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State Responsibilities to Regulate and Adjudicate Corporate Activities under the United Nations' core Human Rights Treaties

Individual report on the International Covenant on Economic, Social and
Cultural Rights

Report No.2

Prepared for the Special Representative of the Secretary-General on Human
Rights and Transnational Corporations and
Other Business Enterprises

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PREFACE

The following report is part of a series examining States' obligations in relation to corporate activity under the United Nations' core human rights treaties.¹ A report summarizing the main findings and trends from the treaty-specific reports was submitted to the fourth session of the Human Rights Council.²

The series of reports maps the scope and content of States Parties' responsibilities to regulate and adjudicate the actions of business enterprises under the treaties and as elaborated by the respective treaty bodies.³ This mapping supports the work of the Special Representative of the United Nations Secretary-General (SRSG) on the issue of human rights and transnational corporations and other business enterprises. The (then) United Nations Commission on Human Rights mandated the SRSG, *inter alia*, to:

“(b) elaborate on the role of States in effectively regulating and adjudicating the role of transnational corporations and other business enterprises with regard to human rights, including through international cooperation.”⁴

The reports analyze a representative sample of primary materials associated with each treaty:⁵ the actual treaty provisions; General Comments or Recommendations by the Committees; Concluding Observations on States Parties' periodic reports; and Views on Communications and under Early Warning Measures and Urgent Procedures.⁶

The reports are based on references by the treaties and treaty bodies to States Parties' duties to regulate and adjudicate corporate activities.⁷ However, as it is less common for the treaty bodies to refer explicitly to corporations, the reports also highlight more general

¹ The following treaties were considered as part of this series: the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); the Convention on the Rights of the Child (CRC); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW). The International Convention on the Rights of Persons with Disabilities (ICRPD) (adopted by the General Assembly in Dec. 2006) and the International Convention for the Protection of All Persons from Enforced Disappearances, which had not entered into force at the time of completing the research, have not been included. All reports will be made available as they are completed at <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>.

² A/HRC/4/35/Add.1.

³ The human rights treaty bodies are committees of independent experts that monitor implementation of the core international human rights treaties. They are created in accordance with the provisions of the treaty that they monitor.

⁴ Commission on Human Rights Resolution 2005/69, para. (b). The SRSG now reports to the UN Human Rights Council.

⁵ The ICRMW report relies to some extent on secondary sources because of the scarcity of primary sources from the recently established Committee on Migrant Workers (CMW).

⁶ The ICCPR, CAT, ICERD, CEDAW and ICRMW all have associated individual complaints mechanisms. CEDAW and CAT also have procedures for urgent inquiries. ICERD has an early warning procedure.

⁷ Drawing on the SRSG's mandate, this report uses “regulation” to refer to treaty body language recommending legislative or other measures designed to prevent or monitor abuse by business enterprises, and “adjudication” to refer to judicial or other measures to punish or remediate abuse.

references to State obligations regarding acts by non-State actors, especially where they help identify patterns and measures relevant to business enterprises. The reports do not document references to non-State actors that are unrelated to the mandate, such as armed groups, educational institutions, family members and religious leaders. Further, the reports focus on States' obligations in relation to rights impacted by corporate activities, rather than on corporate entities as possible rights-holders.⁸

The decision to focus the research on the treaties reflects the global importance of the United Nations' human rights treaty machinery. Due to time and resource constraints, other domains of human rights law, such as the regional human rights systems and international customary law, have not been included in this particular series, though they are referenced briefly in the SRSG's report to the fourth session of the Human Rights Council.⁹ The same is true of other branches of international law that are relevant to the mandate, such as labor law.

Any views or recommendations expressed in this series do not necessarily represent the views of the SRSG, the Office of the United Nations High Commissioner for Human Rights or the various treaty monitoring bodies.

The reports are numbered chronologically according to the date of adoption of each treaty.

⁸ The UN human rights treaties have not been interpreted to protect the rights of corporate bodies. This is in contrast to e.g. the European Convention on Human Rights, many rights of which have been extended to benefit companies or other non-State legal entities.

⁹ A/HRC/4/35.

EXECUTIVE SUMMARY

A. The duty to protect

The International Covenant on Economic, Social and Cultural Rights (ICESCR) does not contain a general provision which explicitly refers to the duty to ensure or protect rights. It specifically refers to “protection” only in Art. 10, which recognizes that protection should be accorded to the family, mothers and children, and in Art. 15, which recognizes the right to benefit from the protection of interests resulting from scientific, literary or artistic productions.

However, in its commentary the Committee on Economic, Social and Cultural Rights (CESCR) has expressed the view that rights under the Covenant generally impose on States Parties three types of obligations, namely the obligations to respect, protect and fulfill. CESCR sees the duty to protect as taking measures to prevent third parties from interfering with rights, including business enterprises. General Comments highlight the Committee’s view that a State Party could violate the Covenant if it fails to take such measures, including regulatory and adjudicative measures.

The Committee has stressed that the principle of progressive realization, as outlined in Art. 2(1), does not absolve States of their duty to protect, or of any other duties. Indeed, CESCR has highlighted that States have immediate obligations in relation to rights under the Covenant, such as the obligation not to discriminate, to take steps, and to fulfill ‘core obligations’ with respect to specific rights. Core obligations often include requirements for protection against abuses by third parties.

The Committee has also referred to State obligations regarding corporate activities as part of the **duty to respect**. According to CESCR, a State could violate its duty to respect if it fails to take into account its Covenant obligations “when entering into bilateral or multilateral agreements with other States, international organizations and other entities such as multinational entities.” It is assumed that the term “multinational entities” includes corporations.

B. References to business enterprises

There are no direct references to business enterprises in the Covenant. Further, unlike other United Nations’ human rights treaties, it does not refer to the need to prohibit certain acts by “groups,” “organizations” or “enterprises,” although it does refer to minimum standards for educational institutions. Several General Comments and Concluding Observations explicitly refer to **corporations**, either in general terms or with respect to **specific sectors or types of industries**, such as the food, manufacturing, extractive and pharmaceutical industries. Concluding Observations also refer to business enterprises engaging in major infrastructure and extractives projects affecting indigenous peoples.

In addition, the Committee commonly refers to ‘**employers**’ or the ‘**labor market**,’ both of which include a wide range of corporate actors. The Concluding Observations tend to discuss regulation and adjudication of employers in relation to slavery and child labor; workplace discrimination; safe working conditions; and the right to form and join trade

unions. It is clear States must prevent workplace abuse by regulating and adjudicating acts by both public and private employers.

The Committee also refers to ‘**third parties,**’ ‘**non-state actors**’ and ‘**private**’ actors when discussing State protection against interference with rights. It is assumed that unless the Committee expressly states otherwise, such terms include corporations, particularly when the Committee is discussing situations likely to involve business enterprises. In fact, General Comment 15 explicitly includes corporations in its definition of third parties.

C. Measures States are required to take

While Art. 2(1) of the Covenant provides States Parties with discretion in deciding the steps they will take towards full realization of rights, it also says that they should use all appropriate means, “including particularly the adoption of legislative measures.”

Thus it is unsurprising that CESCR regularly confirms the importance of legislative measures and often recommends that States take such measures to regulate third party activities. However, it rarely provides guidance on the exact type of legislation required – in line with the Covenant it considers that States have latitude in deciding which legislative measures would be most suitable. The Committee has also recommended administrative mechanisms and other types of regulation, such as national policies and actions plans, and facilitation of meaningful participation (in the context of extractives or major infrastructure projects affecting communities). Regardless of the type of regulation chosen, it is clear from both General Comments and Concluding Observations that the regulation must be effective in form and substance.

According to CESCR, States should establish effective **monitoring** mechanisms in order to ensure the enforcement of any regulation and prevent third party interference with rights. Recommendations in this respect often refer specifically to employers and companies providing government services. The Committee also outlines the role of National Human Rights Institutions in monitoring compliance with rights and examining complaints.

The Committee further requires States to **adjudicate** abuse by third parties. While the Covenant does not expressly require States to provide an **effective remedy** for violations in the same way as the International Covenant on Civil and Political Rights, the Committee has stressed that providing an effective remedy is part of the State’s duty to take steps to progressively achieve the full realization of Covenant rights.

CESCR particularly encourages judicial remedies. It has considered judicial remedies indispensable in some situations, particularly for violations involving discrimination. The Committee has nevertheless noted that administrative remedies may also be appropriate in some circumstances. Regardless of the nature of the remedy, remedies must be enforced and physically and economically accessible.

The Committee considers that provision of an effective remedy includes a right to **reparation**, which the Committee defines as including compensation, restitution,

satisfaction or guarantees of non-repetition. Several General Comments and Concluding Observations speak of compensating victims: in these situations, the Committee expects States to ensure compensation is granted even where a private actor committed the primary abuse. What is often unclear is whether the State must ensure that third parties provide redress.

It is rare for General Comments to discuss **sanctions or penalties** for third parties and additionally unclear if such penalties should apply to natural or legal persons, and whether they should be part of a civil or criminal action. Concluding Observations are more likely to discuss penalties for third parties but also do not specify the type of sanctions required.

Finally, the Committee supports **educational and promotional measures** for third parties, including business enterprises, stressing that such measures may be very effective in preventing interference with rights, and may complement legislative measures.

The Committee has said in several General Comments that while only States are parties to the Covenant and are thus the only actors ultimately accountable for complying with it, third parties such as corporations also have some responsibilities regarding the “realization of rights.” It has also commented that, among other things, the private business sector should pursue its activities on the basis of codes of conduct conducive to the “respect of rights.” CESCR has directed that as part of their Covenant duties, States should provide an environment facilitating third parties’ fulfillment of any such responsibilities. According to the Committee, States should also raise awareness of the Covenant so that third parties, including corporations, consider rights in their activities.

D. Business and rights specific information

The Committee’s commentaries imply that the duty to protect applies to regulating and adjudicating actions by all types of business entities in relation to all Covenant rights capable of violation by private actors. Nevertheless, the research sample highlighted some trends suggesting that to date, the Committee mentions certain sectors and rights more than others in discussing protection against corporate abuse. This simply suggests current trends and does not indicate that the Committee may or will focus only on certain types of abuses by certain types of business enterprises.

In particular, the Committee has discussed the following:

| Type of actor | Discussion |
|---|---|
| Employers | Protection against forced and child labor and discrimination as well as steps to safeguard the right to just and favorable conditions of work and trade union rights. |
| Corporations involved in extractives or major infrastructure projects | Steps to safeguard the right to health, the right to an adequate standard of living, including the right to housing, the right to water and the right to an effective remedy. Such steps are often discussed as being necessary to protect the rights of indigenous peoples affected by these projects. |

| Type of actor | Discussion |
|--|--|
| Extractive and manufacturing industries | Protection of the rights to health and water in cases of pollution. |
| Business enterprises (including companies that market, produce and distribute food) | Steps to protect the right to food associated with the right to an adequate standard of living. |
| Pharmaceutical industry and food manufacturers | Protection of the right to health. |
| Actors making use of scientific, literary or artistic productions (including corporations) | Discussion of the right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production. |
| Water providers and corporations whose acts could affect water provision and quality | Steps to safeguard the rights to health and to water, including protecting against contamination and unequal or discriminatory distribution. |
| Housing agencies and owners | Steps to protect the right to housing. |
| Companies that own public places such as restaurants, hotels etc. | Steps to ensure non-discriminatory access and services. |

E. State-owned or controlled enterprises and privatization of government services

The research sample did not uncover any explicit references to State-owned or controlled enterprises, though the Committee has referred to “**State-owned facilities**” as part of discussions about the **duty to respect**. The Committee does not explain what it means by the term “**State-owned facilities**” and it is unknown whether it could include facilities run by corporations or only those operated by State organs. Accordingly, it is unknown if the Committee’s comments regarding “**State-owned facilities**” provide any insights into its thoughts on **State-owned enterprises**. It is also unclear if the Committee intended to focus on **ownership** as a means of bringing the duty to respect into play regarding State-owned facilities or whether it was also concerned with State **control**.

In looking for guidance in the Committee’s commentary about corporations in general, it appears that, in line with broader concepts of international law, the Committee does not focus on ownership structures when it discusses the duty to protect against corporate abuse. Thus, it seems that when the Committee makes recommendations to prevent corporate abuse as part of the **duty to protect**, it is directing the State to regulate the activities of all types of corporations, regardless of their ownership structure. What is less clear is whether the Committee considers that obligations in relation to State-**controlled** enterprises also arise through the duty to protect.

There is more guidance about the need to regulate newly privatized companies. CESCR focuses on the State’s continuing responsibility for privatized services and suggests that such responsibility arises through the **duty to protect**. For example, the Committee has confirmed several times that the duty to protect includes measures to ensure that

privatization does not interfere with rights, including regulating third party interference where “public services have been partially or fully privatized.” Concerns generally focus on the quality of services as well as equal and non-discriminatory access. In particular, CESCR has recommended that States regulate the activities of private social security schemes, private health-care providers and other social services providers in order to safeguard rights.

F. Territorial scope of the Covenant

The Covenant is largely silent about jurisdictional and territorial scope. Nevertheless, the Committee interprets the Covenant as applying to all individuals within a State Party’s territory as well as those beyond its national territory but under its effective control. The Committee has not provided detailed guidance on the meaning of the term “effective control.”

It is therefore unknown how the Committee would interpret a situation where a corporation acts on the State’s behalf (exercising elements of governmental authority or acting under the instructions, direction or control of the State) outside the national territory, and exercises a degree of control over individuals such that, were such control exercised by State agents, the State’s Covenant obligations would likely apply in full. As suggested below, more guidance from CESCR would be helpful regarding such a situation.

G. Regulation with extraterritorial effect

The main issue here is whether a State Party has any duties under the Covenant to regulate or at least “influence” (as per the Committee’s commentary) corporate actors abroad whose activities affect individuals who are outside the State’s national territory and effective control.

Unlike the Convention Against Torture, the Covenant does not expressly require States Parties to establish jurisdiction over abuses by their nationals wherever they occur. And the Committee’s only relevant remarks appear in General Comments 12, 14 and 15 on the rights to food, health and water respectively.

Key questions are raised by a section in General Comment 15 on the right to water titled “International Obligations,” which includes discussion about the “essential role” of international cooperation. In the most relevant passage to this report, the Committee remarks that “steps should be taken by States parties to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries. Where States parties can take steps to influence other third parties to respect the right, through legal or political means, such steps should be taken in accordance with the Charter of the United Nations and applicable international law.”

Similar sentiments appear in General Comment 14 although unlike General Comment 15, they do not refer to taking steps to prevent violations by a State’s “own citizens and companies.” General Comment 12 indicates that as part of “implementing” their “commitments” in terms of international cooperation, States Parties should take steps to “protect” the right to food in other countries. The main questions from these statements

are set out below in the Conclusions section. Ultimately, it is unclear what types of companies are meant by “their own companies;” what actions the terms “prevent,” “legal or political means” or even “protect” in this context entail; and whether and when the term “other third parties” could include corporations. Further, given CESCR’s remarks seem to be part of discussions concerning international cooperation, it is unclear whether the Committee sees a link between international cooperation and regulation or other actions with extraterritorial effect.

At the very least, the Committee’s comments indicate that it considers that the Covenant *permits* regulation or other acts to influence corporate acts abroad, though the Committee suggests that any action to influence third parties’ acts abroad should accord with the UN Charter and other relevant principles of international law.

No other General Comments (including the three most recent General Comments) or any of the Concluding Observations examined have similar remarks to General Comments 12, 14 and 15. This raises questions as to the current thinking of the Committee on this issue as well as whether the Committee may have intended its remarks only to relate to the rights discussed in General Comments 12, 14 and 15.

H. Trends and Issues which would benefit from further elaboration

This report shows that the Committee has increasingly considered the issue of States Parties’ duties regarding corporate activities and that it believes a State Party has a duty to protect against interference with rights by corporations, at least in relation to violations affecting individuals within the State’s effective control. It considers that legislative, administrative, judicial and educative measures are important in this regard though it rarely mandates exactly how such measures should operate in practice. This lack of detailed guidance may be explained by the discretion afforded by the Covenant in terms of implementation.

Nonetheless, this report identifies several areas which are key to the SRSG’s mandate and where further elaboration or discussion by the Committee could assist States, business enterprises and individuals to better understand their rights and obligations. No judgment is made as to whether and how the Committee should consider all or some of these issues – they are highlighted as much to indicate how far the Committee has progressed on this issue as to point out areas which could potentially pose difficult questions for States Parties, businesses, individuals and civil society.

- 1. The scope of the duty to protect in relation to corporate activities:** While the Covenant does not explicitly include a general duty to protect, CESCR has expressed the view that the Covenant imposes three levels of obligations on States, including the duty to protect. What remains unclear is the exact nature and scope of this duty, including whether the concept of “due diligence,” which the Committee has only discussed concerning protection against domestic violence, should be applied to other types of third party acts. If CESCR does consider that the concept has wider application, further elaboration would be helpful on the extent of due diligence

required for a State Party to fulfill its duty, bearing in mind States Parties' discretion in terms of implementation.

2. **Reference to business enterprises and applicability of the duty to protect to all types of companies and rights:** Since 1999 the Committee has increasingly focused on State obligations to prevent business abuse, with growing references to specific types of businesses or sectors. Further guidance on other sectors and types of businesses would be useful.
3. **Responsibilities belonging to corporations:** the Committee has increasingly referred to business enterprises having some “**responsibility**” to respect and even to “**realize**” rights. The nature and extent of such responsibility remain unclear. In particular, it is uncertain what legal and practical consequences the Committee sees for any violation of business responsibilities, considering it confirms that corporations are “not bound by the Covenant.” It is also unclear whether CESCR considers that any business responsibilities go beyond a mere responsibility to “respect” rights, towards also “realizing” them and what this might mean in practice. Finally, it is uncertain what is expected of States Parties in facilitating the fulfillment of such responsibilities.
4. **Adjudication measures:** while the Committee has increasingly recommended specific measures to adjudicate private corporate acts, some issues, such as the sanctioning of legal persons (as opposed to individuals) or compensation, remain unclear. More guidance would be beneficial on whether the Committee considers that the duty to protect in business contexts requires States Parties to take steps targeted at the business enterprise itself or whether it is sufficient to target associated individuals.
5. **Duty to respect:** The Committee has said that States Parties could violate the duty to respect if they fail to consider human rights in their agreements with “multinational entities.” It would be helpful if the Committee could elaborate on this discussion, including whether the term “multinational entities” includes corporations and assuming this is the case, the steps a State Party could or should take in order to discover human rights impacts of agreements as well as desired or required actions if it learns of such impacts.
6. **State-owned or controlled enterprises:** The research did not uncover any explicit references to State-owned or controlled enterprises, though the Committee has referred to **State-owned facilities** when discussing the **duty to respect**. It is unknown whether the term “**State-owned facilities**” includes those run by corporations or whether the Committee’s comments relate at all to State-owned **enterprises**. In relation to the Committee’s guidance regarding corporate activities more generally, its broad references to “corporations” without discussing ownership suggest that its recommendations apply to all corporations, whether State or privately **owned**. More guidance would be helpful on this issue as well as how the Committee considers States Parties responsible for abuse by State-**controlled** enterprises. For example, does it consider that failure to prevent abuse by such enterprises could amount to a violation of the duty to protect even though such enterprises may not be considered third parties?

- 7. Territorial scope of the Covenant:** The Committee considers that a State Party's Covenant obligations apply to individuals who are within its "effective control" even if they are outside the State's national territory. However, it is unknown how the Committee might interpret a situation where a corporation acting on the State's behalf has effective control over individuals abroad. More guidance would be helpful on this issue, including when a State might be seen to have effective control over individuals through a corporation acting on its behalf.
- 8. Regulation with extraterritorial effect:** The Committee contemplates action in relation to corporate abuse affecting individuals outside a State Party's territory and effective control. However, the Committee has not frequently discussed this issue and the comments it has made could benefit from further clarification. It is particularly unclear what the Committee means by a State's "own companies" and therefore in relation to which types of companies a State should take steps to "prevent" abuse rather than "influence" activity through "legal or political means." It is also uncertain what the terms "prevent" and "legal or political means" entail and whether the Committee's comments apply only to the rights to food, health and water as discussed in General Comments 12, 14 and 15. Finally, it is difficult to know how the Committee's comments interrelate with the concept of international cooperation - for instance, does the Committee believe that extraterritorial regulation is intertwined with international cooperation and if so, could States be seen as violating their commitments in relation to international cooperation if they fail to regulate or at least take action to influence corporate acts abroad?

