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Committee on the Rights of the Child

Palais Wilson
52, rue des Pâquis
CH-1201 Geneva
Switzerland

Submission on Draft One of the General Comment on Child Rights and the Business Sector

24 August 2012

Dear Sir or Madam,

as the German national umbrella organisation of non-governmental organisations (NGOs) in development cooperation, VENRO represents 115 organisations with different backgrounds in independent and church-related development co-operation, humanitarian aid as well as development education, public relations and advocacy.

We warmly welcome your initiative to deliver a General Comment on Child Rights and the Business Sector that will aim to provide States Parties with a framework for implementation of the Convention as a whole with regard to the business sector. Against the background of the increasing globalization of business structures and the fact that over 305 million children aged between five and 17 are currently working - 115 million of them even carrying out particularly hazardous work detrimental to their development - we consider it as necessary and important to strengthen the child rights perspective in the business sector.

Draft One of the General Comment on Child Rights and the Business Sector contains important thematic aspects and detailed recommendations for states and the business sector which will contribute to the implementation of child rights. Nevertheless, we are thankful for the opportunity to submit additional remarks.

Please find attached our suggestions, remarks and additional comments and feel free to contact us in case of any further inquiry or lack of clarity.

Yours sincerely,



Ralf Tepel
(VENRO Board)



Samia Kassid
(VENRO Working Group Childrens Rights)

Submission on Draft One of the General Comment on Child Rights and the Business Sector

Acknowledging that the Committee has decided to provide States parties with a “framework for implementation of the Convention as a whole with regard to the business sector” we feel that the draft text is lacking descriptions of the ways in which children become victims of rights violations specifically caused by business operations and concrete guidance on key issues, concepts and terms. We are hopeful, that the Committee will shed more light on the specific types of violations and further define general concepts in relation to the business sector. Please find below a number of suggestions:

I. Definition of “Economic Exploitation” (Art. 32 CRC)

According to Article 32(1) of the Convention on the Rights of the Child, “States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child’s education, or to be harmful to the child’s health or physical, mental, spiritual, moral or social development.”

In §42 of Draft One of the General Comment on Child Rights and the Business Sector the specific requirement arising from this article to take all necessary measures to ensure the prohibition of economic exploitation and hazardous work is emphasized. We welcome the clear expression of the state duty to effectively enforce Article 32 CRC by ratifying and enacting into national law both ILO Conventions relating to child labour.

However, from our perspective it is necessary to define the term “economic exploitation” in order to create a coherent basis for all international actors to exercise their duties and for all children suffering from economic exploitation to be able to claim for their rights. Neither does the Convention itself provide us with a definition¹, nor do the existing General Comments of the Committee which mention the term “economic exploitation” shed light on its precise meaning.² So far, a definition of child

¹ The term is not yet defined although the Committee has had intense discussion in the last 20 years. In 1993, for example, the Committee has devoted its 2nd (annual) discussion day to the economic exploitation of children but the recommendations which formed the result of these discussions, do not include a precise definition. See UN Doc. CRC/c/20, [http://www.unhchr.ch/tbs/doc.nsf/0/7b7a4f2120b2aacb4125615100388678/\\$FILE/G9319038.pdf](http://www.unhchr.ch/tbs/doc.nsf/0/7b7a4f2120b2aacb4125615100388678/$FILE/G9319038.pdf). Moreover Jaap E. Doek, emeritus professor of Family and Juvenile Law at the Vrije Universiteit in Amsterdam, for instance, has emphasized the need for a clear definition of this term at the International Conference “Stopping the economic exploitation of children: new approaches to fighting poverty as a means of implementing human rights?”, 22 to 24 February 2002, in Hattingen, http://www.jaapedoek.nl/publications/keynotes/keynote_261.pdf

² See for example General Comment No. 11 (2009): Indigenous children and their rights under the Convention, CRC/C/GC/11, 12 February 2009, §§69-71; General Comment No. 9 (2006): The rights of children with disabilities, CRC/C/GC/9, 27 February 2007, §75; General Comment No. 8 (2006): The right of the child to protection from corporal punishment and other cruel or degrading forms of punishment (arts. 19; 28, para. 2; and 37, inter alia), CRC/C/GC/8, 2 March 2007, § 36; General Comment No. 7 (2005): Implementing child rights in early childhood, CRC/C/GC/7/Rev.1, 20 September 2006, §36(e); General Comment No. 6 (2005): Treatment of unaccompanied and separated children outside their country of origin, CRC/GC/2005/6, 1 September 2005, §23; General Comment No. 3 (2003), HIV/AIDS and the rights of the child, CRC/GC/2003/3, 17 March 2003, §36.

labor exists based on the ILO Conventions No. 182 and No. 138.³ Moreover, UNICEF has published criteria for defining exploitation.⁴ These include:

- children take on full-time work too early;
- their working hours are too long;
- the work is not appropriately remunerated;
- children are forced to bear too much responsibility;
- the work is boring and monotonous;
- the work environment is dangerous, e.g. on the street or underground;
- they do work which is both physically and mentally too strenuous;
- they have no energy or time to go to school or do their schoolwork.

