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UN Committee on the Rights of the Child  
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**Submission from the Justice and International Mission Unit, Synod of  
Victoria and Tasmania, Uniting Church in Australia on *Draft One of  
the Committee on the Rights of the Child’s General Comment on Child  
Rights and Business Sector***

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The Justice and International Mission Unit, Synod of Victoria and Tasmania, Uniting Church in Australia, welcomes this opportunity to make a submission on the *Draft One of the Committee on the Rights of the Child’s General Comment on Child Rights and Business Sector*. The Unit supports the draft General Comment and believes that more needs to be done by Governments to ensure businesses respect and uphold the rights of children as outlined in the *UN Convention on the Rights of the Child* and other key UN human rights instruments.

The Unit has over a decade of experience in campaigning for children’s rights. We are one of the few civil society bodies that sits on the working group for child employment laws in the Australian state of Victoria. The Uniting Church also provides welfare services to children through its agencies in Australia and provides funding and support for children’s welfare and education overseas working in partnership with churches in those countries.

Specific comments on the draft General Comment are outlined below.

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## Paragraph 6

The Unit would urge the inclusion of reference to the *Athens Ethical Principles* (developed in 2006 by governments, businesses, non-government organisations and UN bodies), the *Luxor Protocol* (which was the outcome of the End Human Trafficking Now: Enforcing the UN Protocol Luxor International Forum on 12 December 2010) and the *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children of the United Nations Convention against Transnational Organised Crime*.

## Paragraph 11

With regards to the reference to public procurement contracts, it should be noted that it is not sufficient for a company to simply have its own code of conduct stating it supports children's rights, but it needs to have implementation mechanisms in place to ensure this commitment is a reality in practice. The Unit has direct experience of businesses in Australia with their own codes stating zero tolerance to child labour in their supply chain, but when serious risks are pointed out of where child labour may exist the company in question has refused to take any action to investigate compliance or enforce their own code.

A model for good practice in public procurement is provided by the US Government. Executive Order (EO) 13126 on the 'Prohibition of Acquisition of Products Produced by Forced or Indentured Child Labor' applies to purchases made by the US Federal Government, and is designed to ensure that 'executive agencies shall take appropriate actions to enforce the laws prohibiting the manufacture or importation of goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part by forced or indentured child labor'.<sup>1</sup>

Pursuant to Section 2 of the EO, the US Department of Labor (in consultation and cooperation with the Department of the Treasury and the Department of State) publishes in 'the Federal Register a list of products ('EO List'), identified by their country of origin, that those Departments have a reasonable basis to believe might have been mined, produced, or manufactured by forced or indentured child labor'.<sup>2</sup>

In addition, Section 3 of the EO empowers the Federal Acquisition Regulatory Council (FARC) to issue rules relating to contractor certifications. Under these certifications, a contractor must certify that a product furnished under the procurement contract is free of forced/indentured labour where that product is included in the EO List. Section 3 also

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<sup>1</sup> Executive Order 13126 of June 12, 1999, § 1. In particular, the laws listed in Section 1 are the Tariff Act of 1930, 19 USC § 1307, the Fair Labor Standards Act, 29 USC § 201 et seq, and the Walsh-Healey Public Contracts Act, 41 USC § 35 et seq.

<sup>2</sup> Executive Order 13126 of June 12, 1999, § 2.

empowers the FARC to issue rules regarding investigations - where a product is suspected to be made from forced/indentured labour - and contractual remedies.

The Department of Labor published an initial determination of the EO List on 18 January 2001. Since then, the list has been updated on a periodic basis, depending on the nature and extent of information received, pursuant to the Department of Labor's (DOL) procedural guidelines.<sup>3</sup>

On 18 January 2001, the US Federal Acquisition Regulatory Council (FARC) published rules regarding the 'application of labor laws to government acquisitions' FARC rules on government acquisition, including, under part 22.1503, the 'procedures for acquiring end products on the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor'.<sup>4</sup> The following rules were promulgated in relation to contractor certification under part 22.1503:

(a) *When issuing a solicitation for supplies expected to exceed the micropurchase threshold, the contracting officer must check the List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor (the List) ([www.dol.gov/dol/ilab](http://www.dol.gov/dol/ilab)) (see 22.1505(a)). Appearance of a product on the List is not a bar to purchase of any such product mined, produced, or manufactured in the identified country, but rather is an alert that there is a reasonable basis to believe that such product may have been mined, produced, or manufactured by forced or indentured child labor.*

...

