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21 December 2011

Working Group on the issue of human rights and
transnational corporations and other business enterprises
c/o Mr. Michael van Gelderen
Research and Right to Development Division
Office of the United Nations
High Commissioner for Human Rights
Palais des Nations
CH-1211 Geneva 10

**Subject: UNICEF's submission to the Working Group on the issue of human rights and
transnational corporations and other business enterprises**

Dear Working Group Members:

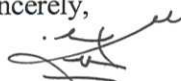
I am very grateful for this opportunity to offer UNICEF's contribution to the reflection on the priority focus for the Working Group in line with its mandate as per Human Rights Council resolution A/HRC/17/4.

In order to inform the work ahead, please find attached one annex describing how business enterprises affect children's rights in several areas beyond child labour. Children need to be protected at all times in all situations. With this in mind, in the enclosed annex, UNICEF offers a number of suggestions on ways in which the Working Group can work with States and business to ensure the Guiding Principles are effectively implemented in order to provide adequate protection for children.

We look forward to continuing our engagement with the Working Group in ensuring that children's rights are duly considered by states and business enterprises. UNICEF will be present at the Introductory exchange of stakeholders on 20 January 2012. We would be delighted to present UNICEF's work in this area to the members of the Working Group.

We hope you will find the enclosed contribution of use. UNICEF would agree with making these comments public.

Sincerely,



Leila Gharagozloo-Pakkala
Director
Private Fundraising and Partnerships

Enclosure: UNICEF Contribution

Annex : UNICEF Contribution to the attention of the Working Group on the issue of human rights and transnational corporations and other business enterprises

Question 1

What do you suggest should be the priority focus areas for the Working Group in line with its mandate as per Human Rights Council resolution A/HRC/17/4?

The work of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises since 2005 has created awareness on State obligations concerning business-related human rights abuses. In its resolution 8/7 (2008), the Human Rights Council supported the “Protect, Respect and Remedy” Framework developed by the Special Representative, and requested him to integrate a gender perspective throughout his work and give special attention to persons belonging to vulnerable groups, **in particular children**.¹

However, children's rights are not explicitly addressed in the Guiding Principles on Business and Human Rights: Implementing the United Nations “Protect, Respect and Remedy” Framework. There is a special case to address children since they are such a large group and childhood experiences impact an individual's entire life. In addition, children are rarely in a position to represent their interests.

The Committee on the Rights of the Child is currently doing preparatory work towards the issue of a General Comment on children's rights and the business sector. This instrument will enable states to create the framework for businesses to protect children's rights.

Building on the Convention on the Rights of the Child (CRC) and the UN Guiding Principles, UNICEF, Save the Children and the UN Global Compact joined forces in June 2010 to develop the Children's Rights and Business Principles. The Principles are a result of the need for stronger recognition of children's right on the business and human rights agenda and it provide business with a principled approach on how to respect and support children's rights within their operations. Starting in 2012, UNICEF will be supporting a number of initiatives to make the Principles practical for the corporate sector.

The upcoming CRC General Comment and the Children's Rights and Business Principles highlight the impact of business on children's rights and have created an important momentum for promoting the respect and support for children's rights by business. UNICEF is fully invested in this area and will be working with government and companies to further advance this agenda by calling on business enterprises to make a commitment to children and to respect and support children's rights in the workplace, marketplace and community.

In light of the above initiatives and the need to further the agenda of business and children's rights, UNICEF urges the UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises to further consider these issues and give special attention to children as a key thematic priority.

¹ Emphasis added.

Question 2

In addition to promoting and disseminating the Guiding Principles, the Working Group must ensure that they are effectively implemented by both governments and business, and that they result in improved outcomes for individuals and groups around the world whose rights have been affected by business activity. How do you suggest that it achieve this complex task?