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ABBREVIATIONS

| | |
|--------|---|
| CAT | Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment; Committee against Torture |
| CEDAW | Convention on the Elimination of all Forms of Discrimination against Women; Committee on the Elimination of all Forms of Discrimination against Women |
| CERD | Committee on the Elimination of all Forms of Racial Discrimination |
| CESCR | Committee on Economic, Social and Cultural Rights |
| CMW | Committee on Migrant Workers |
| CRC | Convention on the Rights of the Child; Committee on the Rights of the Child |
| HRC | Human Rights Committee |
| ICCPR | International Covenant on Civil and Political Rights |
| ICERD | International Convention on the Elimination of all Forms of Racial Discrimination |
| ICESCR | International Covenant on Economic, Social and Cultural Rights |
| ICRMW | International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families |
| OHCHR | Office of the United Nations High Commissioner for Human Rights |
| SOE | State owned enterprise |
| SRSR | Special Representative of the Secretary-General |

INTRODUCTION

1. This report outlines the nature of States Parties' obligations in relation to activities of business enterprises under the International Covenant on Economic, Social and Cultural Rights (ICESCR), as elaborated by its treaty monitoring body, the Committee on Economic, Social and Cultural Rights (CESCR).

2. Like the other treaty specific reports in this series, this report is based on an examination of primary materials associated with ICESCR, namely the treaty provisions themselves; General Comments by the Committee and Concluding Observations on States' periodic reports.¹⁰

3. General Comments were examined in their entirety. However, due to time and resource constraints, examination of Concluding Observations was limited to Sessions 30 through 36 of CESCR.¹¹ Of the sessions included, research was further narrowed to only those Concluding Observations containing relevant search terms.

4. The search terms ranged from general terms such as "business," "company," "corporation," "protect" and "private" to more specific terms once it was discovered that CESCR regularly mentions particular types of companies and sectors. The main sources used for searching treaty documentation were the United Nations Treaty Bodies Database and the Human Rights Index of United Nations Documents, provided by the Faculty of Law – Institute of Public Law at the University of Bern.

5. This report focuses on CESCR's commentary on State duties regarding business enterprises, with reference to broader discussions about non-State actors where relevant. References to 'private actors, business enterprises or entities' or similar phrases using the word 'private' should be understood as references to non-State actors. Use of the word 'private' is not intended to denote the private/public distinction in the sense of private/proprietary companies versus publicly listed/owned companies. The phrase 'non-State actor' is understood as any actor that is not a State agent and that may indirectly or directly violate human rights (as enshrined in the relevant treaty).

6. This report focuses on States' duties to regulate and adjudicate corporate activities - it discusses corporate responsibilities only to the extent discussed by the Committee and is not intended as an examination of direct obligations for business enterprises under international law.

7. Part I of this report examines CESCR's discussion of the duty to protect generally while Part II looks at the Committee's references to business enterprises. Part III explores the steps that CESCR has recommended States Parties take in order to fulfill the duty to protect against harm by private entities, specifically focusing on measures to both

¹⁰ ICESCR does not yet have an individual complaints mechanism though a draft Protocol is currently under consideration. For more information, see <http://www.ohchr.org/english/bodies/cescr/>. Note that CESCR also holds days of general discussion on certain topics. As General Comments generally reflect the content of these discussion days, they are not separately discussed.

¹¹ See <http://www.ohchr.org/english/bodies/cescr/sessions.htm> for a complete list of CESCR's sessions.

regulate and adjudicate acts by business enterprises.¹² Part IV provides more detail on guidance from the Committee regarding specific types of corporate actors and rights. Part V discusses specific issues related to State-owned and controlled enterprises and privatization. Part VI looks at whether CESCR commentary to date on the Covenant's extraterritorial application could mean that States Parties' obligations may apply to situations where corporations acting on behalf of the State exercise effective control over individuals outside the State's national territory, while Part VII examines whether the Committee has interpreted the Covenant as requiring a State Party to regulate or take other action to prevent corporate abuses of rights belonging to individuals outside its national territory and effective control. Finally, Part VIII highlights trends and issues which would benefit from further clarification. Annex 1 contains the substantive articles of ICESCR, Annex 2 lists States Parties and Annex 3 provides a list of CESCR's General Comments.

PART I - THE DUTY TO PROTECT

8. Similar to other treaty bodies, CESCR focuses on the duty to protect when discussing State duties regarding private or corporate activities. While a general mention of the duty to protect cannot be found as such in the Covenant, an examination of the Committee's commentary confirms that it considers States parties to have duties to prevent and punish abuse by non-State actors, including corporations.

A. The Covenant, its interpretation by the Committee, and the duty to protect

9. Unlike Art.2(1) of the ICCPR, the Covenant does not expressly contain a general duty to "ensure" rights, nor does it mention a general duty to protect. Arts. 10 and 15 contain the only explicit references to "protection." Art. 10 provides for special protection for the family, mothers and children and in particular, directs States to protect children from economic exploitation and to legislate against harmful working conditions. Under Art. 15, States recognize the right to benefit from the protection of interests resulting from scientific, literary or artistic productions.

10. CESCR has nevertheless interpreted the Covenant as imposing three levels of duties: the duties to respect, protect and fulfill. Since 1999, the Committee has increasingly identified these duties in its General Comments, such as those relating to the rights to health, to water and to work.¹³ Most of these General Comments reflect the

¹² This focus is in line with para. (b) of the SRSG's mandate: see Preface for a discussion of the understanding of "regulate" and "adjudicate" for the purposes of this report.

¹³ General Comment 14 on the right to the highest attainable standard of health [hereinafter General Comment 14], para. 33; General Comment 15 on the right to water [hereinafter General Comment 15], para. 20; and General Comment 18 on the right to work [hereinafter General Comment 18], para. 22. See also General Comment 12 on the right to adequate food [hereinafter General Comment 12]; General Comment 13 on the right to education [hereinafter General Comment 13]; General Comment 16 on the equal right of men and women [hereinafter General Comment 16]; and General Comment 17 on the right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which s/he is the author [hereinafter General Comment 17]. All General Comments are available in *Compilation of General Comments and General Recommendations adopted by Human Rights Treaty Bodies*, U.N. Doc HRI/GEN/1/Rev.8 (2006).

Committee's view that States have a duty to protect against interferences by third parties. In this regard, the Committee has referred to the need to prevent and punish abuse by the "private sector," "private actors" and "groups" as well as specifically discussing corporations in some instances.¹⁴

11. To illustrate with respect to the right to work, the Committee provides that the obligation to protect requires States to prevent "third parties from interfering with the enjoyment of the right to work."¹⁵ The Committee goes on to say that a State Party could violate the right to work through omitting to regulate the activities of individuals, groups or corporations.¹⁶ Further, the duty to protect includes States prohibiting forced or compulsory labor perpetrated by "non-state actors."¹⁷

12. Earlier General Comments also consider that States Parties could violate their Covenant obligations if they fail to take steps to protect against third party interference.¹⁸ These include General Comment 16,¹⁹ General Comment 15,²⁰ General Comment 14,²¹ General Comment 13,²² and General Comment 7.²³

13. More specifically, the Committee has said that it is difficult to see how the undertaking in Art. 2(2) to guarantee that Covenant rights are exercised without discrimination could be fulfilled without States taking steps to prevent and punish State and private based discrimination.²⁴ CESCR has also made similar comments about Art. 3, in which States undertake to ensure the equal rights of men and women to the enjoyment of Covenant rights.

B. Progressive realization

14. The concept of "progressive realization" should be briefly discussed with respect to possible limitations to the duty to protect. Art. 2(1) of ICESCR provides that States Parties undertake to "take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures."

15. In the context of this report, an examination of this provision poses the question of whether the limitations based on progressive realization and resource availability

¹⁴ *PART II – References to business enterprises* below, p.20, explores in more detail the Committee's comments about corporate activities.

¹⁵ General Comment 18, para. 22

¹⁶ *Ibid.*, para. 32

¹⁷ *Ibid.*, para. 25

¹⁸ See e.g. General Comment 13, para. 59; and General Comment 14, para. 51

¹⁹ General Comment 16, para. 19 & 20

²⁰ General Comment 15, para. 15

²¹ General Comment 14, para. 19, 26, 33, 48, 49 & 51

²² General Comment 13, para. 47 & 50

²³ General Comment 7 on forced evictions [hereinafter General Comment 7], para. 8, 9 & 15

²⁴ General Comment 3 [hereinafter General Comment 3] on the nature of States Parties' obligations

affect the duty to protect: could a State point to these factors to justify failure to protect against non-State abuse?

16. The Committee believes that States Parties have some immediate obligations to respect, protect and fulfill rights using all appropriate means, even if full realization of rights may be achieved progressively. In particular, States have to take steps to realize rights and not discriminate in any case. There is also a strong presumption that retrogressive measures are not permissible.

17. In addition, States must meet what the Committee has called ‘core obligations’ specific to each right, which are of immediate effect.²⁵ Many of these core obligations include actions related to third parties and protection against abuses by them. For instance, General Comment 18 on the right to work underlines that core obligations include “[avoiding] any measure that results in discrimination and unequal treatment in the private and public sectors of disadvantaged and marginalized individuals and groups or in weakening mechanisms for the protection of such individuals or groups.”²⁶ In General Comment 17, protection of the moral and material interests of authors, and of their rights, is mentioned several times among the core obligations. For instance, States should “protect the rights of authors to be recognized as the creators of their scientific, literary and artistic productions and to object to any distortion, mutilation or other modification of, or other derogatory action in relation to, their productions that would be prejudicial to their honor or reputation.”²⁷

18. While the Committee recognizes that the obligation to “take steps” is subject to the State’s “maximum available resources,” it has also said that a State will be unable to attribute a failure to satisfy minimum obligations based on available resources unless it can show it has used “every effort” to use its resources to fulfill those obligations.²⁸

19. All these comments suggest that the concept of progressive realization will not absolve a State of its obligations, including in relation to the duty to protect.

C. Due diligence

20. The Committee has discussed the concept of “due diligence” with respect to the State’s duty to protect against domestic violence. It has said that “States parties must take appropriate measures to eliminate violence against men and women and act with due diligence to prevent, investigate, mediate, punish and redress acts of violence against them by private actors.”²⁹

21. The research did not uncover further explanation of the concept. Thus it is not clear if the Committee considers it to be relevant to other rights and if so, what steps

²⁵ See generally General Comment 3

²⁶ General Comment 18, para. 31

²⁷ General Comment 17, para. 39. See also General Comment 14, para. 43, and General Comment 15, para. 37

²⁸ General Comment 3, para. 10

²⁹ General Comment 16, para. 27

States must take to establish that they have acted with due diligence.³⁰ Accordingly, more guidance from the Committee on this issue would be welcome and could serve to confirm that States Parties' obligations regarding the duty to protect are those of means rather than result. It could illuminate whether CESCR believes, like the Human Rights Committee, that to breach the duty to protect there must be some act or omission by the State that evidences a failure to exercise *due diligence* to prevent, punish, investigate or redress third party interference with rights, as well as how this might work in practice.³¹

D. Other duties

22. As suggested above, the Committee is far more likely to discuss State regulation of corporate activities as part of the duty to protect, somewhat unsurprising given that by its nature, that duty requires protection against third party interference. However, it also seems that the Committee has referred to corporate activities in relation to the duty to respect. General Comment 18 provides that States Parties can violate the duty to respect if they fail to take into account their Covenant obligations "when entering into bilateral or multilateral agreements with other States, international organizations and other entities such as multinational entities."³² It is assumed that the term "multinational entities" includes corporations. Thus this is not so much a direction to regulate corporate activities as a confirmation that States should consider rights in all dealings with corporate actors.

23. General Comments also direct States to ensure that their participation in international organizations and "international agreements" adequately considers Covenant rights.³³ For example, General Comment 18 considers that States Parties should pay greater attention in the International Monetary Fund, World Bank and regional development banks to influence lending policies, credit agreements and structural adjustment programs to protect the right to work.³⁴ It is foreseeable that as part of their participation in such organizations, States Parties might need to consider the impact of corporate activities on rights.

³⁰ The concept of "due diligence" as applied to human rights law is generally associated with the Inter-American Court of Human Rights' decision in *Velasquez Rodriguez* which confirmed that States could be held responsible for private acts where they fail to act with "due diligence" to prevent or respond to violations. *Velasquez Rodriguez Case*, Judgment of July 29, 1988, Inter-Am.Ct.H.R. (Ser. C) No. 4 (1988) para. 166 - 174. The case concerned violations by State sponsored forces but the opinion notes that States have similar obligations to prevent or respond to private acts not directly attributable to the State - see para. 172 in particular.

³¹ See Part I of the ICCPR report in this series, likely available late May at <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>. The HRC's commentary suggests that it believes that violations of the duty to protect would not follow simply from abuse by a private actor per se but from the State's failure to act with due diligence to prevent, punish, investigate or redress such abuse.

³² General Comment 18, para. 33. See also General Comment 12, para 50.

³³ See e.g. General Comment 17, para. 56; General Comment 15, para. 35 & 36; General Comment 13, para. 56; General Comment 12, para. 36; Note that General Comments regularly give directions as to how international organizations themselves can act to safeguard rights but this discussion is beyond the scope of this report. See e.g. General Comment 18, para. 53; General Comment 15, para. 60; General Comment 12, para. 41; General Comment 4 on the right to adequate housing [hereinafter General Comment 4], para. 19

³⁴ General Comment 18, para. 30

24. The Committee has also said that States can be found to breach the duty to respect if State-owned facilities interfere with rights.³⁵ And, as set out in Part III below, the Committee has also discussed the importance of the duty to promote rights in the context of corporate activities.

PART II - REFERENCES TO BUSINESS ENTERPRISES

25. This Part explores whether the Covenant refers to business enterprises, other non-State actors or certain contexts in ways that suggest necessary regulation or adjudication of business activities. It also looks at examples of the Committee discussing corporate activities and other non-State actors where relevant.

A. Treaty provisions

26. There are no explicit references to business enterprises in the Covenant. There are, however, several references to non-State actors in the context of their impact on rights. Preambular paragraph (PP) 5 recognizes that individuals have duties to each other and their communities. It is identical to PP 5 in the ICCPR. Similarly, Art. 5(1) is identical to Art. 5(1) of the ICCPR — both prevent using the Covenant to imply a right for States, groups or persons to destroy any Covenant rights or limit them to a greater extent than permitted by the Covenant.³⁶ Of more relevance to State duties to regulate non-State actors' behavior is Art. 13(3), which provides that States undertake to respect parents' rights to send their children to non-public schools, "which conform to such minimum educational standards as may be laid down or approved by the State."³⁷

27. Other provisions do not specifically mention non-State actors but deal with particular social contexts (such as the labor market, occupational health and safety and the provision of health services) that closely involve private actors, including business enterprises. It is thus difficult to understand how a State Party could take steps towards realization of these rights without regulation and adjudication of such actors.

28. As explained further below, such provisions include Arts. 6 – 8 on workers' rights, Art. 10 on special protection for the family, mothers and children and Art. 12 on the right to the highest attainable standard of health, which among other things, requires steps to prevent, treat, and control occupational diseases. The Committee has interpreted all of these provisions as requiring States to regulate and adjudicate acts by both private and public employers in order to guarantee rights. And as stated above, the Committee has interpreted States Parties' obligations as generally including a duty to protect against third party abuse.

³⁵ See *Part V – State controlled enterprises and Privatization*

³⁶ The research has not uncovered any commentary by CESCR on this provision. Commentators who have examined it in light of the ICCPR suggest that it was simply intended to prevent individuals or groups from relying on any rights they might have under the Covenant to abuse the rights of others. See Nowak, *UN Covenant on Civil and Political Rights: CCPR Commentary* (2nd rev ed, 2005): 111-119. [0]

³⁷ The treaty, as well as CESCR's commentary, contains numerous references to private educational institutions, such as in General Comment 13 on the right to education. This report does not systematically refer to private educational institutions, as these greatly differ from other types of businesses and were considered not to fall within the scope of the SRSG's mandate.

B. CESCR Commentary

29. This section includes both direct references to business (such as references to “private enterprises,” “corporations,” manufacturing industries, etc.) and general references to private actors which, unless stated otherwise, are taken to include business enterprises.

Reference to corporations

30. Several General Comments explicitly refer to corporations. For instance, in General Comment 18, CESCR considers that a violation of the duty to protect includes a failure to “regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to work of others...”³⁸

31. In General Comment 15, CESCR’s view is that the duty to protect includes prevention of third party interference with enjoyment of the right to water.³⁹ It notes that “third parties” include “corporations and other entities as well as agents acting under their authority.”⁴⁰

32. As outlined below, Concluding Observations tend to refer to particular types of industries or sectors, instead of specifically mentioning corporations. Only one general reference to business enterprises was found in the research sample: in the Concluding Observations for Luxembourg, the Committee expressed concern for prisoners working for “private enterprises.”⁴¹ The Committee recommended that prisoners only work for private enterprises in consensual situations “close to those of a free working relationship as regards wages and social security.”⁴²

Specific types of industries

33. As detailed in Part IV, CESCR has discussed specific types of companies or industries in both General Comments and Concluding Observations. For instance, in General Comment 14, CESCR considers that breaches of the duty to protect the right to health could include failing to (a) regulate the activities of **corporations** to prevent them from violating the right to health; (b) protect consumers and workers from detrimental practices by **employers and food/medicine manufacturers**; and (c) “enact or enforce laws to prevent the pollution of water, air and soil by **extractive and manufacturing industries**.”⁴³

34. CESCR has also referred to States Parties’ obligations to protect against **third parties carrying out forced evictions** without appropriate safeguards,⁴⁴ and to prevent both **private and public landlords** abusing rights related to housing.⁴⁵ And General

³⁸ General Comment 18, para. 35

³⁹ Note that the Committee recognizes the right to water as part of Art.11(1) on the right to an adequate standard of living and Art.12 on the right to the highest standard of physical and mental health. See General Comment 15, para. 3

⁴⁰ *Ibid.*, para. 23, 24 & 44(b)

⁴¹ Concluding Observations on Luxembourg E/C.12/1.Add.86, para. 20

⁴² *Ibid.*, para. 32

⁴³ General Comment 14, para. 51

⁴⁴ General Comment 7, para. 9

⁴⁵ *Ibid.*, para. 10 & 19; General Comment 4, para. 8 & 17

Comment 5 on persons with disabilities considers that States Parties should require “**private employers, private suppliers of goods and services**, and other non-public entities” to abide by non-discrimination and equality norms through legislative and other measures.⁴⁶

35. Several Concluding Observations single out particular sectors as areas of concern in relation to child labor, such as the **agricultural and industrial sectors**,⁴⁷ **small-scale mining and stone-crushing operations**,⁴⁸ **mining operations**,⁴⁹ and the **sex industry**.⁵⁰ The Committee has also discussed the **construction sector**⁵¹ and the **informal sector**⁵² with respect to working conditions and wages. In relation to regulation to prevent occupational accidents, the Committee has expressed concern about hazardous practices in particular sectors and industries in some States including the “**mining and nuclear sectors**,”⁵³ “**the fishing and offshore petroleum industries**,”⁵⁴ and the “**banana-growing and small mines sectors**.”⁵⁵

36. As discussed more in Part V, Concluding Observations discuss the need for States to regulate **private service providers** carrying out government-like functions, including private social security schemes and private health-care providers.⁵⁶

37. Finally, Concluding Observations have discussed activities related to extractives or major infrastructure projects which affect rights, particularly those held by indigenous communities.⁵⁷ In various Concluding Observations, the Committee has expressed concern about such projects, has called for rights to be safeguarded, environmental laws to be respected, and has required compensation for affected parties in case of violations.⁵⁸ The Committee has also emphasized the importance of consultations with affected groups, especially indigenous peoples, before States authorize commercial activities. It is hard to understand how States could comply with all of these requirements without regulating and adjudicating the acts of business enterprises involved in such projects.

⁴⁶ General Comment 5 on persons with disabilities [hereinafter General Comment 5], para. 11

⁴⁷ Concluding Observations on Mexico E/C.12/MEX/CO/4, para. 22

⁴⁸ Concluding Observations on Zambia E/C.12/1/Add.106, para. 25 & 47

⁴⁹ Concluding Observations on China E/C.12/1/Add.107, para. 23

⁵⁰ Concluding Observations on Chile E/C.12/1/Add.105, para. 9 & 47; See also Concluding Observations on Spain E/C.12.1/Add.99, para. 33, where the Committee asked the State to report on measures taken to combat trafficking and sexual exploitation.

