

UN Committee on the Rights of Child

General Day of Discussion on

**Resources for the Rights of the Child:
Responsibility of States**

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**Submission by ad hoc working group on ‘Available
Resources: The African Context; An African Perspective’**

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‘AVAILABLE RESOURCES: THE AFRICAN CONTEXT; AN AFRICAN PERSPECTIVE.’¹

INTRODUCTION

1. The contributors to this submission welcome the decision of Committee on the Rights of the Child (‘Committee’) to devote the annual day of discussion to the subject of ‘Resources for the Rights of the Child – Responsibility of States’. This submission, which approaches the issue of resources available for the implementation of socio-economic rights from a distinctly African perspective, focuses on the second area of concern of the Committee, namely the issue of ‘available resources’ and their allocation to children. Given the nature of our areas of concern, particular attention is paid to the question of available resources within the framework of ‘international co-operation’, to trade and economic policies affecting available resources, to the role of the private sector in Africa, and to accountability and its impact on available resources. We wish to elaborate different dimensions of these issues by placing emphasis on current African experiences and concerns. Our overall aims are:-

- To assist the Committee to adopt an understanding of ‘available resources’ in our regional context;
- To inform the Committee recommendations related to international co-operation, trade and economic policy, the role of the private sector and accountability with a focus that adequately reflects African perspectives;
- To influence the identification - and distribution - of available resources in a way that better achieves the fulfilment of socio-economic rights for children;
- To provide a backdrop to the Committee’s future concluding observations and any other form of interactions with donor and recipient countries, international agencies and other international role players, including the private sector.

2. The collective and individual obligation of states to realize the economic and social rights of children to the maximum of their available resources **within the framework of international cooperation** predates the CRC itself. Article 1(3), as read with article 55, of the UN Charter represents an earlier recognition of the need for international cooperation in ‘solving international problems of an economic, social and cultural character’. These provisions were included in article 2(1) of the International Covenant on Economic, Social and Cultural Rights, whose monitoring body – the Committee on Economic, Social and Cultural Rights – has since acknowledged that without them, ‘the full realization of economic social and cultural rights will remain an unfulfilled aspiration in many countries.’ As is clear in the UN Charter, universal respect for human rights, including the realization of economic and social rights, is crucial to achieving enduring, global peace and security. It is our contention that the **broadest possible interpretation** should be given by the Committee to the term ‘**international co-operation**’, and that **this understanding should proceed beyond the role of individual governments and UN agencies**, as will be explained further below.

¹ This document was prepared after a roundtable convened in Nairobi, Kenya on 2 June 2007, attended by the individuals on the cover page. Written input was provided by S Van der Swaluw (International Child Support Africa, Regional Office) prior to the meeting and by L Muntingh and J Gallinetti (Community Law Centre) subsequent to the meeting. **The following groups and/or organisations have added their endorsements to this submission: Child Protection Alliance (CPA), The Gambia; Coalition Nationale des Associations et ONGs en Faveur de l’Enfant (Conafe-Senegal), Senegal; Forum des ONG et associations d’aide à l’enfance en difficulté, Côte d’Ivoire; Forum des Organisations de Defense des Droits de l’Enfant au Togo (FODDET), Togo; Ghana NGO Coalition on the Rights of the Child (GNCRC), Ghana; Save the Children Sweden Eastern Africa Region; Save the Children Sweden Southern Africa Region; Save the Children Sweden Western Africa Region; The Institute for Human Rights and Development in Africa (IHRDA), The Gambia.**

3. Here, it is apposite to give a background to the African context in regard to ‘available resources’ for children. Despite its firm recognition in international law, **the obligation of international co-operation continues to be regarded by many as being merely philanthropic.** Africa continues to be seen as the object of charitable and humanitarian relief to be bestowed upon her at will, rather than as a partner in a developmental programme sanctioned and defined by international legal obligations. No attempt thus far has been made to **interpret the concept and ambit of ‘international co-operation’ in a more meaningful way,** and we argue that both donor and recipient states are desperately in need of an authoritative exposition.

