***Ref.: Written Comments to the Committee on Economic, Social and Cultural Rights regarding its draft General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities***

The Center for International Environmental Law (CIEL) is pleased to contribute written comments to the Committee on Economic, Social and Cultural Rights (the Committee) regarding its draft General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities (draft General Comment).

As a general observation, CIEL welcomes the Committee's draft General Comment. Guidance by the Committee on business activities, especially in regard to extraterritorial obligations, public-private partnerships, export credit agencies, and markets, are particularly timely and relevant in light of economic globalization, efforts towards sustainable development, and large-scale investment projects resulting in human rights and environmental harm.

***1. Extraterritorial Obligations***

The draft General Comment elaborates on extraterritorial obligations in a discrete section. The Committee's opening sentence of paragraph 30 rightly sets the tone regarding the importance of ETOs. The Committee's analysis of the respect, protect and fulfil dimensions of extraterritorial obligations similarly reflects a nuanced and careful balance in the articulation of extraterritorial obligations.

One area for improvement of the draft General Comment is the general frame of extraterritorial obligations in paragraphs 31 and 33. In these paragraphs, the emphasis is placed by the Committee on business entities located outside the State's territory. This emphasis is warranted given the current gaps apparent in the implementation of extraterritorial obligations. However, this emphasis should not lead to conclude that extraterritorial obligations only concern situations where the State can exercise influence, control, power or authority over business entities located outside its territory. In fact, business activities *within* a state’s territory can have significant impact on the enjoyment of human rights of people living outside a State’s territorial boundaries. This is exemplified by situations involving significant transboundary environmental damage resulting from business activities within the State's territory that harm human rights of people beyond the State. In that regard, ETOs under the Covenant also encompasses an obligation to protect human rights from being impaired by extraterritorial environmental harm resulting from business activities that take place within the State’s territory.

***2. Public-private Partnerships in Sustainable Development***

The reaffirmation of the sustainable development paradigm offered by the UN Rio+20 Conference on Sustainable Development did not go unnoticed by the Committee, which put forward a *Statement* in advance of said Conference that noted,

6 (i) The importance that States parties to the Covenant live up to their responsibility to ensure that the corporate sector observe the Rio principles as they bear on all the rights under the Covenant, as stressed by the Committee in its 2011 Statement on the obligations of States Parties regarding the corporate sector and economic, social and cultural rights.

As a result of the Rio+20 Conference, the UN General Assembly adopted the so-called 2030 Agenda for Sustainable Development which sets out 17 Sustainable Development Goals. The implementation of the Sustainable Development Goals has involved the design of public-private partnerships involving the business sector. However, there are growing voices signaling a lack of accountability of business actors and governments in the actual implementation of these public-private partnerships.

Since paragraph 22 of the draft General Comment identifies privatization as a growing trend worldwide, it could also provide guidance on State obligations regarding another key trend worldwide that directly affects the realization of economic, social and cultural rights, namely the implementation of sustainable development goals via public-private partnerships.

***3. Export Credit Agencies***

The draft General Comment refers to "export credit and investment-related insurance and guarantee" in the context of the obligation to fulfil in paragraph 26. This reference, as an example of facilitating measures, is problematic on a number of grounds.

For one, export credit agencies usually argue that the "*Recommendation on common approaches on environment and officially supported export credits,*" adopted by the Council of the Organization on Economic Cooperation and Development, establish the only ECA-specific framework for social, environmental and human rights due diligence. These "Common Approaches", however, suffer from serious limitations that often lead to human rights and environmental harms.

Moreover, the linkages between export credit agencies and business activities is not only relevant to the analysis of the obligation to fulfil, but also to the duty to protect. Officially supported export credits establish a significant link and influence between the State and the business sector, and therefore the Committee should consider providing explicit guidance to States in regard to the operation of export credit agencies, particularly in relation to the issues of transparency, prevention and remedy.

***4. Markets***

The draft General Comment refers to the "infrastructures necessary for the proper functioning of markets" in paragraph 26. The Committee, however, provides no definition or guidance on what are those necessary infrastructures, nor what constitutes the proper functioning of markets, under a human rights framework. This lack of definition and guidance is problematic for several reasons.

Currently, markets reward private business actors who generate the highest profit for their shareholders. However, under a human rights framework, a properly functioning market should not be simply understood as enabling private profit. Instead, within a human rights framework a properly functioning market should be measured, inter alia, by the market’s ability to meet the basic needs of all citizens, reduce income inequality, uphold ethical and cultural standards, and serve the public good, including in respect of environmental protection. In this context, States have a duty to employ proper measures, including regulation, to ensure markets do not compromise States’ human rights obligations. In many instances, in order for States to fully comply with their obligations under the Covenant on Economic, Social and Cultural Rights, they may need to increase regulation of private enterprise, avoid privatizing public services, or implement a robust and equitable tax infrastructure to finance government operations necessary for the fulfillment of the rights of their citizens.

The Committee should therefore consider providing further definition and guidance on what is a properly functioning market within the human rights framework of the Covenant on Economic, Social and Cultural Rights. This definition should include, at a minimum: the goal of serving the public good; transparency; the internalization of the true costs of economic activity, including the environmental costs, social impacts and cultural implications; and adequate safeguards for the protection of vulnerable groups.

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