



## Convention on the Rights of the Child

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### COMMITTEE ON THE RIGHTS OF THE CHILD

Thirty-first session

#### SUMMARY RECORD (PARTIAL)\* OF THE 813th MEETING

Held at the Palais Wilson, Geneva,  
on Friday, 20 September, 2002, at 10 a.m.

Chairperson: Mr. DOEK

#### CONTENTS

#### DAY OF GENERAL DISCUSSION

The private sector as service provider and its role in implementing child rights

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\* No summary record was prepared for the rest of the meeting.

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The meeting was called to order at 10.05 a.m.

DAY OF GENERAL DISCUSSION (agenda item 6)

The private sector as service provider and its role in implementing child rights

1. The CHAIRPERSON welcomed participants to the day of general discussion and invited the United Nations High Commissioner for Human Rights to make a statement.
2. Mr. VIEIRA DE MELLO (United Nations High Commissioner for Human Rights), welcoming the opportunity to make his first appearance before a treaty monitoring body, said that no human beings were more in need of protection, and yet had so much to offer in return, than children.
3. Referring to his own experience within the United Nations system, he asked participants to reflect on the role of the private sector in societies emerging from trauma. The rebuilding of post-conflict societies such as those in Kosovo and East Timor presented considerable opportunities for private investment. However, it was of the utmost importance that reconstruction took place, on one hand, with due regard for human rights and, on the other, with a view to alleviating poverty. In his view, even though the legal obligation to ensure that happened applied only to States parties, human rights considerations were also a collective responsibility.
4. During his term as High Commissioner, he intended to raise the profile of human rights bodies. It was still true that many people were unaware of the work of his Office. He therefore welcomed the participation of so many representatives from the private sector at the day of general discussion.
5. The CHAIRPERSON said that the private sector was neither mentioned in the Convention, nor a party to the Convention. Thus, lawyers might convincingly argue that the rights and obligations of the private sector could not be derived from the Convention. However, the reality was that, for many centuries, the private sector had been heavily involved in promoting the healthy development of children.
6. The positive role of non-governmental organizations (NGOs) in the promotion and implementation of human rights was often welcomed by the human rights community. However, there was growing concern at the trend of privatization of State enterprises, particularly with regard to the provision of basic services such as water, health care and education. It had been reaffirmed that States parties, despite the privatization of service provision, remained under the obligation to ensure that the provisions of human rights treaties were implemented.
7. Yet many difficult questions remained unanswered concerning the role and obligations of the private sector. Judging by the number of papers submitted for the day of general discussion, the issue had aroused considerable interest. For the purposes of the discussion, the questions had been divided into two main issues: firstly, States parties' responsibilities in contracting out

services for children and, secondly, the responsibilities of private service providers. The Committee intended the current discussion as the beginning of a process, taken up by others, to develop more specific guidelines or codes for the role of the private sector in implementing child rights. It also hoped to be able to make specific recommendations, based on the outcome of the discussion, to adopt at the end of its thirty-first session.

8. Many new questions had arisen in the light of the papers submitted for the discussion. For instance, it had been asked whether a State had the right to contract out all of its obligations under a human rights treaty, and whether it made any difference if the contracting party was a for-profit company. It had been suggested that it was morally objectionable to make money out of incarcerating children. Thus, the Committee had been requested to call upon States not to engage in the privatization of detention centres, prisons or correctional or remand centres for juveniles. Some had argued that profit should not be made from the provision of basic services, while others maintained that a sustainable, for-profit service was preferable to an inefficient, possibly inadequate, public one.

9. He invited Mr. Paul Hunt, Rapporteur of the Committee on Economic, Social and Cultural Rights, to provide the participants with some background concerning legal issues.

10. Mr. HUNT (Committee on Economic, Social and Cultural Rights) stressed that his outline of the approach taken by the Committee on Economic, Social and Cultural Rights to the topic of international human rights obligations of States in the context of service provision reflected his personal understanding of that Committee's position and, in any case, was not intended to suggest that the Committee on the Rights of the Child should adopt the same approach.

11. As reflected in the International Covenant on Economic, Social and Cultural Rights, international human rights law was neutral with regard to the privatization of service provision, neither requiring nor precluding any particular form of government or economic system, provided only that they were democratic and observant of all human rights. In its General Comments, the Committee on Economic, Social and Cultural Rights had noted the relevance, in that regard, of other human rights, in particular the right to development. That Committee recognized that international human rights law was interested more in the final realization of all human rights than in the way in which it was achieved, subject to the qualifications expressed. Its fullest examination of States' obligations was found in its General Comment 14, on the right to health. Since health services were among those involving private-sector provision, he proposed to examine States' obligations in relation to that right - although similar points applied to others, such as the rights to food and education.