4. Since the Structural Adjustment Programmes (SAPs) of the 1990’s, there have been enormous changes in the context of both development in, and aid to, Africa. Africa’s recent positive economic development has been documented, and significant growth opportunities are emerging, among others, in relation to oil industry, the mining and minerals industry, and the export of energy. This can partly be linked to China’s exploding expansion into Africa. Supporting the economic revival of Africa’s fortunes are numerous encouraging developments relating to political stability and constitutionalism. This new era of democracy, trade expansion and globalization presents particular challenges which need to be met in the short and medium term, but in developmentally appropriate ways that can endure for a significant number of years in support of children’s rights. Of concern, though, is increasing evidence that where economic development has taken off, benefits have not accrued to those already marginalized on any significant scale, but have benefited only the elite.

5. The stark reality which underpins our submission is that **the majority of African governments do not have sufficient available resources** to implement the human rights programmes in the social, health, education and welfare sectors that are required to ensure sufficient progress in fulfilling children’s rights to survival and development. As is well known, 80% of the highly indebted poor countries (HIPC) are in sub-Saharan Africa. Further, as noted 7 years ago already, more than half of the largest economies in the world were global corporations rather than countries. Part of the explanation of the failure of the world to combat (child) poverty, is that **we have not yet found a meaningful mechanism in international law to hold the corporate sector accountable. Private sector corporations, including multinationals, donors and other international agencies, both in the UN stable and in the trade environment, continue to be key players in ensuring ‘available resources’,** rather than states being solely responsible. This state of affairs is likely to prevail for at least the immediate future.

6. However, the agenda of much ‘international cooperation’ to Africa is often clouded by a **lack of transparency,** by **welfarism** or a humanitarian foundation, as opposed to being rights-based or viewed as a legal responsibility. In some donor quarters, the ‘Afro pessimism’ that prevails, results in, for example, overly restrictive conditions being attached to aid. It has been said that the **‘superpowers’ dominate the world aid agenda,** which does not necessarily leads to an agenda which is rooted in children’s rights, but is based on other considerations. As the World Bank Development Indicators (2006) note, total annual official development assistance to Africa for infrastructure has been on the decline, and new figures show that international aid actually declined in 2006, for the first time in 10 years (Mail and Guardian, June 8 - 14 2007). In some instances, a large percentage of what is supposed to be aid is actually spent in the donor country itself. And donor countries continue to attach harmful economic policy conditions to aid and debt relief (Mail and Guardian, June 8 - 14 2007).

7. Although the 2005 Paris Principles have gone some way towards achieving improved co-ordination of co-operative efforts and increased accountability of recipient governments, we reiterate the concern that at grassroots level, the **Paris Principles are not showing much effect yet,** and are even having negative unintended consequences (such as interminable inter-donor and intergovernmental meetings, to the exclusion of beneficiary communities, and at the expense of actual programme delivery).

8. Available resources involve both financial and human resources, and unfortunately many African governments have significant deficits in relation to both. Building human capital is critical to the African development project, and therefore also crucial to the fulfilment of children's socio-economic rights. We therefore highlight areas of possible Committee intervention to ensure that 'available resources' through, amongst other things, 'international co-operation' and trade, result in meaningful and scaled up human resources for the attainment of children's social and economic rights.

COMMENTARY TO RECOMMENDATION NO. 1:

A 'FIRST CALL FOR CHILDREN' IN SOCIO-ECONOMIC RIGHTS

9. Africa continues to be the continent with the highest proportion of children, with more than 50% of the population aged below the age of 18 years. It is also the least developed continent economically. This demographic reality means that despite some advances in containing fertility rates, **there continues to be an extraordinary demand for social services for children, such as health and education.**