⁵¹ Concluding Observations on China E/C.12/1/Add.107, para. 25

⁵² See Concluding Observations on: Mexico E/C.12/MEX/CO/4, para. 30; Slovenia E/C.12/SVN/CO/1, para. 15 & 30; Uzbekistan E/C.12/UZB/CO/1, para. 45; Serbia & Montenegro E/C.12/1/Add.108, para. 17; Italy E/C.12/1/Add.103, para. 19 & 40; Chile E/C.12/1/Add.105, para. 43; Kuwait E/C.12/1/Add.98, para. 17 & 37; Spain E/C.12/1/Add.99, para. 30; Russian Federation E/C.12/1/Add.94, para. 45

⁵³ Concluding Observations on Slovenia E/C.12/SVN/CO/1, para. 31; See also Concluding Observations on China E/C.12/1/Add.107, para. 24, in relation to the mining sector.

⁵⁴ Concluding Observations on Norway E/C.12/1/Add.109, para. 13 & 31. See also Concluding Observations on Iceland E/C.12/Add.89, para. 14 & 23, in relation to the fishing industry.

⁵⁵ Concluding Observations on Ecuador E/C.12/1/Add.100, para. 41

⁵⁶ See e.g. Concluding Observations on: Zambia E/C.12/1/Add.106, para. 44; Chile E/C.12.1/Add.105, para. 57; Luxembourg E/C.12/1/Add.86, para. 35

⁵⁷ See e.g. Concluding Observations on Ecuador, E/C.12/1/Add.100, para. 12

⁵⁸ See e.g. Concluding Observations on: Mexico E/C.12/MEX/CO/4, para. 10 & 28; China E/C.12/1/Add.107, para. 31; Canada E/C.12/CAN/CO/4 & E/C.12/CAN/CO/5, para. 38

Employers and the labor market

38. As described above, the Committee mentions particular industries as part of its discussions about work rights. It also generally refers to “**employers**” and the “**labor market**” when discussing the duty to protect against abuse of work rights. General Comment 18 on the right to work provides the most detailed remarks and discusses the need to regulate and adjudicate employers’ abuse.⁵⁹

39. Similar to the other general terms in this section, the Committee does not necessarily refer to business enterprises when it speaks of employers. However, it seems uncontroversial that directions regarding employers’ behavior generally apply to both private and public employers, including business enterprises.

40. In discussing States’ duties regarding the activities of employers or the labor market more generally, the Committee focuses on the Covenant rights relating to employment to express concern about four main areas:⁶⁰ (a) forced and child labor; (b) discrimination in the workplace, including equal participation in decision-making and issues related to equal work for equal pay; (c) safe working conditions and (d) the right to form and join trade unions. Part IV below explores these comments in more detail.

Third parties

41. Finally, the Committee uses terms such as “**non-state actors**,” “**third parties**,” “**private sphere**” and “**groups**” in numerous General Comments when discussing which actors States must regulate as part of the duty to protect. For instance, CESCR has suggested that the right to food should be protected from interference by “third parties.”⁶¹ It is assumed that these terms implicitly include corporations. In fact, General Comment 15 specifically defines “third parties” to include “individuals, groups, corporations and other entities as well as agents acting under their authority.”⁶²

PART III - MEASURES STATES ARE REQUIRED TO TAKE

A. Regulation

42. Art. 2(1) provides States with latitude as to the means they may use to take steps towards progressively achieving the Covenant’s full realization. The Covenant says that “all appropriate means” should be used, “including particularly the introduction of legislative measures.” This section examines any guidance provided by CESCR on what this provision and the rest of the Covenant might require of States in terms of regulating corporate abuse.

43. The Committee confirms in General Comment 3 that the phrase “all appropriate means” should be given “its full and natural meaning” to include a variety of feasible

⁵⁹ Other examples include General Comment 16, para. 23 – 26; General Comment 14, para. 15 & 51; General Comment 13, para. 50; General Comment 6 on the economic, social and cultural rights of older persons [hereinafter General Comment 6], para. 22 – 24; General Comment 5, para. 11, 20 – 27

⁶⁰ These rights include those contained in Arts. 3, 6, 7, 8, 10 & 12

⁶¹ General Comment 12

⁶² General Comment 15, para. 23

measures, provided they are appropriate.⁶³ General Comment 9 reiterates that States have flexibility in how they implement the Covenant.⁶⁴ The Committee will ultimately decide whether the “means” taken by States to protect rights are appropriate. However, the Committee makes it clear that all measures should aim at ensuring protection as soon as possible.⁶⁵

44. Thus it is unsurprising that the Committee does not always expressly refer to legislative measures when discussing protection against third party abuse but instead refers more generally to the need for the State to “ensure” certain rights, to “control” certain activities or to “take measures to prevent”⁶⁶ certain actions.⁶⁷ In some cases, it simply notes that the State has an obligation to “regulate” third parties.⁶⁸

Legislative measures

45. Nevertheless, the Committee regularly confirms the importance of legislative measures. In fact, General Comments consistently suggest that steps towards the realization of rights necessitate legislative measures, including regulation of third party activities. For instance, the Committee has remarked that “in many instances legislation is highly desirable and in some cases may even be indispensable. For example, it may be difficult to combat discrimination effectively in the absence of a sound legislative foundation for the necessary measures. In fields such as health, the protection of children and mothers, and education, as well as in respect of the matters dealt with in articles 6 to 9, legislation may also be an indispensable element for many purposes.”⁶⁹

46. Further, the Committee considers that States should forbid all forms of forced and child labor through legislation, and should regulate domestic and agricultural work to ensure that such workers receive appropriate levels of protection.⁷⁰

47. The Committee has also specifically advocated legislative measures in relation to the right to water. General Comment 15 refers to the need to restrain third parties, including corporations, from interfering with the right to water and provides that a State could violate the duty to protect by failing to “enact or enforce laws to prevent the contamination and inequitable extraction of water.”⁷¹

⁶³ General Comment 3, para. 4

⁶⁴ General Comment 9 on the domestic application of the Covenant [hereinafter General Comment 9], para. 1

⁶⁵ General Comment 18, para. 37; General Comment 17, para. 47

⁶⁶ General Comment 14, para. 35; See also General Comment 13, para. 47, 50, 58 & 59; General Comment 12, para. 15, 19 & 27

⁶⁷ See e.g. Concluding Observations on: Uzbekistan E/C.12/UZB/CO/1, para. 19; China E/C.12/1/Add.107, para. 52, 61; Azerbaijan E/C.12/1/Add.104, para. 20; Ecuador E/C.12/1/Add.100, para. 41; Kuwait E/C.12/1/Add.98, para. 36; Guatemala E/C.12/1/Add.93, para. 33; Republic of Moldova E/C.12/1/Add.91, para. 41; Russian Federation E/C.12/1/Add.94, para. 46

⁶⁸ See e.g. General Comment 14, para. 51

⁶⁹ General Comment 3, para. 3; on the importance of legislation, see also General Comment 7, para. 8 & 9; General Comment 5, para. 16

⁷⁰ General Comment 18, para. 9, 11, 23 & 25

⁷¹ General Comment 15, para. 44(b)

48. In some instances, the Committee sees retrogressive legislative measures as violations of the Covenant — such as the abrogation of legislation protecting against unlawful dismissal or forced labor.⁷²

49. While CESCR's preference is for direct incorporation of the Covenant into national law, it recognizes that States implement rights through a variety of mechanisms and instruments.⁷³ Even where the Committee clearly supports legislative measures, it acknowledges that States have some discretion in deciding the scope and content of such measures. Accordingly, General Comments on Concluding Observations rarely contain detailed directions as to the required content of legislation designed to protect rights.

50. However, CESCR stresses that national laws should be based on accountability and transparency, and should ensure equal access to protection measures.⁷⁴ The Committee has also suggested that civil society and the private sector (among others) should be involved in the adoption of legislation which establishes national mechanisms to monitor implementation of rights.⁷⁵

51. Finally, the Committee clearly believes that legislation should be enforced – it is insufficient to simply have legislation “on the books.” In particular, the Committee notes a clear link between failure to implement labor legislation and poor working conditions.⁷⁶ As discussed below, the Committee believes that monitoring third parties is necessary to ensure they comply with relevant regulations.

Administrative mechanisms

52. There are situations where specific regulatory measures apart from legislation are contemplated, such as administrative measures. For example, General Comment 17 recognizes that prevention of unauthorized use of productions could occur through legislation or collective administration of authors' rights.⁷⁷ General Comment 16 highlights that measures to fulfill the duty to protect include establishing administrative mechanisms, including public institutions, to protect women against discrimination by private actors, including providing remedies for violations.⁷⁸ General Comment 7 requires procedural protections in relation to forced evictions, including an opportunity for genuine consultation, adequate notice for affected parties, presence of government representatives at evictions carried out by non-state actors and provision of legal remedies.⁷⁹

⁷² General Comment 18, para. 34; General Comment 17, para. 42; General Comment 15, para. 42; General Comment 14, para. 30 – 32, 48

⁷³ General Comment 9, para. 8

⁷⁴ General Comment 17, para. 47

⁷⁵ General Comment 18, para. 38

⁷⁶ China E/C.12/1/Add.107, para. 24, 50 & 53

⁷⁷ General Comment 17, para. 31

⁷⁸ General Comment 16, para. 19 & 38. Para. 38 is particularly relevant as it requires the establishment of administrative institutions such as ombudspersons, NHRIs etc. See also General Comment 15, para. 28(i)

⁷⁹ General Comment 7, para. 15

Regulation related to meaningful participation

53. The Committee may contemplate some form of regulation of corporations when it speaks of States Parties' obligations to facilitate meaningful participation of individuals in decisions affecting them.⁸⁰ For example, General Comment 15 provides that before actions are taken by the State or "any other third party" which interfere with an individual's right to water, the State must ensure that "such actions are performed in a manner warranted by law, compatible with the Covenant, and that comprise[s] (a) opportunity for genuine consultation with affected parties; (b) timely and full disclosure of proposed measures; (c) reasonable notice of proposed actions; (d) legal recourse and remedies for affected parties; and (e) legal assistance for obtaining legal remedies."⁸¹ If such requirements are necessary in relation to both State and third party actions, it would seem that States Parties must regulate relevant third parties in some way to ensure that the requirements are met in relation to their projects.

54. Concluding Observations also discuss the importance of informed consent in relation to extractives and major infrastructure projects.⁸² While the Committee does not specifically mention that business enterprises require regulation in this regard, it seems difficult to see how the State could ensure such consultation and consent occurs without doing so. Further, while they did not explicitly mention consent or meaningful participation, the Concluding Observations for Ecuador did recommend regulation of transnational companies involved in extractives projects which negatively impact on indigenous communities – it said legislative and administrative measures should be implemented "to avoid violations of environmental laws and rights by transnational companies."⁸³

National policies and action plans

55. Finally, when the Committee makes general statements that States require "systems of protection" or "national plans of action" for certain rights, it suggests a broad range of legal, administrative and other regulatory measures may be used to establish that system.⁸⁴ Often, the implication is that such policies and measures should involve private actors, including business enterprises, in their creation, as well as target private sector behavior where necessary. For example, General Comment 12 provides that States should adopt a "framework law" in relation to the right to adequate food. It says that such

⁸⁰ See General Comment 17, para. 34, for another example of "other measures," such as providing persons with the necessary information to protect their rights. Para. 35 speaks of States conducting human rights impact assessments for legislation to ensure that rights will continue to be protected. Para. 46 requires States to take steps to ensure individuals effectively participate in decision-making processes regarding their rights. See also General Comment 16, para. 21; General Comment 15, para. 28, which provides that integrated strategies may include ensuring proposed developments do not interfere with water access and assessing whether certain actions will impinge on water availability. Para. 48 of the same General Comment requires individuals to be given access to information concerning water services, including situations where information is held by third parties (including corporations).

⁸¹ General Comment 15, para. 56

⁸² See generally *Part IV - Business and rights specific information*

⁸³ Concluding Observations on Ecuador E/C.12/1.Add.100, para. 12 & 35. See *Part IV - Business and rights specific information*

⁸⁴ General Comment 18, para. 13, 18, 26 & 31; General Comment 14, para. 3; General Comment 12, para. 21 – 26, provide that a food strategy should address issues related to production, processing, distribution, marketing and consumption of food.

a law should not only include desired goals but also how they may be achieved, with reference to “the intended collaboration with civil society and the private sector...”⁸⁵

56. General Comment 18 also speaks of States Parties establishing “national plans of action” as part of legislative measures to implement the right to work. The Committee refers to targets for implementation and says that measures should provide for “the involvement of civil society, including experts on labor issues, the private sector and international organizations.”⁸⁶ The Committee also suggests that the State should develop mechanisms to identify the main areas affecting compliance with legislation and facilitate the adoption of corrective legislative and administrative measures.⁸⁷

57. General Comment 14 requires States to “adopt measures against environmental and occupational health hazards,” including national policies to minimize occupational accidents and diseases, and to eliminate pollution of air, water and soil.⁸⁸ General Comment 5 requires States to “develop policies which promote and regulate flexible and alternative work arrangements that reasonably accommodate the needs of disabled workers”⁸⁹ and asks States to ensure that public transportation is accessible to persons with disabilities to ensure they are able to travel to places of employment.⁹⁰

B. Monitoring

58. The Committee considers that States Parties must establish effective monitoring mechanisms in order to enforce any regulation and ensure third parties do not interfere with rights. In this respect, the Committee has made particularly clear recommendations in relation to the employment context, and when companies provide government services.⁹¹ For example, General Comment 16 requires States Parties to “monitor compliance by the private sector with national legislation on working conditions through an effectively functioning labor inspectorate.”⁹² In General Comment 15, the Committee considers that States Parties should have an “effective regulatory system” to prevent third parties from interfering with the right to water; this system should include independent monitoring.⁹³

59. Numerous Concluding Observations ask States to establish effective inspection mechanisms with adequate resources to monitor third party compliance and impose sanctions on offenders, especially in relation to labor rights.⁹⁴ For example, the Concluding Observations for Bosnia and Herzegovina expressed concern that employers’

⁸⁵ See e.g. General Comment 12, para. 29. See also General Comment 5, para. 12, which contains broad instructions to States to “temper, complement, compensate for or override” market forces which produce unsatisfactory results for persons with disabilities.

⁸⁶ General Comment 18, para. 38

⁸⁷ General Comment 18, para. 45; General Comment 12, para. 31

⁸⁸ General Comment 14, para. 36

⁸⁹ General Comment 5, para. 22

⁹⁰ General Comment 5, para. 23

⁹¹ General Comment 17, para. 20; General Comment 16, para. 41

⁹² General Comment 16, para. 24

⁹³ General Comment 15, para. 24

⁹⁴ See e.g. Concluding Observations on Mexico E/C.12/MEX/CO/4, para. 32, and China E/C.12/1/Add.107, para. 53.

breaches were not being addressed because of an inadequate labor inspection mechanism.⁹⁵ The Committee recommended that the State ensure that “labor inspection units are sufficiently staffed and resourced in order to enable them to effectively combat abuses.”⁹⁶ A sample of other similar recommendations is provided below:⁹⁷

In the **Concluding Observations for China**, CESCR recommended that the State provide “sufficient resources to the labor inspectorate to enable regular and independent inspections of safety and health conditions in all sectors and to ensure that employers who fail to observe safety regulations are duly sanctioned.”⁹⁸

The **Concluding Observations for Zambia** strongly urged the State to “improve its monitoring mechanisms” in order to effectively combat child labor in small-scale mining operations and stone-crushing.⁹⁹

The **Concluding Observations for Spain** urged the State to “take effective measures to prevent accidents in the workplace, including by strengthening the labor inspectorate in order to ensure that employers who fail to observe safety regulations are sanctioned.”¹⁰⁰

60. Further, General Comment 10 suggests that National Human Rights Institutions (NHRIs) can play a crucial role in “promoting and ensuring the indivisibility and interdependence of all human rights.”¹⁰¹ It then lists the types of activities NHRIs may carry out in this regard, including monitoring compliance with rights,¹⁰² and “examining complaints alleging infringements of applicable economic, social and cultural rights standards within the state.”¹⁰³ The broad wording used in these comments suggests that the Committee encourages NHRIs to monitor both non-State and State abuses - within the limits of their mandate.

C. Adjudication

61. As the Covenant does not have an article requiring effective remedies equivalent to Art. 2(3) of the ICCPR, it is necessary to look to CESCR’s guidance on this issue, particularly in relation to violations involving business enterprises. At the outset, it is clear that the Committee requires States to adjudicate abuse by third parties, including corporations, not least because such adjudication generally indicates that any applicable

⁹⁵ Concluding Observations on Bosnia & Herzegovina E/C.12/BIH/CO/1, para. 15

⁹⁶ *Ibid.*, para. 36

⁹⁷ See also Concluding Observations on: Uzbekistan E/C.12/UZB/CO.1, para. 51; Malta E/C.12/1/Add.101, para. 16; Ecuador E/C.12/1/Add.100, para. 41; Guatemala E/C.12/1/Add.93, para. 15 & 33; Russian Federation E/C.12/1/Add.94, para. 47; Malta E/C.12/1/Add.101, para. 16; Ecuador E/C.12/1/Add.100, para. 41; Kuwait E/C.12/1/Add.98, para. 35; Guatemala E/C.12/1/Add.93, para. 33; Russian Federation E/C.12/1/Add.94, para. 47

⁹⁸ Concluding Observations on China E/C.12/1/Add.107, para. 53

⁹⁹ Concluding Observations on Zambia E/C.12/1/Add.106, para. 47; see also para. 44 which recommended stronger monitoring of private social security schemes and funds.

¹⁰⁰ Concluding Observations on Spain E/C.12/1/Add.99, para. 31

¹⁰¹ General Comment 10 on the role of national human rights institutions [hereinafter General Comment 10], para. 3

¹⁰² *Ibid.*, at para. 3 specifically (f) & (g)

¹⁰³ *Ibid.*, at para. 3(g)

regulations are being enforced.¹⁰⁴ In this respect, the Committee encourages incorporation of the Covenant into national law so that adjudication is based on Covenant rights.¹⁰⁵

The obligation to provide effective remedies

62. According to CESCR, several articles of the Covenant imply States Parties are obliged to provide effective remedies.

63. The Committee views effective remedies as part of the State's duty to take steps by all appropriate means with a view to progressively achieving the full realization of Covenant rights under Art. 2(1). It has noted that "a State party seeking to justify its failure to provide any domestic legal remedies for violations of economic, social and cultural rights would need to show either that such remedies are not 'appropriate means' within the terms of article 2.1 of the Covenant or that, in view of the other means used, they are unnecessary. It will be difficult to show this and the Committee considers that, in many cases, the other 'means' used could be rendered ineffective if they are not reinforced or complemented by judicial remedies."¹⁰⁶

64. The Committee has confirmed on a number of occasions that it considers that victims must have access to effective "judicial or other appropriate remedies" at the national level.¹⁰⁷ For example, the Committee has stressed with respect to Art. 15(1)(c) that as part of their core obligations, States should provide equal access to administrative, judicial and other remedies for violations of rights relating to scientific, literary or artistic productions.¹⁰⁸ General Comment 4 provides that the right to adequate housing requires remedies such as the right to appeal a planned eviction or demolition, the right to obtain compensation after an illegal eviction and the right to complain about illegal actions by public or private landlords.¹⁰⁹ In order to facilitate adequate adjudication, the Committee regularly asks the judiciary, other law enforcement authorities and administrative officers to consider the Covenant rights in carrying out their functions.¹¹⁰

65. Similar to its guidance regarding regulation, the Committee does not often specify the particular type of remedy required in any given situation - it is more common to see broad recognition that protection of rights requires effective access to judicial, administrative or other remedies.¹¹¹ The Committee makes it clear that it believes States Parties must take steps to ensure that remedies are effective, enforced and physically and economically accessible.¹¹²

¹⁰⁴ See e.g. General Comment 17, para. 43 & 45; General Comment 16, para. 21 & 41; General Comment 15, para. 43; General Comment 14, para. 49

¹⁰⁵ See e.g. General Comment 18, para. 49

¹⁰⁶ See General Comment 9, para. 3

¹⁰⁷ See e.g. General Comment 18, para. 48; General Comment 17, para. 51; General Comment 15, para. 55; General Comment 14, para. 59; General Comment 12, para. 32; General Comment 9, para. 2

¹⁰⁸ General Comment 17, para. 39

¹⁰⁹ General Comment 4, para. 17

¹¹⁰ See e.g. General Comment 18, para. 50; General Comment 17, para. 21; General Comment 15, para. 58; General Comment 14, para. 61; General Comment 12, para. 34 ; General Comment 9, para. 14 & 15

¹¹¹ See e.g. General Comment 17, para. 51

¹¹² See e.g. General Comment 17, para. 18(b) & 51; General Comment 7, para. 15; General Comment 9, para. 9

66. CESCR has stressed that the requirement to provide an effective remedy does not necessitate a judicial remedy in all situations—administrative remedies may also be “adequate” in many cases, particularly if there is an opportunity for judicial review.¹¹³

67. It also appears that the Committee supports evidentiary rules to ensure that remedial determinations occur in a way that facilitates participation and protection of victims, including in actions against private actors. For example, in the Concluding Observations for Liechtenstein, the Committee encouraged legislation which would shift the burden of proof to employers in sexual harassment cases – i.e. the employer would need to prove that there was no sexual harassment.¹¹⁴

Judicial remedies

68. Even though CESCR envisages and accepts a wide range of remedies, it has put particular emphasis on judicial remedies. The Committee has said that States should not assume that economic, social and cultural rights are non-justiciable,¹¹⁵ and has stressed that “...there is no Covenant right which could not, in the great majority of systems, be considered to possess at least some significant justiciable dimensions.”¹¹⁶ The Committee considers justiciability to mean the ability of an issue to be “appropriately resolved by the courts.”¹¹⁷

69. CESCR has noted in particular that judicial remedies “seem indispensable” in relation to violations of non-discrimination provisions.¹¹⁸ As stated above, the Committee has expressed particular concern about both public and private acts of discrimination, suggesting that it encourages States Parties to provide access to judicial remedies in both types of situations.¹¹⁹

70. What is less clear is whether the Committee supports judicial remedies through civil as well as criminal actions. The Concluding Observations for Canada expressed concern at the “lack of legal redress available to individuals when governments fail to implement the Covenant, (...) the lack of effective enforcement mechanisms for these rights ... and the inadequate availability of civil legal aid, particularly for economic, social and cultural rights.”¹²⁰ The rare reference to civil legal aid at least suggests that the Committee envisages both civil and criminal action for Covenant breaches.

