German NGO Forum on Child Labour

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The economic and social rights of the child must be established worldwide!

Theses of the Child Labour Forum
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The following theses are intended to form the core of a position paper of the German NGO Forum on Child Labour and to be examined at the international conference on "Stopping the Economic Exploitation of Children".

(1) The world wide debate on child labour seems at first glance to be marked by strong controversies. Beyond various differences in emphasis, however, vague contours of a possible consensus emerge. On the other hand, due to conceptual uncertainties this consensus cannot yet be developed.

The current controversy on child labour arose during the 1970s. In its convention 138 concerning the minimum age for employment of 1973, the International Labour Organization proposed the goal of ***abolishing all child labour***. For example, article 1 of this convention reads: "Every member country for which this convention is in force will undertake to pursue international policies that have the goal of ensuring the actual elimination of child labour." This goal had been formulated with the substantial participation of trade unions of the industrialized nations and with regard to the official sector. A movement of working children formed (first in Latin America) at the same time; in association with this movement and related to the non-official sector, the ***right of the child to work*** was propagated (that is not intended to be the "right to work"). These movements thus demanded an (also economic) children's right to self-determination that includes participation rights.

Behind both poles stood (in part not expressed, in part emphasized) (a) differing basic pedagogical assumptions and childhood models (childhood as protected space for the formation [of personality] vs. "protagonism") as well as (b) experience in and with various socio-economic contexts.

This controversy remained limited to small academic and development-political circles until the mid-nineties. This did not change until the general public saw that work was being done on the new convention 182 of the International Labour Organization regarding the worst forms of child labour. The new attention being given to this development was not the least the result of the preparations of the Global March Against Child Labour which, the longer the work continued, was becoming increasingly related to developing the new convention. The high mark of public attention was reached by the controversy over child labour in 1998, when the 86th International Work Conference discussed the first draft of convention 182 and at the same time the Global March Against Child Labour reached its climax and conclusion in Geneva. Only now did the demand for the elimination of child labour get widespread public and political support, even in many countries of Latin America, Africa and Asia: Until the mid-1990s, only about twenty countries of the "South" had ratified convention 138 (which even the ILO thus deemed to

be “non-ratifiable”), but this was followed from 1996 to 2001 by almost 60 ratifications from this group of countries (nonetheless, under inclusion of several countries from the area of the former Soviet Union).

At the same time, there was a number of national and international meetings of the movements of working children in 1996, which demonstrated the growing strength of these movements. These movements found support from non-governmental organizations (NGOs) in the industrialized countries and partly from Christian churches (thus, the plenary meeting of the Ecumenical Council of Churches in Harare allowed participation of these movements). At several of the meetings of working children and in other circles associated with these movements, the International Labour Organization and its position on child labour as well as the Global March Against Child Labour were in part strongly attacked. (In Latin America, the discussion among non-governmental organizations during the Global March Against Child Labour was particularly intense.)

It was in keeping with modern public communication structures that in particular the controversy and its polarization were perceived, but not the fact that a well-differentiated, broad range of opinion had been established.

On the one hand, the International Labour Organization also made reference in its convention 182 to convention 138, but included with the “worst forms of child labour” the non-official sector (for the first time in its history with a convention exclusively related to this!) and focused the efforts on behalf of abolishing certain forms of child labour. At the same time, several publications associated with ILO emphasized the fact that not all child labour is wrong and to be rejected. Here they were able to refer to convention 138 that does distinguish between different kinds of “child labour” (see below).

The mission statement of the Global March also does not demand a general prohibition of child labour. In obvious conformity with article 32 of the Convention on the Rights of the Child, it states: “The goal of the Global March is to mobilize world wide efforts to protect and promote the rights of all children, especially the right to receive a free meaningful education and to be free from economic exploitation and from performing any work that is likely to be damaging to the child's physical, mental, spiritual, moral or social development.” Child labour that is to be rejected is thus qualified using the criteria of “exploitation” and “damaging.”

On the other hand, the movements of working children (and the adult authors) emphasized the self-evident right of children to be protected against exploitation. They rejected any kind of work that would ruin the health and future of the child. For example, the “Joint Declaration of Children and Their Educators Following the Fifth Latin American Meeting and First Mini World Summit of Working Children” of Huampani (Peru) in 1997 can be understood in this way, which states: “We claim the right of each person to be able to work regardless of their age, with due regard for all human rights, with special consideration of the conditions as children and young persons, and under observance of all individual and collective employment laws in all work areas.”