10. This as a backdrop, it has been pointed out that the CRC itself falls short of expressly placing a general (**legal**) obligation on ratifying states to accord **priority** to implementing children's socio-economic rights above those of other citizens (Chirwa, 2007). The absence of express provisions requiring preferential positive measures to realize children's socio-economic rights can be attributed to the lack of proper recognition of socio-economic rights in international and comparative constitutional law at the time that the drafting of the CRC was taking place. However, international human rights law has, since 1990, moved in the direction of imposing an obligation of a 'first call for children,' a duty that posits that 'the essential needs of children should be prioritized', and that children's needs be explicitly identified, and not simply assumed or 'read off' from the fulfilment of the social and economic rights of other groups, such as women. This recognition lies at the base of the Committee statement that there must be 'a willingness [by states] to give higher political priority to children and an increasing sensitivity to the impact of governance on children and their human rights' (CRC General Comment No.5 2003, para. 10). We would argue, however, that even this does not go far enough to establish a clear norm/principle that requires states parties to give preference to children's rights (because it simply exhorts states to accord a **higher** priority to children, as opposed to requiring children's socio- economic rights to be **the** priority.) Therefore, the Committee should lay down a founding **legal principle** that **priority be accorded to the fulfilment of children's socio-economic rights.**

COMMENTARY TO RECOMMENDATION NO. 2:

DONOR COUNTRIES AND INTERNATIONAL AGENCIES

11. The Committee, in its concluding observations and general comments, often encourages state parties to seek international cooperation in broad terms, either in relation to general or specific issues. This exhortation to states to collaborate jointly or individually is in our view insufficiently elaborated. It fails to acknowledge that **not all international cooperation or development assistance is necessarily conducive to children's rights, and that some is outright harmful to the furtherance of children's rights.** The SAPs of the 1990's illustrated this, as adverse consequences for children ensued. Some donors have their own agendas, or priorities informed by national foci or foreign policy, rather than the needs of recipient states or those of beneficiaries, and this may ultimately affect children's rights. One frequently encounters programmes which have been developed in isolation from a rights- based approach, or which do not prioritise or sometime even identify children's rights. Sometimes donors compete with one another for 'turf' or make aid promises that are not kept;

generally, most developed countries have failed to meet the internationally agreed benchmark of 0.7% GDP allocation for development assistance. The aid pledges made at the G8 summit of 2005 have not materialised sufficiently (Last in Line, 2007; Cape Times, 7 June 2007). Further, foreign policy and trade practices and negotiations are frequently contradictory and inconsistent with children's rights-based commitments that donor countries have made in other contexts. Unfavourable trade terms resulting from trade agreements in which Africa comes off second best diminish development opportunities and economic growth potential for African countries which could impact positively on available resources.

12. We believe that the Committee should play a **far more directive role** in spelling out the **form** that international co-operation and trade policies should take, the **principles** upon which they should be based, and **practices to be avoided** in international co-operation and trade, especially international trade. We also believe that the Committee can play an invaluable role in ensuring that development assistance does positively impact on children, and is informed by the framework of the CRC. We premise some of our submissions on article 45 of the CRC, which addresses directly the interface between the Committee, the specialized agencies and other UN Organs. Key elements of our recommendation concern **steps that the Committee can take** to follow up on both recipient and donor countries to ensure that this is complied with.

13. Key contributions of the Committee should be to:-

- **Encourage alternative reports** submitted to the CRC to comment not just on government's performance and obligations, but also **to comment on the behaviour of donor countries** in respect of any non-commitment of aid, as well as non- delivery of promised aid, non-prioritization of children's rights in aid programmes, and setting of over- rigorous conditions which result in ill- conceived international cooperation;
- Require donor states parties to report on the **alignment of their foreign policy and trade policies** with their **aid policy and children's rights**, and to explicitly identify their contribution to children's rights fulfilment;
- Ensure that **technical assistance** provided as part of the international co-operation it promotes is **sensitive to the African context**, and that international cooperation achieves the **transfer of skills** and **builds human capacity** in recipient countries in Africa, by not just recommending that states parties seek international assistance in one or another area, but by elaborating **minimum requirements for such cooperation**, such as knowledge of local context and knowledge of comparable environments in developing countries or in Africa;
- Encourage - through dialogue, concluding observations and other means - the improvement of coordination between donors, international agencies, and other relevant international bodies concerned with socio-economic development, including other agencies linked to the UN, as well as by the CRC Committee regularly giving **concrete and specific recommendations** on the **efficacy of country programmes of UN organs and associated agencies** which impact on the delivery of children's socio-economic rights.