These are important steps, but we consider it as necessary to clarify the meaning of the term “economic exploitation” on the international level. We therefore kindly ask the Committee to clarify what is meant by “economic exploitation” including the following questions:

- How do you define the term “economic exploitation”?
- Which forms of economic exploitation do exist?
- What is the difference between the two categories contained in Art. 32 CRC – the “economic exploitation” and “work that is likely to be hazardous”?
- When is a child to be regarded as being exploited?
- What should be done to prevent a child from economic exploitation?

By clarifying the above questions we kindly ask you to answer them with a gender perspective.

II. Child Labor in the informal sector

The international agreements in the field of child labor are a very important basis for obtaining commitments from the nations in question. However, there is no reference to child labor in the informal sector in either of the two most significant ILO Conventions as well as the CRC. Even the Roadmap for Achieving the Elimination of the Worst Forms of Child Labour by 2016 that was adopted at the Hague Global Child Labour Conference 2010 names child labor in the informal economy only twice in a very general way.⁵ As most of the children are employed, respectively exploited, in the informal sector, this should be taken into account when putting the agreements into practice.⁶

³This definition was adopted at the 18th International Conference of Labor Statisticians (2008). UNICEF: Progress for Children. A Report Card on Child Protection, September 2009, New York, p. 16

⁴UNICEF: Information: Kinderarbeit - Grenzenlose Ausbeutung (Child labor - limitless exploitation), Cologne 2008

⁵ First, the participants of the Global Child Labour Conference 2010 recognize that “political leadership is needed to achieve the elimination of the worst forms of child labour [...] particularly in the informal economy where most child labour occurs” (p. 2). Second, governments should work “towards regulating and formalizing the informal economy where most instances of the worst forms of child labour occur, including through the strengthening of state labour inspection and enforcement systems and capacities” (p. 4).

<http://www.ilo.org/ipeinfo/product/viewProduct.do?productId=13453> (22.08.2012).

⁶ See for example <http://www.un.org/en/globalissues/briefingpapers/childlabour/index.shtml> (25.07.2012)

Draft One of the General Comment on Child Rights and the Business Sector mentions child labor in the informal sector in §10 underlining the states obligation to respect, protect and fulfil child rights and “to take measures to ensure that business activities take place within appropriate legal and institutional frameworks in all circumstances whereby children's rights can be clearly recognised and protected”.

Beyond that, states should identify and develop innovative and supportive policies and mechanisms that include the informal economy and the tremendous number of children working in that area in order to attend school and have access to social benefits. Otherwise there is the risk to discriminate children working in the informal or even illegal sector – in addition to their already harmful and exploitative working conditions - because laws and mechanisms set up in the formal sector lie beyond their scope. To realize the children’s rights to non-discrimination (Art. 28 CRC) and the right to be heard (Art. 36 CRC), it is important to set up mechanisms that focus on children working in the informal or illegal sector and are thus marginalized.

We therefore suggest to underline the need for innovative policies and mechanisms with special regard to children working in the informal sector in the General Comment on Child Rights and the Business Sector.

III. Ratification of the 3rd Optional Protocol to the Convention of the Rights of the Child

On 19 December 2011, the UN General Assembly passed the Optional Protocol to the Convention on the Rights of the Child on a Communications Procedure providing for an individual complaints procedure as well as other complaints mechanisms (investigation procedures, intergovernmental complaints) within the scope of the CRC and the Optional Protocols. This protocol is now open for signature and ratification. Until today (24 August 2012), 26 states have signed the Optional Protocol. It will enter into force as soon as 10 states have ratified it, none has done this so far.

The Optional Protocol is of utmost importance for the implementation of the CRC as it gives children the possibility to bring breaches of the CRC before the Committee – once all other means of domestic remedies to seek justice have been exhausted.

At different points of Draft One of the General Comment on Child Rights and the Business Sector the Committee mentions the importance to provide access to remedy for all children that are exploited or working under harmful or hazardous conditions (see for example §4, 13, 54, 55). Access to remedy is one of the central pillars for children to claim for their rights and seek justice on national and international level. To our surprise, the complaints procedure established by the recent Optional Protocol to the CRC is mentioned only once in this context. In §61 the Committee calls upon all states to ratify this Protocol and promote its ratification by other states parties.

From our perspective, the individual complaints procedure will be a central mechanism to obtain remedy in the future and thus should play a more important role in the General Comment on Child Rights and the Business Sector. We therefore kindly ask the Committee to promote the individual complaints procedure in the

General Comment as one important mechanism - if possible, with the appeal to sign and ratify the respective protocol as soon as possible.

IV. Child Rights Impact Assessment (A.ii) and Child Rights Due Diligence (A. iii)

Analyzing the impact of business-related policy, proposed legislation, regulations, budgets or other administrative decisions from a child rights perspective is an important aspect and needs to be supported (§45f.). Moreover, we welcome the idea to encourage and where appropriate to require businesses to undertake human rights due diligence (§49f.) to ensure a specific child rights focus during all business operations.