A possible point of reference for a process of mutual understanding could thus be the Convention on the Rights of the Child (1989) and here under article 32, paragraph 1: “States Parties recognize the right of the child to be protected from economic exploitation and from performing any work that is likely to be hazardous or to interfere with the child's education, or to be harmful to the child's health or physical, mental, spiritual, moral or social development.”

This article therefore serves as a frame of reference, first, because it (implicitly) assesses the various forms of child labour differently in legal terms (and addresses only those it rejects) and, secondly, the child is conceived as bearer of rights and not as an object.

There are, however, two conditions that have prevented the consensus-building process: There has been only limited success in carrying on a discourse about childhood models and basic socio-pedagogical assumptions beyond cultural, political, regional and other borders, and thus this discourse is largely fragmented (whereby it is questionable, to which extent it is even possible to do this among different cultures).

Second, there has not yet been any success in overcoming a wide variety of conceptual uncertainties. Even the concept of work is controversial, for example, whether (forced) economic activities (activities of economic usefulness for third parties) in a criminal environment (child prostitution, drug trade) may be designated as work (as convention 182 does), or whether they should instead be addressed as consequences of criminal activity. From this the question ensues, how the use of children in armed conflicts, such as child slavery and child trade are to be assessed in terms of their "work quality". (In spite of all terminological differences there is, of course, consensus on the need to abolish all these forms of child abuse immediately. Nevertheless, such terminological questions are meaningful especially with regards to national and international law.)

A further point of contention is whether "child labour" should be related exclusively to situations of employment or can also include (unpaid) activities within the family environment (house work, helping in parents' business or in agriculture). A suggestion was even made to view "attending school" as "work".

Of serious consequence is, further, that the term "exploitation" generally is used in different ways and frequently (and misleadingly) is equated with "harmfulness,", "dangerousness", and the like.

Indicative of such conceptual uncertainties are announcements and publications of many non-governmental organizations and international organizations and even international legal texts. For example, one brochure from terre des hommes Deutschland e.V. ("Kein Kinderspiel" of September 2001) emphasizes on the one hand the necessity of "distinguishing between exploitation and meaningful work", and then later finds that: "Children have a right to protection from exploitation and child labour."

(2) Any discussion of "child labour" must define what is meant by the use of this term because it is related to forms of voluntary, semi-voluntary (forced by socio-economic structures) and (under threat or application of violence) forced activities of children that are very different in terms of cause, type and results.

There is no one single thing called child labour. Even an initial comparison of the work of a six year-old boy who has to knot carpets in debt bondage in the Indian state of Uttar Pradesh with the work of a thirteen year-old girl living with her parents in Managua, (at times) goes to school and works as street trader, shows the wide spectrum of associations with the term "child labour". This is so obvious that a mere listing of possible elements making up "child labour" may serve as illustration:

The ***working conditions*** of children are different:

Girls have often less favourable opportunities than boys for asserting their rights. A cause of this is that a majority of girls – often concealed and almost always socially isolated – have to work as maids and sometimes as slaves in private households.

Some children work at home or in the home village context, others as working migrants in the non-official sector of urban centres; others are abducted and taken to far-away countries.

The age of the working children is different; even five-year-olds work. At debate is whether the work of young persons aged 14 or 15 to 18 years old can even be used to refer to "child labour" (as is done implicitly by the Convention of the International Labour Organization and the Convention on the Rights of the Child).

Different, too are the duration, difficulty and dangerousness of work.

The legal status of working children varies and the factual degree of their freedom that has been established outside of the legal system and thus illicitly: While some children perform work voluntarily in every respect and have an influence on their working conditions, others are forced to do so by socio-economic relationships. Frequently, they are not free in a factual sense even if they are free by

law. Enslaved children are robbed of every factual freedom, whereby in the case of debt bondage this illicit deprivation of personal liberty is established by (usually verbal) agreements as a kind of contract.

It is also a difference whether children are paid for their work or not. A small portion (about five percent) of children work in export-oriented business sectors. In the official sector, child labour is infrequent, but frequent in non-official settings. Most subsistence economies are dependent on child labour.

Some working children are by no means excluded from a basic education, others do not even have access to elementary, non-official instruction.

There are many ***causes*** of child labour and different forms of child labour often have different causes:

As a rule, poverty is one of the chief causes that a "supply" of potential child labourers arises. The causes of poverty are thus also the causes of child labour. These causes include world wide economic conditions, the indebtedness of many countries, unsuccessful structural adjustment programmes, misguided governmental and private investments, land reforms that fail to materialize, and generally misconceived economic and social policies.

