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IOE Observations on the Draft General Comment by the UN Committee on the Rights of the Child regarding Child Rights and Business

The International Organisation of Employers (IOE) is the global voice of business, representing 151 national employers' federations in 144 countries. The IOE is constructively involved in debates on business and human rights, as well as business and children's rights, at various levels and in several institutions. Against this background, the IOE would like to make the following observations on the first draft of the General Comment:

General IOE Observations

As already stated in the IOE's observations on the annotated outline of the General Comment, the IOE fully supports the endeavor by the Committee on the Rights of the Child to give guidance to State Parties for implementation of the Convention on the Rights of the Child. Since children are especially vulnerable, States must pay particular attention to their rights. The Committee on the Rights of the Child takes the right approach to focus on the State Parties' obligations under the Convention in relation to the business sector. It thereby can give real added value to the range of different activities and initiatives that focus on the promotion of children's rights and the elimination of child labour.

It is regrettable that the draft General Comment appears to start from the (unfounded and unacceptable) assumption that businesses are more likely than not to be involved in violations of child rights. It is of concern that the role of the business sector is perceived throughout the draft General Comments as the established "children's rights-abuser".

The IOE welcomes that the draft of the General Comment has a much broader scope than the earlier annotated outline and does not focus predominantly on the home States of multinational companies. The draft rightly stresses in paragraph 22 that "*the host State has the primary responsibility to respect, protect and fulfil child rights in its territory.*" The IOE considers the recommendations in paragraph 44 on strengthening regulatory agencies, on disseminating law and regulation, as well as on training judges and other judicial officials, and in paragraph 42 on legislative, administrative, social and educational measures as particularly important in this regard.

One important issue with regard to the protection of the rights of the child is the proliferation of the informal sector in many countries. The General Comment rightly addresses this point in paragraph 10. However, just to demand that States should "*take measures to ensure that business activities take place within appropriate legal and institutional frameworks*" is not enough. In view of the significance of the informal sector, the General Comment should elaborate and give more guidance on how to protect the rights of the child in this sector of the economy.

For countries that are not capable of fulfilling their obligations they have signed up to with the Convention on the Rights of the Child (CRC), the draft rightly emphasizes in paragraph 21 the “*obligation upon the international community to assist those countries*”. Moreover, in paragraph 24 it gives the recommendations to provide “*technical and financial assistance to conflict-affected States to ensure their institutions are equipped to prevent and address violations of child rights.*” It would be important to expand on how this could actually happen more effectively.

The draft takes the right approach by stressing the need for support for small and medium-sized enterprises through additional and tailored guidance in paragraph 62, as well as for businesses contemplating operating in conflict zones through current, accurate and comprehensive information of the local child rights context in paragraph 63. Indeed, in the discussions on due diligence which take place at UN, OECD and EU levels, the lack of support for companies is a constant theme. States have to provide easily accessible and relevant information for companies to enable them to fulfill a meaningful due diligence process.

Business is not part of the problem, but part of the solution. There should be greater emphasis in the draft that policies, programmes and initiatives should be jointly developed and implemented with business. Regarding the proposal of the development of a national Business and Child Rights Policy Framework in paragraph 62, the close involvement of business is of paramount importance and should be emphasized.

Moreover, a national Business and Child Rights Policy can only be one component of a much broader framework of policies for the implementation of the Convention on the Rights of the Child. It would be misguided to focus predominantly on business when implementing the CRC.

Specific Observations

There is no reason to suppose that the outsourcing of functions to the private sector will make children any more vulnerable to human rights abuses than if those functions remained with the State, as indicated in paragraph 1 and 31. It is inappropriate for the General Comment to imply that this might be the case.

In paragraph 30 it is requested that States “*are obliged to first attempt to identify what the best interest of the child is*”. It seems that States are being asked to exercise the wisdom of Solomon. In many instances what would constitute a child’s best interests will be far from clear and not something children themselves will necessarily be competent to determine. Categorical statements of this sort are far from helpful.

Paragraph 33 relates to the working time of parents. The General Comment, however, turns the point upside down: The problem is not the working hours *per se*, but that the State does not fulfill its responsibility to provide adequate child care. Moreover, the issue of “inappropriate biomedical research” by companies is far-fetched and seems strange to be the focus of the General Comment.

The proposal in paragraph 36 that children should be consulted before governments engage in business-related decision-making is questionable at best. All the problems and fundamental questions with regard to representativeness, the consultation model, etc., are left open.

The draft proposes in paragraph 43 to incorporate “*clauses on the rights of the child into business agreements, investment treaties and other foreign investment agreements with transnational corporations and foreign governments*”. The discussion on social clauses in trade agreements should not be repeated here. However, the question arises as to whether it makes sense to focus specifically on children’s rights with regard to trade. Considering the fact that the most important children’s rights are human rights and that the UN Guiding Principles on Business and Human Rights addresses these questions, they should be left to the discussions of the UN Working Group on Business and Human Rights.

The same argument applies to linking children’s rights with export credits: Besides the fact that such linkage would entangle the grant of export credits in red tape, with the only impact being the deterioration in export conditions, which therefore would do more harm than good, these questions are in any case being addressed by the UN Working Group on Business and Human Rights and should be left for the work of that Group.

The assertion in paragraph 62 that “*in many circumstances, the business sector has a limited vision and understanding of the impact they have on children’s rights*” does not reflect the real experience of business and of the need for businesses to ensure their reputations are not compromised by offending the rights of others, children included.

The draft recommends in paragraph 66 to “*consider the creation of a focal point for implementation of the CRC in the context of business*”. Again, it is highly doubtful whether a specific focal point for children’s rights and business makes sense. The danger is that national administration will get lost in a multiplicity of focal points and sub-structures if focal points for every topic are established. Instead, the General Comment might recommend including children’s rights in existing focal points and multistakeholder forums.

According to paragraph 50 of the draft, “*states should put in place verification and enforcement mechanisms*” in case reporting on “*efforts to address child rights impacts*” are mandatory for business. It is unclear what is meant by this provision. The question of a mandatory reporting obligation is already highly contested - third party certification, etc even more so. The draft is suggesting here in just one sentence without any kind of explanation or justification a provision on which there is not even the beginning of a consensus.
