1. The Development of Political, Civil and Economic, Social and Cultural Rights and Children

States must see their role as fulfilling clear legal obligations to each and every child. Implementation of the human rights of children must not be seen as a charitable process, bestowing favours on children.¹

Legislation without supporting socio-economic changes may risk greater clandestine work and more exploitive work situations. This is not to undermine international laws focusing on economic exploitation. The ILO has acknowledged the role of law as a catalyst in bringing about the reforms protecting working children. However, international law can only succeed where it provides a framework which pays heed to all relevant economic, social and cultural factors affecting the child.²

1.1. The Interdependence of Political, Civil and Economic, Social and Cultural Rights

There is developing a recognition that all human rights, political, civil, economic, social and cultural rights are interdependent and that the states need to give equal emphasis to these various rights. In terms of children the Committee on the Rights of the Child (the CRC Committee) has when discussing Article 4 of the 1989 UN Convention on the Rights of the Child (CRC) stated that the “[e]njoyment of economic, social and cultural rights is inextricably intertwined with enjoyment of civil and political rights … [T]he Committee believes that economic, social and cultural rights, as well as civil and political rights, should be regarded as justiciable.”³ Article 4 of the CRC reads:

¹ Committee on the Rights of the Child, General Comment No. 5 (2003), General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42, and 44, para. 6), CRC/GC/2003/5, 27 November 2003, para. 11
² The then Director-General of the ILO in Van Bueren, G., The International Law on the Rights of the Child, 1998, p. 263
³ Committee on the Rights of the Child, General Comment No. 5 (2003), General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42, and 44, para. 6), CRC/GC/2003/5, 27 November 2003, para. 6
States Parties shall undertake all appropriate legislative, administrative, and other measures for the implementation of the rights recognized in the present Convention.

With regard to economic, social and cultural rights, States Parties shall undertake such measures to the maximum extent of their available resources and, where needed, within the framework of international cooperation.

The CRC Committee meant that the second sentence in the article was “a realistic acceptance” that limited financial and other resources could impede that economic, social and cultural rights be fully realized. The concept of “progressive realization” was instituted here entailing that “States need to be able to demonstrate that they have implemented ‘to the maximum extent of their available resources’ and, where necessary, have sought international cooperation.” The Committee gave reference to the Committee on Economic, Social and Cultural Rights (of the International Covenant on Economic, Social and Cultural Rights) stating that it “entirely concurs” with this Committee’s statement that “even where the available resources are demonstrably inadequate, the obligation remains for a State Party to strive to ensure the widest possible enjoyment of the relevant rights under the prevailing circumstances...” Here the CRC Committee emphasized that “[w]hatever their economic circumstances, States are required to undertake all possible measures towards the realization of the rights of the child, paying special attention to the most disadvantaged groups”. These include all rights, political, civil, economic, social and cultural rights, as the CRC Committee stated that the intention behind its General Comment No. 5 was “to promote the full enjoyment of all rights in the Convention by all children”, and that this should be accomplished by legislation, establishing coordinating and monitoring bodies (governmental and independent), comprehensive data collection, awareness-raising and training and developing and implementing appropriate policies, services and programmes. While stating that it was an obligation by the state parties to the CRC in order to ensure the full compliance of the Convention to have

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4 Committee on the Rights of the Child, General Comment No. 5 (2003), General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42, and 44, para. 6), CRC/GC/2003/5, 27 November 2003, para. 7

5 Committee on the Rights of the Child, General Comment No. 5 (2003), General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42, and 44, para. 6), CRC/GC/2003/5, 27 November 2003, para. 8, making reference to Committee on Economic, Social and Cultural Rights, general comment No. 3 (fifth session 1990)

6 Committee on the Rights of the Child, General Comment No. 5 (2003), General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42, and 44, para. 6), CRC/GC/2003/5, 27 November 2003, para. 8

7 Committee on the Rights of the Child, General Comment No. 5 (2003), General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42, and 44, para. 6), CRC/GC/2003/5, 27 November 2003, para. 9