
*Draft for consideration*Distr.: General
24 June 2016

Original: English

Committee on Economic, Social and Cultural Rights**Fifty-eighth session**

6 -24 June 2016

Item 4 of the provisional agenda

Substantive issues arising in the implementation
of the International Covenant on Economic,
Social and Cultural Rights**General Comment No. 24 on State Obligations under the
International Covenant on Economic, Social and Cultural Rights in
the Context of Business Activities****Draft prepared by Olivier De Schutter and Zdzislaw
Kedzia, Rapporteurs****I. Introduction**

1. With increased globalization of economic activities and a growing trend towards privatization, businesses play an important role in the realization of economic, social and cultural rights. The corporate sector has long contributed to the fulfilment of the rights enshrined in the International Covenant on Economic, Social and Cultural Rights, including by generating employment opportunities and investing in economic development. An alarming number of incidents worldwide, however, demonstrate that corporate activities can also adversely and irreparably affect the substantial enjoyment of the said rights. This General Comment clarifies the duties of the State under the International Covenant on Economic, Social and Cultural Rights to ensure that the activities of businesses contribute to and do not impede the realization of economic, social and cultural rights.

2. The urgent need to prevent and address the adverse impacts of business activities on human rights is well reflected in various legal instruments and standards adopted by the international community. Most notably, the Human Rights Council adopted in 2011 the Guiding Principles on Business and Human Rights that implement the 'Protect, Respect and Remedy' Framework proposed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises.¹ Human rights treaty bodies and various Special Procedures have regularly affirmed the

¹ A/HRC/17/31 ("Guiding Principles").

State responsibility to regulate the business impacts on human rights and protect those whose Covenant rights are adversely affected by business activities.²

3. The Committee on Economic, Social and Cultural Rights has previously considered the growing impact of business activities on the enjoyment of specific Covenant rights relating to health³, housing⁴, water⁵, social security⁶ and the right to work⁷ and just and favorable conditions of work⁸. In addition, the Committee has also addressed the issue in concluding observations⁹ on States Parties' reports and in its first decision on an individual communication¹⁰. Given the complexity and gravity of the issue, however, the Committee has decided in 2011 to dedicate a Statement to State obligations related to corporate responsibilities in the context of the Covenant rights.¹¹ The present General Comment builds on these previous efforts to clarify the nature and scope of the relationship between State obligations under the Covenant and the role and impact of the business sector on the implementation of economic, social and cultural rights.

4. This General Comment aims to provide guidance on the international law obligations under the Covenant in the context of business activities. As such, it seeks to assist States parties, including parliaments, domestic courts and national human rights institutions, in fulfilling their Covenant duties. It is also the Committee's intention that the present General Comment will support business entities' and civil society on taking into account Covenant obligations in their activities.

II. Context and Scope

5. The present General Comment primarily addresses States Parties and their obligations concerning business activities that may affect the enjoyment of economic, social and cultural rights under the Covenant. It understands business activities broadly to include such activities of any business entity, whether they operate transnationally or whether their activities are purely domestic, whether fully privately owned or State-owned, regardless of its size, sector, location, ownership and structure.

6. This General Comment is also relevant to non-State actors in the corporate sector. In a number of States Parties, international law provisions, including the Covenant, are incorporated into domestic law. In certain jurisdictions individuals are allowed direct

² A/HRC/4/35/Add.1 (State responsibilities to regulate and adjudicate corporate activities under the United Nations core human rights treaties: an overview).

³ E/C.12/2000/4 (General Comment No. 14 (2000): The right to the highest attainable standard of health (art. 12)) ("GC 14"), paras. 26, 35.

⁴ E/1992/23 (General Comment No. 4 (1991): The right to adequate housing), para. 14.

⁵ E/C.12/2002/11 (General Comment No. 15 (2002): The right to water (arts. 11 and 12)) ("GC 15"), para. 49.

⁶ E/C.12/GC/19 (General Comment No. 19 (2008): The right to social security (art. 9)) ("GC 19"), paras. 45-46, 71.

⁷ E/C.12/GC/18 (General Comment No. 18 (2006): The right to work (art. 6)), para. 52.

⁸ E/C.12/GC/23 (General Comment No. 23 (2016): The right to just and favorable conditions of work (art. 7)) ("GC 23"), paras. 74-75.

⁹ See E/C.12/CAN/CO/6 (Concluding observations on the sixth periodic report of Canada (2016)), paras. 15-16; E/C.12/VNM/CO/2-4 (Concluding observations on the second to fourth periodic reports of Viet Nam (2014)), paras. 22, 29; E/C.12/DEU/CO/5 (Concluding observations on the fifth periodic report of Germany (2011)), paras. 9-11.

¹⁰ *I.D.G. v. Spain*, Communication No. 2/2014, 13 Oct. 2015 (E/C.12/55/D/2/2014).