Reparation

71. Whether the remedy is administrative, judicial or couched in some other form, the Committee generally considers that victims are entitled to “adequate reparation, which

¹¹³ General Comment 9, para. 9

¹¹⁴ Concluding Observations on Liechtenstein E/C.12/LIE/CO/1, para. 7 & 26

¹¹⁵ See General Comment 9, para. 7 & 10 and General Comment 3, para. 5

¹¹⁶ General Comment 9, para. 10

¹¹⁷ *Ibid.*

¹¹⁸ *Ibid.*, at para. 9

¹¹⁹ See General Comment 5, para. 16, which provides that anti-discrimination legislation regarding disability is viewed as “indispensable in virtually all States parties” and that such legislation should include the ability to seek judicial remedies where appropriate.

¹²⁰ Concluding Observations on Canada E/C.12/CAN/CO/4 & E/C.12/CAN/CO/5, para. 11(b)

may take the form of restitution, compensation, satisfaction or a guarantee of non-repetition.”¹²¹

72. The Committee has suggested that compensation in particular may be appropriate in a number of situations, and that any compensation provided should be “adequate.” What is less clear is whether the State or an individual or business should be responsible for granting compensation to the victim. It seems that at least in relation to the protection of moral and material interests related to scientific, literary or artistic productions under Art. 15(1)(c), the Committee expects States Parties to include third parties as part of adjudication procedures to ensure that they compensate victims for harm. In General Comment 17, the Committee suggests that States Parties could violate the Covenant by failing to ensure that “third parties adequately compensate authors for any unreasonable prejudice suffered as a consequence of the unauthorized use of their productions.”¹²²

73. The Committee has also discussed compensation in relation to extractives and major infrastructure projects affecting health and housing rights, especially projects conducted on land inhabited by indigenous communities. It has called for States Parties to ensure that in such situations, adequate compensation and/or alternative accommodation is provided.¹²³ For example, in the Concluding Observations for Mexico, CESCR urged the State to “ensure that adequate compensation and/or accommodation and land for cultivation are provided for indigenous communities and local farmers” affected by major construction projects such as the La Parota dam.¹²⁴

74. Unlike General Comment 17, these Concluding Observations do not express that States Parties should ensure that third parties themselves compensate victims. Nevertheless, the Committee makes it clear that it expects States to provide reparation for abuse related to such activities – the State then seems to have discretion as to whether to require third parties to provide compensation.

Sanctions and Penalties

75. General Comments tend to speak broadly about enforcing laws or reparation without specifying the need for penalties, criminal or otherwise. One exception is General Comment 15, which highlights that penalties should be imposed on third parties for non-compliance with laws protecting the right to water.¹²⁵

76. In contrast, Concluding Observations regularly recommend that States Parties sanction or penalize perpetrators, particularly in the employment context. Some examples are set out briefly below:

¹²¹ General Comment 18, para. 48; General Comment 16, para. 21

¹²² General Comment 17, para. 31 & 45

¹²³ See e.g. Concluding Observations on: Mexico E/C.12/MEX/CO/4, para. 28; China E/C.12/1/Add.107, para. 61; Ecuador E/C.12/1/Add.100, para. 53; Kuwait E/C.12/1/Add.98, para. 37

¹²⁴ Concluding Observations on Mexico E/C.12/MEX/CO/4, para. 28

¹²⁵ General Comment 15, para. 24

The **Concluding Observations for the Russian Federation** recommended the imposition of penalty payments for employers' discriminatory approaches to recruitment.¹²⁶

The **Concluding Observations for Mexico** not only urged the State to amend legislation to prohibit employers from requiring "non-pregnancy certificates" but also to sanction employers who failed to comply with such provisions.¹²⁷

77. Several other Concluding Observations speak of sanctions for employers who fail to provide safe working conditions, pay wages or who violate prohibitions on forced or slave labor.¹²⁸ For instance, the Concluding Observations for Kuwait recommended the State to "undertake all the necessary measures to eliminate practices amounting to forced labor."¹²⁹ The Committee also recommended that "those who violate labor legislation be sanctioned and that the victims of such violations be compensated."¹³⁰

78. The Committee's calls for criminalization or legal action in relation to certain types of abuse also indicate that some kind of penalty should be imposed for violations, as illustrated by the following examples:

The **Concluding Observations for Slovenia** urged the State to criminalize sexual harassment in the workplace.¹³¹

The **Concluding Observations for Brazil** urged the State to take "legal action" against "perpetrators of crimes against landless farmers and members of trade unions."¹³²

79. The Committee does not often specify what types of sanctions should be applied, simply referring to the need to "sanction" or "penalize" offenders.¹³³ For example, it is uncommon for CESCR to outline whether the State should impose civil or criminal sanctions, or for it to specify whether penalties should target natural or legal persons in situations where a business enterprise is responsible for abuse.

D. Educational and Promotional Measures

Promoting awareness and understanding amongst the private sector

80. The Committee supports education and promotion of rights amongst business enterprises. The Committee recognizes that educational measures may be very effective

¹²⁶ Concluding Observations on Russian Federation E/C.12/1/Add.94, para. 44

¹²⁷ Concluding Observations on Mexico E/C.12/MEX/CO/4, para. 33

¹²⁸ See also Concluding Observations on: Mexico E/C.12/MEX/CO/4, para. 32; China E/C.12/1/Add.107, para. 53 & 54; Spain E/C.12/1/Add.99, para. 31; Russian Federation, E/C.12/1/Add.94, para. 47

¹²⁹ Concluding Observations on Kuwait, para. 37 – see also para. 35 which focuses on migrant workers and sanctions for employers who fail to observe terms of employment and safety regulations.

¹³⁰ *Ibid.*

¹³¹ Concluding Observations on Slovenia E/C.12/SVN/CO/1, para. 29

¹³² Concluding Observations on Brazil E/C.12/1/Add.87, para. 49

¹³³ See e.g. Concluding Observations on: Mexico E/C.12/MEX/CO/4, para. 32 & 33; China E/C.12/1/Add.107, para. 53 & 54; Kuwait E/C.12/1/Add.98, para. 35 & 37; Spain E/C.12/1/Add.99, para. 31; Russian Federation E/C.12/1/Add.94, para. 47

and complement legislative measures in many situations.¹³⁴ Several General Comments require States to ensure that the private business sector is aware of and considers relevant rights in their activities.¹³⁵ General Comment 5 also recognizes that legislative measures should be complemented by other measures such as raising societal awareness of challenges facing persons with disabilities.¹³⁶ Further, General Comment 10 on the role of NHRIs notes the importance of NHRIs promoting awareness and understanding of the Covenant rights amongst the “private sector.”¹³⁷

81. Similar to the General Comments, the Concluding Observations support promotion of rights amongst private actors, often recommending that States set up processes to educate the private sector, especially employers, on the importance of respecting rights and to provide training on preventive measures. They also suggest promotion through the provision of incentives for behavior consistent with the protection of Covenant rights. For example:

The **Concluding Observations for China** recommended the Macao Special Administrative Region to increase public awareness, “especially in the private sector” of the importance of parental leave.¹³⁸ It also recommended that as part of measures to promote integration of persons with disabilities into the labor market, the Macao Special Administrative Region should provide incentives to employers and strengthen job quotas.¹³⁹

In the **Concluding Observations on Iceland**, the Committee expressed its concern at the large number of accidents on fishing vessels and urged Iceland to “raise awareness of the importance of preventive measures” and to train “seamen in matters relating to vessel stability...”¹⁴⁰

82. Finally, the Committee has also commended States which involve non-State actors in consultations for writing periodic reports, suggesting it might be in favor of greater corporate involvement in consultations as well as civil society engagement. It has also highlighted that one objective of reporting is to encourage “the involvement of the various economic, social and cultural sectors of society in the formulation, implementation and review of the relevant policies.”¹⁴¹ This suggests that the Committee might support a greater role for business enterprises, as part of the economic sector of society, in formulating, implementing and reviewing policies.

¹³⁴ See General Comment 5, para. 11

¹³⁵ General Comment 18, para. 43; General Comment 17, para. 48; General Comment 15, para. 49; General Comment 14, para. 55

¹³⁶ General Comment 5, para. 11

¹³⁷ General Comment 10, para. 3

¹³⁸ Concluding Observations on China E/C.12/1/Add.107, para. 119

¹³⁹ *Ibid.*, para. 121

¹⁴⁰ Concluding Observations on Iceland E/C.12/1/Add.89, para. 23

¹⁴¹ General Comment 1 on reporting by States Parties [hereinafter General Comment 1], para. 5

Promoting business ‘responsibilities’

83. CESCR has stressed in four General Comments, including the two most recent ones, that while States are “ultimately accountable” for compliance with the Covenant, other actors, including private enterprises, also have responsibilities regarding the realization and/or respect of rights even though they are “not bound by the Covenant.”¹⁴² It is important to note that the Committee alternates between speaking of corporate responsibilities regarding the “realization” of rights and the “respect” of rights.

84. The Committee has discussed a responsibility for corporations to “respect rights” in relation to the right to work, right to food and the protection of moral and material interests relating to scientific, literary and artistic works.¹⁴³ General Comment 18 for instance provides that private business enterprises, national and multinational, “should “conduct their activities on the basis of legislation, administrative measures, codes of conduct and other appropriate measures promoting respect for the right to work, agreed between the government and civil society.”¹⁴⁴ General Comment 12 contains similar remarks, saying that the “private business sector - national and transnational – should pursue its activities within the framework of a code of conduct conducive to respect of the right to adequate food, agreed upon jointly with the Government and civil society.”¹⁴⁵

85. The Committee has gone further in three general comments (discussing the right to work, the right to health and the right to food) and has used the term “realize rights” in the context of business responsibilities.¹⁴⁶ For example, in General Comment 14, the Committee says that the “private business sector” has “responsibilities regarding the realization of the right to health.”¹⁴⁷ The Committee has also mentioned the roles corporations may play in relation to rights - roles which seem to go beyond respecting rights. For instance in relation to the right to work, CESCR recognized that private enterprises “have a particular role to play in job creation, hiring policies and non-discriminatory access to work.”¹⁴⁸

86. As discussed in the Conclusions of this report, questions arise regarding the Committee’s expectations of States and business enterprises regarding “business responsibilities” under the Covenant. It is unclear whether, according to the Committee, a responsibility to “realize” rights by business means going beyond a responsibility to “respect” rights. It is also unclear whether such recommendations would apply to rights other than those discussed in the four General Comments mentioned above.

87. In relation to States Parties’ roles in relation to “business responsibilities,” the Committee says that States Parties should “provide an environment facilitating the discharge of these obligations.”¹⁴⁹ Further, the Committee considers that any codes of

¹⁴² General Comment 18, para. 52; see also General Comment 17, para. 55; General Comment 14, para. 52; General Comment 12, para. 20

¹⁴³ General Comment 18, para. 52; General Comment 17, para. 55; and General Comment 12, para. 20

¹⁴⁴ General Comment 18, para. 52

¹⁴⁵ General Comment 12, para. 20

¹⁴⁶ General Comment 18, para. 52; General Comment 14, para. 52; and General Comment 12, para. 20

¹⁴⁷ General Comment 14, para. 42.

¹⁴⁸ General Comment 18, para. 52

¹⁴⁹ General Comment 18, para. 52; General Comment 14, para. 42

conduct should be agreed with the government and civil society. These comments suggest that States Parties are therefore encouraged to promote the respect for rights by business, including through codes of conduct.¹⁵⁰

PART IV - BUSINESS AND RIGHTS SPECIFIC INFORMATION

88. In suggesting measures to ensure protection against private corporate acts, the Committee has focused on specific types of businesses and rights. This should not, however, be interpreted as restricting in any way the application of the Covenant to other types of businesses or to situations where businesses affect other types of rights. The section below only outlines what types of rights CESCR most generally highlights with respect to different industries and even then there is a necessary degree of duplication given the Committee does not always specify which rights it is discussing in relation to particular industries or vice versa.

A. Employers: the right to work and non-discrimination

89. ICESCR recognizes the right to work under Articles 6 to 8. Art. 10 speaks of special protection for working mothers and children. It is clear that the Committee considers that States Parties should ensure all employers, public or private, respect these rights. As set out below, General Comment 18 on the right to work is the clearest in this respect but the Committee regularly speaks of the State's duty to regulate employers in relation to a broad spectrum of rights.

90. In Art. 6(1), States Parties recognize the right to work and agree to take appropriate steps to safeguard the right. Art. 6(2) explains the steps States should take to achieve full realization of the right, including employment conditions that safeguard fundamental freedoms. Art. 7 speaks of States recognizing the right to just and favorable working conditions which ensure (among other things) equal pay for equal work,¹⁵¹ safe working conditions,¹⁵² equal opportunity for promotion,¹⁵³ and reasonable working hours.¹⁵⁴ Art.10 further provides for special protection for mothers and children and young people in employment.

91. In discussing States' duties regarding the activities of employers or the labor market, the Committee frequently expresses concern about four main areas: (a) forced and child labor; (b) discrimination in the workplace, including equal participation of men and women in decision-making, discrimination affecting various groups and issues related to equal work for equal pay; (c) safe working conditions and (d) the right to form and join trade unions.

¹⁵⁰ See e.g. General Comment 18, para. 52; General Comment 17, para. 55; General Comment 14, para. 52; General Comment 12, para. 20

¹⁵¹ Art. 7(a)

¹⁵² Art. 7(b)

¹⁵³ Art. 7(c)

¹⁵⁴ Art. 7(d)

Forced and child labor

92. Art.10(3) provides that children and young persons “should be protected from economic and social exploitation” and that “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.” In addition, States should “set age limits below which the paid employment of child labor should be prohibited and punishable by law.” This provision has been interpreted by the Committee as requiring regulation of employers.

93. General Comment 18 in particular says that children should be protected from harmful work and economic exploitation.¹⁵⁵ Further, in Concluding Observations, the Committee regularly expresses concern at the minimum age set for child labor and at working conditions for child workers. The most common recommendation is a change to the minimum working age, implying that once legislation is changed, the State will need to regulate employers in some way to enforce the new minimum age. Examples are set out below:

In the **Concluding Observations for Mexico**, the Committee recommended that the State “consider ratifying ILO Convention No. 138 (1973) concerning Minimum Age for Admission to Employment and that it accordingly raise the minimum working age from 14 years to the age of completion of compulsory schooling and, in any case, to no less than 15 years...”¹⁵⁶

In the **Concluding Observations for Uzbekistan**, the Committee urged the State to “take all necessary measures to ensure the protection of minors against economic and social exploitation and to enable them to fully enjoy their right to education and an adequate standard of living.”¹⁵⁷ It also strongly recommended that the State “consider ratifying ILO Convention No. 182 (1999) concerning the prohibition and immediate action for the elimination of the worst forms of child labor.”¹⁵⁸

94. Several Concluding Observations single out particular sectors as areas of concern in relation to child labor in the relevant State. For example, the Concluding Observations for Mexico expressed concern at the high number of children under 16 engaged in child labor in the agricultural and industrial sectors.¹⁵⁹ The Concluding Observations for Zambia addressed child labor in small-scale mining and stone-crushing operations and urged improved monitoring and stronger legislative and “other measures” in order to combat the problem.¹⁶⁰ Similarly, the Concluding Observations for China expressed “deep concern” at child labor in mining operations.¹⁶¹ The Committee urged China to “effectively enforce” legislation prohibiting child labor and to “adopt preventive measures, to ensure that those children who engage in labor do not work under conditions that are harmful to them.”¹⁶²

¹⁵⁵ General Comment 18, para. 15

¹⁵⁶ Concluding Observations on Mexico E/C.12/MEX/CO/4, para. 41

¹⁵⁷ Concluding Observations on Uzbekistan E/C.12/UZB/CO/1, para. 50

¹⁵⁸ *Ibid.*

¹⁵⁹ Concluding Observations on Mexico E/C.12/MEX/CO/4, para. 22

¹⁶⁰ Concluding Observations on Zambia E/C.12/1/Add.106, para. 25 & 47

¹⁶¹ Concluding Observations on China E/C.12/1/Add.107, para. 23

¹⁶² *Ibid.*, para. 52

95. The Concluding Observations for Chile targeted the sex industry and recommended that Chile strengthen measures to combat commercial sexual exploitation of children.¹⁶³

96. The Committee also speaks strongly against forced labor, and discusses both regulatory and adjudicative action against perpetrators. The implication is that the Committee considers that States Parties should penalize anyone perpetuating slavery, forced labor and/or trafficking, whether such perpetrators are State authorities, individuals or business enterprises. Examples are provided below:

The **Concluding Observations for Brazil** expressed concern at forced labor “which is often close to slavery,” especially in rural areas. The Committee urged Brazil to implement its “National Plan for the Eradication of Slave Labor and to undertake urgent measures in this regard, especially through the imposition of effective penalties.”¹⁶⁴

In its **Concluding Observations for Kuwait**, CESCR expressed “deep concern” at the situation of domestic workers, especially migrants, who may be subject to forced labor and denial of the right to freedom of movement. It recommended the State to take “all necessary measures” to eliminate forced labor, sanction “those who violate labor legislation” and compensate victims of violations.¹⁶⁵

The **Concluding Observations for Israel** welcomed regulations prohibiting employers from withholding workers’ passports,¹⁶⁶ the implication being that the Committee supports regulation of employers in order to safeguard against any form of forced labor or loss of freedom of movement.

Discrimination in the workplace

97. An examination of General Comments and Concluding Observations shows that the Committee systematically calls upon States to combat workplace discrimination.

98. As illustrated below, issues covered in General Comments and Concluding Observations include wage discrimination;¹⁶⁷ women’s participation in the labor market, especially decision-making positions; parental leave practices;¹⁶⁸ racial discrimination

¹⁶³ Concluding Observations on Chile E/C.12/1/Add.105, para. 9 & 47; See also Concluding Observations on Spain E/C.12.1/Add.99, para. 33, where the Committee asked the State to report on measures taken to combat trafficking and sexual exploitation.