Concerning these two aspects, we would encourage the Committee to be more precise and to answer the following questions in its General Comment:

- What is precisely meant by child rights impact assessments?
- When should child rights impact assessments be undertaken?
- What should be included in a child rights impact assessment?
- Who should conduct a child rights impact assessment?
- Are there existing methods or instruments for the child rights impact assessment?
- Is there a best practice example that could be useful?⁷
- How can “corporate child rights due diligence” be defined? (see §49)⁸
- How can the Guiding Principles on Business and Human Rights and the Framework developed by the Special Representative of the United Nations Secretary-General on the issue of human rights and transnational corporations and other business enterprises, (A/HRC/17/31) provide guidance in this regard?

V. Trade of Arms and Munitions

In §43 of Draft One of the General Comment on Child Rights and the Business Sector the Committee explains all States “should develop and implement law and regulation that addresses specific foreseeable risks to child rights from business enterprises that are operating abroad”. To emphasize the meaning of these duties, the Committee names the sale of arms and munitions as an example (see also §24, §43, §49, §51).

⁷ See for example Aim for Human Rights (2009): Guide to Corporate Human Rights Impact Assessment Tools and Management.

http://www.aimforhumanrights.org/fileadmin/user_upload/pdf/HRB_Guide_to_corporate_HRIA_2009-def.pdf (22.08.2012) and Rights and Democracy (2007): Getting it Right: A step-by-step guide to assess the impact of foreign investment on human rights, http://www.dd-rd.ca/site/_PDF/publications/Getting-it-right_HRIA.pdf (22.08.2012).

⁸ A clear definition of “corporate due diligence” is still missing on the international level despite the effort of the Special Representative of the United Nations Secretary-General John Ruggie in its Guiding Principles on Business and Human Rights. See for example: Hamm, Brigitte/ Scheper, Christian (2011): Human Rights Impact Assessments zur Umsetzung der menschenrechtlichen Verantwortung von Unternehmen. Konzeptionelle Herausforderungen und praktische Ansätze. INEF Forschungsreihe Menschenrechte, Unternehmensverantwortung und Nachhaltige Entwicklung 10/2011. Duisburg: Institut für Entwicklung und Frieden, Universität Duisburg-Essen, <http://www.humanrights-business.org/files/hria.pdf> (22.08.2012).

The global trade of arms and munitions has been at the centre of attention during the recent UN conference on an Arms Trade Treaty (ATT). Between 2nd and 27th of July 2012 the international community of states negotiated a treaty that aims at controlling the trade of arms and munitions. Unfortunately, the delegates at the United Nations failed to reach consensus and to set common standards to regulate the international trade in conventional arms.

From our point of view, it is necessary to continue this important process and to control the global trade of arms. An estimated 27.5 million people were internally displaced as a result of conflict at the end of 2010 – most of them were driven by the widespread (mis)use of weapons.⁹

We would thus encourage the Committee to be more precise on the states duties concerning the global arms trade.

VI. The business sector and the environment

Environmental damage has been pointed out as one of the major human rights challenges in the 21st century by the OHCHR in a recent report submitted to the UN Human Rights Council, which has now appointed an independent expert on this issue. While the first Draft of the GC contains a number of single references to business and the environment (paragraphs. 4, 13, 33-34, 41, 43, 44, 57), it might be helpful to dedicate more attention on this issue, given the tremendous impact business operations can have on the environment and thus on a number of child rights dependent on preserving a healthy environment such as the right to food, to water, to health etc.- not just in the context of the right to life, survival and development.

1. Children are particularly affected by environmental damage through business operations, e.g. the use of dangerous pesticides or toxic heavy metals. Children in developing countries are even more affected, since they are frequently exposed to environmental pollutants that have been prohibited in developed nations. They may also be exposed to toxic waste imported from western states. There is a frequent lack of necessary information about harmful and toxic substances. Product labels – if they exist at all – are rarely in the local language and are not written in a child-friendly way.

2. The increasing exploitation of natural resources, the loss of biodiversity and other irrevocable ecological damage - often driven by business operations - also darken children's future prospects. Young people are affected in more than one way, today and as adults when they need to live with the consequences of environmental degradation.

It should therefore be emphasized in the General Comment on Child Rights and the Business Sector that not only "(w)hen determining the level of reparation, mechanisms should take into account that children" (p.57) must live with the long-term consequences of corporate violations of their rights and can be more vulnerable

⁹ See <http://www.un.org/apps/news/story.asp?NewsID=42585&Cr=disarmament&Cr1=> (22.08.2012).

to their effect than adults in terms of susceptibility, but first of all when determining policy priorities, regulating corporations and formulating adequate standards and prohibitions concerning the environment and the business sector, or when collecting data on business activities. Application of the precautionary principle, the concept of intergenerational justice or the reversal of the burden of proof is just an example of how the principle of the best interests of the child can be taken into account with regard to the business sector and the environment.

Describing the relationship between business activities and environmental protection or other selected key areas in greater detail may be crucial in providing concrete guidance with regard to the implementation of the CRC as a whole and the business sector. We therefore kindly ask the Committee to take these aspects into account in the General Comment on Child Rights and the Business Sector.