¹¹ E/C.12/2011/1 (Statement on the obligations of States parties regarding the corporate sector and economic, social and cultural rights) ("2011 Statement"), para. 7.

recourse against business entities for violation of their economic, social and cultural rights as guaranteed under the Covenant. There are also an increasing number of jurisdictions that require business entities to report on their human rights due diligence process. The present General Comment seeks to assist the corporate sector in appreciating their human rights obligations and ensuring their compliance.

III. Obligations of States Parties under the Covenant

7. States Parties have the primary obligation to respect, protect and fulfil the economic, social and cultural rights enshrined in the Covenant of all persons under their jurisdiction. This includes a duty to prevent violations of the Covenant rights in the context of business activities by individuals and entities under their jurisdiction.¹²

A. General Obligations

8. Under article 2.1 of the Covenant, States Parties must use all appropriate means, including legislative and other measures, to the maximum available resources, in order to progress towards the full realization of Covenant rights. Accordingly, States Parties are required to adopt measures as necessary to effectively protect individuals from abuses of their economic, social and cultural rights by third parties, including business entities, and to provide access to effective remedies. In addition, States Parties have the obligation to ensure that business entities under their jurisdiction respect the Covenant rights and comply with the provisions of the Covenant and that corporate activities do not hinder the enjoyment of the Covenant rights.

Non-discrimination

9. Under articles 2 and 3 of the Covenant, States Parties have the obligation to guarantee the enjoyment of Covenant rights to all without discrimination.¹³ States Parties are required to eliminate formal as well as substantive forms of discrimination.¹⁴ Accordingly, States Parties must not only regularly review that domestic laws and policies do not discriminate on prohibited grounds, but also adopt specific measures, including legislation, aimed at prohibiting discrimination by non-State entities in the exercise of economic, social and cultural rights. Among the categories who are often disproportionately affected by the adverse impact of business activities are women and girls, indigenous peoples particularly in relation to extractive projects, and ethnic or religious minorities where they are politically disempowered.

10. The Committee has previously underlined that discrimination in the exercise of the economic, social and cultural rights is frequently found in private spheres, including families¹⁵; in workplaces and labour market¹⁶; and in the housing and lending sectors¹⁷. Accordingly, States Parties have the obligation to ensure that individuals and entities in the private and market spheres do not discriminate on prohibited grounds. The failure to take

¹² 2011 Statement, paras. 1, 3, 5.

¹³ See E/C.12/GC/20 (General Comment No. 20: Non-discrimination in economic, social and cultural rights (art. 2, para. 2)) (“GC 20”) (2009), paras. 7-8.

¹⁴ Ibid. at paras. 8, 11.

¹⁵ See GC 20, para. 11.

¹⁶ See, e.g., GC 18, paras. 13-14; GC 20, para. 32; E/1996/22 (General Comment No. 6: The Economic, Social and Cultural Rights of Older Persons) (“GC 6”), para. 22.

¹⁷ See, e.g., GC 4, para. 17; GC 20, para. 11.

the necessary legal, regulatory, remedial, educational, or other measures in order to adequately prevent and remedy discriminatory conduct constitutes a violation of the State obligations under the Covenant.

11. Committee reiterates its grave concern that certain segments of population face a greater risk of suffering intersectional and multiple discrimination.¹⁸ For instance, investment-linked evictions and displacements often result in physical and sexual violence against, and inadequate compensation and additional burden related to resettlement for, women and girls.¹⁹ In addition, women are overrepresented in the informal economy and are less likely to enjoy labor-related and social security protections.²⁰ Furthermore, despite some improvement, women continue to be underrepresented in corporate decision-making processes worldwide.²¹ The Committee therefore recommends States Parties to address this issue of specific impacts of business activities on women and girls and to incorporate a gender perspective into all measures to regulate business activities that may adversely affect economic, social and cultural rights, including by consulting the Guidance on National Action Plans on Business and Human Rights²². States Parties should also take appropriate steps, including through temporary special measures, to improve women's representation in the labour market, including at the upper echelons of the corporate hierarchy.

B. Specific Obligations linked to Business Activities

12. The Covenant establishes specific obligations of States Parties at three main levels--to respect, to protect and to fulfil. The scope of these obligations extends to both domestic and overseas activities of business entities with a nexus to the jurisdiction of States Parties and over which States Parties may exercise influence. Given the complex and evolving nature of the subject matter, the extraterritorial components of the obligations are addressed separately in the sub-section C, titled "Extraterritorial Obligations".

Obligation to respect

13. The obligation to respect means that domestic laws, policies, or any other measures pertaining to business entities and activities under the jurisdiction of States Parties must conform to the economic, social and cultural rights provisions under the Covenant.²³

14. Under certain circumstances States Parties may be held directly responsible, in accordance with international law, for the action or inaction of business actors. An act or omission of a non-State entity, for instance, is directly attributable to a State Party if the private entity is in fact acting on that State Party's instructions or is under its control or direction in carrying out the particular conduct at issue.²⁴ In addition, a non-State entity's

¹⁸ GC 20, para. 17.

¹⁹ UNHCR & UN Habitat, *Forced Evictions*, Fact Sheet No. 25/Rev.1 (2014), pg. 16.

