

December 12, 2014

Mr. Guy Ryder  
International Labour Organization  
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Dear Mr. Director-General,

We acknowledge that the correspondence and telephone conversations between our organizations have not produced clarity about our respective positions. Although we remain mystified about the basis on which the ILO justifies omitting married girls from global estimates of child labourers, we sincerely wish to understand and accurately represent your rationale. To that end, we have set out our position, which is based on a thorough study of the relevant international instruments, and wherever indicated by quotation marks, we have directly quoted ILO documents and materials.

We respectfully ask that you now identify the areas to which you take exception.

#### PART ONE: CHILD LABOUR

1. "Child labour reflects the engagement of children in prohibited work."
2. "The starting point to derive global and regional estimates of child labour is children in employment; that is children performing any type of work within the production boundary of the System of National Accounts (SNA) of the United Nations." (The website of the United Nations Statistics Division states that: *The System of National Accounts is the internationally agreed standard set of recommendations on how to compile measures of economic activity.*)
3. "Household services in a third-party household, paid or unpaid, is included within the production boundary of the SNA."

#### PART TWO: 'CHILD MARRIAGE'

4. Guided by the Convention on the Rights of the Child, which defines a child as anyone under the age of 18, States Parties reserve the right to set the minimum age of marriage in their own countries. Before reaching the minimum age of marriage in her country, a girl does not have the legal status to consent to marriage or to enter into a marriage contract.

5. In legal terms, any girl who is placed in a marriage-like union before the minimum age of marriage in her country is a victim of the crime of forced marriage.
  - a. Note: A girl below the legal age of marriage cannot legally consent to marriage. Therefore, even if such a girl expresses a desire to marry she will be defined legally as a victim of the crime of forced marriage.
  - b. Note: The world uses the term “child marriage” as informal shorthand to refer to the illegal arrangements through which under-aged girls are forced to assume adult marital roles and status. Legally, this is a misnomer: marital unions with children are prohibited, marital contracts with children cannot exist, and therefore by law, there is no such thing as “married” girls who have not yet reached the age of majority. For the purposes of this discussion, we are all using the informal, popular term “child marriage” to refer to girls forced prematurely into marriage-like unions.

### PART THREE: FORCED MARRIAGE AND THE CRIMES FLOWING FROM IT

6. The rights, obligations, and privileges accorded to adults who consent to enter into a legal marriage contract cannot apply to girls who are too young to enter into such contracts.
7. All activities flowing from an illegal living arrangement that is disguised as “marriage” are prohibited and illegal. All circumstances that exist as a result of that forced marriage are prohibited, and their perpetuation is prohibited and illegal.
8. It is a crime to change the household of a child under the illegal, written or verbal, formal or informal contractual terms of a forced marriage. Although that child may be forced to reside in the home of her ‘spouse’, the transfer of her place of residence is an illegal act, and in the eyes of the law, she is not residing in “her own household.” Under a prohibited arrangement to which she cannot and therefore did not consent, that child victim of forced marriage has been deprived of “her own household” and forced to reside in a third-party household.
9. Consider this scenario: In a country where the legal age of marriage is 17, two 13-year-old girls, Girl A and Girl B, are cooking dinner for the members of the household in which they reside along with the adult man who heads the household. Girl A is the man’s daughter; Girl B is his ‘wife’.
  - a. Legally, Girl A is “in her own household”. By cooking dinner, she is performing **household chores within her own household**. This work does not fall within the production boundaries of the SNA.
  - b. Legally, Girl B is *not* “in her own household”. Under the terms of a forced child marriage, her place of residence was transferred. By cooking dinner, she is performing **unpaid domestic services in a third-party household**. This work falls within the production boundaries of the SNA.
10. Furthermore, since forced marriage is the illegal circumstance under which she took up residence in that third-party household, and forced marriage is the illegal condition under which she carries out all activities in that third-party household, Girl B’s performance of any domestic service in that third-party household is *forced labour*. The circumstances of a forced marriage define every productive activity performed within it as forced labour.

#### PART FOUR: CHILD MARRIAGE RESULTS IN A WORST FORM OF CHILD LABOUR

11. All forced labour qualifies as a worst form of child labour.
12. All girls who are “married” before the age that they can legally consent to marriage are victims of forced marriage.
13. All victims of forced marriage (that is, all under-aged married girls) who perform any domestic work in the third-party households in which they reside – whether that work is light or hazardous, paid or unpaid – are in forced labour.
14. Therefore, all child marriage results in a worst form of child labour.
15. Consider this: The ILO can and does classify a 13-year-old boy who accepted full-time, low-paid factory work on the night shift as a victim of one of the worst forms of child labour. But the ILO *does not* classify as a worst form of child labour the work of a 13-year-old ‘married’ girl who is required to perform unpaid domestic services outside of her own home, day and night, which fall within the production boundaries of the SNA. (This alone should classify her as a victim of one of the worst forms of child labour, but it bears mentioning that because sex with a minor is rape, she is subjected to ritual rape; that she lives under the constant threat of pregnancy and either maternal death or motherhood before attaining the requisite physical maturity; and that she is compelled to obey the commands of her “husband”, among many other violations.)