COMMENTARY TO RECOMMENDATION NO. 3: TRACKING ALL DOMESTIC RESOURCES

14. The contributors to this submission do recognise that 'available resources' includes both those available through international cooperation and aid **and** those available domestically. Further, there are African countries with access to significant mineral, oil and other resources, which are, in far too many instances, not employed to the benefit of children. Recent findings in a paper on economic policy and child rights in Africa point to the conclusion 'that mineral dependent and oil exporting [Africa] countries that witnessed the fastest growth during the decade ending 2005 have had **higher poverty rates**, greater income inequality, less spending on health care, higher prevalence of child malnutrition, and lower literacy and school enrolments than in other [African] countries at the same level of income per capita.' (African Child Policy Forum, 2006). **Angola**, an oil producing country, has amongst the worst child development indicators on the continent. The paper indicates further that

net foreign direct investment in Africa was a mere US\$10.1 billion in 2004, 1.6% of global flows, but with more than half going to **Nigeria** and **Sudan**. Child poverty is rarely differentiated from poverty in general, and its special dimensions are seldom recognised (African Child Policy Forum, 2006, at 21), including exacerbating vulnerability to violence, armed conflict, HIV/Aids and discrimination. The report suggests that the **challenge is not merely to ensure accelerated growth**, but to take measures to ensure that poor people, including **children who are disproportionately represented amongst the poor**, contribute to and benefit from the growth process.

15. The Committee does ask for specific information on measures taken to ensure the implementation of socio-economic rights of children to the maximum extent of available resources by using indicators or target figures to show what proportion of the budget is devoted to social expenditure on children, and to ensure that the disparities between different regions and groups of children are bridged. However, we contend that **general investment indicators** related to children (i.e.% of GDP, etc) are **insufficient to assess effectiveness, efficiency and impact** of children's socio-economic programmes. Indicators must be developed that identify children in all aspects of economic activity, including private sector involvement and government owned corporations or enterprises, to highlight the **total package of resources** available for spending on children's socio-economic rights and development. In addition, these indicators should be capable of showing impact and progress in a way that is disaggregated by gender and marginalized groups. The various statements and recommendations of the Committee promote increasing resource allocated to child rights advancement, but there is no way to really know to what extent African countries are progressing in increasing their investment on children's socio-economic rights.

16. The Committee must lead in the development and adoption (with significant African input) of a **global measurement framework** for 'available resource allocation' - domestic and international - that includes both **public** and **private** sector investment and is disaggregated by gender and recognizes marginalized groups. The framework will be used by countries and the global community to monitor and evaluate progress in delivering children's socio-economic rights. The need to use different methods for the collection of qualitative and quantitative data, and methodologies relevant to the African context, should be clear.

17. The Committee must also **clarify how local communities should contribute** in poor countries to the state's 'available resources', e.g. regarding community contribution to the costs of education, bearing in mind the advantages of community ownership and long term sustainability, as well as the risk of government abdicating it's responsibility where there is an expectation that parents or communities must provide, and bearing in mind the need to reduce any risk of entrenching social divisions in society, e.g. discrimination in education (Sloth-Nielsen and Mezmur, 2007).

COMMENTARY TO RECOMMENDATION NO. 4: ROLE OF TRADE AND PRIVATE SECTOR RESOURCES

18. In its General Comment No.5 the Committee states that '[i]mplementation is an obligation for States parties, but needs to engage all sectors of society, including children themselves.' International law has recognized the significant impact of private actors – both businesses and civil society organizations – on the enjoyment of human rights (Chirwa, 2005). The role of the private sector, specifically multi-national corporations, and international trade relations, as well as inter-governmental organisations such as the European Union and the WTO, are particularly vital in contributing to available national resources in Africa where governments are already burdened with resource issues and cannot alone make child rights and welfare reforms work. Moreover, state parties at an international level, outside of Africa, can be implicated. It makes little sense if a country sells weapons with one hand, and gives donor aid to children affected by armed conflict with the other!

