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**Annex VIII**

**OUTLINE FOR THE DAY OF GENERAL DISCUSSION ON “THE PRIVATE  
SECTOR AS SERVICE PROVIDER AND ITS ROLE IN IMPLEMENTING  
CHILD RIGHTS”**

Committee on the Rights of the Child  
Day of general discussion  
Friday, 20 September 2002 Palais Wilson, Geneva

**OUTLINE**

**THE PRIVATE SECTOR AS SERVICE PROVIDER AND  
ITS ROLE IN IMPLEMENTING CHILD RIGHTS**

In accordance with rule 75 of its provisional rules of procedures, the Committee on the Rights of the Child has decided to devote periodically one day of general discussion to a specific article of the Convention or to a child rights theme.

“The private sector as service provider and its role in implementing child rights” is the theme for the next general discussion of the Committee on the Rights of the Child. The discussion will take place on 20 September 2002 during the thirty first session of the Committee at the United Nations Office at Geneva.

The purpose of the general discussions is to foster a deeper understanding of the content and implications of the Convention as they relate to specific topics. The discussions are public. Government representatives, United Nations human rights mechanisms, as well as United Nations bodies and specialized agencies, non governmental organizations and individual experts are invited to take part.

**The context: human rights treaty bodies and private actors**

The preamble to the Universal Declaration of Human Rights provides some useful guidance, affirming that “every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for the rights and freedoms ...”. Human rights treaty bodies have specifically made reference, particularly in general comments, to the responsibilities of business in the implementation of specific rights in their respective treaties.

For instance, general comment No. 12 of the Committee on Economic, Social and Cultural Rights (CESCR) on the right to adequate food notes that “While only States are parties to the Covenant and are thus ultimately accountable for compliance with it, all members of society individuals, families, local communities, non governmental organizations, civil society organizations, as well as the private business sector have responsibilities in the realization of the

right to adequate food. The State should provide an environment that facilitates implementation of these responsibilities. The private business sector national and transnational should pursue its activities within the framework of a code of conduct conducive to respect of the right to adequate food, agreed upon jointly with the Government and civil society.”

CESCR general comment No. 14 on the right to the highest attainable standard of health (art. 12), in paragraphs 35, 36, 39, 42, 51, 55 and 56, makes specific reference to the responsibilities of the private sector, noting in particular in paragraph 42 that “while only States are parties to the Covenant and thus ultimately accountable for compliance with it, all members of society individuals, including health professionals, families, local communities, intergovernmental and non governmental organizations, civil society organizations, as well as the private business sector have responsibilities regarding the realization of the right to health”.

Other references to the responsibilities of the private sector appear in CESCR general comment No. 13 on the right to education (art. 13), paragraph 30; Committee on the Elimination of Discrimination against Women (CEDAW) General Recommendation No. 19 on violence against women, paragraph 9; and CEDAW General Recommendation No. 24 on article 12 women and health, paragraph 15. Furthermore, the Convention on the Elimination of All Forms of Discrimination against Women spells out in article 2 (e) the obligation of States parties “to take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise”. A similar obligation is included in the International Convention on the Elimination of All Forms of Racial Discrimination which, in article 2 (d), obliges States parties to “prohibit and bring to an end, by all appropriate means, including legislation as required by circumstances, racial discrimination by any persons, group or organization”.

### **The Convention on the Rights of the Child**

The Convention on the Rights of the Child enshrines the general principle that “in all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration” (art. 3, para. 1) and that “States Parties shall ensure that institutions, services and facilities responsible for the care or protection of children shall conform with the standards established by competent authorities, particularly in the areas of safety, health, in the number and suitability of their staff, as well as competent supervision” (art. 3, para. 3). It thereby establishes the obligation of the State party to set standards in conformity with the Convention and ensure compliance by appropriate monitoring of institutions, services and facilities, including of a private nature. Along the same lines, the general principle of non discrimination as enshrined in article 2, as well as the right to life and to maximum survival and development (art. 6), assume particular importance in the context of the current debate, with the State party equally being obliged to create standards consistent and in conformity with the Convention. Such obligations of the State party are also applicable in the context of article 4.

Furthermore, privatization measures may have a particular impact on the right to health (art. 24) and the right to education (arts. 28 and 29), and the States parties have the obligation to ensure that privatization does not threaten accessibility to services on the basis of criteria prohibited under the principle of non discrimination. With regard to the right to education, the

CESCR general comment No. 13 warns of possible consequences of private activity in this sector, noting that “the State has an obligation to ensure that the liberty set out in article 13 (4) [the liberty of individuals and bodies to establish and direct educational institutions] does not lead to extreme disparities of educational opportunity for some groups in society”. Furthermore, article 25 of the Convention on the Rights of the Child specifically calls for periodic review of the treatment and the circumstances of children who have been placed by the authorities for the purpose of care, protection or treatment of their health, including in private facilities, thus establishing obligations for the State party for the setting of standards and monitoring vis à vis the private sector.