²⁰ A/HRC/26/39 (Report of the Working Group on the issue of discrimination against women in law and in practice), paras. 48-50.

²¹ *Ibid.* at paras. 57-62.

²² Working Group on Business and Human Rights, *Guidance on National Action Plans on Business and Human Rights* (1 December 2014).

²³ 2011 Statement, para. 4.

²⁴ Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries adopted by the International Law Commission, Report of the International Law Commission on the Work of its 53rd session (23 April to 1 June and 2 July to 10 August 2001), A/56/10 ("Articles on State Responsibility"), art. 8. See also A/RES/56/83 (Jan. 28, 2002); A/RES/59/35 (2 December 2004); A/RES/62/61 (6 December 2007); and A/RES/65/19 (6 December 2010).

activity related to the exercise of government authority may be directly attributed to a State Party if its law empowers the private entity to do so²⁵ or if the circumstances call for such exercise of government functions in the absence or default of the official authorities²⁶. Furthermore, an act that is otherwise not attributable to a State Party is nevertheless deemed as such if and to the extent that State Party acknowledges and adopts the conduct as its own.²⁷

15. The obligation to respect is also violated when States Parties facilitate a violation of the Covenant rights by third parties, including business actors. For instance, forced evictions often occur in the context of investment projects²⁸, accompanied by the State failure to intervene or provide victims with access to remedies.²⁹ In a number of cases, States Parties have seized land that is crucial to certain individuals or communities and to their enjoyment of Covenant rights in order to make it available to investors and businesses.³⁰

16. Furthermore, a State failure to adopt and implement effective measures to prevent businesses from violating Covenant rights may constitute a violation of the obligation to respect. Covenant rights may be abused by, for instance, lowering the criteria for approving new medicines³¹ or granting exploration and exploitation permits for natural resources without giving due consideration to the potential adverse impacts of such activities on the individual and community's enjoyment of Covenant rights. The Committee also notes that corruption of public officials often facilitates and enables such failure by States Parties to respect the Covenant rights. In addition, judicial corruption results in impunity for business actors and injustice for victims without access to effective remedies.

Obligation to protect

17. The obligation to protect means that States Parties must effectively prevent the infringements of economic, social and cultural rights in the context of business activities, both domestically and, to the extent compatible with international law, extraterritorially. The obligation to protect requires States Parties to adopt legislative, administrative, educational, as well as other appropriate measures, to ensure effective protection against Covenant rights violations linked to business activities. This obligation also requires States Parties to ensure that businesses exercise due diligence in order not to impede the enjoyment of the Covenant rights of those who depend on their business activities or who may be negatively affected by them. As part of this obligation to protect, States Parties must also provide victims of such corporate abuses with equal and effective access to remedies.

18. The obligation to protect entails a positive duty to establish clear human rights standards for business actors and regulate relevant activities by adopting legislative and other measures. To this end, States Parties should adopt a legal framework requiring

²⁵ Ibid. at art. 5.

²⁶ Ibid. at art. 9.

²⁷ Ibid. at art. 11.

²⁸ E/1998/22/Annex IV (General Comment No. 7 (1997): The right to adequate housing (art. 11)) ("GC 7"), paras. 7, 18.

²⁹ Forced Evictions, *supra* note 20, pg. 7-8.

³⁰ See, e.g., A/HRC/25/54/Add.1 (Report of the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context: Mission to Indonesia (2013)), paras. 55, 59-63.

³¹ See A/63/263 (The right to health: Note by the Secretary-General); A/HRC/11/12 (Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health).

business entities to exercise human rights due diligence³² in order to identify, prevent, mitigate, as well as to account for the negative impacts caused by their decisions and operations on the enjoyment of Covenant rights. In addition, States Parties should also require businesses, if needed, to adopt human rights based codes of conduct for their management and employees; impose criminal and administrative sanctions and penalties for corporate violations of the Covenant rights; enable civil suits by victims of rights violations against corporate perpetrators; revoke business licenses and subsidies, if and to the extent necessary, from repeat offenders; and revise relevant tax codes to deny business exemptions in case of human rights violations and to align business incentives with human rights responsibilities. The obligation to protect also requires States Parties to monitor the impacts of business activities on the enjoyment of economic, social and cultural rights, to regularly review the adequacy of laws and identify and address compliance and information gaps, as well as emerging problems.³³

19. The obligation to protect at times necessitates direct regulation and intervention. States Parties should consider measures such as, for instance: restricting marketing and advertising of certain goods and services in order to protect public health³⁴ or to combat stereotyping and discrimination³⁵; exercising rent control in the private housing market to as required for the protection of everyone's right to adequate housing³⁶; establishing minimum wage and fair remuneration practices to ensure adequate working conditions³⁷; and regulating other business activities concerning the Covenant rights to education, employment, and reproductive health, in order to effectively combat gender discrimination³⁸.