Situations of poverty are aggravated by the marginalization of certain societal groups. This is by no means necessarily the result of poverty in general, but due to an internal societal process of exclusion. These marginalized groups are particularly affected by "exploitive" child labour (for this term, see below), for example with ethnic or religious minorities, members of lower castes, and people who have not owned land for generations.

However, a "supply" of potential child labour only arises where societal and family stances and attitudes tolerate or even approve of child labour (whereby these can also be the attitudes of minority groups). Child labour is also the result of prevailing concepts of childhood. Further, and in the context of prevailing concepts of childhood, the development of the supply of child labour is shaped by the respective social accentuations of educational policies: Where there is not a sufficient and free supply of basic educational and schooling offer or where the schools can not be developed in an attractive way, child labour is more frequent than in situations where this is not the case.

Finally, the age structure of a society can favour the rise of a supply of child labour. In some countries with a large proportion of children and young persons in the overall population, a comparatively large portion of children and young persons works (in other countries, however, the corresponding portions are wide apart).

Only if certain determining conditions exist does a "supply" of potential child labour give rise to concrete forms of the same:

Decisive is the type and scope of the "demand". It can come from the family, for which the help of the child may be necessary for survival. Small businesses of the non-official sector ask for children because they are cheaper than adults. Poor widows in central African countries are dependent upon cheap "house maids" who fetch firewood and water for them. Organized crime uses children. Frequently, but never always, the demand for child labour is characterized by adults feathering their own nests at the children's expense. If children work "independently", we are dealing with a completely different demand structure.

The type and scope of the demand are frequently affected by political, legal, social and economic determining conditions that are responsible for the formation of certain forms of child labour. These forms include a wide spectrum; some are traditionally and socio-culturally well established and find broad-based acceptance. Other forms of child labour are due to the conditions of modern globalization processes and are accepted by children and their families only if forced to do so.

This listing is as incomplete as it is unsystematic. It is merely supposed to clarify the fact that the discourse about "child labour" can only be successful if a well-differentiated concept of "child labour" can be defined and agreed upon. Against this background there is reason to suppose that the controversy addressed in thesis 1 has as one of its causes the uncritical use of different concepts of "child labour" based on different references to various socio-economic contexts. In any case, the question of whether "child labour" is harmful, dangerous, "negative," "tolerable" or "positive" cannot be answered if asked in general terms and not with sufficient attention paid to distinctions.

(3) In view of the variety and partial lack of comparability of associations made with the term "child labour," it is worthwhile to attempt at a typology oriented to the realization of the rights of the child. To do so, one thing that must be done is to define and distinguish the terms "exploitation", "harmfulness" and "dangerousness". It is to be noted that there are context-dependent limits for such a typology and that it can thus have only model-like character with limited empirical validity.

Convention 138 of the International Labour Organization already mentions various types of work: "Light work" is characterized according to article 7 by the fact that, first, it is not "harmful" for the "health or development" of the child and, secondly, does not impact negatively on attending school. Thirteen year-olds may perform such work as long as it is permitted by national lawmakers. Permissible is the work of fourteen year-olds during professional training (article 6). The minimum age for allowing the performance of "dangerous" work is 18. Here, a first attempt is being made to provide a typology of child labour using three criteria to describe the effects of work on a child (harmfulness, dangerousness, effect on attending school).

ILO Convention 182 presents in article 3 a four-part typology of the "worst forms" of child labour: (a) all forms of slavery or practices similar to slavery, including forced or compulsory recruitment of children for use in armed conflict; (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances; (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs, (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children. Again, "harmfulness" is thus a criterion for determining the forms of child labour that should be eliminated without delay (where all of the types listed are "harmful"). Further criteria are the compulsory nature of work (article 3, paragraph a) and the basic legal quality ("illegality") of work (article 3, paragraph c), whereby no separate criterion is named for the type according to article 3, paragraph b (prostitution, pornography). In view of the significance and the open character of the "harmfulness" criterion, recommendation 190 of the International Labour Organization concerning the worst forms of child labour in section II attempts to operationalise by combining characteristics of work that are deemed "dangerous". (Apparently the criteria "harmfulness" and "dangerousness" are used synonymously.)

