This submission is made on behalf of the Special Rapporteur on the rights of persons with disabilities, Ms. Catalina Devandas-Aguilar, pursuant to her mandated responsibilities following Human Rights Council resolution 26/20. It is respectfully made in relation to the public call for consultation on the draft general comment on “State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities”.

In light of the inequality experienced by persons with disabilities worldwide, including their overrepresentation amongst those who live in poverty and their exclusion from business related activities and decision making processes, the Special Rapporteur seeks to provide her contribution on the draft general comment. The contribution aims at supporting the Committee on Economic, Social and Cultural Rights in their efforts to include a human rights based perspective towards disability across their work, in line with the principles of the Convention on the Rights of Persons with Disabilities.

It has a particular focus on the impacts of discrimination on grounds of disability and denial of reasonable accommodation in the context of business activities. The results of discriminatory norms, policies, and practices can be further exacerbated for certain groups of persons with disabilities, in particular, women with disabilities that face considerable restrictions on the exercise of their rights relative to men and other women, including due to having fewer opportunities in terms of employment and restricted participation in business activities.

The submission concludes by reiterating the obligations which States Parties, organization or private enterprises have in relation to upholding the rights of persons with disabilities.

1. **Non-discrimination**

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

***Proposal: Introduce explicit reference to “persons with disabilities facing disproportionate barriers in accessing the general labour market, employment-related programmes and participating in business activities."***

10. The Committee has previously underlined that discrimination in the exercise of the economic, social and cultural rights is frequently found in private spheres, including families; in workplaces and labour market; and in the housing and lending sectors. Accordingly, States Parties have the obligation to ensure that individuals and entities in the private and market spheres do not discriminate on prohibited grounds. The failure to take the necessary legal, regulatory, remedial, educational, or other measures in order to adequately prevent and remedy discriminatory conduct constitutes a violation of the State obligations under the Covenant. Furthermore, a robust non-discrimination framework should include denial of reasonable accommodation as a form of discrimination on the basis of disability.

***Proposal: Introduce explicit referencing to the denial of reasonable accommodation as a form of discrimination on the basis of disability recognized under the Convention on the Rights of Persons with Disabilities, which expands previous human rights standards on non-discrimination.***

11. Committee reiterates its grave concern that certain segments of population face a greater risk of suffering intersectional and multiple discrimination. For instance, investment-linked evictions and displacements often result in physical and sexual violence against, and inadequate compensation and additional burden related to resettlement for, women and girls. In addition, women are overrepresented in the informal economy and are less likely to enjoy labor-related and social security protections. Furthermore, despite some improvement, women continue to be underrepresented in business decision-making processes worldwide. Women with disabilities, face enormous attitudinal, physical and informational barriers to equal opportunities in the world of work. They experience higher rates of unemployment and economic inactivity and are at greater risk of insufficient social protection that is a key to reducing extreme poverty. The Committee therefore recommends States Parties to address this issue of specific impacts of business activities on women and girls and to incorporate a gender perspective into all measures to regulate business activities that may adversely affect economic, social and cultural rights, including by consulting the Guidance on National Actions Plans on Business and Human Rights. States Parties should also take appropriate steps, including through temporary special measures, to improve women’s representation in the labour market, including at the upper echelons of the business hierarchy.

***Proposal: Introduce explicit reference to women with disabilities, as a group that is particularly affected by attitudinal, physical and informational barriers which holds them back from seizing and benefiting from equal opportunities in the world of work. Even when compared to other segments of population which are vulnerable to intersectional and multiple discrimination, they experience higher rates of unemployment and economic inactivity and are at greater risk of insufficient social protection that is a key to reducing extreme poverty.***

1. **Obligation to protect**

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

• States Parties’ failure to adopt and enforce necessary legislation aimed at preventing private health providers from denying access to affordable and quality services, treatments or information. This includes denial of services and care necessary for the realization of women’s sexual and reproductive rights and inadequate protection against non-consensual medical treatment and experimentation.

• States Parties’ failure to adopt a regulatory framework for private providers of education, including sanctions for abusive practices. In particular, the Committee has noted that private institutions involved in higher education and early childcare providers were often insufficiently or poorly regulated. Furthermore, the growing privatization of education heightens the risk of discrimination on grounds of wealth or social status.

• States Parties’ failure to ensure proper identification and elimination of obstacles and barriers preventing groups vulnerable to exclusion and discrimination, in particular persons with disabilities, from having access to loans, mortgages and the full range of financial services for starting or strengthening a business. This includes banking practices which do not recognise persons with disabilities' legal capacity or do not consider them creditworthy, eligibility criteria which pose particular challenges for people with disabilities, and other requirements which leave them outside the reach of the services provided in the financial area.

***Proposal: Introduce a concrete example reflecting the discrimination against person with disabilities in accessing bank loans, mortgages and other forms of financial credit.***

1. **Obligation to fulfill**

26. The obligation to fulfil has three components: the duty to facilitate, the duty to promote, and the duty to provide. The duty to facilitate requires States Parties to take all necessary measures to create an enabling environment for business actors to respect the economic, social and cultural rights enshrined in the Covenant as well as to contribute towards the full realization of these rights. Facilitating measures comprise a wide variety of economic and fiscal policy tools and incentives, such as export credit, investment-related insurance and guarantee, tax exemptions and deductibles, and infrastructures necessary for the proper functioning of markets. Further affirmative action programmes and other measures, such as specially designated funding, need to be taken to improve accessibility for and cover reasonable accommodation costs incurred in facilitating inclusive working environments for persons with disabilities.

***Proposal: Introduce an example of facilitation measures aimed at creating a non-discriminatory and inclusive working environment for persons with disabilities.***

28. The duty to provide obliges States Parties to mobilize resources to provide for goods and services necessary for the full realization of the Covenant rights, when rights holders are not in a position to provide for themselves for the reasons beyond their control. To this end, States Parties should raise resources, including by direct taxation of business income, and seek business cooperation and support to fulfil the Covenant rights and comply with other human rights standards and principles. The obligation to provide also requires States Parties to step in and provide assistance to victims where business actors trusted to deliver goods or services crucial to the enjoyment of Covenant rights fail to comply with their duties. The duty to achieve substantive equality is an integral part of the obligation to fulfil which requires the State and the private actors to create enabling conditions. Provision of necessary support constitutes a precondition for ensuring that persons with disabilities do participate in and benefit from business opportunities and processes.

***Proposal: Introduce an explicit mentioning of the duty to achieve substantive equality and the vital role of support for many persons with disabilities.***