

The Committee on the Rights of the Child's General Comment No. 16 provides the framework and guidance to governments and other role-players as to steps they should take to fulfil their responsibilities. It specifically requires the development of legislation and regulations to ensure that businesses exercise due diligence and report on child rights impacts and remedial measures in place to address any infringements.

Supporting the implementation of the CRBP

Krieger noted that UNICEF's involvement was not limited to the development of the CRBP, but has continued supporting businesses to understand and apply the principles in their routine operations. After the CRBP were adopted, UNICEF was approached by a number of businesses expressing confusion around which principles to apply, and how to apply these. UNICEF therefore commenced work on the development of tools unpacking what it means to comply and implement the CRBP.

UNICEF's tools have sought to translate the CRBP's foundational principle into practices, specifically through the due diligence processes envisaged by the CRBP, and through the adoption of remedial measures to remedy identified infringements.

Due diligence is an important measure that enables companies to reflect on, and know the extent to which they are compliant with the CRBP and associated instruments. The due diligence framework involves five components: a commitment to respect human rights; ongoing assessment of the business' human rights impact; integration of results into corporate processes and management structures; ongoing monitoring, reporting and communication; and the establishment of grievance procedures. Central to the entire process, is the need for stakeholder engagement and ensuring that children's voices are heard.



UNICEF has developed the following tools to guide companies to understand and apply the CRBP:

The tools are living documents, and as the UN Guiding Principles are being developed, UNICEF is constantly updating them.

Case studies and opportunities for advancing children's rights through the legal framework

Viviers provided an overview of four case studies and two possible opportunities illustrating how the child rights in business framework can be strengthened in South Africa. He commenced his presentation by pausing the question as to whether the CRBP could be effectively integrated into business operations through the regulatory framework applicable to business. Viviers reiterated that there are numerous opportunities for the integration of CRBP as the government places a high priority on the regulation and monitoring of business activities through policies and other measures.

Viviers cited a number of policies as providing opportunities for advancing government's obligations in implementing the CRBP.

Policy example 1: The Draft National Liquor Policy

The Draft National Liquor Policy, which regulates liquor outlets, is currently open for comment. Although the liquor policy has not fully integrated children's rights, there is some indication that the policymakers may have, to some extent, considered children's rights in the formulation of the draft policy. The first indication is provided in the regulation governing the distance and location of liquor outlets from schools (more than 500 meters is the recommendation). The second indication is found in the discussion on the impact of alcohol abuse on families, in particular as it relates to violence, and the impact of foetal alcohol syndrome on children. Thus the current Draft National Liquor Policy reflects that policymakers may have considered children's rights in its formulation though the document was not drafted through a child rights lens.

There is a clear prerogative to ensure, through advocacy and consultation, that the Draft National Liquor Policy and related policies fully integrate the principles enunciated in the CRBP. If there is a failure to integrate the CRBP across all relevant policies, then the realisation of the duties on businesses contained in the CRBP will depend entirely on the ability and willingness of companies to self-regulate.

Policy example 2: The Draft National Gambling Policy

The Draft National Gambling Policy is also open for comment and currently does not adequately consider children's rights. It attempts to provide some protection to children by taking into account the location of gambling outlets (e.g. not near malls) and in its regulation of access to gambling outlets. This is however inadequate from a child rights perspective.

This is an opportunity that should be embraced by the child rights sector to influence the policy and ensure that as the policy is further developed, it fully integrates children's rights and protect children from the hazards associated with gambling.

Policy example 3: Department of Trade and Industry's (DTI) National Industrial Policy Framework and Industrial Policy Action Plan

The Department of Trade and Industry (DTI)'s National Industrial Policy Framework and Industrial Policy Action Plan was developed without taking children's rights into account. This does not mean that it is a bad framework *per se*, but it means that there is no due diligence process for children's rights (or human rights) in either the policy framework or action plan, and this will have an impact on industries in the future. The policy framework and action plan present a good starting point for child rights advocacy as they lay the foundation for businesses and industries across the board.