20. States Parties should adopt policies and other non-legislative measures to ensure that incentives to businesses do not lead to restrict or hinder enjoyment of Covenant rights. This is particularly important in the areas of investment and intellectual property. Investment and trade agreements and national measures defining the investment and trade regimes at domestic level must be designed in a way that the increase in trade volumes and investment flows improve, rather than risk undermining, the rights protected under the Covenant.³⁹ States Parties should identify any potential conflict between their obligations under the Covenant and subsequent trade or investment agreements, and refrain from entering into such agreements where such conflicts are found to exist.⁴⁰ An intellectual property framework should also encourage research and development activities that serve the fulfilment of Covenant rights. Such framework, however, should not deny or restrict everyone's access to essential medicines as necessary for the enjoyment of the right to

³² Guiding Principles, art. 17.

³³ Ibid. at cmt. 17.

³⁴ See WHO Framework Convention on Tobacco Control ("WHO FCTC") (May 21, 2003), UN Treaty Series, vol. 2302, p. 166; Convention on the Rights of the Child ("CRC") (Nov. 20, 1989), UN Treaty Series, vol. 1577, p. 3, *entered into force* Sept. 2, 1990; and E/C.12/2005/4 (General Comment No. 16 (2005): The equal rights of men and women to the enjoyment of all economic, social and cultural rights (art. 3)), para. 57.

³⁵ Convention on the Elimination of All Forms of Discrimination against Women ("CEDAW") (Dec. 18, 1979), UN Treaty Series, vol. 1249, p. 3, *entered into force* Sept. 3, 1981, art. 5.

³⁶ E/1992/23 (General Comment No. 4: The Right to Adequate Housing (art. 11(1))) ("GC 4"), para. 8(c).

³⁷ GC 23, paras. 10-16, 19-24.

³⁸ CEDAW/C/GC/28, para.13.

³⁹ See A/HRC/19/59/Add.5 (Report of the Special Rapporteur on the right to food: Addendum on guiding principles on human rights impact assessments of trade and investment agreements).

⁴⁰ Vienna Convention on the Law of Treaties, 23 May 1969, 1155 *U.N.T.S.* 331, Arts. 26 and 30 § 4, b).

health⁴¹. It should also enable an access to productive resources such as seeds, which is crucial to the right to food⁴² and ensure the right to enjoy the benefits of scientific progress.⁴³ In addition, design and implementation of relevant policies should be accompanied by assessment of their impacts on the enjoyment of Covenant rights.

21. The duty of States Parties is both to create an appropriate legal and policy framework and to enforce these laws, regulations and policies. Therefore, effective monitoring, investigation and accountability mechanisms must be put in place to enable business compliance and accountability and ensure access to remedies for those whose Covenant rights have been violated in the context of business activities. Such enforcement systems require not only legal measures but also enabling infrastructure, such as independent national human rights institutions, competent inspectorates in the area of food safety and working conditions, and consumer protection agencies, with the authority and resources necessary to adequately discharge their duties. Effective enforcement also requires robust mechanisms against corruption, the independence of which should be guaranteed and which should be sufficiently well resourced.

22. This General Comment is adopted at a time when privatization is a growing trend in many parts of economic, social and cultural life worldwide. The private sector has long played an important role in the sectors closely related to certain Covenant rights, such as the right to work and the right to food. However, it is also gaining importance in other areas relating to social protection, water, sanitation, health, education and cultural life. The increased role and impact of private actors in what used to be predominantly public sectors pose new challenges for States Parties in complying with their obligations under the Covenant. It poses particular challenges as regards the affordability of goods and services that are necessary for the enjoyment of basic economic, social and cultural rights. In this regard, States Parties should ensure that privatization does not lead to a situation in which the enjoyment of Covenant rights is undermined by the inability to pay, at the risk of creating new forms of socio-economic segregation. They retain the obligation to regulate and ensure that private actors provide affordable access to quality services to all.

23. The Committee also draws the attention of the States parties to the challenges facing human rights defenders.⁴⁴ During the review of States Parties' periodic reports, the Committee has regularly come across accounts of threats and attacks aimed at those seeking to protect their own or others' Covenant rights, particularly in the context of extractive and development projects.⁴⁵ In addition, trade union leaders, indigenous leaders, and anti-

⁴¹ See also A/HRC/23/42 (Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health), para. 3 (recognizing the obligation to provide essential medicines as an immediate obligation for all States Parties).

⁴² SR Food Report, paras. 5, 7.

⁴³ International Covenant on Economic, Social and Cultural Rights (Dec. 16, 1966), UN Treaty Series, vol. 993, p. 3, *entered into force* Jan. 3, 1976 ("ICESCR"), art. 15.

⁴⁴ See A/HRC/31/L.28 (Protecting Human Rights Defenders Addressing Economic, Social and Cultural Rights); A/RES/53/144 (Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms).