12. Since most social rights, such as those to housing, food and health, were not precisely defined in international human rights law and, moreover, lacked a deep legal tradition relating to their concepts, the international community had a responsibility, in his view, to elaborate the

concepts of the international social rights enshrined in the International Bill of Rights and other major human rights instruments such as the Convention on the Rights of the Child. But the task was difficult, especially since it depended on the elaboration of new concepts such as “core obligations”, “human rights indicators” and “human rights benchmarks” as well as recognition of the right to international assistance and cooperation - a challenge reflected in General Comment 14.

13. Before States’ obligations could be identified, norms relating to them had to be clarified. The norm relating to the right to health was mentioned in article 12 of the International Covenant on Economic, Social and Cultural Rights and, more fully, in article 24 of the Convention on the Rights of the Child. Since, however, such provisions remained imprecise, the normative content of the right to health had been dwelt on in General Comment 14 of the Committee on Economic, Social and Cultural Rights. In that Committee’s view, that right extended not only to health care but to the underlying determinants of health such as access to safe and potable water, adequate sanitation and other requirements for a healthy environment, including sexual and reproductive health - a significantly wide interpretation. General Comment 14 sought to give it further depth by recognizing four elements - availability, accessibility, acceptability and good quality - essential to the right to health in any jurisdiction. The Committee on Economic, Social and Cultural Rights had already begun to use that conceptual framework.

14. Public health and health-care facilities had to be available within a jurisdiction. Since, however, mere availability might exclude some social groups, the facilities must also be accessible to all, in law and fact, without discrimination; they must also be accessible economically - that was to say, affordable, as noted in the General Comment. The Committee was also trying to elaborate the concept of acceptability and good quality. As recognized in the General Comment, the precise application of the four elements would depend upon the stage of economic development of the State in question; in that regard, more was to be expected of a developed than of a developing State.

15. General Comment 14 proceeded to the obligations of States parties arising from that normative content, identifying three obligations: to respect, protect and fulfil. The first required States to refrain from interfering, directly or indirectly, with enjoyment of the right to health; the second required them to prevent third parties from so interfering; and the third required them to adopt suitable legislative, administrative, budgetary, judicial, promotional and other measures towards the full realization of that right. For current purposes, the obligations to protect and fulfil were perhaps the most significant. According to the General Comment, the State had a duty to ensure that privatization of the health sector did not constitute a threat to the availability, accessibility, acceptability and quality of health facilities, goods and services. In other words, a State could not privatize its international human rights obligations, and must take reasonable measures to ensure that privatized services were consistent with international human rights - for example, non-discriminatory and within the reach of all sectors of society.

16. According to General Comment 14, application of norms made it possible to identify violations of the right to health. Denial of access to health services by particular individuals or groups as a result of discrimination was a violation of the State’s obligation to respect; failure to prevent individuals or groups from violating the rights of others to health breached the State’s

obligation to protect; and failure to take measures to reduce inequitable distribution of health services might be a violation of the State's obligation to fulfil. A similar conclusion had been reached by a group of international legal experts in adopting, in 1997, the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights.

17. The right to health had to be implemented first and foremost at the national level. According to General Comment 14, States should consider adopting a framework law to establish national monitoring mechanisms, including provisions relating to targets and time frames for the achievement of health benchmarks; the comment also included important observations on benchmarks, remedies and accountability. The Committee on Economic, Social and Cultural Rights attached great importance to accountability; while leaving room for discretion in measuring it, it stressed that adequate monitoring was essential. In the view of that Committee, therefore, service delivery by private actors should take place only in the context of the State's overarching participatory public health strategy and plan of action, a framework law, the identification of key right-to-health indicators and national benchmarks, adequate monitoring arrangements, accessible, transparent and effective accountability mechanisms and, where appropriate, judicial or other remedies.

18. But the adoption of any national policy, including privatization, or international agreement affecting the right to health should be preceded by an independent, objective and publicly available assessment of the impact on that right, especially the right to health of the poor, and any resultant signs of a negative impact should trigger effective countermeasures consistent with the international human rights obligations of all parties. Private-sector delivery should therefore involve explicit respect for national and international human rights law at all stages, including policy formulation and substance, monitoring and accountability arrangements.

19. With regard to the obligations and responsibilities of private-sector providers themselves, General Comment 14 stated that, while only States were parties to the Covenant and thus ultimately accountable for compliance with it, all members of society, including the private business sector, had responsibilities regarding the realization of the right to health, and that States parties should therefore provide an environment that facilitated the discharge of those responsibilities.

20. The CHAIRPERSON thanked the speaker for his statement, which provided helpful guidance and was relevant to the rights of the child. He announced that the meeting would proceed immediately to the working groups.

The discussion covered in the summary record ended at 11 a.m.