19. Trade is critical to extending the basket of resources on the basis of which allocation can take place. The **lack of access by Africa to the world and regional trade markets** (e.g. the EU) **affects the available resources** in state parties on the continent for the realisation of children's rights. The point that should be underscored is that **mainstreaming human rights and trade regimes is necessary** so that trade does not trample on human rights, including children's rights. Children should be protected from the adverse effects of economic policies or financial downturns, and **their best interests recognised as a principle underpinning private sector economic activity and international trade in Africa**.

20. The Committee should emphasize that more equitable trade agreements will increase the amount of available resources on hand to address the rights of children in Africa. States in Africa and at the international level should be required to align trade policies with the CRC and the **Committee should seek avenues to promote the principle that trade negotiations are conducted in compliance with standards that do not negatively affect the advancement of children's rights**. Africa's sustainable development should be prioritized, and to this end the Committee should comment on state party reports by keeping in mind adverse trade practices that affect children's rights. It must be noted that multinationals and corporations are rarely stateless, and it remains the responsibility of the host state parties, who are bound by international conventions and trade agreements, to implement and enforce the legislation and policies as is required by their international legal obligations.

21. The Committee can, for example, motivate strongly for **improved state and interstate level regulatory frameworks** to minimise the risks for children's rights infringements by the private sector, as has been occurring recently with respect to effort to support the ability of national states to combat corrupt practices, including those perpetuated by the private sector, through the OECD Convention on Combating Bribery for Foreign Public Officials in International Business Transactions (adopted in 1997) and the United Nations Convention Against Corruption (adopted in 2003). Countries should be encouraged to ratify these Conventions.

22. The other side of the coin is that, where necessary, **African governments should be required to account for the manner in which they have used the private sector and international trade** to advance children's rights domestically. Direct contributions to the provision of services or facilities for communities in which the private sector conducts business, including benefits to children, can be required by governments as a conditionality of permitting investment in the area. Private actors exploiting natural resources on indigenous land should have a responsibility to establish infrastructure and services to those communities.

23. The Committee should highlight that, in line with the **'duty to protect'** incumbent upon the state in relation to socio-economic rights, the acts and negative effects of private actors and international trade on the realization of children's rights does not in any way exempt the state from being responsible whenever such activities are not in compliance with international children's rights obligations. The **'duty to protect'** also **demands of states to regulate non-state actors including the creation of accountability mechanisms** and remedies for victims of violations committed by private actors.

COMMENTARY TO RECOMMENDATION NO. 5: ACCOUNTABILITY

24. The CRC, like many other international instruments, lacks effective enforcement mechanisms to hold state parties of the CRC accountable for non-compliance. Although national resources are available in many countries, they are not adequately allocated and utilized for the advancement of global children's rights. State parties are obligated by the CRC to raise funds for children's rights. However, reciprocal **legal** obligations on the part of donor states towards resource allocation does not

come out clearly from the practice of the Committee. Further, the process of **solicitation and allocation of aid lacks transparency and accountability**, which we view as a **cross cutting issue** in relation to available resources.

25. Further, planning and allocation processes (by donors and state parties) tend to be ‘top down’, therefore leading to minimal or diminished involvement of state parties (in the case of donor financing) and beneficiaries (in the case of recipient states), including child beneficiaries. This also contradicts a rights-based approach to programming, which emphasizes a ‘bottom up’ approach which is inclusive of child participation. There is lack of universally agreed-upon standards – or guidelines - for monitoring and reporting on resource allocation, utilization and accountability.

26. Accountability to local recipients is also a concept which covers the activities of international agencies linked to the UN stable, which the Committee must do its utmost to promote.

27. At the same time, legitimate international concerns about African governments’ transparency and ability to curb corruption and nepotism, not to mention waste or misuse of donor funds, diminishes potential aid options and leads to inadequate flows of funds due to rigorous accountability mechanisms (which are given preference over capacity building at national levels to better manage donor funds (see Save the Children Alliance 2007)). Accountability is therefore a key theme in the recipient context as well.