⁴⁵ See, e.g., Viet Nam, *supra* note 7, para. 11; E/C.12/1/Add.44 (Concluding observations on the report of Egypt (2000)), para. 19; E/C.12/IND/CO/5 (Concluding observations on the fifth report of India (2008)), paras. 12, 50; E/C.12/PHIL/CO/4 (Concluding observations on the second to fourth periodic reports of the Philippines (2008)), para 15; E/C.12/COD/CO/4 (Concluding observations on the second to fourth reports of the Democratic Republic of Congo (2009)), para. 12; E/C.12/LKA/CO/2-4 (Concluding observations on the second to fourth reports of Sri Lanka (2010)), para. 10; E/C.12/IDN/CO/1 (Concluding observations on the initial report of Indonesia (2014)), para. 28.

corruption activists are often subject to the risk of harassment. The Committee recommends States Parties to take all necessary measures to protect human rights advocates and their work and to refrain from imposing criminal penalties on them or enacting new criminal offences with a purpose of hindering their work.

24. Examples of violations of the Covenant rights under the obligation to protect include:

- States Parties' failure to adopt and enforce necessary legislation aimed at preventing private health providers from denying access to affordable and quality services, treatments or information. This includes denial of services and care necessary for the realization of women's sexual and reproductive rights and inadequate protection against non-consensual medical treatment and experimentation.
- States Parties' failure to adopt a regulatory framework for private providers of education, including sanctions for abusive practices.⁴⁶ In particular, the Committee has noted that private institutions involved in higher education and early childcare providers were often insufficiently or poorly regulated.⁴⁷ Furthermore, the growing privatization of education heightens the risk of discrimination on grounds of wealth or social status.⁴⁸

Obligation to fulfil

25. The obligation to fulfil requires States Parties to take necessary steps, to the maximum of their available resources, to facilitate and promote the enjoyment of Covenant rights, and in certain cases, to directly provide goods and services essential to such enjoyment.

26. The obligation to fulfil has three components: the duty to facilitate, the duty to promote, and the duty to provide. The duty to facilitate requires States Parties to take all necessary measures to create an enabling environment for business actors to respect the economic, social and cultural rights enshrined in the Covenant, and thus to contribute towards the full realization of these rights. Facilitating measures comprise a wide variety of economic and fiscal policy tools and incentives, such as export credit, investment-related insurance and guarantee, tax exemptions and deductibles, and infrastructures necessary for the proper functioning of markets.

27. The duty to promote requires States Parties to provide information and guidance for business actors as well as the public on how to comply with relevant laws and policies related to economic, social and cultural rights. This may include launching educational campaigns, collecting and disseminating best practices, and regularly updating relevant materials. This obligation also entails informing government agencies and institutions responsible for shaping business policies and practices by providing them with relevant information, training and support.⁴⁹ In addition, States Parties should educate the public on their rights and access to remedies pertaining to the Covenant rights in the context of business activities.

28. The duty to provide obliges States Parties to mobilize resources to provide for goods and services necessary for the full realization of the Covenant rights, when rights holders are not in a position to ensure access to them by themselves for the reasons beyond their

⁴⁶ A/69/402 (Report of the Special Rapporteur on the right to education to the 69th session of the General Assembly) ("SR Education: GA69"), para. 1.

⁴⁷ Ibid. at paras. 35, 56.

⁴⁸ Ibid. at paras. 48-49.

⁴⁹ Guiding Principle, art. 8.

control. To this end, States Parties should raise resources, including by direct taxation of business income, and seek business cooperation and support to implement the Covenant rights and comply with other human rights standards and principles. The obligation to provide also requires States Parties to step in and provide assistance to victims where business actors trusted to deliver goods or services crucial to the enjoyment of Covenant rights fail to comply with their duties.

29. Violations of the obligation to fulfil occur mainly through the failure of States Parties to adopt all necessary measures they have the capacity to take towards the realization of the Covenant rights, mobilizing to that effect their maximum available resources. Such violations include State failures to repair roads and other infrastructure necessary to deliver basic goods by responsible business entities, such as food, water, and electricity, from the place of origin to the place of consumption; to take measures against tax evasion by business entities that diminish public resources towards the realization of economic, social and cultural rights; and to uproot corruption involving business entities that undermines the rule of law and often enables human rights violations⁵⁰.

C. Extraterritorial Obligations

30. The extraterritorial application of human rights obligations is of particular significance due to the increasing interdependence of States Parties and their economies. The past thirty years have witnessed a dramatic increase in the number and influence of transnational corporations, growing investment and trade flows between countries, and the emergence of global supply chains. In addition, major development projects have increasingly involved private investments, often in the form of public-private partnerships between State agencies and foreign private investors.

31. In its 2011 Statement, the Committee reiterates that States Parties' obligations under the Covenant do not stop at their territorial borders. States Parties are required to take necessary steps to prevent human rights violations abroad by corporations over which they may exercise influence, without infringing the sovereignty or diminishing the obligations of the host States under the Covenant.⁵¹ The Committee has also addressed specific extraterritorial obligations of States Parties concerning business activities in its previous General Comments relating to the right to water⁵², the right to work⁵³ and the right to social security⁵⁴, as well as in its concluding observations.