¹⁶⁴ Concluding Observations on Brazil E/C.12/1/Add.87, para. 23 & 47

¹⁶⁵ Concluding Observations on Kuwait E/C.12/1/Add.98, para. 17 & 37

¹⁶⁶ Concluding Observations on Israel E/C.12/1/Add.90, para. 8

¹⁶⁷ See e.g. Concluding Observations on: Liechtenstein E/C.12/LIE/CO/1, para. 13 & 28; Canada E/C.12/CAN/CO/4 & E/C.12/CAN/CO/5 para. 50; Slovenia E/C.12/SVN/CO/1, para. 12 & 25; Bosnia & Herzegovina E/C.12/BIH/CO/1, para. 33

¹⁶⁸ See e.g. Concluding Observations on: Austria E/C.12/AUT/CO/3 para. 13 & 26; China E/C.12/1/Add.107, para. 109 & 119; Malta E/C.12/1/Add.101, para. 15 & 33.

and discrimination against other minorities, including migrant workers, older persons¹⁶⁹ and persons with disabilities;¹⁷⁰ and sexual harassment and sex discrimination.¹⁷¹

99. On wage discrimination, the Committee has often recommended measures to reduce the wage gap between men and women:¹⁷²

In the **Concluding Observations for Austria**, the Committee noted with concern that despite changes in equal treatment laws, women often receive lower pay for equal work. It recommended that the “State party adopt measures to enforce the principle of equal pay for equal work, as well as enact legislation to strengthen the protection of persons working under atypical employment contracts, and that it intensify its efforts in the field of qualification programmes for women working in low-paid jobs and unemployed women.”¹⁷³

100. The Committee has also expressed concern at wage discrimination faced by particular groups or minorities:

In its **Concluding Observations on Israel**, CESCR expressed concern at wage discrimination facing Arab workers and recommended measures to reduce these inequalities, including ensuring equal pay for equal work.¹⁷⁴

101. On equal participation of men and women and discrimination against women, General Comment 18 “underlines the need for a comprehensive system of protection to combat gender discrimination and to ensure equal opportunities and treatment between men and women in relation to their right to work by ensuring equal pay for work of equal value.”¹⁷⁵ In Concluding Observations, the Committee has consistently called for States to take steps to increase women’s participation in the labor market, including in high-level positions:¹⁷⁶

The **Concluding Observations on Uzbekistan** expressed concern at the low representation of women in managerial posts in the private sector, and called on Uzbekistan to adopt gender equality laws and to overcome stereotypes in the public and private spheres.¹⁷⁷

¹⁶⁹ General Comment 18, para. 16; General Comment 6, para. 22

¹⁷⁰ See e.g. Concluding Observations on: Liechtenstein E/C.12/LIE/CO/1, para. 14 & 29; Kuwait E/C.12/1/Add.98, para. 13, 16 & 32; Brazil E/C.12/1/Add.87, para. 44

¹⁷¹ See e.g. Concluding Observations on: Liechtenstein E/C.12/LIE/CO/1, para. 7 & 26; Slovenia E/C.12/SVN/CO/1, para. 14 & 29; Mexico E/C.12/MEX/CO/4, para. 15 & 33, whereby the Committee expressed concern that employers in the *maquiladora* (textile) industry require women to certify that they are not pregnant in order to be hired or to avoid being dismissed. It urged Mexico to amend legislation in order to prohibit this practice and sanction non-complying employers.

¹⁷² See e.g. Concluding Observations on: Republic of Moldova E/C.12/1/Add.91, para. 37; Brazil E/C.12/1/Add.87, para. 22 & 45; Iceland E/C.12/1/Add.89, para. 21

¹⁷³ Concluding Observations on Austria E/C.12/AUT/CO/3, para. 22

¹⁷⁴ Concluding Observations on Israel, E/C.12/1/Add.90, para. 21 & 37

¹⁷⁵ General Comment 18, para. 13

¹⁷⁶ See also Concluding Observations on: Chile E/C.12/1/Add.105, para. 37; Spain E/C.12/1/Add.99, para. 11; Iceland E/C.12/1/Add.89, para. 21; Luxembourg E/C.12/1/Add.86, para. 34

¹⁷⁷ Concluding Observations on Uzbekistan, E/C.12/UZB/CO/1, para. 15 & 43

In the **Concluding Observations for Malta**, the Committee recommended that the State Party “continue and strengthen its efforts to increase the participation of women in the labor market and to ensure equal treatment between women and men, including equal remuneration for work of equal value.”¹⁷⁸

In the **Concluding Observations for the Democratic People’s Republic of Korea**, the Committee said it was “concerned about the lack of domestic legislation on non-discrimination against women and about the persistence of de facto inequality between men and women in decision-making positions, both in political and administration bodies, as well as in the industrial sector as a whole.”¹⁷⁹

102. On parental leave, the Committee has recommended regulation of the private sector to ensure the same rights are provided to employees in that sector as those working in the public sector:

In the **Concluding Observations for China**, the Committee recommended that the Macao Special Administrative Region “take effective measures to increase public awareness, especially in the private sector, about the importance of maternity and paternity leaves that reconcile professional and family life for men and women.”¹⁸⁰ It also recommended “immediate measures to ensure workers in the private sector their right to maternity leave ... and to ensure that male workers in the private sector are granted the right to five days of paternity leave, as in the public sector.”¹⁸¹

103. CESCR has also taken a strong stance on sexual harassment, calling for criminalization of such practices:

In the **Concluding Observations for Slovenia**, the Committee “urged the State party to undertake measures to combat sexual harassment in the workplace including by adopting specific legislation rendering it a criminal offence in order to combat this practice and better protect victims.”¹⁸²

104. With respect to persons with disabilities, General Comment 5 notes that “private employers, private suppliers of goods and services, and other non-public entities” should be required to abide by non-discrimination and equality norms through legislative and other measures.¹⁸³ Concluding Observations also highlight the Committee’s belief that States must combat discrimination against persons with disabilities, including through regulating employers’ activities:¹⁸⁴

¹⁷⁸ Concluding Observations on Malta E/C.12/1/Add.101 para. 32

¹⁷⁹ Concluding Observations on Democratic People’s Republic of Korea E/C.12/1/Add.95, para. 32

¹⁸⁰ Concluding Observations on China, E/C.12/1/Add.107, para. 119. See also para. 109.

¹⁸¹ *Ibid.*

¹⁸² Concluding Observations on Slovenia E/C.12/SVN/CO/1, para. 29

¹⁸³ General Comment 5, para. 11

¹⁸⁴ See also Concluding Observations on: Israel E/C.12/1/Add.90, para. 33; Luxembourg E/C.12/1/Add.86, para. 18 & 30; China E/C.12/1/Add.107, para. 121

In its **Concluding Observations on the Russian Federation**, CESCR recommended effective measures to integrate persons with disabilities into the labor market, including penalty payments for non-employment.¹⁸⁵

105. In relation to racial discrimination or discrimination against minorities, the Committee has noted that States should take steps to ensure equal access to economic resources and training to minimize discrimination in access to employment.¹⁸⁶ Further, it has called for legislative measures to prevent and punish abuse:

In the **Concluding Observations for Mexico**, the Committee urged the State party to “take effective measures to improve the working conditions of indigenous workers by, inter alia, adopting and/or implementing relevant legislation, enforcing the Federal Act for the Prevention and Elimination of Discrimination and corresponding state legislation...”¹⁸⁷

In the **Concluding Observations for Kuwait**, the Committee was concerned at discrimination against migrant workers regarding Covenant rights and was also deeply concerned about the unfair terms of employment and working conditions of migrant workers.¹⁸⁸ It then recommended that the “State party provide the same treatment to migrant workers as to Kuwaiti citizens” and that it “consider ratifying the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families.”¹⁸⁹

Working conditions

106. The Committee commonly addresses the regulation and adjudication of employers in relation to various aspects of working conditions, including the payment of wages in line with minimum wage requirements and guaranteeing safe working conditions, especially in relation to the informal sector, children and migrant workers.

107. In particular, the Committee advises the establishment and enforcement of minimum wage regulation,¹⁹⁰ and for action to be taken against employers who fail to pay workers on time:

In the **Concluding Observations on Canada**, the Committee urged the State Party “to adopt all necessary measures to ensure that minimum wages are increased throughout Canada to a level enabling workers and their families to enjoy a decent standard of living.”¹⁹¹

¹⁸⁵ Concluding Observations on Russian Federation, E/C.12/1/Add.94, para. 44

¹⁸⁶ General Comment 18, para. 44

¹⁸⁷ Concluding Observations on Mexico E/C.12/MEX/CO/4, para. 32

¹⁸⁸ Concluding Observations on Kuwait E/C.12/1/Add.98, para. 13 & 16

¹⁸⁹ *Ibid.*, para. 32.

¹⁹⁰ See generally Concluding Observations on: Canada E/C.12/CAN/CO/4 & E/C.12/CAN/CO/5, para. 47; Uzbekistan E/C.12/UZB/CO/1, para. 49; Azerbaijan E/C.12/1/Add.104, para. 46; Ecuador E/C.12/1/Add.100, para. 40; Kuwait E/C.12/1/Add.98, para. 34; Guatemala E/C.12/1/Add.93, para. 32

¹⁹¹ Concluding Observations on Canada E/C.12/CAN/CO/4 & E/C.12/CAN/CO/5, para. 47

In its **Concluding Observations on China**, CESCR urged the State to continue to take necessary measures to ensure that the wage standard is effectively enforced, especially in rural areas, which is “aggravated by the persistent problem of wage arrears, especially in the construction sector.”¹⁹² The Committee further encouraged the State party to “establish a wage enforcement mechanism that periodically adjusts minimum wages to the cost of living, facilitate the redress of wage claims, and take sanctions against employers who owe wages and overtime pay and impose fines and penalties on their workers.”¹⁹³

In the **Concluding Observations for Guatemala**, the Committee recommended that the State Party “ensure that the minimum wage is increased regularly in proportion to the cost of living so as to guarantee an adequate standard of living for workers and their families and to ensure that the rules regarding the minimum wage are respected in practice.”¹⁹⁴

108. Several Concluding Observations express the Committee’s concern that abuse of rights occurs in the informal sector and recommend regulating that sector to ensure that domestic and rural workers receive adequate pay:

In the **Concluding Observations on Italy**, the Committee expressed concern that abuse of rights occurs in large informal economy and recommended Italy to “increase its efforts to effectively regularize the informal labor sector.”¹⁹⁵

In the **Concluding Observations for Serbia and Montenegro**, the Committee was concerned “that many persons, especially Roma, internally displaced persons and refugees, work in the informal economy or in the low-income sector without adequate working conditions and social security coverage.”¹⁹⁶

In the **Concluding Observations of Chile**, the Committee recommended that the State ensure workers in the informal sector are entitled to adequate social security benefits.¹⁹⁷

109. The Committee has also recommended that States, in their efforts to reduce the informal sector, provide incentives to employers. For instance, the Concluding Observations for Uzbekistan recommended the reduction of the informal sector through helping to create more small and medium sized enterprises.¹⁹⁸ The Concluding Observations on Spain urged the State to reduce the informal workforce, including through providing incentives to employers to offer more open-ended contracts and

¹⁹² Concluding Observations on China E/C.12/1/Add.107, para. 25

¹⁹³ *Ibid.* para. 54

¹⁹⁴ Concluding Observations on Guatemala E/C.12/1/Add.93, para. 32

¹⁹⁵ Concluding Observations on Italy, E/C.12/1/Add.103, para. 19 & 40

¹⁹⁶ Concluding Observations on Serbia & Montenegro, E/C.12/1/Add.108, para. 17. See also Concluding Observations on: Mexico E/C.12/MEX/CO/4, para. 30; Slovenia E/C.12/SVN/CO/1, para. 15 & 30; Russian Federation E/C.12/1/Add.94, para. 45

¹⁹⁷ Concluding Observations on Chile, E/C.12/1/Add.105, para. 43

¹⁹⁸ Concluding Observations on Uzbekistan, E/C.12/UZB/CO/1, para. 45

recommended improving protection of domestic workers.¹⁹⁹ The Concluding Observations for Kuwait recommended including domestic workers in the Labor Code, sanctioning employers who violate labor legislation and compensating victims of violations.²⁰⁰

110. In relation to safe and healthy working conditions, the Committee clearly supports strict regulation and monitoring of employers, including labor inspection teams with the power to enforce legislation and mechanisms to sanction employers who fail to abide by safety regulations.²⁰¹ As discussed throughout this report, the Committee has shown particular concern at conditions in particular sectors in some States, such as the mining sector, and at the working conditions of migrant workers:

In the **Concluding Observations for Slovenia**, the Committee requested the State to include more information in its next report on “occupational accidents, particularly in hazardous sectors such as the mining and nuclear sectors.”²⁰²

In the **Concluding Observations for China**, the Committee was “deeply concerned” that “insufficient implementation” of existing labor legislation had led to “generally poor conditions of work, including excessive working hours, lack of sufficient rest breaks and hazardous working conditions.”²⁰³ It noted with concern that this problem was “especially acute for migrant workers.”²⁰⁴ The Committee was also “alarmed” by the “high incidence of serious occupational accidents in the State party, particularly in the mining sector.”²⁰⁵

Trade union rights

111. Art. 8 concerns the right to form and join trade unions,²⁰⁶ and unions’ abilities to function freely.²⁰⁷ The Committee’s commentary indicates it believes that States have a duty to ensure that trade union rights are enjoyed by all workers, regardless of whether they work in the public or private sector. For example, the Concluding Observations for Canada recommended the State to take measures to ensure that workers in “precarious, part-time and temporary low wage jobs” enjoy their trade union rights.²⁰⁸ This implies that States should regulate employers to prevent interferences with these rights.

112. It seems the Committee also considers States to have a role in the negotiation of collective agreements. While CESCR has acknowledged that States are generally neutral

¹⁹⁹ Concluding Observations on Spain, E/C.12/1/Add.99, para. 30 & 32

²⁰⁰ Concluding Observations on Kuwait, E/C.12/1/Add.98, para. 17 & 37

²⁰¹ Concluding Observations on China E/C.12/1/Add.107, para. 53; see also Concluding Observations on: Malta E/C.12/1/Add.101, para. 16; Ecuador E/C.12/1/Add.100, para. 41; Kuwait E/C.12/1/Add.98, para. 35; Spain E/C.12/1/Add.99, para. 31; Guatemala E/C.12/1/Add.93, para. 33; Russian Federation E/C.12/1/Add.94, para. 47; Concluding Observations on Iceland E/C.12/1/Add.89, para. 23

²⁰² Concluding Observations on Slovenia E/C.12/SVN/C0/1, para. 31

²⁰³ Concluding Observations on China E/C.12/1/Add.107, para. 24

²⁰⁴ *Ibid.*

²⁰⁵ *Ibid.*

²⁰⁶ Art. 8(1)(a)

²⁰⁷ Art. 8(1)(c)

²⁰⁸ Concluding Observations on Canada E/C.12/CAN/CO/4 & E/C.12/CAN/CO/5, para. 48; see also Concluding Observations on: Ecuador E/C.12/1/Add.100, para. 42; Israel E/C.12/1/Add.90, para. 38

players in collective bargaining, it has also confirmed that States must ensure wages agreed in such negotiations are in accordance with the Covenant, as illustrated below:

In the **Concluding Observations for Austria**, the Committee noted “the principle of neutrality of the State in the collective bargaining process” but also urged the State to “ensure that any wages negotiated in collective agreements must secure workers and employees a decent living for themselves and their families, in accordance with article 7 (a) (ii) of the Covenant.”²⁰⁹

In the **Concluding Observations for Liechtenstein**, the Committee recommended that the State Party “consider introducing a legal minimum wage or ensure that wages negotiated in collective agreements are applicable to all employers and employees of an economic sector or a profession, irrespective of membership in the Chamber of Trade and Commerce. ...”²¹⁰

113. The Committee clearly considers that States Parties have a duty to protect employees from abuse of Covenant rights by State and non-State employers, including business enterprises. It highlights that States must play a central role in regulating and adjudicating employers’ behavior, including through enacting and/or enforcing legislation (in some cases criminal) to ensure protection.

B. Corporations involved in extractives or major infrastructure projects: the rights of indigenous peoples

114. CESCR has expressed concern about commercial activities concerning major infrastructure and extractives projects affecting indigenous communities. Concluding Observations, such as those for Ecuador, confirm that States are obliged to regulate and adjudicate companies involved in such activities in order to prevent and punish interference with rights:

The **Concluding Observations for Ecuador** expressed concern at the “negative health and environmental impacts of natural resource extracting companies’ activities at the expense of the exercise of land and culture rights of the affected indigenous communities and the equilibrium of the ecosystem.”²¹¹ It thus “strongly recommended” the State to “implement legislative and administrative measures to avoid violations of environmental laws and rights by transnational companies.”²¹²

²⁰⁹ Concluding Observations on Austria E/C.12/AUT/CO/3, para. 23

²¹⁰ Concluding Observations on Liechtenstein E/C.12/LIE/CO/1, para. 30

²¹¹ Concluding Observations on Ecuador E/C.12/1.Add.100, para. 12

²¹² *Ibid.* para. 35

115. The Committee has also expressed on several occasions the importance of seeking the full consent of concerned communities before granting concessions to international companies, as outlined in the following Concluding Observations:

The **Concluding Observations for Ecuador** stated the Committee's "deep concern" that "natural extracting concessions have been granted to international companies without the full consent of the concerned communities."²¹³ The Committee therefore requested Ecuador to obtain the consent of indigenous peoples before implementing natural resources extracting projects.²¹⁴

The **Concluding Observations on Brazil** urged the State to seek the informed consent from indigenous peoples before allowing timber, soil or subsoil mining projects to progress.²¹⁵

In the **Concluding Observations on Mexico**, the Committee urged the State Party "to ensure that the indigenous and local communities affected by the La Parota hydroelectric dam project or other large-scale projects on the lands and territories which they own or traditionally occupy or use are duly consulted, and that their prior informed consent is sought, in any decision-making processes related to these projects affecting their rights and interests under the Covenant, in line with ILO Convention No. 169 concerning Indigenous and Tribal Peoples in Independent Countries."²¹⁶

116. The Committee has also called on States to protect indigenous peoples from forced evictions.²¹⁷ For instance, the Concluding Observations for Brazil expressed concern that the State was not adequately protecting indigenous peoples from interference with their land by "mineral, timber and other commercial interests."²¹⁸ It expressed particular concern at the forced eviction of certain groups from land which was "expropriated with impunity by mineral and other commercial interests,"²¹⁹ and called on Brazil to ensure that "indigenous peoples are effectively protected from threats and danger to their lives and from eviction from their lands."²²⁰ It is difficult to see how such protection could occur without regulation of the mineral, timber and other commercial "interests" mentioned by the Committee.

117. As detailed above in Part III, the Committee has also called for remedial measures to be taken in relation to forced evictions. For example, in the Concluding Observations for Mexico, the Committee asked for more information on the number of forced evictions in the country as well as the remedial measures, including legislative, taken regarding forced evictions.²²¹ The Committee has also recommended that States ensure compensation is made available to affected communities:

²¹³ *Ibid.* para. 12

²¹⁴ *Ibid.* para. 35

²¹⁵ Brazil E/C.12/1.Add.87, para. 58

²¹⁶ Mexico, E/C.12/MEX/CO/4, para. 28

²¹⁷ See e.g. Ecuador E/C.12/1.Add.100, para. 53; Brazil E/C.12/1.Add.87, para. 35

²¹⁸ Brazil E/C.12/1.Add.87, para. 35

²¹⁹ *Ibid.* para. 36

²²⁰ *Ibid.* para. 58

²²¹ Concluding Observations on Mexico, E/C.12/MEX/CO/4, para. 43

In the **Concluding Observations on Mexico**, the Committee urged the State to ensure compensation and alternative accommodation for affected communities and the safeguarding of Covenant rights. In relation to the latter, the Committee specifically referred the State Party to General Comments 14 and 15.²²²

118. As stated in Part III, the Committee tends not to specify whether the State should facilitate victim actions against private actors to obtain compensation. Rather, it speaks more generally about States Parties making compensation available.

C. Extractive and manufacturing industries: industrial hygiene and the rights to health and water

119. CESCR has also discussed extractives companies as well as the manufacturing industry in discussing industrial hygiene related to the rights to health and water. Art. 12 recognizes the right to the highest attainable standard of physical and mental health and provides in paragraph 2(b) that steps to achieve the full realization of the right should include improving environmental and industrial hygiene. To this end, General Comment 14 on the right to health notes that a breach of the duty to protect includes failing to “enact or enforce laws to prevent the pollution of water, air and soil by extractive and manufacturing industries.”²²³

120. General Comment 15 on the right to water, discussed more below in relation to water service providers, notes that “environmental hygiene” is an “aspect of the right to health” and that it “encompasses taking steps on a non-discriminatory basis to prevent threats to health from unsafe and toxic water conditions.”²²⁴ It says that States Parties “should ensure that natural water resources are protected from contamination by harmful substances and pathogenic microbes.”²²⁵ Read with the rest of General Comment 15 which specifically refers to the duty to protect against interference by third parties, including corporations, the implication is that States must protect against contamination from both private and public actors, including through regulation.