28. The Committee should in its work be particularly mindful of the abovementioned prevailing trends, especially for Africa, and hold donor governments, recipient governments and civil society organizations accountable in the solicitation, allocation and utilization of both internal and external resources in the best interest of children, through universally established mechanisms. The Committee should ensure that governments are held accountable for donor commitments to the community beneficiaries of those donor agreements.

29. The concept of corporate social responsibility is often misunderstood. If a company makes many donations to the right causes, it is considered to be a company with a good social conscience. However, it can also be more a marketing tool than anything else. True corporate social responsibility has to do with ensuring that in the production/sales/manufacturing processes there are no negative social, economic and environmental consequences, including those affecting children (e.g. relating to poor labour conditions for mothers, harmful child work, tolerance of hazardous work, environmentally irresponsible practices and so forth). The Committee can advocate for policies to be enforced by the nation states that host or provide the home base of these corporations (and the UN and other multi-lateral organizations like the European Union encouraged to enforce this too), governments can be encouraged to hold corporations which do not comply to account, to ensure free and fair economic competition (anti-trust laws), and even to reward companies that share the burden of social care systems in the African countries in which they do business by giving them some form of tax relief.

Annexure: Recommendations

1. A 'first call for children' in socio-economic rights

The Committee should lay down as founding **legal principle** in international law that priority be accorded to the fulfilment of children's socio-economic rights.

2. Donor countries & international agencies

The Committee must adopt a more critical approach to 'international co-operation' by:-

a) ensuring - through recommendations, dialogue, and other means - not only better coordination between all UN organs and all associated agencies as well as international organisations (who must all proceed from a child-rights based approach), but also by giving concrete and specific recommendations on country programmes of UN organs and associated agencies where these do not sufficiently deliver the required resources to children, as well as by encouraging alternative reports to comment on the efficacy of international co-operation.

b) addressing in concluding observations of donor countries the non-commitment of aid from donor countries, as well as non- delivery of promised aid, and donors setting of over- rigorous conditions instead of capacity building and strengthening of recipient governments, which result in ill- conceived international cooperation.

c) ensuring that technical assistance provided is sensitive to the African context, and that it achieves the transfer of skills and human capacity to recipient countries in Africa, by elaborating minimum requirements for international cooperation, such as knowledge of local context and of comparable environments in developing countries or in Africa.

3. Global measurement framework for available resources

The Committee must lead in the development and adoption (with significant African input) of a global measurement framework for 'available resource allocation' – domestic and international - that includes both **public** and **private** sector investment, and is disaggregated by gender and recognizes marginalized groups.

4. International trade and the role of the private sector

(a)The Committee should emphasize that states in Africa and at the international level should be required to align trade policies with the CRC, and that they must ensure that trade negotiations are conducted in compliance with standards that do not negatively affect the advancement of children's rights.

(b)The Committee can motivate strongly for improved state and interstate level regulatory frameworks to minimise the risks for children's rights infringements by the private sector.

(c)Where necessary, governments should be required to account for the manner in which they have used the private sector and international trade to advance children's rights.

(d) The Committee should highlight that, in line with the 'duty to protect' of the state, the acts and negative effects of private actors and international trade on the realization of children's rights does not in any way exempt the State from being responsible whenever such activities are not in compliance with international children's rights obligations.

5. Accountability

(a) The Committee should hold governments, donors and civil society organizations accountable in the solicitation, allocation and utilization of both internal and external resources in the best interest of children, through universally established mechanisms. The monitoring of resource allocation and utilization should be participatory to include communities/beneficiaries, and especially children.

(b) Since true corporate social responsibility has to do with ensuring that in production/sales/manufacturing processes there are no negative social, economic and environmental consequences, including those affecting children, the Committee can advocate for social responsibility policies to be enforced by the nation states that host corporations which are economically active in Africa. In this regard, States should be encouraged to report on how they hold private sector accountable to non-violation of children's rights in their production/manufacturing/sales processes.

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