Policy example 4: Advertisements

The last example deals with the Vodacom advert in which a child is portrayed as happy when technology works and unhappy when it is not operational. This advert cannot be seen as 'funny' as it implies that children need material things and technology in order to be happy. There is nothing to counter this, and it sends a confusing message to parents, especially those that do not have a wide array of technology available.

Viviers further highlighted two broad opportunities for integrating children's rights into the national framework governing business.

Opportunity 1: Broad-Based Black Economic Empowerment & B-BBEE Codes of Good Practice

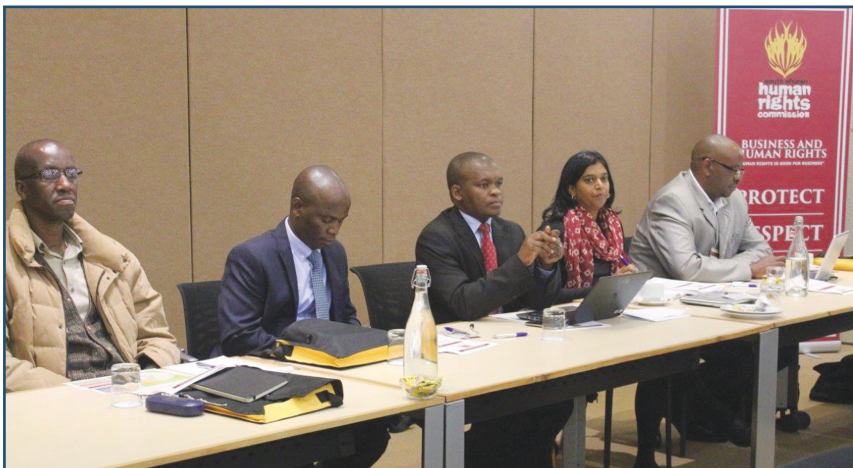
The Broad-Based Black Economic Empowerment & B-BBEE Codes of Good Practice do not entirely consider children's rights, but these offer unique opportunities for facilitating, supporting and monitoring CRBP if they were adequately revised through a child rights lens. Reporting on the CRBP could practically become part of the B-BBEE score card and used as an incentive for business to gain points.

Opportunity 2: Government Tender Bulletin

The CRBP are not currently considered in the issuing and adjudication of tenders. It should be a point of advocacy that it becomes a requirement for companies who tender for government contracts to show compliance with the CRBP; or that companies which can show compliance with CRBP will be awarded extra marks in the tender process.

Viviers concluded with the observation that the CRBP should not be seen as an add-on, but as an integral obligation that society must adhere to. He made the following recommendations:

- Recommendation 1: All organisations and institutions advocating for implementation of the CRBP by businesses should make sure that they themselves are implementing the CRBP.
- Recommendation 2: Start with policies that guide business practices, whether by government, business, NGO's or other institutions.
- Recommendation 3: Actively involve the DTI in the promotion, support and implementation of CRBP.
- Recommendation 4: Lead by example. We need champions from government (all levels), big business, industries and small business.



Perspectives from the business sector

Following the presentations on the legal framework, rights and responsibilities, a number of presentations were made from the operational perspective and the perspective of the business sector.

Paul Kapelus, Synergy: **Sustainability and reporting on** **non-financial issues**

Paul Kapelus, Director at Synergy and the chair of the Business and Human Rights Working Group for the UN Global Compact in South Africa's presentation focused on issues of sustainability and reporting on non-financial issues.

Kapelus observed that the discussions up until this point had largely focussed on the negative impacts that business can have on children and how best to protect children from harm. He framed his discussion from a different perspective - the opportunities that children provide for business. Africa, he noted, is a very young continent with a growing youth population which provides both unique long-term profitable and sustainable opportunities, as well as challenges for business. In this context Kapelus asked the following question: Are we really considering children as the future, and what does this really entail?

Whilst the young population presents a growing emerging market, it also presents a challenge. Current indicators point to a bleak future for children in South Africa, with high prospects of poor education and low prospects of future employment. This should be of grave concern to the business sector given the decreasing pool of skilled labour necessary to support a growing and modern economy.

