
Submission to the United Nations Committee on Economic, Social and Cultural Rights

Concerning the Committee's Draft General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities

19 January 2017

In this Submission

Background	1
1. Accountability and Access to Remedy	2
2. State-Owned Enterprises	2
3. Trade Unions and Workers	3
4. Women's Rights	3
5. States Parties Reports	4

Background

The Institute for Human Rights and Business (IHRB) welcomes the initiative by the United Nations (UN) Committee on Economic, Social and Cultural Rights (the Committee) to develop a General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR) in the Context of Business Activities. IHRB appreciates the opportunity to provide input to the Committee on the draft General Comment.

The development of a General Comment on this subject is an important contribution to clarifying state obligations in the context of business activities and further embedding existing internationally agreed standards and good practice in this area. Key to achieving that aim is to ensure that the General Comment fully aligns with the UN Protect, Respect and Remedy framework and Guiding Principles on Business and Human Rights (UN Guiding Principles) as well as related follow up initiatives by other parts of the UN human rights system. The following sections therefore focus on elements that in IHRB's view should be added to the draft General Comment.

1. Accountability and Access to Remedy

IHRB recommends that the Committee give consideration to how its General Comment, in particular section IV. on Remedies, can be strengthened, including by adding appropriate references to and building on the work undertaken by the UN Office of High Commissioner for Human Rights (OHCHR) on the issue of improving access to remedy for victims of business-related human rights abuses. This OHCHR project, which submitted its report¹ to the UN Human Rights Council in 2016, has made an important contribution both by analyzing current state practices and challenges in implementing the third pillar of the UN Guiding Principles focused on access to remedy, and by providing recommendations for States and other actors in this regard.

As the OHCHR report notes, “The guidance is addressed primarily to State agencies and judicial bodies concerned with the development, administration and enforcement of domestic legal regimes that regulate the respect by business enterprises of human rights...The guidance may also help to inform the ongoing work of international bodies with mandates relevant to business and human rights, including human rights treaty bodies.² IHRB recommends that the Committee give consideration to how best to build on and include in its General Comment elements of the “Guidance to improve corporate accountability and access to judicial remedy for business-related human rights abuse” annexed to the 2016 OHCHR report and in the companion explanatory notes document.³

2. State-Owned Enterprises

The General Comment would be strengthened significantly by including a dedicated section focused on State duties with respect to State-owned business enterprises. IHRB notes that the draft General Comment makes only one brief reference to these enterprises.⁴ Principle 4 of the UN Guiding Principles provides that “States should take additional steps to protect against human rights abuses by business enterprises that are owned or controlled by the State, or that receive substantial support and services from State agencies such as export credit agencies and official investment insurance or guarantee agencies, including, where appropriate, by requiring human rights due diligence.”

In 2016, the UN Working Group on the issue of human rights and transnational corporations and other business enterprises focused its report⁵ to the Human Rights Council on the duty of States to protect against human rights abuses involving State-owned enterprises. The Working Group noted that not enough attention has been paid to the human rights responsibilities and impacts of such enterprises nor to the duties of States in this regard. The Working Group report proposed a number of measures that

¹A/HRC/32/19, available at: http://www.ohchr.org/Documents/Issues/Business/DomesticLawRemedies/A_HRC_32_19_AEV.pdf

² Ibid, paragraph 19.

³ A/HRC/32/19/Add.1, available at: http://www.ohchr.org/Documents/Issues/Business/DomesticLawRemedies/A_HRC_32_19_Add.1_AEV.pdf

⁴ Draft General Comment, paragraph 6.

⁵ A/HRC/32/45, available at: <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G16/091/71/PDF/G1609171.pdf?OpenElement>

States could take in the context of State-owned enterprises. These included, at minimum, that “States should clearly set their expectations that State-owned enterprises respect human rights throughout their operations...(and) set out their expectations in a specific document such as a national action plan or, preferably, amend existing regulations on ownership, corporate governance or responsible business conduct so as to expand their coverage.”⁶ There are a range of additional steps States could be prompted to take to encourage and mandate responsible business conduct by these enterprises, including by clearly defining criteria under which human rights due diligence should be conducted, including based on company size, industry sector and operating context.⁷

3. Trade Unions and Workers

The draft General Comment rightly highlights challenges facing human rights defenders, and includes references to specific risks of harassment facing trade union leaders.⁸ IHRB believes the draft General Comment would be strengthened by additional focus on State obligations in the context of trade unions consistent with Article 8 of the ICESCR. As international trade unions have highlighted⁹, recent years have seen growing government and business efforts in countries around the world to limit trade union membership, restrict the right to strike, and deny collective bargaining among other violations of provisions contained in ICESCR Article 8. In this context and consistent with the Committee’s General Comment No. 23 on the right to just and favorable conditions of work, it would also be helpful if the current General Comment includes references to other relevant international instruments, such as conventions of the International Labour Organization including on freedom of association and collective bargaining rights as set out in ILO Convention No. 87 and No. 98.

4. Women’s Rights

The draft General Comment rightly highlights the adverse impacts of business activities on women and girls, the risks of multiple forms of discrimination and the need to incorporate a gender perspective in all measures to regulate business activities.¹⁰ Additional examples could usefully be added in this section such as gender discrimination in accessing land and natural resources as well as the lack of adequate participation of women in consultation and decision making concerning new investments. In this context, the draft General Comment would be strengthened by including reference to the UN Food and Agriculture Organization 2012 Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.¹¹ These Guidelines affirm the responsibilities of States to ensure that women and girls have equal tenure rights and access to land as well as equal treatment of men and women in redistributive reforms. The Guidelines also stress that States should take additional steps to protect against abuses of human

6 Ibid, paragraph 98.

7 Ibid, paragraph 77.

8 Draft General Comment, paragraph 23.

9 See 2016 ITUC Global Rights Index, available at: http://www.ituc-csi.org/IMG/pdf/survey_ra_2016_eng.pdf

10 Draft General Comment, paragraph 11.

11 Available at: <http://www.fao.org/docrep/016/i2801e/i2801e.pdf>

rights and legitimate tenure rights by business enterprises that are owned or controlled by the State, or that receive substantial support and service from State agencies.

5. States Parties Reports

The draft General Comment notes that the Committee increasingly considers the growing impact of business activities on the enjoyment of specific Covenant rights, including in its concluding observations on States Parties' reports.¹² It would be helpful if the Committee included a specific recommendation in the General Comment that all periodic reports include a section providing information on how States are seeking to implement the UN Guiding Principles from the perspective of rights obligations under the ICESCR. Past submissions by IHRB to the UN Human Rights Council's Universal Periodic Review process provide examples of how information and recommendations in this area could be included in current reporting formats.¹³

Founded in 2009, IHRB is the leading international think tank on business and human rights. IHRB's mission is to shape policy, advance practice and strengthen accountability in order to make respect for human rights part of everyday business.

¹² Draft General Comment, paragraph 9.

¹³ See for example, IHRB's 2015 Submission to the Human Rights Council Universal Periodic Review Session 23: Myanmar, available at: https://www.ihrb.org/uploads/submissions/2015-3%2C_IHRB_Submission%2C_UN_Universal_Periodic_Review_of_Myanmar.pdf