121. The Concluding Observations for Ecuador described above are also relevant in this regard, as is the Committee’s request to China to include detailed information in its next report on “environmental policies formulated by the State party, in particular, policies to reduce atmospheric pollution, and to evaluate the impact of large infrastructure development projects on the environment.”²²⁶

D. Business enterprises: the right to food

122. Art. 11(2) recognizes the right to be free from hunger. It further prescribes that States will take measures to (a) improve methods of food production, conservation and distribution including through reforming agrarian systems and (b) ensure an equitable

²²² *Ibid.* para. 10 & 28

²²³ General Comment 14, para. 51

²²⁴ General Comment 15, para. 8

²²⁵ *Ibid.*

²²⁶ Concluding Observations on China, E/C.12/1/Add.107, para. 63

distribution of world food supplies, taking into account the problems facing food importing and exporting countries.

123. CESCR has stressed that in order to fulfill the duty to protect, States should take measure to ensure enterprises do not deprive individuals of access to adequate food.²²⁷ Further, violations of the right to food include failing to regulate “groups” to prevent breaches.²²⁸ The Committee has said that in order to fulfill the obligation to protect food resource bases, States Parties should ensure that “private business sector” activities conform with the right to food.²²⁹

124. The Committee may also require regulation of corporations marketing certain food products. For example, in General Comment 12 on the right to food, the Committee considers that adequate food strategies should address issues relating to marketing and consumption of safe food.²³⁰ The Committee also suggests that the United Nations Children’s Fund (UNICEF) might be able to assist States upon request to formulate legislation concerning the marketing of breast milk substitutes.²³¹

E. Pharmaceutical industry and food manufacturers: the right to health

125. The Committee has recognized that both food manufacturers and pharmaceutical companies can affect the right to health.²³² For example, General Comment 14 on the right to health prescribes that breaches of the duty to protect include failing to (a) regulate the activities of corporations to prevent them from violating the right to health; and (b) protect consumers and workers from practices detrimental to health, e.g. by employers and manufacturers of medicines or food.²³³

126. Similar to situations concerning the right to food, the Committee also suggests that States Parties should regulate companies marketing pharmaceutical products in order to safeguard the right to health.²³⁴ For example, in General Comment 14, the Committee considers that the obligation to protect in relation to the right to health includes controlling the “marketing of medical equipment and medicines by third parties.”²³⁵

²²⁷ General Comment 12, para. 15

²²⁸ *Ibid.* para. 19

²²⁹ *Ibid.* para. 27

²³⁰ *Ibid.* para. 25

²³¹ *Ibid.* para. 30

²³² See Part V below for a brief discussion of the Committee’s views concerning the regulation of health care providers and other entities providing core government services.

²³³ General Comment 14, para. 51

²³⁴ Going beyond companies marketing pharmaceutical products, General Comment 14 also says at para. 51 that a State Party could violate the duty to protect by failing to discourage the “production, marketing and consumption of tobacco, narcotics and other harmful substances.”

²³⁵ General Comment 14, para. 35

F. The private sector: the right to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production

127. Art. 15(1)(c) recognizes everyone's right to "benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author." General Comment 17 confirms that the Committee considers this right to impose duties on the State to ensure the effective protection of authors' interests against infringement by third parties.²³⁶ The Committee also believes that States Parties must ensure that third parties adequately compensate authors for any unreasonable prejudice suffered as a consequence of the unauthorized use of their productions.²³⁷

128. The Committee has indicated that States must look for the right balance in protecting moral and material interests where such protection could abuse other human rights. It has, for instance, noted its view that States must prevent unreasonably high medicine, food and education costs resulting from protecting intellectual property.²³⁸ Further, it considers that products should be denied patentability where "commercialization would jeopardize the full realization" of other rights.²³⁹ The Committee suggests that human rights impact assessments should be carried out before increasing intellectual property protection.²⁴⁰ The implication from all of these statements is that States should regulate intellectual property rights holders (including business enterprises) in some instances to protect other rights.

129. In relation to indigenous peoples, the Committee has stressed that States Parties should prevent the unauthorized use by third parties of indigenous peoples' scientific, literary and artistic productions.²⁴¹ Concluding Observations have recommended that States enact and enforce legislation to protect collective authorship rights from unauthorized use by "third parties" in line with General Comment 17:

In its **Concluding Observations on Mexico**, CESCR noted with concern that collective authorship of indigenous peoples is not protected by the Federal Copyright Act or any other legislation. It recommended that the State consider adopting legislation to recognize, register and protect collective authorship and to prevent unauthorized use of scientific, literary and artistic productions by third parties, in line with General Comment 17.²⁴²

G. Water providers: the right to water

130. General Comment 15 on the right to water provides that the duty to protect requires prevention of third party interference with enjoyment of the right to water. It says that third parties include "corporations and other entities as well as agents acting

²³⁶ General Comment 17, para. 31, 42, 44 & 45

²³⁷ *Ibid.* para. 31

²³⁸ *Ibid.* para. 35

²³⁹ *Ibid.*

²⁴⁰ *Ibid.*

²⁴¹ *Ibid.* para. 32 & 33

²⁴² Concluding Observations on Mexico E/C.12/MEX/CO/4, para. 27 & 46; see also Concluding Observations on Canada E/C.12/CAN/CO/4 & E/C.12/CAN/CO/5, para. 67

under their authority.”²⁴³ The Committee considers that States Parties are required to adopt legislative and other measures to prevent these actors from denying equal access and polluting water resources.

131. The Committee has said that especially in situations where “third parties” control or operate water services, a regulatory system should be established to prevent abuse, including “independent monitoring, genuine public participation and imposition of penalties for non-compliance.”²⁴⁴ There is also a call for the population to have full and equal access to information on water services held by “third parties.”²⁴⁵ In addition, before a “third party” commits an action that could interfere with the right, the authorities must ensure it complies with the law, is compatible with the Covenant and includes consultation with, and legal recourse for, affected parties.²⁴⁶

H. Housing agencies and landlords: the right to housing

132. Art. 11(1) recognizes the right to an adequate standard of living, including adequate food, clothing and housing, and the continuous improvement of living conditions. States are expected to take appropriate steps to ensure realization of this right. Similar to its discussions about the right to food, the Committee clearly considers that such steps involve protecting against both private and public interference with housing.

133. General Comment 7 requires States to ensure legislative and other measures are in place to prevent and punish forced evictions by private bodies without appropriate safeguards.²⁴⁷ The Committee asks that States Parties’ periodic reports include information on “legislation concerning the rights of tenants to security of tenure and to protection from eviction.”²⁴⁸ General Comment 4 also discusses the importance of security of tenure, including in situations of private rental accommodation, and the need for the State to protect tenants by “appropriate means” against “unreasonable rent levels or rent increases.”²⁴⁹ The Committee considers that certain domestic remedies must be available, including the ability to complain about illegal actions by private and public landlords.²⁵⁰

134. Concluding Observations have addressed the need for States to protect against private interference with housing, including forced evictions linked to major infrastructure projects. Further, in the Concluding Observations for Mexico, CESCR recommended the State to adopt a comprehensive national housing legislation, including legislation on rent control.²⁵¹ The Committee has also recommended that States Parties combat discrimination against specific vulnerable groups in the provision of housing, as illustrated by the Concluding Observations on Italy:

²⁴³ General Comment 15, para. 23, 24 & 44(b)

²⁴⁴ *Ibid.* para. 24

²⁴⁵ *Ibid.* para. 48

²⁴⁶ *Ibid.* para. 56

²⁴⁷ General Comment 7, para. 9

²⁴⁸ *Ibid.* para. 19

²⁴⁹ General Comment 4, para. 8

²⁵⁰ *Ibid.* para. 17

²⁵¹ Concluding Observations on Mexico, E/C.12/MEX/CO/4, para. 43

In the **Concluding Observations on Italy**, CESCR noted with concern the difficulties faced by marginalized groups in renting or obtaining public housing because of discrimination.²⁵² It urged the State to “take all necessary corrective measures to combat discrimination in the housing sector against the disadvantaged and marginalized groups, particularly immigrants and the Roma.”²⁵³

I. Public places that are privately owned: non-discriminatory access

135. General Comment 6 recalls the Vienna International Plan of Action on Ageing, which encourages States to support better access to cultural institutions such as museums, theaters and concert halls for older persons.²⁵⁴ Where such institutions are privately owned, it is foreseeable that some regulation (including monitoring) of these institutions might be required to support better access. For example, in General Comment 5 on persons with disabilities, CESCR provides that States are responsible for promoting access to places used for cultural performances, recreation, sports and tourism, suggesting some regulation of private owners of such places might be necessary.²⁵⁵

PART V – STATE-OWNED ENTERPRISES, STATE-CONTROLLED ENTERPRISES AND PRIVATIZATION OF GOVERNMENT SERVICES

136. This Part maps the Committee’s comments on States Parties’ duties in relation to activities by State-owned or controlled enterprises as well as private companies, often newly privatized, carrying out core government services.

A. State-owned or controlled enterprises

137. The research did not uncover any explicit references to State-owned or controlled enterprises, though the Committee has referred to “**State-owned facilities**.” as part of discussions about the **duty to respect**. For example, General Comment 14 provides that the duty to respect includes refraining from “unlawfully polluting air, water and soil, e.g. through industrial waste from state-owned facilities.”²⁵⁶ General Comment 15 also suggests that States could breach the duty to respect by allowing water pollution by State-owned facilities.²⁵⁷ The Committee does not explain what it means by the term “**State-owned facilities**” and it is unknown whether it could include facilities run by corporations or only those operated by State organs. Accordingly, it is unknown if the Committee’s comments regarding “**State-owned facilities**” provide any insights into its thoughts on **State-owned enterprises**.

²⁵² Concluding Observations on Italy, E/C.12/1/Add.103, para. 23

²⁵³ *Ibid.*, para. 46

²⁵⁴ General Comment 6, para. 40

²⁵⁵ General Comment 5, para. 36

²⁵⁶ General Comment 14, para. 34

²⁵⁷ General Comment 15, para. 21

138. Further, given that international law tends to focus on control rather than ownership as a means of directly attributing acts to a State,²⁵⁸ it is unclear if the Committee's reference to "State-owned" was designed to encompass State-owned **and** controlled facilities. In other words, it is unknown if the Committee intended to focus on State ownership as a means of bringing the duty to respect into play or whether it was also concerned with State control.

139. Given the lack of explicit references to State-owned or controlled enterprises, it is necessary to look for any guidance in the Committee's general statements about the duty to protect against corporate abuse. These commentaries suggest that in line with broader concepts of international law,²⁵⁹ the Committee does not focus on ownership structures when it discusses the duty to protect against corporate abuse. Thus it does not seem as though the Committee sees different duties in relation to **State-owned** enterprises as opposed to privately owned companies. Rather, it appears that when the Committee recommends States to regulate corporate activities as part of the duty to protect, these recommendations are intended to apply to all types of corporations, regardless of their ownership structure. What is less clear is whether such recommendations would also apply to **State-controlled** enterprises or whether States' actions in relation to State-controlled enterprises are viewed any differently given such enterprises may technically not classify as "third parties."

B. Privatization

140. The Committee provides more guidance in relation to private actors providing core government services, particularly those that have been recently privatized. While these discussions tend not to specifically refer to business – instead referring to actors such as health-care providers - it is reasonable to assume they directly relate to business conduct.

141. CESCR focuses on the State's continuing responsibility for privatized services and suggests that such responsibility arises through the **duty to protect**. For example, the

²⁵⁸ The secondary rules of State responsibility as codified in the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts (ILC Articles) look generally at when a State may be held responsible under international law for the acts of non-government entities. The ILC Articles were adopted by the ILC in 2001. In 2004, the UN General Assembly deferred further consideration of them until its 62nd session in 2007. Professor James Crawford, the ILC Special Rapporteur on State Responsibility from 1997 to 2001, suggests that the ILC Articles provide only a limited number of situations in which States may be held responsible for private acts. He argues that State attribution for private acts will occur only when the State consents to accept responsibility; when private entities are empowered by the law to exercise elements of government function (Art. 5); where private groups act under the State's instructions or direct control (Art. 8); and where groups exercise government authority (Art. 9). See General Assembly Resolution 59/35, 2 December 2000, UN Doc A/RES/59/35, adopted at the 65th plenary meeting of the General Assembly (UN Doc. A/59/SR.65). See also James Crawford, *The ILC's Articles on State Responsibility, Introduction, Text and Commentaries* (Cambridge University Press, 2002).

²⁵⁹ There is international case-law to the effect that unless publicly owned companies are exercising elements of government authority or are acting under the direction, instructions or control of the State, they will have a separate legal personality from the State and should be treated in the same way as private companies. In other words, acts of publicly owned corporations are not necessarily attributable to the State unless the State used its ownership interest as a vehicle for directing the company to commit the acts: See for example *SEDO, Inc. v. National Iranian Oil Co.*, (1987) 15 Iran-U.S.C.T.R 23 and *International Technical Products Corp. v; Islamic Republic of Iran*, (1985) 9 Iran-U.S.C.T.R. 206).

Committee has confirmed several times that the duty to protect includes measures to ensure that privatization does not interfere with rights, including regulating third party interference where “public services have been partially or fully privatized.”²⁶⁰ Concerns generally focus on the quality of privatized services as well as equal and non-discriminatory access.

142. For instance, the Committee in General Comment 14 provides that among other things, the obligation to protect includes, (a) “the duties of States to adopt legislation or to take other measures ensuring equal access to health care and health-related services provided by third parties;” (b) “to ensure that privatization of the health sector does not constitute a threat to the availability, accessibility, acceptability and quality of health facilities, goods and services;” and (c) “to ensure that medical practitioners and other health professionals meet appropriate standards of education, skill and ethical codes of conduct.”²⁶¹ It remarks that “States should also ensure that third parties do not limit people’s access to health-related information and services.”²⁶²

143. Concluding Observations also discuss regulation to ensure rights are protected against abuse by actors providing core services, particularly private health-care providers, private social security schemes and social service providers in general, as illustrated by the following examples:

The **Concluding Observations for Chile** recommended that the State “ensure that women in the reproductive age are not discriminated against in the private health-care system.”²⁶³

The **Concluding Observations for Luxembourg** recommended the State to provide more information in its next report on how it “monitors social services provided by private organizations that use public funds, so as to ensure that they conform to the requirements of the Covenant.”²⁶⁴

The **Concluding Observations for Zambia** recommended the State to “exercise a stronger monitoring function in relation to private social security schemes and funds so as to ensure that those schemes provide adequate social protection to their beneficiaries.”²⁶⁵

²⁶⁰ General Comment 16, para. 20. See also General Comment 18, para. 25; General Comment 15, para. 27; General Comment 14, para. 12(b), 26 & 35; General Comment 7, para. 9; General Comment 5, para. 11 & 12

²⁶¹ General Comment 14, at para. 35

²⁶² *Ibid.*

²⁶³ Concluding Observations on Chile E/C.12/1/Add.105, para. 57

²⁶⁴ Concluding Observations on Luxembourg E/C.12/1/Add.86, para. 35

²⁶⁵ Concluding Observations on Zambia E/C.12/1/Add.106, para. 44

PART VI – Territorial Scope of the Covenant

144. This part examines the territorial scope of States Parties' duties under the Covenant. The Committee's views in this area are only explored to the extent that they shed light on protection against corporate abuse of individuals' rights where those individuals are outside a State Party's national territory though still within its effective control. Part VII looks at the different situation of States Parties' obligations, if any, in relation to individuals outside both their territory and effective control, where the abuse is being carried out by a corporation with some connection to the State.

145. Unlike Art. 2(1) of the ICCPR which explicitly requires States Parties to respect and ensure the enjoyment of rights to individuals "within their territory and subject to their jurisdiction," Art. 2 of ICESCR does not refer to the territorial scope of States Parties' obligations. In fact, the only reference to "territory" or "jurisdiction" in the Covenant is in Art. 14, which provides directions to States Parties who have not secured compulsory, free primary education in their territory or territories under their jurisdiction.

A. The Committee's view

146. Unlike General Comment 31 from the HRC, CESCR has not expressly stated in any General Comments that States Parties' obligations extend to both individuals within their national territory, and those outside their territory but within their effective control.²⁶⁶ However, CESCR seems to adopt the same position as the HRC when it says in a number of General Comments that a State Party could violate its Covenant obligations if it fails to protect persons "within its jurisdiction" from infringements by third parties.²⁶⁷

147. Concluding Observations support this interpretation, regularly directing States Parties to take the necessary measures to ensure rights to individuals within their "jurisdiction."²⁶⁸ Further, in the Concluding Observations for Israel, the Committee expressed concern at Israel's claim that the Covenant only applied to persons who were within its territory *and* subject to its jurisdiction.²⁶⁹ The Committee reaffirmed its view that "the State party's obligations under the Covenant apply to all territories and populations under its effective control."²⁷⁰ The Concluding Observations for the Republic of Moldova also suggests that the Committee considers Covenant obligations to apply to individuals over whom the State Party has effective control.²⁷¹

²⁶⁶ See Part VI of the ICCPR report for more detail, at <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>.

²⁶⁷ General Comment 15, para. 44(b); General Comment 14, para. 51

²⁶⁸ See e.g. Concluding Observations on: Republic of Moldova E/C.12/1/Add.91, para. 34; China E/C.12/1/Add.107, para. 45, 62, 68 & 101; Libyan Arab Jamahiriya, E/C.12/LYB/CO/2, para. 39 & 43; Uzbekistan E/C.12/UZB/CO/1, para. 41 & 57; Kuwait E/C.12/1/Add.98, para. 31; Italy E/C.12/1/Add.103, para. 35

²⁶⁹ Israel E/C.12/1/Add.90, para. 15

²⁷⁰ *Ibid.*, para. 31

²⁷¹ Concluding Observations on Republic of Moldova E/C.12/1/Add.91, para. 10

B. Relevance to the duty to protect against corporate abuse

148. The application of a State Party's Covenant obligations to individuals within its effective control even though outside its territory means that all of its duties apply, including the duty to protect. What is unclear is what the Committee means by "effective control" and what this could mean in relation to corporate acts abroad.²⁷² It does not appear that the Committee has provided any guidance on this issue apart from the references provided above.

149. In relation to protecting against corporate abuse abroad, the question is how the Committee would interpret a situation where corporations act on the State's behalf (exercising elements of governmental authority or acting under the instructions, direction or control of the State) outside the national territory, and exercise a degree of control over individuals such that, were such control exercised by State agents, the State's Covenant obligations would apply in full. As discussed in the Conclusions section below, more guidance from the Committee would be helpful in relation to this issue, including when a State is considered to have "effective control" over individuals through its agents or others acting on its behalf, including corporations.

PART VII - Regulation with extraterritorial effect

A. Introductory remarks

150. Given the SRSG's mandate looks specifically at the acts of transnational businesses, an important question is whether a State Party has any duties under the Covenant to regulate or at least influence corporate actors abroad, whose activities affect individuals who are both outside the State's national territory and effective control. In other words, has the Committee interpreted the Covenant as requiring States Parties to regulate the overseas actions of corporations incorporated in them, otherwise linked to them or even those without any real connection where particular abuses have been committed? Such regulation is generally labeled "prescriptive extraterritorial jurisdiction" – i.e. the regulation of persons or activities outside a State's territory, usually through legislation. A related question is whether the Committee has encouraged or indicated that such regulation is at least permissible under the Covenant.

151. As noted in the SRSG's March 2007 report to the Human Rights Council, prescriptive extraterritorial jurisdiction is generally permissible under international law provided there is a recognized basis of jurisdiction: where the perpetrator or victim is a national; where the acts have substantial adverse effects on the State; or where specific

²⁷² The HRC has discussed as one example of "effective control" the control exercised over individuals abroad by State agents, especially in peace-keeping missions. The individual report on the ICCPR for this series questions how the HRC would react to a situation where corporations acting on behalf of the State exercise control over individuals abroad[0]. See Part VI of the ICCPR report for more detail.

international crimes are involved.²⁷³ An overall reasonableness test must also be met, which includes non-intervention in other States' internal affairs.²⁷⁴

152. At the outset, it is important to note that, unlike the Convention Against Torture (CAT), the Covenant does not expressly require States Parties to establish jurisdiction over abuses by their nationals wherever they occur.²⁷⁵ Thus this Part examines whether the Committee has ever interpreted the Covenant to require such action or other forms of influence by States Parties.