Paul Kapelus



The high levels of inequality in South Africa pose a real threat to the business sector. Overcoming the underlying causes of inequality through better child rights business practices today is thus of central importance to the business sector. It appears, however, that the business sector is not adequately aware of this fundamental link and that the pursuit of better child rights business practices is in their best interests.

The predominant view of business is that respecting child rights means obeying child labour laws. However, the examples discussed above clearly show that it means so much more than simply obeying labour laws. It covers an infinite number of possibilities, including internet safety, fast food, ethical advertising and marketing practices. When it comes to family cohesion, for instance, there are issues that need particular attention. For example, what impact does migrant labour have on family cohesion and how does business mitigate the risks and harm while recognizing that migrant labour is a well-established system in South Africa upon which the economy and many households depend?

The industry is also changing, it is becoming mechanised, and qualification requirements for labourers are changing. This in turn will change the demographic and social dynamics around mining in the most profound way. If children are placed at the centre of the labour industry, there are questions that need to be answered. The increasing number of women that need to go into the workplace raises further questions as to how children are going to be looked after. There has not been a lot of effort to provide for child care in the workplace. In terms of employee indebtedness, the impact of being in debt on children and the consequences of the unethical conduct of debt administrators is a key human rights issue. In all, there are many ways in which children are impacted by business processes.

Are children's rights seen as sufficiently material to business interests to ensure routine corporate action and reporting?

The UN Global Reporting Initiative advocates that companies provide regular sustainability reports. However, companies, by their nature tend to report primarily on matters of material interest to them and their shareholders. The pertinent question therefore is whether child rights are recognised as sufficiently material for business to be reporting on? A survey of current reporting practices show that this is not the case and most of the sustainability reports available only refer to child labour. However, we know that the issues are more complex and wide-ranging than child labour.

To change the face of company action and company reports requires a change in company's perspectives on the materiality of children's rights to their sustainability, profitability and risk-management. Stakeholders must engage in advocacy to ensure that companies and shareholders see the advancement of children's rights as material. This in turn depends on making visible the impact of child rights promotion and transgressions on their future sustainability and profitability.

Kapelus emphasised the importance of the need to encourage businesses to advance and start reporting on the full complexity of child rights promotion, and to provide business with tools to understand how to report on their impact on children, both positive and negative.

The King Code on Corporate Governance, to which the Johannesburg Stock Exchange ascribes, requires companies to report on its material interests. The King Code Reporting Guidelines directs companies to report on human rights norms in all leading human and child rights instruments.

Kapelus buttressed the need to integrate children's rights into the business frame of reference so that they are seen and reported on as material to business sustainability.

Chesney Bradshaw, ABB Group **South Africa: Fulfilling ABB's** **human rights obligations**

ABB Group South Africa (ABB) is a power and automation company with 1500 employees in South Africa and another 300 employees in the southern Africa region. ABB manufactures electrical products in South Africa and its primary customers are municipalities and utilities in the region.

ABB recognises the protection and promotion of human rights as a core operational issue, given its centrality to the sustainability, risk management and corporate social investment components of the business. Bradshaw provided an overview of the various processes and engagements that ABB has undertaken or participated in, in fulfilment of its human rights responsibilities.

ABB was involved in the consultations that took place with John Ruggie in 2011 prior to the adoption of the UN Guiding Principles. The company has recently developed its 2015 – 2020 sustainability objectives, one of which is the advancement and protection of human rights.

ABB is planning further stakeholder dialogue in South Africa on these sustainability objectives to identify and remedy any gaps.

In addition, human rights are integrated into many of the company policies which guide the conduct of its staff, and which are indeed a requirement of a number of its clients. These include a supplier code of conduct, its social investment policy, its company ethics guidelines, as well as internal risk-management procedures.

Chesney Bradshaw



Human rights have also been integrated into ABB's decision-making through its management system. In the supply chain there are several human rights aspects that need to be taken into account, for example, if one of ABB's suppliers was to use child labour, ABB would terminate that relationship and find another supplier or suspend the relationship until the issue is addressed. ABB's procurement processes also gives preference to suppliers that provide child care facilities. Human rights are also taken into account in mergers and acquisitions as part of the due diligence processes.