32. In Article 56 of the Charter of the United Nations, "All Members pledge themselves to take joint and separate action in cooperation with the Organization..." to achieve purposes set out in Article 55 of the Charter, including: "... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion."⁵⁵ This duty is expressed without any territorial limitation, and should be taken into account when addressing the scope of States' obligations under human rights treaties. Also in line with the Charter, the International Court of Justice has acknowledged the extraterritorial scope of core human rights treaties, focusing on their object and purpose, legislative history and the lack of territorial limitation provisions in the

⁵⁰ Convention Against Corruption (Oct. 31, 2003), G.A. Res. 58/4, Foreword.

⁵¹ 2011 Statement, paras. 5-6.

⁵² GC 15, paras. 31, 33.

⁵³ GC 18, para. 52.

⁵⁴ GC 19, para. 54.

⁵⁵ Charter of the United Nations (June 26, 1945), 59 Stat. 1031, *entered into force* Oct. 24, 1945.

text.⁵⁶ Customary international law also prohibits a State from allowing its territory to be used to cause damage on the territory of another State, a requirement that has gained particular relevance in international environmental law.⁵⁷

33. Extraterritorial obligations arise when a State Party may exercise control, power or authority over business entities or situations located outside its territory, in a way that could have an impact on the enjoyment of human rights by people affected by such entities' activities or by such situations. In this regard, the Committee also takes note the General Comment 16 of the Committee on the Rights of the Child⁵⁸, the Guiding Principles on Business and Human Rights, and of the Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, which provide a partial restatement of international human rights law as it have developed in this area in recent years.⁵⁹

Extraterritorial obligation to respect

34. The extraterritorial obligation to respect requires States Parties to refrain from interfering directly or indirectly with the enjoyment of the Covenant rights by persons outside their territories. As part of this obligation States Parties should ensure that they do not obstruct another State from complying with its obligations under the Covenant. This duty is particularly relevant to the negotiation and conclusion of trade and investment agreements or of financial and tax treaties,⁶⁰ as well as in judicial cooperation.

Extraterritorial obligation to protect

35. The extraterritorial obligation to protect requires States Parties to also pay close attention to the adverse impacts outside their territories of the activities and operations of business entities that are domiciled under their jurisdiction. States Parties have the obligation to prevent and redress such impacts on the enjoyment of Covenant rights, regardless of where the harm occurs.

36. This obligation extends to any business entities over which States Parties may exercise influence by regulatory means or by the use of incentives, including economic incentives, in accordance with the Charter of the United Nations and applicable

⁵⁶ Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, 2004 I.C.J. 136 (9 July), paras. 109-112.

⁵⁷ See *Trail Smelter Case (United States v. Canada)*, 3 R.I.A.A. 1905 (1941), pg. 1965 (“[U]nder the principle of international law ... no State has the right to use or permit the use of its territory in such a manner as to cause injury ... in or to the territory of another or the properties or persons therein, when the case is of serious consequence and the injury is established by clear and convincing evidence.”); *Corfu Channel Case (U.K. v. Alb.) (Merits)* 1949 I.C.J. 4 (9 Apr.), para. 22 (“[E]very State’s obligation not to allow knowingly its territory to be used for acts contrary to the rights of other States”); and *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, 1996 I.C.J. 226 (8 July), para. 29 (reiterating the State obligation to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control). See also *Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, O. De Schutter et al., 34 *Hum. R. Qty.* 1084 (2012) (“*Commentary to Maastricht Principles*”), cmts. 3, 13.

⁵⁸ CRC/C/GC/16 (General Comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights), paras. 43-44.

⁵⁹ See also *Commentary to Maastricht Principles*, *supra* note 55.

⁶⁰ See A/HRC/19/59/Add.5 (Report of the Special Rapporteur on the right to food: Addendum on guiding principles on human rights impact assessments of trade and investment agreements).

international law.⁶¹ For instance, a State Party may seek to regulate business entities such as: entities that are considered domiciliaries of that State Party by virtue of being incorporated, having a seat of business, or generating substantial revenues there; entities with substantial business activities in the State Party's territory; entities whose activities in the State Party's territory have nevertheless threatened or may threaten the exercise of economic, social and cultural rights outside the territory; or, more broadly, any entity with a reasonable link to that State Party, for instance, due to the nationality of its shareholders or the location of its assets. States Parties may also utilize indirect measures, such as preference on state contracts to human rights-friendly businesses and international diplomacy and education, in order to protect the economic, social, and cultural rights of the persons at home and abroad.

37. Whereas States Parties would not normally be held internationally responsible for any violation of economic, social and cultural rights which is caused directly by a private entity's conduct, it would be in breach of its obligations under the Covenant if the violation reveals its failure to take reasonable measures that could have prevented the occurrence of the event. The responsibility of the State can be engaged in such circumstances even if other intervening causes have also played a role in the occurrence of the violation.⁶² The Committee also reiterates that business activities of private entities and their extraterritorial impacts may also be attributed to States Parties in four scenarios described in the paragraph 15 of the present General Comment.