#### PART FIVE: COLLECTION OF DATA AND STATISTICS

16. “The [ILO’s] production of global and regional estimates is based on an extrapolation of child labour data from a large number of national household surveys...[and] specialized National Child Labour Surveys supported by the ILO’s International Programme for the Elimination of Child Labour (IPEC)...[and] also other household surveys such as UNICEF’s Multiple Indicators Cluster Surveys (MICS), national Labour Force Surveys (LFS) and other relevant national household surveys.”
17. Per the Chief of the ILO’s Fundamental Principles and Rights at Work Branch, the ILO methodology includes questions about age, sex, status of school enrolment, etc., but does not include marital status as a relevant indicator in determining whether the work of a child does or does not qualify as child labour.
18. Consider again the scenario outlined in paragraph 9 above: A National Child Labour Survey brings data collectors to the residence of Girl A and Girl B as they are cooking dinner. It is daytime; the domestic tasks being performed by the two children do not appear to be hazardous; both girls report that they have completed six years of primary schooling; their gender is recorded but is irrelevant as an indicator of child labour. Establishing the marital status of the two children is the only indicator that can determine whether the particular work they are doing qualifies as legitimate “household chores performed within one’s own household”, or as illegal “unpaid domestic service performed in a third-party household.”
  - a. When Girl A responds that she is not married and she lives in that household, which is headed by her father, the meal preparation in which she is engaged can be characterized as household chores.

- b. When Girl B responds that she is married and she also lives in that household, which is headed by her husband, the exact same meal preparation must be defined as domestic service in a third-party household.
  - c. Girl B's work must be characterized as forced labour, and she must be counted as a child who, by virtue of her forced marriage, is engaged in one of the worst forms of child labour.
19. The ILO has never recognized forced marriage as forced labour or included the girls who are subjected to it in global estimates of child labourers. This has rendered invisible each of the 14 million girls every year who, through illegitimate "marriages", became forced labourers.
  20. The exclusion of married girls also means that the ILO's global estimates erroneously report two trends that do not exist in reality: it is not the case that as children age, the percentage of girls versus boys engaged in child labour decreases substantially, and it is not the case that more older boys than older girls are subjected to the worst forms of child labour.
  21. At long last, the world is truly seized by the imperative of ending child marriage. Correctly recognizing it as one of the worst forms of child labour will send the appropriate message to governments and all those complicit in child marriage: the hundreds of millions of adults who willfully perpetrate, enable, or overlook such gross violations of a whole litany of girls' most fundamental human rights. By recognizing the phenomenon as child labour, the ILO can take an active role in ending the child marriage it abhors.
  22. No changes in the ILO Conventions will be required to begin identifying and including all the missing girls engaged in the worst forms of child labour. Just two decisions are needed: an acknowledgement by the ILO of past miscalculations, and a correct reading and application of the provisions and definitions contained in Convention 182, and the 18<sup>th</sup> International Conference of Labour Statisticians' Resolution Concerning Statistics of Child Labour.
  23. Note: This legal reading of the relevant international instruments does not ignore the egregious crime of child rape to which all married girls are subjected on a ritual basis. It simply does not *require* an analysis of that additional and most forceful indicator of child labour in order to establish, beyond a doubt, that all child marriage is child labour in one of its worst forms. And since, from the start of our correspondence two months ago, all responses received from the ILO have focused narrowly on 'children performing any type of work within the production boundaries of the System of National Accounts', we have limited our argument to that narrow sphere.
  24. No revised or additional data collection or methods are required to correct the oversight that has undermined the validity of ILO child labour statistics since the agency began producing estimates. The 'missing' data exists; statistics are already collected and estimates are already produced by other branches of the United Nations. Among the data sources upon which the ILO now bases its production of child labour estimates are UNICEF's Multiple Cluster Survey Indicators. This fact is a positive indication that the UN agencies, funds, and programmes mandated to address child labour are coordinating efforts, to some extent. Full system-wide coherence now calls for the incorporation of existing UNICEF and UNFPA estimates of child marriage (a worst form of child labour) into ILO global estimates of child labour.

Mr. Ryder, you are uniquely positioned to lead on this issue, not only at the ILO, but across the rest of the UN and its Member States. We believe that you should take a principled stand, and tell the world that the ILO acknowledges the internationally agreed imperative to eliminate child marriage.

Recognizing the millions of forgotten young girls is legally sound, and it is the right thing to do. As advocates for social justice, we also have a moral and organizational obligation to pursue what is right. We and countless others within civil society and governments who are working to defend the equal rights and dignity of girls, to end child marriage, and to prevent child labour are anxious to join you in this effort.

We would appreciate your prompt response. We will view a non-response as evidence that you see no point in clarifying or pursuing these matters further.

Sincerely yours,



Paula Donovan  
Co-Director, AIDS-Free World



Stephen Lewis  
Co-Director, AIDS-Free World

cc. Mr. Anthony Lake, Executive Director, UNICEF