The International Covenant on Economic, Social and Cultural Rights (1966) and the Convention on the Rights of the Child (1989) take a somewhat different direction than do the legal texts of the International Labour Organization. Article 10 of the Pact deals with the right of the family to protection and emphasizes the special need children and young people have for protection. In this context it states: "Children and young persons should be protected from economic and social exploitation. Their employment in work harmful to their morals or health or dangerous to life or likely to hamper their normal development should be punishable by law. States should also set age limits below which the paid employment of children should be prohibited and punishable by law." Here we thus already encounter (and not just in the already quoted article 32 of the Convention of the Rights of the Child) an additional criterion, namely, that of the "economic exploitation".

This right of the child to protection from economic exploitation is, however, an undefined legal term. This is related not least with the fact that "economic exploitation" in the texts on international law is not defined and is brought into close relationship with "harmfulness" or "dangerousness" (the Pact uses the term, characteristically enough, only in the context of activities of the child). As is there not, on the other hand, any consensus about the meaning of "economic exploitation," however, a definition of the concept is required:

The definition of the term "exploitation" proposed by Marxism and the labour theory of value provides no clarification on this point. On the other hand, it makes no sense to equate "exploitation" with "harmfulness" or "dangerousness": "exploitation" is related to the structure of the work relationship, and "harmfulness/dangerousness" to the effects of work.

One could basically speak of the "exploitation" of a child if that child is forced against his will to perform work or an activity. "Economic exploitation" of a child would then be the appropriation of economic advantages through the use of power (physical force, market power, structural force), whereby the exploited child becomes an object of the exploiter(s). The Convention on the Rights of the Child enumerates rights that should be observed when defining the term "economic exploitation": right to a free expression of expression (article 13), right to freedom of association (article 15), right to benefit from social security (article 26), right to education (article 28), right to rest and leisure (article 31), and right to protection from sexual abuse (article 34):

Against this background, ***criteria for defining the term "economic exploitation"*** could be:

- violation of the right of the optional nature of a contractual agreement, which includes the participation of equals in the design of the agreement (if a child is forced to work against his will and/or under conditions rejected by him; if, in short, he has no possibility of co-determining his employment relationship, then this constitutes "economic exploitation".
- violation of the right to assemble and of concluding collective agreements, and
- violation of rights according to the Universal Human Rights Charta (General Declaration of Human Rights of 1948, the International Covenant on Civil and Political Rights ["civil pact") and International Covenant on economic, social and cultural rights (social pact), both 1966), as these rights belong to the indispensable core of customary international law.

Such a definition of the term "economic exploitation" should supposedly at least claim relative general validity. It is less susceptible for cultural, social and economic characteristics than the definition of the criteria "harmfulness" and "dangerousness" (whether work is considered to be "harmful" for a child – also by the child himself – can be decided from the respective context).

However, the criterion "economic exploitation" is not meaningful or suitable for all forms of child labour (helping around the home, independent work, etc.). The term "harmfulness" and "dangerousness" can thus not be given up entirely when attempting a typology of child labour. For their definition, ILO Recommendation 190 is helpful. It states in section "II. Dangerous Work":

"In determining the types of work referred to under Article 3(d) of the Convention, and in identifying where they exist, consideration should be given, inter alia, to:

(a) work which exposes children to physical, psychological or sexual abuse;
(b) work underground, under water, at dangerous heights or in confined spaces;
(c) work with dangerous machinery, equipment and tools, or which involves the manual handling or transport of heavy loads;
(d) work in an unhealthy environment which may, for example, expose children to hazardous substances, agents or processes, or to temperatures, noise levels, or vibrations damaging to their health;
e) work under particularly difficult conditions such as work for long hours or during the night or work where the child is unreasonably confined to the premises of the employer."

It should be noted that the terms "harmfulness" and "dangerousness" do not allow a clear typology for the intended meaning of "child labour", as they merely represent this meaning on a scale that could begin, for example, with "always very harmful and dangerous" and end with "always meaningful and useful". Between these two poles, however, is contained an unlimited number of mixtures (of characteristics yet to be defined).

Overall it could be worthwhile to attempt a human rights typology of the intended meaning of "child labour" that forms individual types according to the degree of "economic exploitation," "harmfulness," and "dangerousness" (the last two terms would had to be defined and distinguished from one another)

and assigns certain forms of child labour to these types. Such a typology could be a decisive prerequisite for carrying through article 32 of the Convention on the Rights of the Child and making it justiciable. This is especially true for the possibility of an individual application. Such a typology would be of importance for implementing ILO conventions 138 and 182, for the work of the International Programme on the Elimination of Child Labour (IPEC) and for the development work and possibly the occasion for placing new emphases.