Internally, ABB has undertaken human rights awareness raising and capacity building workshops. In terms of its corporate social responsibility programmes, ABB has been involved in a number of child-rights promotion initiatives, including youth development programmes such as energy efficiency programmes for schools in the Eastern Cape; the provision of desks to schools; voluntary corporate social responsibility initiatives where employees go to schools to speak about careers in engineering as well as involvement with projects focusing on the needs of HIV and AIDS orphans. Additionally, ABB has a global hotline for reporting human rights violations.

Bradshaw concluded his presentation with a case study indicating how ABB implemented policies geared to protect and advance children's rights. For example, an investigation in 2011 found that one of ABB's suppliers in China was using child labourers and the company reported on this incident in its sustainability report. ABB subsequently approached the ILO for guidance on how best to deal with the matter. The outcome was that ABB advised its supplier of the transgression and what its child rights expectations were. The supplier responded positively by sending the children home, having them medically examined and paying the affected children their wages until they turned 16 to mitigate any loss of income to their household. The supplier also paid for their education and offered those children jobs when they turned 16 years old.

Lindiwe Zikhali, Anglo American: Anglo American's approach to children's rights

Lindiwe Zikhali provided an overview of the measures taken by Anglo American, which has operations worldwide, and four business entities in South Africa (Amplats, Kumba Iron-Ore, Coal South Africa and De Beers), to directly or indirectly benefit children in South Africa.

Anglo American recognises that mining is an industry associated with harm to people and the environment and has developed various best practice standards and policies to mitigate the associated risks in the various spheres of its operations.

Anglo American subscribes to the Voluntary Principles on Security and Human Rights. In preparation for the implementation of these principles, the company conducted an analysis of its business practices in South Africa. Based on the results, a policy and implementation plan was developed. On the supply chain-side, Anglo has developed a set of responsible sourcing principles which regulate various aspects, including child labour, human trafficking and the prohibition of harsh and inhumane treatment. These principles have been introduced to the broader mining industry through the chamber of mines for possible adoption.

Another best practice tool that was developed by Anglo is the socio-economic assessment toolkit (SEAT), which provides the framework for proactively identifying risks and opportunities in a participatory way with stakeholders, including community members, NGOs, and government bodies. SEAT was in fact noted by UNICEF as a best practice for identifying child rights impacts.

Lindiwe Zikhali



Anglo American also makes substantial contributions to the community in fields such as health (infrastructure, building clinics, mobile clinics, provision of free ART's to employees and dependents, and through health and wellness programmes). Following a recent study, Anglo will be turning its attention to supporting the strengthening of government health systems to ensure stronger health infrastructure and services at a community level.

Anglo American also provides and builds Early Childhood Development (ECD) facilities, primary and secondary schools in the various communities within which it operates. In the Northern Cape, both Kumba Iron Ore and De Beers have donated a substantial amount of money for building a local university. Anglo Platinum supports Techno Girls, an initiative for girls with an interest in maths and science. The Greenside Coalery in Mpumalanga operates a 24-hour crèche facility to cater for employees who work in shifts. The intention is to roll this out to other mines. Anglo American also has scholarship schemes, learner and educator interventions for maths and science, especially in problem schools.

In terms of infrastructure, Anglo American is working with the Development Bank of Southern Africa and ten municipalities to improve infrastructure and local municipal capacities. The platinum business is also collaborating with government to build two dams which are expected to provide 1.9 million people with access to clean water.

Despite all of these initiatives, it is clear that there is still much that needs to be done in order to fully realise children's rights. Anglo American is certainly open to learning further on how to put children at the heart of its daily business operations.



Roundtable discussion

Following the presentations, the participants engaged in a roundtable discussion on the many issues raised as well as the way forward to achieving stronger and more systemic protection and promotion of children's rights in and through business in South Africa.

Need for a strong national legal framework to ensure compliance and accountability

Zane Dangor from the Department of Social Development observed that in the absence of a strong legislative framework governing business responsibilities, there is little to compel compliance with the CRBP. Without positive duties being enshrined in law, business will always implement what they should be implementing and the capability of civil society and others to take business to court based on codified principles is important. The same accountability does not currently apply to organised business. The UN Guiding Principles and the UN Global Compact are all voluntary instruments with no enforcement mechanisms. Even the UN Global Compact has been critiqued for not holding big business to account. Dangor stressed that the issue of self-regulation is premised on self-interest.