(c) *Except as provided in paragraph (b) of this section,<sup>5</sup> before the contracting officer may make an award for an end product (regardless of country of origin) of a type identified by country of origin on the List the offeror must certify that—*  
 (1) *It will not supply any end product on the List that was mined, produced, or manufactured in a country identified on the List for that product, as specified in the solicitation by the contracting officer in the Certification Regarding Knowledge of Child Labor for Listed End Products; or*

<sup>3</sup> United States Department of Labor, Office of the Secretary, Bureau of International Labor Affairs, Procedural Guidelines for the Maintenance of the List of Products Requiring Federal Contractor Certification as to Forced or Indentured Child Labor Under 48 CFR Subpart 22.15 and E.O. 13126 of 18 January 2001, p 5351 (2001).

<sup>4</sup> Application of Labor Laws to Government Acquisitions 48 CFR § 22 (2001).

<sup>5</sup> Part 22.1503 (b) of the Application of Labor Laws to Government Acquisitions 48 CFR § 22 (2001) states:

(b) The requirements of this subpart that result from the appearance of any end product on the List do not apply to a solicitation or contract if the identified country of origin on the List is—

- (1) Canada, and the anticipated value of the acquisition is \$25,000 or more (see 25.405);
- (2) Israel, and the anticipated value of the acquisition is \$50,000 or more (see 25.406);
- (3) Mexico, and the anticipated value of the acquisition is \$54,372 or more (see 25.405); or
- (4) Aruba, Austria, Belgium, Denmark, Finland, France, Germany, Greece, Hong Kong, Ireland, Italy, Japan, Korea, Liechtenstein, Luxembourg, Netherlands, Norway, Portugal, Singapore, Spain, Sweden, Switzerland, or the United Kingdom and the anticipated value of the acquisition is \$177,000 or more (see 25.403(b)).

- (2)(i) *It has made a good faith effort to determine whether forced or indentured child labor was used to mine, produce, or manufacture any end product to be furnished under the contract that is on the List and was mined, produced, or manufactured in a country identified on the List for that product; and*
- (2)(ii) *On the basis of those efforts, the offeror is unaware of any such use of child labor.*
- (d) *Absent any actual knowledge that the certification is false, the contracting officer must rely on the offerors' certifications in making award decisions.*

In addition to rules regarding contractor certification, part 22.1503(e) provides the following rules on investigations to be carried out by an agency's Inspector General:

- (e) *Whenever a contracting officer has reason to believe that forced or indentured child labor was used to mine, produce, or manufacture an end product furnished pursuant to a contract awarded subject to the certification required in paragraph (c) of this section, the contracting officer must refer the matter for investigation by the agency's Inspector General, the Attorney General, or the Secretary of the Treasury, whichever is determined appropriate in accordance with agency procedures, except to the extent that the end product is from the country listed in paragraph (b) of this section, under a contract exceeding the applicable threshold.*

The FARC rules on government acquisition also address Government agency's recourse to remedies against contractors. Part 22.1504(a) allows for Government agency's to impose remedies for the following violations:

- (1) *The contractor has submitted a false certification regarding knowledge of the use of forced or indentured child labor.*
- (2) *The contractor has failed to cooperate as required in accordance with the clause at 52.222-19, Child Labor Cooperation with Authorities and Remedies, with an investigation of the use of forced or indentured child labor by an Inspector General, the Attorney General, or the Secretary of the Treasury.*
- (3) *The contractor uses forced or indentured child labor in its mining, production, or manufacturing processes.*
- (4) *The contractor has furnished an end product or component mined, produced, or manufactured, wholly or in part, by forced or indentured child labor.*

In response to the violations outlined above, part 22.1504(b) stipulates that:

- (1) *The contracting officer may terminate the contract.*
- (2) *The suspending official may suspend the contractor in accordance with the procedures in subpart 9.4.*
- (3) *The debarring official may debar the contractor for a period not to exceed 3 years in accordance with the procedures in subpart 9.4.*

It should be noted that part 22.1503(f) states that ‘proper certification will not prevent the head of an agency from imposing remedies in accordance with part 22.1504(a)(4) if it is later discovered that the contractor has furnished an end product or component that has in fact been mined, produced, or manufactured, wholly or in part, using forced or indentured child labor.’ In addition remedies in part 22.1504(b)(2) and (b)(3) are deemed inappropriate unless the contractor knew of the violation.