38. In discharging their duty to regulate corporate activities with potential adverse impact on Covenant rights, States Parties may also require such businesses to ensure that other related entities, such as subsidiaries, suppliers, franchisees, or investors, comply with the requirements under the Covenant. Appropriate monitoring and accountability procedures must be put in place to ensure effective prevention and enforcement. Such procedures may include a duty imposed on companies to report on how they take into account human rights (including Covenant rights) in their operations, or if they don't, to explain why they do not.

Extraterritorial obligation to fulfil

39. Article 2.1 of the Covenant explicitly recognizes the importance of international cooperation and assistance for the enjoyment of Covenant rights. It sets out the expectation that States Parties shall take collective action, including through international cooperation, in order to help fulfil the economic, social and cultural rights of persons outside of their national territories.⁶³

40. Consistent with Article 28 of the Universal Declaration of Human Rights⁶⁴, this obligation to fulfil requires States Parties to create and maintain an international environment that enables the fulfilment of the Covenant rights. To this end, States Parties

⁶¹ See, e.g., Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000), The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2000/4 (2000), para. 39; or Committee on Economic, Social and Cultural Rights, General Comment No. 15 (2002), The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2002/11 (26 November 2002), para. 31.

⁶² Articles on State Responsibility, art. 23, cmt. 2 ("To have been 'unforeseen' the event must have been neither foreseen nor of an easily foreseeable kind").

⁶³ See also Commentary to Maastricht Principles, cmt. 28.

⁶⁴ Universal Declaration of Human Rights, G.A. Res. 217A(III) (Dec. 10, 1948), art. 28 ("Everyone is entitled to a social and international order in which the rights and freedoms set forth in this Declaration can be fully realized.").

must take the necessary steps in their domestic legal and policy frameworks, including diplomatic and foreign relations measures, to promote and help create such an environment. States Parties should also encourage business actors whose conduct they are in a position to influence to assist the States Parties in which they operate in their efforts to fully realize the Covenant rights. This implies, in particular, contributing to State ability to mobilize resources for the realization of economic, social and cultural rights, by refraining from strategies to avoid paying taxes in the countries concerned.

IV. Remedies

41. In accordance with Article 8 of the Universal Declaration of Human Rights⁶⁵ and under the Covenant⁶⁶ States Parties have the obligation to guarantee access to effective remedies, and to reparation for victims of violations, preferably through courts. This obligation extends to rights violations in the context of business activities, whether the harm to victims occurs on the territory of the State Party concerned or outside its territory.

A. General principles

42. The Committee has previously concluded that States Parties have the obligation to provide appropriate means of redress to aggrieved individuals or groups and to ensure corporate accountability.⁶⁷ The Committee has also established that the provision of domestic legal remedies for violations of Covenant rights is a State obligation under article 2.1 of the Covenant, which requires States parties to take all appropriate means for the realization of the rights under the Covenant.⁶⁸ The Committee has underlined that “other means used could be rendered ineffective if they are not reinforced or complemented by judicial remedies”.⁶⁹

43. The Guidelines on remedies for victims of international human rights law specify State obligations, including: to prevent rights violations; to thoroughly investigate them and take appropriate actions against alleged offenders; to provide victims with effective access to justice “irrespective of who may ultimately be the bearer of responsibility for the violation”; and to provide effective remedies to victims, including reparation.⁷⁰

44.

45. It is imperative for the full realization of the Covenant rights that remedies be available and effective. This requires that victims seeking remedy must have prompt access to an independent authority, which must have the power to determine whether a violation has taken place and to order cessation of the violation and reparation to redress the harm

⁶⁵ Ibid. at art. 8 (“Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the constitution or by law.”).

⁶⁶ E/C.12/1998/24 (General Comment No. 9 (1998): The domestic application of the Covenant) (“GC 9”), para. 2; *I.D.G. v. Spain*, paras. 14-15.

⁶⁷ GC 9, para. 2.

⁶⁸ Ibid. at para. 3.

⁶⁹ Ibid.

⁷⁰ A/RES/60/147 (2005) (Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law), art. 3 (a)-(d).

done. Reparation can be in the form of restitution, compensation, rehabilitation, satisfaction, and guarantee of non-repetition.⁷¹

46. The Committee notes the particular challenges that victims of transnational corporate abuses face in accessing available and effective remedy. Because of how corporate groups are organized, business entities routinely escape liability by hiding behind the so-called corporate veil, and the parent company may avoid responsibility in the acts of the subsidiary even when it would have been in a position to influence the conduct of its subsidiary. Furthermore, the cross-jurisdictional nature of certain business entities greatly complicates the process of accessing remedy, as seen in some mass tort cases involving pollution and industrial disasters. In addition to the difficulty of proving the damages or establishing the causal link between the conduct of the defendant corporation located in one jurisdiction and the resulting violation in another, transnational litigation is often prohibitively expensive and time-consuming.

