

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

Committee on Economic, Social and Cultural Rights, Sixtieth Session, February 2017.

Comments on the draft document by the Global Coalition for Social Protection Floors

The Global Coalition for Social Protection Floors¹ welcomes the CESCR Committee's decision to draft a General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities. The Coalition especially welcomes CESCR's concern throughout the GC for the growing impact of business activities on realization of economic, social cultural rights specific to the Covenant including the right to social security that necessarily includes the financing and implementation of social protection floors. We also appreciate the emphasis the Committee has given to the vulnerabilities and lived realities of women and girls particularly in the informal sector and therefore the need for incorporating a gender dimension to all measures to regulate business activities. The Coalition through this statement aims to further provide information for CESCR consideration. We hope that the Committee will consider the following issues and recommendations during the General Discussion. We refer to the paragraphs of the Comment as drafted, by number.

III. Obligations of States Parties under the Covenant

A. General Obligations

9. Among vulnerable categories who are often disproportionately affected by the adverse impact of business activities we request you to include transgender persons, informal sector workers, young people, refugees and migrants.

Under **non-discrimination**:

- a. Protect and promote rights of diverse families, whether biological, adoptive, co-inhabiting, etc.
- b. Encourage breaking of gender stereotypes through suitable IEC material, training, and role models

Additionally, States should encourage business sectors to endorse the seven Women's Empowerment Principles (WEP)² as elaborated by UN Global Compact and UN Women. WEP should be part of National Action Plans on Business and Human Rights.

B. Specific Obligations linked to Business Activities

Obligation to respect

13. States should guarantee respectable conditions for public procurement in risky sectors (particularly in extraction activities and the garment sector), and therefore, pay better attention to

¹ The Global Coalition for Social Protection Floors is a Coalition of over 80 organizations globally that promotes the right of all people residing in a country to social security, regardless of documentation. We promote social protection floors as key instruments to achieve the overarching social goal of the 2030 sustainable development agenda. Social protection is one of the foundations for inclusive, equitable and sustainable development. It can simultaneously address the economic, social and environmental dimensions of sustainability and preservation of livelihoods.
<http://www.socialprotectionfloorscoalition.org/>

² Women's Empowerment Principles : Equality Means Business <http://www.weprinciples.org/>

human rights criteria in public contracts assignment. In this regard, International Labour Organization (ILO) Conventions and Recommendations adopted to protect workers from specific risks in respect of supply chains, public contracts and hazardous materials and workplaces should be ratified and applied.

States also should respect the rights of migrant workers especially women migrant workers including domestic workers who are in general rendered invisible by State actors of both receiving and sending countries.

15. In order to comply with their obligation to respect, states should reaffirm and recognize the importance of the fundamental or core Conventions of the ILO in respect of freedom of association and the right to collective bargaining as enabling rights, and to promote social dialogue.

Obligation to protect

17. States should refrain from establishing « Export processing zones » (EPZs) where fundamental principles and rights at work are not fully respected. Rights at work should apply to all territories, including EPZs.

States should adopt legislative measures to ensure that international labour standards are applied to all workers and that fundamental principles and rights at work are respected. States should undertake promotional activities to ensure companies are aware of the ILO Conventions, their ratification procedure and supervisory mechanisms, and their implications for their business activities. This also includes the implications of the ILO Recommendation 202 on Floors of Social Protection founded on the right to social security.

States should also adopt measures to protect the rights of migrant workers by regulating placement agencies; this should include all business activities connected to the mobility of migrant workers.

Under ‘obligation to protect’, a special mention should be made of parental entitlements in the context of **right to work** (maternity leave, paternity leave, adoption leave + child-care support in the form of allowances and necessary infrastructure) .

States should mandate businesses engaging informal sector workers to contribute to their social protection.

18. Several international and inter-governmental organizations (ILO, UN, OECD,) have developed “guidelines for multinational enterprises” to promote the full application of human rights, labour standards and environmental norms in their corporate activities. These guidelines all have their particular characteristics, but are in general non-binding and have few follow-up mechanisms. They also differ in terms of scope of application and grievance mechanisms. In general, the knowledge about these instruments is rather weak and trade unions and other non-state actors often don’t know how to properly use them. Therefore, a focal point is needed for the users to facilitate access to the different systems as well as an overarching mechanism to oversee and coordinate these different international systems. There is a real need for these organizations to coordinate their efforts in this field and **to work towards one single universal standard on business and human rights and a strong, enforceable grievance mechanism at the international level through the joint action of States.**

When international trade agreements are negotiated, states should incorporate social protection floors, as well as a floor of non-negotiable labour and environmental standards, which all relevant stakeholders (lead firms and their suppliers/subcontractors) must respect and protect.

20. States should identify risk profiles of business activities and of assimilated business entities and establish targeted measures in order to prevent them from violating fundamental human rights.

29. We agree that measures used by corporations to evade and avoid taxes can considerably reduce the resources of States to deliver on their human rights obligations. We would like the text to be more specific on the State obligations with regard to corporations. At the end of paragraph 29, we therefore propose the following two sentences:

These measures should include joint action at global level to reform international corporation taxation, along the lines of the OECD BEPS framework. This should also include measures that apply to individuals with links to business who utilize offshore accounts and banking services in countries with secrecy laws.

C. Extraterritorial Obligations

The lack of transparency in global supply chains and the non-disclosure of supplier lists complicate the monitoring by local trade unions and other non-state actors. Therefore, States could consider making the disclosure of supplier lists mandatory.

Business entities should report and publish non-financial information with regards to their activities for full transparency. This non-financial information could also be deposited annually with a public authority for inclusion in a public database. States should set up mechanisms of sanctions for business entities which not fully comply with the obligations of reporting.

The adoption of an international instrument including supplier lists and non-financial information publication would help States to comply with their obligation to protect as they would be better aware of abuses committed by business entities. They therefore would be able to take appropriate measures to ensure effective protection against such violations.

34. We agree that the extraterritorial obligation to respect is particularly relevant to the negotiation and conclusion of trade and investment agreements. We would like to add at the end of this paragraph the following sentence:

It is critical in this regard to investigate Investor-State Dispute Settlement (ISDS) mechanisms for their potential to undermine the capacity of States to comply with their obligations.

IV. Remedies

A. General Principles

When business and transnational entities refuse to comply with national regulation as well as with judicial rulings, host or home countries as well as victims of labour rights violations should be guaranteed **access to remedy at the international level**. Therefore, States could consider to collaborate in order to set up together a specific international tribunal that responds to the essential guarantees of independence and impartiality.



44. As stated in the Resolution³ of the International Labour Conference (June 2016), “States should strengthen labour administration and labour inspection systems in order to ensure full compliance

with laws and regulations and access to appropriate and effective remedy and complaints mechanisms ». Inspection systems are the first tool which reveals infringements and therefore allows to initiate reparation mechanisms processes.

In addition States should through Corporate Social Responsibility policies encourage businesses to work in partnership with civil society organizations to address issues of inequalities, poverty and vulnerabilities in a committed and sustained manner, over and above the regulation of business activities to meet States obligations to respect, protect and fulfill human rights.

³ Resolution concerning decent work in global supply chains, adopted on 10th June 2016 [International Labour Conference Provisional Record 14-1 105th Session, Geneva, May–June 2016].