### **Paragraph 13**

The point should include guidance the maximum possible penalties that can be imposed on a business by the State need to be of a sufficient level that a business is not able to profit from any abuses or violations of children’s rights that it has been party to. While in many cases businesses will have not deliberately have been party to the violation of child’s rights and corrective action may require no more than the issuing of warnings, there are certainly many cases globally of businesses violating the rights of children in the most deliberate and grievous manner in order to increase their profits.

### **Child rights due diligence for business**

In this section should be added advice to States that they should conduct their own research to identify industries at greatest risk of having child rights violations in their supply chains and therefore requiring these industries to take the greatest due diligence measures. States could be encouraged to consider requiring similar risk assessments of serious child rights violations as are required for assessment of illegally logged timber in the US Lacey Act or the Australian *Illegal Logging Prohibition Bill 2011*, that has just passed the House of Representatives and is set to pass the Senate. Further, States could be encouraged to require companies to have to publicly disclose what steps they are taking to ensure their supply chain is free of serious violations of children’s rights in a similar way to the requirements of the Californian Supply Chain Transparency Act (SB 657).

### **Remedial measures must provide for the best interests of the child**

The General Comment should contain advice that any remedial action taken to address child rights violations must still uphold the best interests of the child. For example, it is not acceptable for a company to simply expel child labourers from its supply chain and not take responsibility for what happens to them after they are expelled. Having benefited from the exploitation of children the business should have a responsibility to provide for their welfare. A model of such an approach has been Goodweave, which required businesses that adopted its labeling system to ensure children displaced from the hand-knotted rug industry where given access to schools.<sup>6</sup>

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<sup>6</sup> <http://www.goodweave.net>. To date, GoodWeave has freed more than 3,600 children from weaving looms and prevented thousands more from ending up there.

## **Seizure and Confiscation of Goods produced through the violation of children's rights**

The General Comment correctly identifies the numerous barriers faced in criminal or civil prosecutions of businesses for violations of children's rights. The General Comment should therefore remind States of their obligations to introduce national laws for the seizure and confiscation of goods produced by the use of children through forced labour and sexual exploitation, as outlined in Article 7 of the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography*:

*States Parties shall, subject to the provisions of national law:*

- (a) Take measures to provide for the seizure and confiscation, as appropriate, of:*
  - (i) Goods, such as materials, assets and other instrumentalities used to commit or facilitate offences under the present protocol;*
  - (ii) Proceeds derived from such offences;*
- (b) Execute requests from another State Party for seizure or confiscation of goods or proceeds referred to in subparagraph (a);*
- (c) Take measures aimed at closing, on a temporary or definitive basis, premises used to commit such offences.*

The confiscation of goods can often have a lower threshold of proof for action than civil or criminal actions, and can act as a serious deterrent to companies being willing to be reckless in handling goods where serious violations of children's rights have taken place in their production.

The General Comment should remind States goods and profits produced with the involvement of serious violations of children's rights meet the international definition for the proceeds of crime. Article 2 of both the *UN Convention Against Corruption* (UNCAC) and the *UN Convention against Transnational Organised Crime* (UNTOC) defines "Proceeds of Crime" as "any property derived from or obtained, directly or indirectly, through the commission of an offence".

Article 23 of UNCAC addresses the laundering of the proceeds of crime:

- 1. Each State Party shall adopt, in accordance with fundamental principles of its domestic law, such legislative and other measures as may be necessary to establish as criminal offences, when committed intentionally*
  - (a) (i) The conversion or transfer of property, knowing that such property is the proceeds of crime, for the purpose of concealing or disguising the illicit origin of the property or of helping any person who is involved in the commission of the predicate offence to evade the legal consequences of his or her action;*
  - (ii) The concealment or disguise of the true nature, source, location, disposition, movement or ownership of or rights with respect to property, knowing that such property is the proceeds of crime;*
- (b) Subject to the basic concepts of its legal system:*