Basically, such a procedure would be based on the rights of the child: The emphasis of the discourse on work of the child would then not depend on whether child labour is to be eliminated, but how the child's access to his rights should be secured. In this way, the rights of the child to self-determination and participation move to the central focus also and especially in terms of the child's socio-economic references, which would be significant for the design of national and legal instruments as well as for political and socio-economic regulations.

(4) Attaining the rights of the child – and this is especially true in terms of his economic, social and cultural rights – assumes a poverty reduction that must also be concerned to eliminate economic exploitation of the child in the long term. For this reason, a reduction in poverty must be planned so that it supports the protection and promotion of the rights of the child. For that reason, it should include a strengthening of the legal system and civic-societal structures that allow for an effective participation of the child.

The many different kinds of violations of economic, social and cultural rights of the child have a decisive cause in connection with poverty. It is immediately obvious, for example, that extreme poverty allows for forms of child labour that (in terms of the above definition) are extremely exploitive.

This simple statement has serious consequences. For the development work it means that there should not be an isolated battle against "the" child labour, but that the goal must be a prioritization of a poverty reduction in the interest of the child that must have priority for all of the legal, economic and social policies and must not be subordinated to other interests, for example, business interests.

In terms of implementing ILO Convention 182 this means that article 8 takes on special importance: „Members shall take appropriate steps to assist one another in giving effect to the provisions of this Convention through enhanced international cooperation and/or assistance including support for social and economic development, poverty eradication programmes and universal education." As a result, OECD countries are obligated in terms of international law to take measures of poverty reduction in the fight against economic exploitation. For this reason, too, the so-called "20-20 Initiative" in the follow-up procedure of the world summit for social development must finally be implemented.

A reduction of the means for public developmental aid by OECD member countries cannot be reconciled with the goal of expanding the fight against poverty based on human rights considerations for promoting the rights of the child. Special support for the least developed countries (LDCs) is absolutely essential, as in these countries the extent of public and private poverty makes it almost impossible to give children access to their rights.

Children and their organizations should be given a central role in working out and implementing national strategy papers for fighting poverty (Poverty Reduction Strategy Papers, PRSPs) as part of the debt conversion measures of the International Monetary Funds.

Such a poverty reduction also includes carrying through the economic, social and cultural rights of the child at work. In this sense, the promotion of organizations of working children becomes the task of fighting poverty.

Poverty reduction oriented to human rights must strengthen national and international legal systems as much as it does civil-societal structures. The organization of working children should be supported in

this connection as well. Measures for ensuring access to the right of education can have preventative functions if they help children support their own rights.

(5) Human rights-based poverty reduction policies that promote the economic, social and cultural rights of the child require a strengthening and further development of international instruments as well as the creation of global-economic determining conditions that facilitate and do not impede the promotion of these rights.

Improving international legal systems makes it necessary to both strengthen and further develop the monitoring and implementation mechanisms of existing international instruments (for example, the judicial review procedure of the International Labour Organization) and also the design of new instruments that must include the introduction of individual applications as part of the Convention on the Rights of the Child and the Pact on Economic, Social and Cultural Rights. Here the draft of a optional protocol to the social covenant that was developed by the Committee for Economic, Social and Cultural Rights in 1996 and above all the optional protocol of 1999 to the Convention on the Elimination of All Forms of Discrimination against Women (1979) serve as model.

Further, suitable measures must be used to guarantee a global prioritizing of poverty reduction and thereby ensure that the international organizations contribute toward achieving this goal. In this way it is important, for example, to commit the World Trade Organization (WTO) to a pro-active observance of the economic, social and cultural rights of the child (including the obligation of checking all measures for their effects on implementing the rights of the child and to publish reports on the findings). A coherent design of the global structure policies is required which must include a re-regulation of global finance markets, as the existing legal systems make it impossible to implement a long-lasting poverty reduction due to the many countries involved.

(6) The guarantee of the rights of the child must become the primary task of national economic, social and legal politics that must be coherently designed in terms of this goal.

Required are also social and economic/political reforms (for example, land reform, support for small and medium-sized companies, improving access to micro-credits) just as are the development of the legal and educational system. Among other things, a Convention on the Rights of the Child must be established without any reservations, which will require the retraction of national reservations. The (working) children, their organizations and families should all be invited to participate in all of the processes and measures for implementing this convention that are related to children. Institutions of special applications and measures to protect those who legally uncover violations of the provisions of the ratified ILO conventions and the Convention on the Rights of the Child are just as necessary as the establishment of telephone services or contacts and the naming of ombudspersons who should above all be accessible for affected children (according to no. 15i of ILO Recommendation 190).

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