153. As set out below, there have been several occasions where the Committee has discussed influencing third party acts abroad in light of the principle of international cooperation. The Covenant contains a number of references to "international assistance and cooperation." For example, under Art. 2(1), States Parties undertake to take the necessary steps under the Covenant "individually and through international assistance and cooperation."²⁷⁶ Readers should note that this principle is not examined in this report in detail but only so far as it is considered relevant to the Committee's views on extraterritorial regulation of corporate acts.

B. Commentary from the Committee

154. The Committee has made a few comments which could be read as encouraging or supporting some form of regulation over corporate acts abroad. The difficulty is the lack of clarity in some of these statements, as well as the fact that such comments are generally tied to pronouncements regarding international cooperation. This linking poses questions as to whether the Committee sees extraterritorial regulation as part of international cooperation or if it is contemplating other actions apart from extraterritorial regulation which are usually associated with international assistance or cooperation.

²⁷³ Under the principle of "universal jurisdiction" States may be obliged to exercise jurisdiction over individuals within their territory who allegedly committed certain international crimes. It is unclear whether and how such obligations extend jurisdiction over juridical persons, including corporations. See A/HRC/4/35/Add.2 and A/HRC/4/35, para. 15

²⁷⁴ The entire human rights regime may be seen to challenge the classical view of non-intervention. The debate here hinges on what is considered coercive. For more detail, see A/HRC/4/35/Add. 2, and Andrew Clapham, *Human Rights Obligations of Non-State Actors* (Oxford University Press, 2006), 98.

²⁷⁵ Art. 5 of CAT requires a State Party to take such measures as may be necessary to establish jurisdiction over certain offences when: (a) the offences are committed in any territory under its jurisdiction; (b) when the alleged offender is a national of that State; or when the victim is a national of the State if it considers it appropriate. It should also take the necessary measures to establish jurisdiction over offences in cases where the alleged offender is present in territory under its jurisdiction and it does not extradite that person. For more detail, see the report on CAT as part of this series, likely available June 2007 at <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative>

²⁷⁶ International cooperation is also mentioned in Art. 11(2), which requires States Parties to take measures, individually and through international cooperation, to improve production and distribution of food. Para. (a) and (b) of Art. 11(2) refer to measures which involve disseminating and sharing knowledge of nutrition and ensuring equitable distribution of world food supplies. Para. 4 of Art. 15 provides that States recognize the benefits from encouraging and developing international contacts and cooperation in the scientific and cultural fields. Finally, Art. 23 emphasizes that States agree that "international action" for achieving the Covenant rights "includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishings of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned."

155. General Comment 15 on the right to water contains the most recent and comprehensive discussion of the issue of regulation with extraterritorial effect. Under a section entitled “International Obligations,” it first provides that Arts. 2(1), 11(1) and 23 of the Covenant “require that States parties recognize the essential role of international cooperation and assistance and take joint and separate action to achieve the full realization of the right to water.”²⁷⁷

156. It then provides that the Committee believes that States Parties, in order to comply with their international obligations, must respect the right to water in other countries. It says that “international cooperation requires States parties to refrain from actions that interfere, directly or indirectly, with the enjoyment of the right to water in other countries.”²⁷⁸ The General Comment also notes that any actions within the State’s jurisdiction should not prevent other States from realizing the right to water for their populations.²⁷⁹

157. Even more relevant to this exercise, General Comment 15 provides in paragraph 33 that “steps should be taken by States parties to *prevent* their *own citizens and companies* from violating the right to water of individuals and communities in other countries. Where States parties can take steps to *influence other third parties* to respect the right, *through legal or political means*, such steps should be taken in accordance with the Charter of the United Nations and applicable international law.”²⁸⁰

158. The first sentence of this paragraph suggests that at the very least, the Committee expects States Parties to take some action to “prevent” their “own citizens and companies” from abusing rights abroad. However, it is unclear what “their own companies” includes in practice – the Committee does not elaborate on the links a company needs to have with the State to be classified as one of the State’s “own companies.” It is also unclear if the Committee expects regulatory action or other, less mandatory steps in order to “prevent” violations abroad by such actors.

159. The second sentence suggests that the Committee encourages States Parties to influence third parties other than “their own citizens and companies” where possible. One question is which types of companies, if any, may classify as “third parties” – only those over which the State Party can exercise some influence? Regardless, it seems that the Committee provides States Parties with even more discretion in relation to “third parties” than in relation to “their own citizens and companies” – States Parties seem to have the opportunity to choose legal or political means and to act only in situations where influence is possible.

160. General Comment 14 provides similar, though less detailed, remarks about preventing abuse abroad, once again within a section titled “International Obligations” which first discusses the important of international cooperation.²⁸¹ It says that “to comply

²⁷⁷ General Comment 15, para. 31

²⁷⁸ *Ibid.*, para. 30 & 31

²⁷⁹ *Ibid.*, para. 31

²⁸⁰ *Ibid.*, para. 33. Emphasis added.

²⁸¹ General Comment 14, para. 38

with their international obligations in relation to article 12, States parties have to respect the enjoyment of the right to health in other countries, and to prevent third parties from violating the right in other countries, if they are able to influence these third parties by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law.”²⁸²

161. General Comment 14 does not include the first sentence in paragraph 33 of General Comment 15 which refers to States taking steps to prevent abuse in other countries by their own citizens and companies. It is unclear whether by including this additional sentence in the more recent General Comment 15, the Committee intended to provide stricter guidance in relation to companies with close links to the State Party.

162. General Comment 12 mentions Art. 56 of the UN Charter, Art. 2(1), 11 and 23 of the Covenant and the Rome Declaration of the World Food Summit as support for the fact that States should recognize the “essential role of international cooperation” and “fulfill their commitment to take joint and separate action to achieve the full realization of the right to adequate food.”²⁸³ It says that “in implementing this commitment, States parties should take steps to respect the enjoyment of the right to food in other countries, to protect that right, to facilitate access to food and to provide the necessary aid when required.”²⁸⁴

163. No other General Comments, including the three most recent General Comments, or any of the Concluding Observations examined have similar remarks.²⁸⁵

164. As highlighted in Part VIII (Conclusions and Trends) below, the Committee’s remarks in General Comments 12, 14 and 15 raise several questions regarding its expectation of States concerning corporate acts abroad, as well as the links it sees, if any, between extraterritorial regulation and international cooperation.

165. At the very least, the Committee’s comments indicate that it considers that the Covenant *permits* regulation or other acts to influence corporate acts abroad, though the Committee suggests that any action to influence third parties’ acts abroad should accord with the UN Charter and other relevant principles of international law.²⁸⁶

²⁸² General Comment 15, para. 39

²⁸³ General Comment 12, para. 36

²⁸⁴ *Ibid.*

²⁸⁵ General Comment 8 on the relationship between economic sanctions and respect for economic, social and cultural rights [hereinafter General Comment 8], at para.7, emphasizes that the international community must do “everything possible to protect at least the core content of the economic, social and cultural rights” of the population of a State targeted for sanctions. It is assumed though that these comments have limited relevance to extraterritorial regulation and relate more to the need to ensure sanctions do not unduly interfere with rights.

²⁸⁶ *Ibid.*, para. 33; General Comment 14, para. 39

PART VIII – Conclusions and trends

166. This report shows that the Committee has increasingly examined the issue of States Parties' duties regarding corporate activities. CESCR clearly considers that at least in relation to individuals within a State Party's effective control, the State has a duty to protect against interference with rights by corporations. It believes that legislative, administrative, judicial and educative measures are important in this regard though it rarely mandates exactly how such measures should operate in practice. The lack of such detailed guidance to States is not surprising considering the discretion provided by the Covenant in relation to implementation.

167. Nonetheless, this report identifies several areas which are key to the SRSG's mandate and where further elaboration or discussion by the Committee could assist States, business enterprises and individuals to better understand their rights and obligations. No judgment is made as to whether and how the Committee should consider all or some of these issues – they are highlighted as much to indicate how far the Committee has progressed on this issue as to point out areas which could potentially pose difficult questions for States Parties, businesses, individuals and civil society.

A. The duty to protect

168. While the Covenant does not mention a general duty to protect, the Committee has expressed the view that the Covenant imposes three types of obligations on States: the duties to respect, protect and fulfill. Business enterprises – similarly not mentioned in the Covenant – have been referred to by CESCR mostly in relation to the duty to protect. There is no doubt that the Committee considers States Parties to have obligations to regulate and adjudicate private corporate acts in order to protect rights under the Covenant.

169. Nevertheless, it remains unclear how far States should go in protecting and punishing abuse before they are considered to have fulfilled the duty – namely, are they required to act with “due diligence” and what does this concept mean in relation to violations other than those concerning domestic violence? If CESCR considers that the concept has wider application, more elaboration would be helpful on the extent of due diligence required for a State Party to fulfill its duty, bearing in mind States Parties' discretion in terms of implementation.

170. The Committee has also said that States Parties could violate the duty to respect if they fail to consider human rights in their agreements with “multinational entities.” It would be helpful if the Committee could elaborate on this discussion, including whether the term “multinational entities” includes corporations and assuming this is the case, the types of steps a State Party could or should take in order to discover human rights impacts of agreements as well as desired or required actions if it learns of such impacts.

B. References and attention to business enterprises

171. Even though the Covenant does not mention business enterprises, the Committee has increasingly referred to them in relation to the State duty to protect. **Specific**

references to business in this respect are present in earlier General Comments but appear with far more strength from General Comment 12 in 1999. Accordingly, there has been a trend since 1999 to focus on State obligations regarding business abuse.

172. Further, the Committee has increasingly discussed State obligations in relation to particular sectors and industries, including the extractives industry, water providers, food manufacturers and pharmaceutical companies. It also frequently refers to broader terms such as “employers” and the “labor market” which include corporate actors. It is hoped that in the future CESCR will continue and even increase its discussion of the actions of business enterprises in various sectors.

173. In addition, CESCR has noted that while States are ultimately accountable for rights abuses by third parties, business have some “**responsibilities**” in relation to rights. The Committee has referred to “responsibilities” in relation to both the “realization” and the “respect” of rights. The Committee has recommended that States raise businesses’ awareness of human rights issues and facilitate an environment in which corporations can fulfill any such responsibilities. However, the nature and extent of these responsibilities for both States and corporations remain unclear.

174. In particular, it is uncertain what legal and practical consequences the Committee sees for any violation of business responsibilities, considering it confirms that corporations are “not bound by the Covenant.” It is also unclear whether CESCR considers that any business responsibilities go beyond a mere responsibility to “respect” rights, towards also “realizing” them and what this might mean in practice. Finally, guidance would be helpful on whether facilitating fulfillment of responsibilities by corporations means States should take certain steps to promote and equip corporations to enter into private codes of conduct.

C. Measures States are required to take with respect to business enterprises

175. According to the Committee, States must take legislative or other administrative measures to **regulate** acts by business enterprises. It also considers that States must ensure that regulations are enforced by **adjudicating** acts by private actors, notably through the provision of effective remedies, in particular judicial remedies. CESCR calls for States to **monitor** the application of regulatory measures in order to protect rights and prevent any infringement upon them. The Committee also increasingly recommends **promotional measures**, such as human rights awareness raising and incentives to prevent violations.

176. Thus, while it is clear that the Committee supports measures to regulate and adjudicate private corporate acts, some issues, such as the sanctioning of legal persons (as opposed to individuals) or compensation could benefit from further elaboration. Future discussion could consider what the remedial options of victims should be, and what liabilities States Parties should impose on business enterprises, notwithstanding the margin of appreciation left to States with respect to implementation.

D. State-owned or controlled enterprises

177. The research sample did not uncover any references to State-owned or controlled enterprises though the Committee has referred to “**State-owned facilities**” as part of discussing the **duty to respect**. It is unknown whether the term “**State-owned facilities**” includes those run by corporations and also whether the Committee intended to focus on State control as well as ownership when bringing the acts of State-owned facilities within the ambit of the duty to respect. It is also unclear if the Committee’s comments regarding State-owned facilities offer any insights into its views about State-owned enterprises.

178. In relation to the Committee’s guidance regarding corporate activities more generally, its broad references to “corporations” without any discussion of ownership suggest that its recommendations in relation to the duty to protect apply to all corporations regardless of their ownership structure. More guidance would be helpful on this issue as well as how the Committee considers States Parties responsible for the acts of **State-controlled** enterprises. For example, does it consider that failure to prevent abuse by such enterprises could amount to a violation of the duty to protect even though such enterprises may not be considered third parties?

E. Territorial scope

179. The Committee considers that a State Party’s Covenant obligations apply to individuals who are within its effective control even if they are outside the State’s national territory. However, the Committee has not provided detailed guidance on the concept of “effective control” in relation to the Covenant.

180. It is therefore unknown how the Committee might interpret a situation where a corporation acts on the State’s behalf (exercising elements of governmental authority or acting under the instructions, direction or control of the State) outside the national territory, and exercises a degree of control over individuals such that, were such control exercised by State agents, the State’s Covenant obligations would apply in full. Further guidance to better understand the Committee’s thinking could include: when the Committee would consider that a corporation is acting on the State’s behalf; what might constitute “effective control;” and assuming there is a corporation acting on the State’s behalf and exercising effective control over individuals, would the Committee consider that the State Party’s Covenant obligations apply in full to those individuals?

F. Regulation with extraterritorial effect

181. More guidance would be helpful regarding the Committee’s views on whether States Parties are required to regulate, or influence in some other way, corporate activities which affect individuals outside their national territory and effective control.

182. First, as discussed above, it is unclear what the Committee means by the phrase “their own companies.” It is also hard to say with certainty whether the Committee generally believes that States Parties are required to take steps to *regulate* corporate acts abroad to “prevent” abuse or “protect” rights or whether some other form of action is contemplated. Regarding “their own companies,” if some kind of regulation is required, what links should a corporation have with the State in order to be subject to such

regulation, rather than be considered a “third party” which the State should “influence” where possible through “legal or political means?” More insight into the meaning of the terms “influence” and “legal or political means” would also be helpful.

183. It is also difficult to interpret how the Committee’s comments interrelate with the concept of international cooperation, considering they tend to be included in sections discussing the concept. For example, does the Committee believe that extraterritorial regulation is simply part of international cooperation and if so, could States be seen as violating their commitments in relation to international cooperation if they fail to regulate or at least take action to influence corporate acts abroad?

184. It is unknown whether the absence of any similar discussions in the Committee’s last three General Comments means that it intended to limit its remarks to activities affecting the rights to food, health and water or even that its current thinking simply no longer reflects the remarks in General Comments 12, 14 and 15.

185. Finally, even if the analysis in Part VII is correct that the Committee believes the Covenant *permits* extraterritorial regulation provided it accords with general principles of international law, it is unclear if such beliefs apply broadly to all rights or only those discussed in General Comments 12, 14 and 15.

186. More guidance from the Committee on this issue could assist States Parties to better understand when they may be obliged, if ever, to regulate or take other action against corporate acts where they affect individuals outside the State’s national territory and effective control. It could also assist corporations to understand whether extraterritorial regulation by States is in line with those States’ international obligations, as well as clarify remedial options for victims.

ANNEX 1: SUBSTANTIVE ARTICLES OF ICESCR²⁸⁷

**International Covenant on Economic, Social and Cultural Rights
Adopted and opened for signature, ratification and accession by General Assembly
resolution 2200A (XXI)
of 16 December 1966
entry into force 3 January 1976, in accordance with article 27**

Preamble

The States Parties to the present Covenant,

Considering that, in accordance with the principles proclaimed in the Charter of the United Nations, recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world,

Recognizing that these rights derive from the inherent dignity of the human person,

Recognizing that, in accordance with the Universal Declaration of Human Rights, the ideal of free human beings enjoying freedom from fear and want can only be achieved if conditions are created whereby everyone may enjoy his economic, social and cultural rights, as well as his civil and political rights,

Considering the obligation of States under the Charter of the United Nations to promote universal respect for, and observance of, human rights and freedoms,

Realizing that the individual, having duties to other individuals and to the community to which he belongs, is under a responsibility to strive for the promotion and observance of the rights recognized in the present Covenant,

Agree upon the following articles:

PART I

Article 1

1. All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.

²⁸⁷ Note that all procedural Articles have been taken out of this version, leaving only the substantive Articles that are referred to in the report. Text sourced from the official site of the UN Office of the High Commissioner for Human Rights as at May 2007. See <http://www.ohchr.org/english/law/cescr.htm>.

2. All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.

3. The States Parties to the present Covenant, including those having responsibility for the administration of Non-Self-Governing and Trust Territories, shall promote the realization of the right of self-determination, and shall respect that right, in conformity with the provisions of the Charter of the United Nations.

PART II

Article 2

1. Each state Party to the present Covenant undertakes to take steps, individually and through international assistance and co-operation, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means, including particularly the adoption of legislative measures.

2. The States Parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

3. Developing countries, with due regard to human rights and their national economy, may determine to what extent they would guarantee the economic rights recognized in the present Covenant to non-nationals.

Article 3

The States Parties to the present Covenant undertake to ensure the equal right of men and women to the enjoyment of all economic, social and cultural rights set forth in the present Covenant.

Article 4

The States Parties to the present Covenant recognize that, in the enjoyment of those rights provided by the state in conformity with the present Covenant, the state may subject such rights only to such limitations as are determined by law only in so far as this may be compatible with the nature of these rights and solely for the purpose of promoting the general welfare in a democratic society.

Article 5

1. Nothing in the present Covenant may be interpreted as implying for any state, group or person any right to engage in any activity or to perform any act aimed at the destruction

of any of the rights or freedoms recognized herein, or at their limitation to a greater extent than is provided for in the present Covenant.

2. No restriction upon or derogation from any of the fundamental human rights recognized or existing in any country in virtue of law, conventions, regulations or custom shall be admitted on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.

PART III

Article 6

1. The States Parties to the present Covenant recognize the right to work, which includes the right of everyone to the opportunity to gain his living by work which he freely chooses or accepts, and will take appropriate steps to safeguard this right.

2. The steps to be taken by a state Party to the present Covenant to achieve the full realization of this right shall include technical and vocational guidance and training programmes, policies and techniques to achieve steady economic, social and cultural development and full and productive employment under conditions safeguarding fundamental political and economic freedoms to the individual.

Article 7

The States Parties to the present Covenant recognize the right of everyone to the enjoyment of just and favourable conditions of work which ensure, in particular:

(a) Remuneration which provides all workers, as a minimum, with:

(i) Fair wages and equal remuneration for work of equal value without distinction of any kind, in particular women being guaranteed conditions of work not inferior to those enjoyed by men, with equal pay for equal work;

(ii) Art. decent living for themselves and their families in accordance with the provisions of the present Covenant;

(b) Safe and healthy working conditions;

(c) Equal opportunity for everyone to be promoted in his employment to an appropriate higher level, subject to no considerations other than those of seniority and competence;

(d) Rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays

Article 8

1. The States Parties to the present Covenant undertake to ensure:

(a) The right of everyone to form trade unions and join the trade union of his choice, subject only to the rules of the organization concerned, for the promotion and protection of his economic and social interests. No restrictions may be placed on the exercise of this right other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(b) The right of trade unions to establish national federations or confederations and the right of the latter to form or join international trade-union organizations;

(c) The right of trade unions to function freely subject to no limitations other than those prescribed by law and which are necessary in a democratic society in the interests of national security or public order or for the protection of the rights and freedoms of others;

(d) The right to strike, provided that it is exercised in conformity with the laws of the particular country.

2. This article shall not prevent the imposition of lawful restrictions on the exercise of these rights by members of the armed forces or of the police or of the administration of the state.

3. Nothing in this article shall authorize States Parties to the International Labour Organisation Convention of 1948 concerning Freedom of Association and Protection of the Right to Organize to take legislative measures which would prejudice, or apply the law in such a manner as would prejudice, the guarantees provided for in that Convention.

Article 9

The States Parties to the present Covenant recognize the right of everyone to social security, including social insurance.

Article 10

The States Parties to the present Covenant recognize that:

1. The widest possible protection and assistance should be accorded to the family, which is the natural and fundamental group unit of society, particularly for its establishment and while it is responsible for the care and education of dependent children. Marriage must be entered into with the free consent of the intending spouses.