Finally, it may be interesting to explore the implications of the privatization of detention centres on the rights of the child in the light of articles 37 and 40 of the Convention.

### **Aims of the discussion**

The focus of the day of discussion will be on the impact of increasing participation of private sector actors in the provision and funding of State like functions on the implementation of the Convention on the Rights of the Child. While the Committee is entirely conscious that the business sector can impact children’s rights in a wide variety of ways, it has chosen to focus on exploring the various issues emerging from privatization and the assumption by non governmental organizations or businesses of traditional State functions, i.e. in the health and the education sectors, in the provision of institutional care, legal assistance, treatment of victims, etc., given the high degree of relevance of this trend to the work of the Committee.

Despite numerous references to the responsibilities of the States parties to international human rights treaties vis à vis private sector activities, a significant element frequently impeding the implementation of rights guaranteed in the Convention is States parties’ lack of capacity or unwillingness to adopt measures to ensure that actors in the private sector respect the provisions of the Convention. The Committee on the Rights of the Child and its wide range of partners clearly have a role to play in facilitating the development of guidelines, both for private actors and Governments, for the implementation of the Convention by private actors involved in the provision of services which have traditionally been provided by States parties and fall within the realm of their obligations under the Convention. The main objectives of the day of general discussion will therefore be as follows.

(a) Scope of action of private actors: to explore different types of public private partnerships in services of particular relevance to the implementation of the Convention and assess the direct and indirect, and positive and negative impacts on the full realization of the rights of the child; discussions will include, but are not limited to, accessibility and affordability, quality, sustainability and reliability, safety, privacy, etc.;

(b) Legal obligations:

(i) To specify the obligations of States parties in the context of privatization and/or private sector funding in terms of positive obligations, ensuring non discrimination of access, equitable and affordable access, especially for

marginalized groups, as well as assuring quality and sustainability of service provision. Obligations with respect to regulation and monitoring of the activities of the private sector, including the observance of a rights based approach to their service provision, will be specified. Finally, the availability of remedies for rights holders, i.e. children, will be identified;

(ii) To identify and strengthen awareness of the responsibilities and obligations of private service providers, both for profit as well as not for profit, under the Convention on the Rights of the Child;

(c) Governance: to assess the implications of private sector involvement in service provision on governance issues, in particular on participation, accountability, transparency and independence. One key issue is how the increasing role of civil society in providing these services can enhance participation in governance. A second concern is how to maintain and improve accountability and transparency when services are partially or entirely funded by non State actors. The question of whether private entities involved in service provision, either directly or indirectly, are, or can be made, accountable through the political process, could be addressed;

(d) Models and guidelines: to identify possible models of implementation for States parties with regard to private actors and develop guidelines which would include standard setting for private service providers as well as monitoring and regulation by States parties and accountability of organizations in the private sector.

### **Participation in the day of general discussion**

United Nations programmes and agencies are always invited to participate in the days of general discussion organized by the Committee on the Rights of the Child. Governments are also invited to attend and encouraged to participate actively. In light of the theme for the forthcoming day of general discussion, representatives of the private sector as well as international financial institutions are particularly encouraged to participate. The meeting will be open to the public, with information on participation distributed to United Nations programmes and agencies, NGOs and other interested individuals and organizations.

The meeting will be held during the thirty first session of the Committee, at the Office of the High Commissioner for Human Rights (Palais Wilson, Geneva), on Friday, 20 September 2002.

The Committee on the Rights of the Child invites written contributions on the issues and topics mentioned, within the framework outlined above. Contributions should be sent before 28 June 2002 (if possible in electronic version) to:

Secretariat, Committee on the Rights of the Child  
Office of the High Commissioner for Human Rights, UNOG OHCHR  
CH 1211 Geneva 10  
Switzerland

e mail: [klucke.hchr@unog.ch](mailto:klucke.hchr@unog.ch) or [khemmerich.hchr@unog.ch](mailto:khemmerich.hchr@unog.ch) or  
[bmajekodunmi.hchr@unog.ch](mailto:bmajekodunmi.hchr@unog.ch) or [pdavid.hchr@unog.ch](mailto:pdavid.hchr@unog.ch)