Measures of Implementation of the State Obligation to Prevent and Remedy Corporate Violations of Children's Rights

The Convention on the Rights of the Child (CRC) does not merely state what children's rights are but goes much further. Article 4 demands that governments "undertake all appropriate legislative, administrative, and other measures for the implementation of the rights". The Working Group can work with States and urge them to employ the following measures to protect children's rights from corporate violations, but also the Working Group can meet with relevant treaty bodies to inform them of the impact of business on the respective mandates of the Treaty Bodies and gather information from them on how each Committee addresses these issues in the periodic reporting and other processes.

Legislation and regulation

- Adopt appropriate legislation and related regulations to protect children from business abuse of their rights – this might include proscribing the employment of children under a certain age; protecting children from violence in the workplace; introducing anti-discrimination law for private sector providers; criminalising the sale of children, prostitution and child pornography as required by the Optional Protocol to the CRC on the Sale of Children, Child Prostitution and Child Pornography; regulating marketing of harmful substances such as alcohol and tobacco to children; maternity leave in line with relevant ILO Conventions; and environmental regulation. It should also include protecting children's rights through trade law, investment rules, and related legal measures.
- Monitor business activity and ensure that legislation and regulations are enforced;
- Establish effective and accessible remedies for violations;
- Periodically assess legislation and regulations and fill the gaps where necessary;
- Introduce mandatory corporate reporting which includes children's rights - States can encourage reporting by creating instruments to benchmark and recognize good performance with regard to children's rights; promoting awareness of the benefits of reporting; and requiring state-owned companies to publish reports on their impact on children's rights; and
- Improve regulation so that foreign and domestic investment through private and state business is mindful and responsive to child rights.

Administrative measures

- Have a comprehensive strategy for child rights which takes into account the links between business and children and includes a strategy for preventing and remedying corporate violations.
- Ensure cross-sectoral co-ordination within all government departments on implementation of the CRC including those that shape business policy and action such as ministries of trade, investment, finance as well as departments who 'traditionally' cover children's issues such as education, health and family welfare.

- Monitor how effectively the State is implementing the CRC both internally within government and externally through National Human Rights Institutions (NHRIs) and NGOs.

Other measures

- Support NHRIs in their mandate to protect children's rights from corporate violations;
- Use voluntary initiatives to encourage business to respect children's rights;
- Ensure that all businesses have a clear understanding of their responsibility to respect child rights wherever they operate and provide them with guidance on how to go about respecting children's rights;
- Ensure that children and their families have a clear understanding that business has a responsibility to respect child rights where ever they operate; and collaborate with civil society to ensure children are protected from corporate violations.

Effective Remedy for Corporate Violations of Children's Rights

An important element of the duty to protect is the obligation to take effective enforcement measures - that is to investigate, adjudicate and redress violations of children's rights when the harm is caused or contributed to by third parties. This is another vital area where the Working Group can influence States and business.

The Committee on the Rights of the Child states that "for rights to have meaning, effective remedies must be available to redress violations²." Unless a State provides children with just and timely remedy for corporate violations of their rights, a State's commitment to the CRC becomes all but meaningless. At the same time, businesses themselves have responsibilities regarding providing children with remedies. They must remove obstacles in the way of children accessing judicial remedies and should provide effective grievance mechanisms as a core part of their responsibility to respect human rights.³

To be truly effective, remedies need to acknowledge and reflect the fact that children are particularly at risk from corporate violations of their rights, they are unlikely to know and understand how to access remedies and at the same time they have the capacity to be actively engaged and involved in the remedy process according to their age and maturity and their participation in proceedings needs to be fostered and encouraged.

UNICEF urges the UN Working Group on Human Rights and Transnational Corporations and Other Business Enterprises to work with States and business in ensuring that proper legislation is adopted and adequate remedy is provided for children. UNICEF would be pleased to work in support of the Working Group in providing a briefing on business and children's rights, and also making available its country and regional-level information on best practices.

21 December 2011

² General Comment No. 5 (2003) *General measures of implementation for the Convention on the Rights of the Child* CRC/GC/2003/5 Para 24.

³ Report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie: *Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework* A/HRC/17/3 para 22 (2011).