47. States Parties have the duty to take necessary steps to address these challenges in order to prevent denial of justice and ensure the right to effective remedy and reparation. This requires States Parties to remove substantive, procedural and practical barriers to remedies, including by simplifying and streamlining domestic procedural laws, enabling human rights-related class actions and public interest litigation, facilitating the collection of evidence abroad, including witness testimony, and allowing such evidence to be presented in judicial proceedings. The introduction by corporations of actions to discourage individuals or groups to exercise remedies, for instance by alleging damage to the corporations' reputation, should be kept under scrutiny to ensure that they do not create a chilling effect on the legitimate exercise of such remedies. The Committee strongly recommends States Parties to reduce excessive discovery burden on the victims and define strictly the conditions under which the protection of trade secrets may be invoked without jeopardizing the right of all parties to a fair trial. Furthermore, States Parties and their judicial and enforcement agencies have a duty to cooperate with one another in order to promote information sharing and transparency and prevent the denial of justice.

48. The Committee recalls that all government branches and agencies of States Parties, including the judiciary and law enforcement agencies, are bound by the obligations under the Covenant. It is of utmost importance that the judiciary, in particular judges and lawyers, are well informed of the obligations under the Covenant linked to business activities, and that they may exercise their functions in complete independence.

B. Types of remedies

49. Ensuring corporate accountability for violations of the Covenant rights requires various modalities. The most serious violations of the Covenant may give rise to criminal liability of corporations, in the legal systems that recognize the criminal liability of legal persons. In such cases, prosecuting authorities may have to be made aware of their role in upholding Covenant rights. Victims of violations of Covenant rights should have access to effective remedies, however, even in cases where Covenant rights are at stake and where criminal liability cannot be engaged. Judicial remedies must be available and accessible if non-judicial mechanisms fail to bring effective redress and satisfaction to the victims.

⁷¹ Ibid. at Part IX, "Reparation for harm suffered".

Judicial remedies

50. Violations of the Covenant rights shall often be remedied by an individual claim being filed against the State, whether on the basis of the Covenant itself or on the basis of domestic constitutional or legislative provisions that incorporate the guarantees of the Covenant. However, where the violation is directly attributable to a business entity, victims may be allowed to sue such an entity either directly on the basis of the Covenant, in jurisdictions which consider that the Covenant imposes self-executing obligations on private actors, or on the basis of domestic legislation implementing the Covenant in the national legal order. In this regard, civil remedies play an important role in ensuring access to justice for victims of violations of Covenant rights.

Non-judicial remedies

51. While they should not be seen as a substitute for judicial mechanisms, non-judicial remedies may contribute to providing effective remedy to the victims whose Covenant rights have been violated by business actors and ensuring accountability for such violations. These alternative mechanisms should be adequately coordinated with available judicial mechanisms (both in forms of sanction and compensation). Where such alternative, non-judicial mechanisms are established, they should have the following features⁷²:

(a). *Rights-compatible*: ensuring that outcomes and remedies accord with internationally recognized human rights;

(b). *Legitimate*: enabling trust from the stakeholder groups for whose use they are intended and being accountable for the fair conduct of grievance processes;

(c). *Accessible*: being known to all stakeholder groups for whose use they are intended, and providing adequate assistance for those who may face particular barriers to access;

(d). *Predictable*: providing a clear and known procedure with an indicative timeframe for each stage, and clarity on the types of process and outcome available and means of monitoring implementation;

(e). *Equitable*: seeking to ensure that aggrieved parties have reasonable access to sources of information, advice and expertise necessary to engage in a grievance process on fair, informed and respectful terms;

(f). *Transparent*: keeping parties to a grievance informed about its progress, and providing sufficient information about the mechanism's performance to build confidence in its effectiveness and meet any public interest at stake;

(g). *Based on engagement and dialogue*: consulting the stakeholder groups for whose use they are intended on their design and performance, and focusing on dialogue as the means to address and resolve grievances.

52. Furthermore, these non-judicial remedies should be available in both national and transnational settings.⁷³ Examples include access of victims located outside the State's territory to that State's human rights institutions or ombudspersons as well as to complaints mechanisms established under international organizations.

V. National Implementation

53. Under article 2.1 of the Covenant, States Parties have the obligation to take all appropriate steps, to the maximum of their available resources, in order to progress towards

⁷² Guiding Principles, art. 31.

⁷³ Guiding Principles, art. 27.

the full realization of the rights recognized in the Covenant. In discharging this obligation, States Parties may benefit from the adoption of national action plans and strategies to facilitate its implementation. Such national action plans or strategies may set specific and concrete targets, define the time frame and necessary means for their adoption. Such national action plans or strategies could be adopted in accordance with a framework law specifying the institutional mechanisms through which they shall be approved, in particular the process through which relevant actors, including civil society, the private sector and international organizations, will be involved in its design and implementation; and the responsibilities of national mechanisms for implementation and monitoring.

54. In developing and implementing their national strategies and plans of actions, as well as indicators and benchmarks in this context, States Parties should incorporate human rights principles, including effective and meaningful participation, non-discrimination and gender equality, and accountability and transparency. States Parties should also ensure that monitoring mechanisms are in place to give effect to the national strategies and plans of action. The Committee recalls in this regard the fundamental role that national human rights institutions and civil society organizations can and should play in achieving the full realization of the Covenant rights in the context of business activities.