- (i) *The acquisition, possession or use of property, knowing, at the time of receipt, that such property is the proceeds of crime;*
- (ii) *Participation in, association with or conspiracy to commit, attempts to commit and aiding, abetting, facilitating and counselling the commission of any of the offences established in accordance with this article.*
2. *For purposes of implementing or applying paragraph 1 of this article:*
- (a) *Each State Party shall seek to apply paragraph 1 of this article to the widest range of predicate offences;*
- (b) *Each State Party shall include as predicate offences at a minimum a comprehensive range of criminal offences established in accordance with this Convention;*
- (c) *For the purposes of subparagraph (b) above, predicate offences shall include offences committed both within and outside the jurisdiction of the State Party in question. However, offences committed outside the jurisdiction of a State Party shall constitute predicate offences only when the relevant conduct is a criminal offence under the domestic law of the State where it is committed and would be a criminal offence under the domestic law of the State Party implementing or applying this article had it been committed there;*
- (d) *Each State Party shall furnish copies of its laws that give effect to this article and of any subsequent changes to such laws or a description thereof to the Secretary-General of the United Nations;*
- (e) *If required by fundamental principles of the domestic law of a State Party, it may be provided that the offences set forth in paragraph 1 of this article do not apply to the persons who committed the predicate offence.*

Article 6 of UNTOC is very similar to Article 23 of UNCAC.

Thus, under Article 6 of UNTOC and Article 23 of UNCAC it can reasonably be argued that at a minimum it should be an offence for a company to accept or sell any good where they know the good has involved serious violations of children's rights in its production.

Article 31 of UNCAC requires that States Parties take legal steps to confiscate the proceeds of crime and to identify and trace the proceeds of crime, stating:

1. *Each State Party shall take, to the greatest extent possible within its domestic legal system, such measures as may be necessary to enable confiscation of:*
  - (a) *Proceeds of crime derived from offences established in accordance with this Convention or property the value of which corresponds to that of such proceeds;*
  - (b) *Property, equipment or other instrumentalities used in or destined for use in offences established in accordance with this Convention.*
2. *Each State Party shall take such measures as may be necessary to enable the identification, tracing, freezing or seizure of any item referred to in paragraph 1 of this article for the purpose of eventual confiscation.*
3. *Each State Party shall adopt, in accordance with its domestic law, such legislative and other measures as may be necessary to regulate the administration by the*

*competent authorities of frozen, seized or confiscated property covered in paragraphs 1 and 2 of this article.*

*4. If such proceeds of crime have been transformed or converted, in part or in full, into other property, such property shall be liable to the measures referred to in this article instead of the proceeds.*

*5. If such proceeds of crime have been intermingled with property acquired from legitimate sources, such property shall, without prejudice to any powers relating to freezing or seizure, be liable to confiscation up to the assessed value of the intermingled proceeds.*

*6. Income or other benefits derived from such proceeds of crime, from property into which such proceeds of crime have been transformed or converted or from property with which such proceeds of crime have been intermingled shall also be liable to the measures referred to in this article, in the same manner and to the same extent as proceeds of crime.*

*7. For the purpose of this article and article 55 of this Convention, each State Party shall empower its courts or other competent authorities to order that bank, financial or commercial records be made available or seized. A State Party shall not decline to act under the provisions of this paragraph on the ground of bank secrecy.*

*8. States Parties may consider the possibility of requiring that an offender demonstrate the lawful origin of such alleged proceeds of crime or other property liable to confiscation, to the extent that such a requirement is consistent with the fundamental principles of their domestic law and with the nature of judicial and other proceedings.*

*9. The provisions of this article shall not be so construed as to prejudice the rights of bona fide third parties.*

*10. Nothing contained in this article shall affect the principle that the measures to which it refers shall be defined and implemented in accordance with and subject to the provisions of the domestic law of a State Party.*

Article 12 of UNTOC is very similar to Article 31 of UNCAC.

Thus Article 12 of UNTOC and Article 31 of UNCAC can be seen to justify States requiring companies to trace of origin of goods where there is a high likelihood of children's rights having been seriously abused in their production. Further Article 12(7) of UNTOC and Article 31(8) of UNCAC would justify States requiring companies to demonstrate the goods they are selling are free from serious violations of children's rights in their production, to the degree of certainly that could be reasonably expected.

States could also be encouraged to require financial institutions to take steps to ensure money they are handling from clients are not the profits of serious violations of children's rights.

Article 18 of UNTOC requires States Parties to co-operate on matters of transnational organised crimes including "Identifying or tracing proceeds of crime, property, instrumentalities or other things for evidentiary purposes."

Article 27 of UNTOC and Article 48 of UNCAC requires States Parties to cooperate across borders in conducting inquiries with respect to offences covered by the Convention concerning “The movement of proceeds of crime or property derived from the commission of such offences.”