2. Special protection should be accorded to mothers during a reasonable period before and after childbirth. During such period working mothers should be accorded paid leave or leave with adequate social security benefits.

3. Special measures of protection and assistance should be taken on behalf of all children and young persons without any discrimination for reasons of parentage or other conditions. 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 child labour should be prohibited and punishable by law.

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent.

2. The States Parties to the present Covenant, recognizing the fundamental right of everyone to be free from hunger, shall take, individually and through international co-operation, the measures, including specific programmes, which are needed:

(a) To improve methods of production, conservation and distribution of food by making full use of technical and scientific knowledge, by disseminating knowledge of the principles of nutrition and by developing or reforming agrarian systems in such a way as to achieve the most efficient development and utilization of natural resources;

(b) Taking into account the problems of both food-importing and food-exporting countries, to ensure an equitable distribution of world food supplies in relation to need.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 13

1. The States Parties to the present Covenant recognize the right of everyone to education. They agree that education shall be directed to the full development of the human personality and the sense of its dignity, and shall strengthen the respect for human rights and fundamental freedoms. They further agree that education shall enable all persons to participate effectively in a free society, promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups, and further the activities of the United Nations for the maintenance of peace.

2. The States Parties to the present Covenant recognize that, with a view to achieving the full realization of this right:

(a) Primary education shall be compulsory and available free to all;

(b) Secondary education in its different forms, including technical and vocational secondary education, shall be made generally available and accessible to all by every appropriate means, and in particular by the progressive introduction of free education;

(c) Higher education shall be made equally accessible to all, on the basis of capacity, by every appropriate means, and in particular by the progressive introduction of free education;

(d) Fundamental education shall be encouraged or intensified as far as possible for those persons who have not received or completed the whole period of their primary education;

(e) The development of a system of schools at all levels shall be actively pursued, an adequate fellowship system shall be established, and the material conditions of teaching staff shall be continuously improved.

3. The States Parties to the present Covenant undertake to have respect for the liberty of parents and, when applicable, legal guardians to choose for their children schools, other than those established by the public authorities, which conform to such minimum educational standards as may be laid down or approved by the state and to ensure the religious and moral education of their children in conformity with their own convictions.

4. No part of this article shall be construed so as to interfere with the liberty of individuals and bodies to establish and direct educational institutions, subject always to the observance of the principles set forth in paragraph I of this article and to the requirement that the education given in such institutions shall conform to such minimum standards as may be laid down by the state.

Article 14

Each state Party to the present Covenant which, at the time of becoming a Party, has not been able to secure in its metropolitan territory or other territories under its jurisdiction compulsory primary education, free of charge, undertakes, within two years, to work out

and adopt a detailed plan of action for the progressive implementation, within a reasonable number of years, to be fixed in the plan, of the principle of compulsory education free of charge for all.

Article 15

1. The States Parties to the present Covenant recognize the right of everyone:
 - (a) To take part in cultural life;
 - (b) To enjoy the benefits of scientific progress and its applications;
 - (c) To benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author.
2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for the conservation, the development and the diffusion of science and culture.
3. The States Parties to the present Covenant undertake to respect the freedom indispensable for scientific research and creative activity.
4. The States Parties to the present Covenant recognize the benefits to be derived from the encouragement and development of international contacts and co-operation in the scientific and cultural fields.

PART IV

Article 16

1. The States Parties to the present Covenant undertake to submit in conformity with this part of the Covenant reports on the measures which they have adopted and the progress made in achieving the observance of the rights recognized herein.
2.
 - (a) All reports shall be submitted to the Secretary-General of the United Nations, who shall transmit copies to the Economic and Social Council for consideration in accordance with the provisions of the present Covenant;
 - (b) The Secretary-General of the United Nations shall also transmit to the specialized agencies copies of the reports, or any relevant parts therefrom, from States Parties to the present Covenant which are also members of these specialized agencies in so far as these reports, or parts therefrom, relate to any matters which fall within the responsibilities of the said agencies in accordance with their constitutional instruments.

Article 17

1. The States Parties to the present Covenant shall furnish their reports in stages, in accordance with a programme to be established by the Economic and Social Council within one year of the entry into force of the present Covenant after consultation with the States Parties and the specialized agencies concerned.
2. Reports may indicate factors and difficulties affecting the degree of fulfilment of obligations under the present Covenant.
3. Where relevant information has previously been furnished to the United Nations or to any specialized agency by any state Party to the present Covenant, it will not be necessary to reproduce that information, but a precise reference to the information so furnished will suffice.

Article 18

Pursuant to its responsibilities under the Charter of the United Nations in the field of human rights and fundamental freedoms, the Economic and Social Council may make arrangements with the specialized agencies in respect of their reporting to it on the progress made in achieving the observance of the provisions of the present Covenant falling within the scope of their activities. These reports may include particulars of decisions and recommendations on such implementation adopted by their competent organs.

Article 19

The Economic and Social Council may transmit to the Commission on Human Rights for study and general recommendation or, as appropriate, for information the reports concerning human rights submitted by States in accordance with articles 16 and 17, and those concerning human rights submitted by the specialized agencies in accordance with article 18.

Article 20

The States Parties to the present Covenant and the specialized agencies concerned may submit comments to the Economic and Social Council on any general recommendation under article 19 or reference to such general recommendation in any report of the Commission on Human Rights or any documentation referred to therein.

Article 21

The Economic and Social Council may submit from time to time to the General Assembly reports with recommendations of a general nature and a summary of the information received from the States Parties to the present Covenant and the specialized agencies on the measures taken and the progress made in achieving general observance of the rights recognized in the present Covenant.

Article 22

The Economic and Social Council may bring to the attention of other organs of the United Nations, their subsidiary organs and specialized agencies concerned with furnishing technical assistance any matters arising out of the reports referred to in this part of the present Covenant which may assist such bodies in deciding, each within its field of competence, on the advisability of international measures likely to contribute to the effective progressive implementation of the present Covenant.

Article 23

The States Parties to the present Covenant agree that international action for the achievement of the rights recognized in the present Covenant includes such methods as the conclusion of conventions, the adoption of recommendations, the furnishing of technical assistance and the holding of regional meetings and technical meetings for the purpose of consultation and study organized in conjunction with the Governments concerned.

Article 24

Nothing in the present Covenant shall be interpreted as impairing the provisions of the Charter of the United Nations and of the constitutions of the specialized agencies which define the respective responsibilities of the various organs of the United Nations and of the specialized agencies in regard to the matters dealt with in the present Covenant.

Article 25

Nothing in the present Covenant shall be interpreted as impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources.

ANNEX 2: STATES PARTIES TO ICESCR²⁸⁸

Last update: 19 April 2007

Entry into force: 3 January 1976, in accordance with article 27 [1](#).

Registration: 3 January 1976, No. 14531.

Status: Signatories: 66, Parties: 156.

Text: United Nations, *Treaty Series*, vol. 993, p. 3 ; depositary notification C.N.781.2001.TREATIES-6 of 5 October 2001 [Proposal of correction to the original of the Covenant (Chinese authentic text) and C.N.7.2002.TREATIES-1 of 3 January 2002 [Rectification of the original of the Covenant (Chinese authentic text)].

Note: The Covenant was opened for signature at New York on 19 December 1966.

| Participant | Signature | Ratification, Accession (a), Succession (d) |
|--|-------------|--|
| Afghanistan | . | 24 Jan 1983 a |
| Albania | . | 4 Oct 1991 a |
| Algeria | 10 Dec 1968 | 12 Sep 1989 |
| Angola | . | 10 Jan 1992 a |
| Argentina | 19 Feb 1968 | 8 Aug 1986 |
| Armenia | . | 13 Sep 1993 a |
| Australia | 18 Dec 1972 | 10 Dec 1975 |
| Austria | 10 Dec 1973 | 10 Sep 1978 |
| Azerbaijan | . | 13 Aug 1992 a |
| Bangladesh | . | 5 Oct 1998 a |
| Barbados | . | 5 Jan 1973 a |
| Belarus | 19 Mar 1968 | 12 Nov 1973 |
| Belgium | 10 Dec 1968 | 21 Apr 1983 |
| Belize | 6 Sep 2000 | . |
| Benin | . | 12 Mar 1992 a |
| Bolivia | . | 12 Aug 1982 a |
| Bosnia and Herzegovina 2 | . | 1 Sep 1993 d |
| Brazil | . | 24 Jan 1992 a |
| Bulgaria | 8 Oct 1968 | 21 Sep 1970 |
| Burkina Faso | . | 4 Jan 1999 a |
| Burundi | . | 9 May 1990 a |
| Cambodia 3 , 4 | 17 Oct 1980 | 26 May 1992 a |
| Cameroon | . | 27 Jun 1984 a |
| Canada | . | 19 May 1976 a |
| Cape Verde | . | 6 Aug 1993 a |
| Central African Republic | . | 8 May 1981 a |

²⁸⁸ As at 15 May 2007 – note that list officially updated as at 19 April 2007. Sourced from the official site of the UN Office of the High Commissioner for Human Rights. See <http://www.ohchr.org/english/countries/ratification/3.htm>. Numbers next to State names refer to notes contained on the webpage.

| | | |
|--|-------------|---------------|
| Chad | . | 9 Jun 1995 a |
| Chile | 16 Sep 1969 | 10 Feb 1972 |
| China 5 , 6 , 13 | 27 Oct 1997 | 27 Mar 2001 |
| Colombia | 21 Dec 1966 | 29 Oct 1969 |
| Congo | . | 5 Oct 1983 a |
| Costa Rica | 19 Dec 1966 | 29 Nov 1968 |
| Côte d'Ivoire | . | 26 Mar 1992 a |
| Croatia 2 | . | 12 Oct 1992 d |
| Cyprus | 9 Jan 1967 | 2 Apr 1969 |
| Czech Republic 7 | . | 22 Feb 1993 d |
| Democratic People's Republic of Korea | . | 14 Sep 1981 a |
| Democratic Republic of the Congo | . | 1 Nov 1976 a |
| Denmark | 20 Mar 1968 | 6 Jan 1972 |
| Djibouti | . | 5 Nov 2002 a |
| Dominica | . | 17 Jun 1993 a |
| Dominican Republic | . | 4 Jan 1978 a |
| Ecuador | 29 Sep 1967 | 6 Mar 1969 |
| Egypt | 4 Aug 1967 | 14 Jan 1982 |
| El Salvador | 21 Sep 1967 | 30 Nov 1979 |
| Equatorial Guinea | . | 25 Sep 1987 a |
| Eritrea | . | 17 Apr 2001 a |
| Estonia | . | 21 Oct 1991 a |
| Ethiopia | . | 11 Jun 1993 a |
| Finland | 11 Oct 1967 | 19 Aug 1975 |
| France | . | 4 Nov 1980 a |
| Gabon | . | 21 Jan 1983 a |
| Gambia | . | 29 Dec 1978 a |
| Georgia | . | 3 May 1994 a |
| Germany 8 , 9 | 9 Oct 1968 | 17 Dec 1973 |
| Ghana | 7 Sep 2000 | 7 Sep 2000 |
| Greece | . | 16 May 1985 a |
| Grenada | . | 6 Sep 1991 a |
| Guatemala | . | 19 May 1988 a |
| Guinea | 28 Feb 1967 | 24 Jan 1978 |
| Guinea-Bissau | . | 2 Jul 1992 a |
| Guyana | 22 Aug 1968 | 15 Feb 1977 |
| Honduras | 19 Dec 1966 | 17 Feb 1981 |
| Hungary | 25 Mar 1969 | 17 Jan 1974 |
| Iceland | 30 Dec 1968 | 22 Aug 1979 |
| India | . | 10 Apr 1979 a |
| Indonesia | . | 23 Feb 2006 a |
| Iran (Islamic Republic of) | 4 Apr 1968 | 24 Jun 1975 |
| Iraq | 18 Feb 1969 | 25 Jan 1971 |
| Ireland | 1 Oct 1973 | 8 Dec 1989 |

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|----------------------------------|-------------|---------------|
| Israel | 19 Dec 1966 | 3 Oct 1991 |
| Italy | 18 Jan 1967 | 15 Sep 1978 |
| Jamaica | 19 Dec 1966 | 3 Oct 1975 |
| Japan | 30 May 1978 | 21 Jun 1979 |
| Jordan | 30 Jun 1972 | 28 May 1975 |
| Kazakhstan | 2 Dec 2003 | 24 Jan 2006 |
| Kenya | . | 1 May 1972 a |
| Kuwait | . | 21 May 1996 a |
| Kyrgyzstan | . | 7 Oct 1994 a |
| Lao People's Democratic Republic | 7 Dec 2000 | 13 Feb 2007 |
| Latvia | . | 14 Apr 1992 a |
| Lebanon | . | 3 Nov 1972 a |
| Lesotho | . | 9 Sep 1992 a |
| Liberia | 18 Apr 1967 | 22 Sep 2004 |
| Libyan Arab Jamahiriya | . | 15 May 1970 a |
| Liechtenstein | . | 10 Dec 1998 a |
| Lithuania | . | 20 Nov 1991 a |
| Luxembourg | 26 Nov 1974 | 18 Aug 1983 |
| Madagascar | 14 Apr 1970 | 22 Sep 1971 |
| Malawi | . | 22 Dec 1993 a |
| Maldives | . | 19 Sep 2006 a |
| Mali | . | 16 Jul 1974 a |
| Malta | 22 Oct 1968 | 13 Sep 1990 |
| Mauritania | . | 17 Nov 2004 a |
| Mauritius | . | 12 Dec 1973 a |
| Mexico | . | 23 Mar 1981 a |
| Moldova | . | 26 Jan 1993 a |
| Monaco | 26 Jun 1997 | 28 Aug 1997 |
| Mongolia | 5 Jun 1968 | 18 Nov 1974 |
| Montenegro 14 | . | 23 Oct 2006 d |
| Morocco | 19 Jan 1977 | 3 May 1979 |
| Namibia | . | 28 Nov 1994 a |
| Nepal | . | 14 May 1991 a |
| Netherlands 10 | 25 Jun 1969 | 11 Dec 1978 |
| New Zealand 11 | 12 Nov 1968 | 28 Dec 1978 |
| Nicaragua | . | 12 Mar 1980 a |
| Niger | . | 7 Mar 1986 a |
| Nigeria | . | 29 Jul 1993 a |
| Norway | 20 Mar 1968 | 13 Sep 1972 |
| Pakistan | 3 Nov 2004 | . |
| Panama | 27 Jul 1976 | 8 Mar 1977 |
| Paraguay | . | 10 Jun 1992 a |
| Peru | 11 Aug 1977 | 28 Apr 1978 |
| Philippines | 19 Dec 1966 | 7 Jun 1974 |

| | | |
|--|-------------|---------------|
| Poland | 2 Mar 1967 | 18 Mar 1977 |
| Portugal 6 | 7 Oct 1976 | 31 Jul 1978 |
| Republic of Korea | . | 10 Apr 1990 a |
| Romania | 27 Jun 1968 | 9 Dec 1974 |
| Russian Federation | 18 Mar 1968 | 16 Oct 1973 |
| Rwanda | . | 16 Apr 1975 a |
| Saint Vincent and the Grenadines | . | 9 Nov 1981 a |
| San Marino | . | 18 Oct 1985 a |
| Sao Tome and Principe | 31 Oct 1995 | . |
| Senegal | 6 Jul 1970 | 13 Feb 1978 |
| Serbia 2 | . | 12 Mar 2001 d |
| Seychelles | . | 5 May 1992 a |
| Sierra Leone | . | 23 Aug 1996 a |
| Slovakia | . | 28 May 1993 d |
| Slovenia | . | 6 Jul 1992 d |
| Solomon Islands 12 | . | 17 Mar 1982 d |
| Somalia | . | 24 Jan 1990 a |
| South Africa | 3 Oct 1994 | . |
| Spain | 28 Sep 1976 | 27 Apr 1977 |
| Sri Lanka | . | 11 Jun 1980 a |
| Sudan | . | 18 Mar 1986 a |
| Suriname | . | 28 Dec 1976 a |
| Swaziland | . | 26 Mar 2004 a |
| Sweden | 29 Sep 1967 | 6 Dec 1971 |
| Switzerland | . | 18 Jun 1992 a |
| Syrian Arab Republic | . | 21 Apr 1969 a |
| Tajikistan | . | 4 Jan 1999 a |
| Thailand | . | 5 Sep 1999 a |
| The Former Yugoslav Republic of Macedonia 2 | . | 18 Jan 1994 d |
| Timor-Leste | . | 16 Apr 2003 a |
| Togo | . | 24 May 1984 a |
| Trinidad and Tobago | . | 8 Dec 1978 a |
| Tunisia | 30 Apr 1968 | 18 Mar 1969 |
| Turkey | 15 Aug 2000 | 23 Sep 2003 |
| Turkmenistan | . | 1 May 1997 a |
| Uganda | . | 21 Jan 1987 a |
| Ukraine | 20 Mar 1968 | 12 Nov 1973 |
| United Kingdom of Great Britain and Northern Ireland 13 , 15 | 16 Sep 1968 | 20 May 1976 |
| United Republic of Tanzania | . | 11 Jun 1976 a |
| United States of America | 5 Oct 1977 | . |
| Uruguay | 21 Feb 1967 | 1 Apr 1970 |
| Uzbekistan | . | 28 Sep 1995 a |
| Venezuela (Bolivarian Republic of) | 24 Jun 1969 | 10 May 1978 |
| Viet Nam | . | 24 Sep 1982 a |
| Yemen 16 | . | 9 Feb 1987 a |
| Zambia | . | 10 Apr 1984 a |

Zimbabwe

.

13 May 1991 a

ANNEX 3: LIST OF GENERAL COMMENTS²⁸⁹

| No. | Subject | Date | Languages |
|-----------|---|-------------|---|
| <u>18</u> | <u>The Right to work (art. 6) - Final edited version</u> | <u>2005</u> | <u>Art. C E F R S</u> |
| <u>17</u> | <u>The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author (art. 15 (1) (c)) - Final edited version</u> | <u>2005</u> | <u>Art. C E F R S</u> |
| <u>16</u> | <u>The equal right of men and women to the enjoyment of all economic, social and cultural rights (art.3)</u> | <u>2005</u> | <u>Art. C E F R S</u> <u>Corr.1 F (only)</u> |
| <u>15</u> | <u>The right to water (arts. 11 and 12)</u> | <u>2002</u> | <u>E F R S</u> |
| <u>14</u> | <u>The right to the highest attainable standard of health (art. 12)</u> | <u>2000</u> | <u>Art. C E F R S</u> |
| <u>13</u> | <u>The right to education (art. 13)</u> | <u>1999</u> | <u>Art. C E F R S</u> |
| <u>12</u> | <u>The right to adequate food (art. 11)</u> | <u>1999</u> | <u>Art. C E F R S</u> |
| <u>11</u> | <u>Plans of action for primary education (art. 14)</u> | <u>1999</u> | <u>Art. C E F R S</u> |
| <u>10</u> | <u>The role of national human rights institutions in the protection of economic, social and cultural rights</u> | <u>1998</u> | <u>Art. C E F R S</u> |
| <u>9</u> | <u>The domestic application of the Covenant</u> | <u>1998</u> | <u>Art. C E F R S</u> |
| <u>8</u> | <u>The relationship between economic sanctions and respect for economic, social and cultural rights</u> | <u>1997</u> | <u>Art. C E F R S</u> |
| <u>7</u> | <u>The right to adequate housing: forced evictions (art.11 (1))</u> | <u>1997</u> | <u>E</u> |
| <u>6</u> | <u>The economic, social and cultural rights of older persons</u> | <u>1995</u> | <u>E</u> |
| <u>5</u> | <u>Persons with disabilities</u> | <u>1994</u> | <u>E</u> |
| <u>4</u> | <u>The right to adequate housing</u> | <u>1991</u> | <u>E</u> |
| <u>3</u> | <u>The nature of States parties' obligations (art.2 (1))</u> | <u>1990</u> | <u>E</u> |
| <u>2</u> | <u>International technical assistance measures (art. 22)</u> | <u>1990</u> | <u>E</u> |
| <u>1</u> | <u>Reporting by States parties</u> | <u>1989</u> | <u>E</u> |

²⁸⁹ Text sourced from the official site of the UN Office of the High Commissioner for Human Rights as at 15 May 2007. See <http://www.ohchr.org/english/bodies/cescr/comments.htm>. All General Comments are contained in the document HRI/GEN/1/Rev.8.