This can be observed through, for instance, the alcohol industry's resistance to government regulation. Whilst the industry is of the view that self-regulation is adequate, the evidence indicates that such an approach is not feasible in effectively holding business accountable for human rights.

Furthermore, the Department of Social Development has also found that human rights laws and principles are not adequately respected and upheld by the extractive industries. The pertinent question therefore is: What should we do to change low levels of compliance to human rights norms by business?

Dangor further pointed out that one topical issue relates to parental leave. He observed that there is an argument for changing parental leave regulations so that parents can have more time with their children. This is however not popular amongst the business sector because of the economic implications of such an approach. In moving forward, Dangor argued that there is need to reframe this as a child rights, rather than a labour issue as this may make for a stronger and more acceptable argument.

Child rights responsibilities of private schools

A representative from the Gauteng office of the SAHRC observed that, based on an increasing number of cases reported to the SAHRC, there is a growing trend of child rights transgressions by private schools. The speaker reiterated that private schools are also private businesses and are as obligated to respect, protect and promote children's rights.

The schools in questions do not consider that they have human rights obligations, and view their relationships with parents as purely contractual and governed only by the law of contract, and not human and child rights. These contracts contain clauses that allow schools to terminate the contracts when parents do not comply with contractual terms. A second example found in private schools is that of withholding learners' school reports to extract unpaid school fees.

This impacts directly on the child's right to education. This is a clear example of where businesses are looking out for their own interests at the expense of children's rights.

The need for proactive and preventative interventions

Eric Mokonyama from the Mpumalanga office of the SAHRC raised a concern emerging from complaints received, particularly in the mining industry. Mokonyama observed that in addressing these issues the focus is often on remedying an existing transgression through compensation, rather than focusing on long-term solutions to prevent any similar future transgressions.

The facilitator provided a key example of a scenario requiring proactive preventative measures. The example used was that of the current mining rehabilitation legislation which includes a number of broad regulations, none of which focus on the issue of abandoned mines which pose a real threat to the safety of children. The laxity of the laws have resulted in a number of old mines not being fenced off, thus posing a threat to children living in close proximity to these abandoned sites.

Unique risks in the agricultural sector and children's education rights

Chris Madiba raised two concerns relating to farming and children's rights. The first was a call for the agricultural industry, child rights policy makers and advocates to recognise and develop appropriate solutions to address the unique risks presented by farming to children's rights. He stressed that responding to these specific risks requires a recognition that the risks faced by children living on farms may be quite different to issues experienced by children in rural communities due to the nature of business on farms.

The facilitator recognised the inadequacy of the current legal framework governing the rights of children on farms.

Numerous examples of transgressions were cited and the facilitator observed that in all cases, responses have been ad hoc and that there has been no systemic solution developed to address the specific needs of this group of children.

The second issue raised was a concern with the impact of industrial action by educators on children's education rights. The question was raised that, given the negative impact of industrial action on children's rights, whether education should not be classified as an essential service. If not, how then could the impact of strikes on children's education be minimised?

Skelton was of the view that it would be difficult to successfully argue for the recognition of education as an essential service as it would mean that teachers would lose the right to strike. However, an argument could be made that there are less invasive methods. Skelton observed that it has been difficult to find appropriate middle ground to resolve the tension between these two competing rights.

Responses from the floor to cases and issues raised in the presentations

Victor Mavhidula from the Limpopo office of the SAHRC referred the participants back to the presentation made by Skelton. He emphasised the need for a solution to ameliorate the impact that derailed tender processes have on children's education rights, whatever the cause. Mavhidula shared the details of an incident in the Limpopo province where the Department of Basic Education's tender box was destroyed. The development substantially delayed the tender process. This case, and those presented by Skelton highlight the need for a solution, and the need to identify the role of the Department in securing children's rights in these cases.

Mavhidula further drew the participants' attention to the ongoing impact that mining activities have on children's rights to education in the province.