## **Obligations of online businesses in the supply chain**

Online businesses need to be encouraged or required to assist in minimising the violation of children’s rights within the supply chains they are part of. Sometimes it is difficult to get online companies to accept they have a role to play in combating the violations they have connection to. Consider the example of internet service providers (ISPs) whose services are used by their customers to access commercial child sexual abuse operations. There are approximately a thousand commercial child sex abuse sites globally and an estimated 50,000 new child sexual abuse images are produced each year.<sup>7</sup> The industry is estimated to be worth about US\$250 million globally.<sup>8</sup>

According to the available data,<sup>9</sup> hundreds of thousands of people in western democratic societies access child sexual abuse material online either inadvertently or deliberately. In a 2008 survey of 1,000 adults in the UK, the Internet Watch Foundation found that 5% of all internet users had been exposed to child sexual abuse material online.<sup>10</sup> A BBC report from 2006 indicated that UK ISP BT were blocking 35,000 attempts to access child sexual abuse material each day by their clients.<sup>11</sup> At the time, BT provided service to one third of UK internet users. Cybertip.ca also reported that in the UK, a single ISP blocked more than 20,000 daily attempts to access child sexual abuse material and in Norway the estimate was 15,000 – 18,000 daily attempts.<sup>12</sup>

ISPs disrupting access to commercial child sexual abuse sites is supported by the international police organisation INTERPOL. They summarise the advantages of access blocking as:

*The system prevents crimes from being committed, limits the number of criminals having to be investigated in cases related to commercial child sexual abuse material web pages and protects victims. By preventing crime and thereby reducing the amount of work for the police, more resources can be put into investigations and subsequent court proceedings.*

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<sup>7</sup> UNODC, *The Globalization of Crime: A Transnational Organized Crime Threat Assessment* on 17 June 2010

<sup>8</sup> *ibid.*

<sup>9</sup> Most ISPs that voluntarily block ready access by their clients to child sexual abuse material either do not collect data on the number of attempts made by clients or do not report this statistic.

<sup>10</sup> Internet Watch Foundation, ‘UK adult internet users: 2008 research report’, <http://www.iwf.org.uk/resources/research>

<sup>11</sup> <http://news.bbc.co.uk/1/hi/uk/4687904.stm>

<sup>12</sup> Canadian Centre for Child Protection, ‘Child Sexual Abuse Images. An Analysis of Websites by Cybertip!ca’, November 2009, p. 16.

ISP level access disruption limits the commercial child sexual abuse industry's ability to build their customer base, thus reducing demand for the production of such material.

Permitting access to sexual abuse material further violates the rights of victims. Victims who have pictures of their abuse online suffer extreme feelings of powerlessness and are 're-victimised' each time the image is viewed. While it is desirable to locate and remove such images whenever possible, often it is very difficult. Blocking ready access to sexual abuse material blocks inadvertent access and disrupts deliberate attempts to access such images and protects the rights of victims not to have their images viewed.

Italy and the Philippines have legislation requiring ISPs to disrupt ready access to child sexual abuse sites.

In the UK, the Internet Watch Foundation reports that 70 ISPs, search and content providers, mobile operators and filtering companies block client access to child sexual abuse material covering 98.6% of residential broadband connections.<sup>13</sup>

By contrast, as of October 2011 only five Australian ISPs of between 400 and 600 nationally were working with the Australian Federal Police to block ready access to a limited list of child sexual abuse sites maintained by INTERPOL.<sup>14</sup>

In another example, Amazon initially defended their online sales of the how-to manual for sex with children '*The Pedophile's Guide to Love and Pleasure*' under the banner of being opposed to censorship.<sup>15</sup>

The General Comment should specifically make reference to States requiring Information Communication and Technology (ICT) businesses to assist in combating child sexual abuse online and not allowing their services to be used for such purposes. This should include combating both commercial child sexual abuse operations and networks of pedophiles that use the services of the ICT businesses.

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<sup>13</sup> Internet Watch Foundation, '2010 Annual and Charity Report', p. 4.

<sup>14</sup> Senate Standing Committee on Legal and Constitutional Affairs. Australian Federal Police Question No 25.

<sup>15</sup> See for example Helen Popkin, "Amazon defends 'Pedophile's Guide'", 11 October 2010, [http://www.msnbc.msn.com/id/40112145/ns/technology\\_and\\_science-tech\\_and\\_gadgets/t/amazon-defends-pedophiles-guide/](http://www.msnbc.msn.com/id/40112145/ns/technology_and_science-tech_and_gadgets/t/amazon-defends-pedophiles-guide/)