He recognised the work being done by Anglo American, as shared in the earlier presentation. In the spirit of finding solutions, he noted that the company's focus should be directed to remedying the impact of the many heavy vehicles that continually drive past schools on their way to the mines which create enormous amounts of dust and an unhealthy learning environment, as well as the structural problems for school buildings brought about by the ongoing blasting activities. He noted that a representative from Anglo had indicated that a budget had been made available for the renovation of schools and libraries. However, it has proved impossible to use the money because of differences between community members on how the money should be spent. Mavhidula appealed to Anglo American to support the facilitation of a resolution to the matter.

Joyce Siwani of the National Children's Rights Committee applauded the SAHRC for hosting the roundtable as well as the information shared by the participants. She noted that this meeting marked a positive turnaround after years of negative experiences with the business sector. Having said this, Siwani expressed concern at the loss of coordination and the accountability gap left after the dissolution of the Department of Women, Children and People with Disabilities. She emphasised the need for a strong central child rights coordinating government platform for bringing different role players, including the business sector, together and holding them to account. She urged that the roundtable be used as a platform to reopen dialogue on the need for, and the creation of an appropriate centralised child rights coordinating and accountability mechanism.

Concluding recommendations from the floor

The roundtable discussion concluded with the adoption of the following recommendations to address the issues raised:

- A reference team should be established to take the discussion on children's rights and business principles to the next level and concretise some of the issues to ensure tangible outputs;
- There is a need to make a case for children's rights to become integrated into sustainability reporting and in governing B-BBEE standards;
- The SAHRC should explore further where the unions fit within the business and children's rights debate and what strategies could be put in place to address the competing interests between children's rights and the right to strike;
- A strategy should be developed to include more businesses in the debate on children and human rights. This requires, in the long term, increased collaboration, but as a start a processes should be developed to increase communication with the business sector; and
- The importance of engaging with the media more actively to ensure that children's rights in and through business are profiled and framed correctly so as to encourage appropriate attitudes and understanding of the issues at hand.

Closing remarks from the South African Human Rights Commission

Commissioner Lindiwe Mokate, the SAHRC's dedicated children's rights commissioner, formally closed the proceedings with a vote of thanks to all participants. She observed that due to the high level of engagement, the roundtable had yielded far more than had been expected.

She reiterated the expectations of the roundtable as follows:

We set out to get an assessment of where we are as a country, to identify the different actors, including business, government, international organisations, non-governmental organisations, and ourselves as monitors. We wanted to establish what the challenges are in dealing with business and what impact business activities have on children's rights. We also wanted to identify opportunities for the protection and promotion of children's rights. We wanted to know what avenues existed to work together and how we could move from this stage to the next.

Mokate provided a brief overview of key points raised during the presentations and discussions. These included:

- i. The joint responsibility for respecting and promoting the best interests of children is incumbent on government, civil society and businesses;
- ii. The need to understand and incorporate the rights-based framework for understanding the nature of the responsibilities of business to children's rights provided by the CRBP;

Lindiwe Mokate



- iii. The need for a robust understanding and implementation of child rights principles in and through business and addressing the shortcomings raised by the participants;
- iv. The imperative necessity to utilise child-sensitive laws and strategies governing business in South Africa more broadly to untap opportunities to drive the systemic integration of children's rights in business practices;
- v. The importance of enjoining all companies to advance children's rights through their sustainability, reporting and risk management policies and programmes and ensure that children's rights are recognised by the business sector as material to business operations;
- vi. The imperative necessity to ensure the protection of the right to education and other children's rights in the face of industrial action, especially where such action leads to loss of income for families; securing the protection of children in the context of tender procedures; and the current limited focus on parental leave by businesses as a labour, rather than a child rights issue;
- vii. The need for all stakeholders to play an active role, and that shared and systemic solutions should be developed so as to guarantee the required collective action and the protection of all children by all businesses; and
- viii. The importance of the SAHRC as the preeminent human rights institution in South Africa to support the implementation of the recommendations emerging from the roundtable, and to support businesses to understand the nature and extent of their responsibilities, and hold them to account through its human rights monitoring role.

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