31 January 2017

**Submission to UN Committee on Economic, Social and Cultural Rights on its draft General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities**

On behalf of the member agencies of the United Nations Human Rights Theme Group in Cambodia,[[1]](#footnote-1) OHCHR-Cambodia is pleased to submit this joint submission on the Committee’s draft General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities.

The members of the Human Rights Theme Group in Cambodia express appreciation for the opportunity to comment on the draft General Comment, which is particularly pertinent to Cambodia, where business-related human rights abuses, including in the context of projects financed by development banks, are far too common. We do not see social conflict and violations of rights under the Covenant in the context of business activities likely to diminish in the years to come, given the growth in infrastructure investments in the region and with the emergence of new development actors with limited or no social and environmental safeguards in place.

The Human Rights Theme Group noted the high quality of the draft. We believe that it will prove to be very useful for our Theme Group, including the wide coverage of examples cited, such as the specific reference to the need to encourage research and development activities for the realization of the Covenant while ensuring that these do not undermine access to essential medicines. In addition, in light of the fact that a multitude of business enterprises operating in Cambodia are registered elsewhere, the members of the Human Rights Theme Group welcome the stand-alone section on the extraterritorial application of human rights obligations, specifying that this obligation extends to any business entities over which States Parties may exercise influence by regulatory means or by the use of incentives, including economic incentives, in accordance with the Charter of the United Nations and applicable international law.

For ease of reference, our recommendations have been grouped by theme.

We submit our comments in the hope that they will be useful in the finalization of this important General Comment.

Sincerely,

Wan-Hea Lee

OHCHR Country Representative,

on behalf of the Members of the United Nations Human Rights Theme Group in Cambodia

1. **General obligations : Non-discrimination and vulnerable groups**

The United Nations Human Rights Theme Group in Cambodia welcomes the section devoted to non-discrimination and the different levels of impact that business activities may have on groups at greater risk of suffering inter-sectional and multiple discrimination. The section could be strengthened with recognition of the fact that different groups at risk of inter-sectional and multiple discrimination tend to be vulnerable to adverse business-related impacts for very different reasons. Indigenous peoples, for example, are exposed to different types of risks and levels of impacts from land-consuming projects, including loss of identity, culture, and customary livelihoods, owing to the inextricable links between their identities and cultures to the lands and the natural resources that they have customarily possessed, used and relied upon. The activities of businesses operating in the land sector, for instance, will therefore affect indigenous peoples in ways not felt by others in society. Similarly, internal migrant workers – often lacking the necessary legal documents and therefore also access to adequate housing, health and education services – and their specific vulnerability to exploitation in the context of business activities may also justify being addressed as a separate group in the draft General Comment. A specific reference to a number of other notable vulnerable groups would also be helpful for those of us who promote their rights, including LGBTI, older persons, persons with disabilities and children, along with illustrations of their particular vulnerabilities.

The Theme Group suggests that, after the introductory article (“the Committee reiterates its grave concern that certain segments of population face a greater risk of suffering intersectional and multiple discrimination” in 2.1.), the vulnerability of such specific groups be elaborated in separate articles, in particular, the reasons for any heightened risks faced in the context of business activities.

With respect to the rights of indigenous peoples, the Theme Group suggests the following addition to para. 8 (in italics):

8. … States Parties are required to adopt measures as necessary to protect individuals, *and groups, such as indigenous peoples*, from abuses of ...”

1. **Specific obligations linked to business activities**
2. **The duty to respect – member states at the Boards of multilateral development banks and international financial institutions**

It would be helpful for the draft to clearly set out that the duty of States parties to comply with the Covenant extends to all the roles they may assume, including as Board members of multilateral development banks taking decisions over lending and technical support. Such decisions have great potential for the realization of human rights – or dire consequences, if human rights considerations do not factor in the lending process. For instance, in Cambodia, reports of forced evictions have long been reported in the context of the implementation of development projects financed by multilateral development banks and international financial institutions. By way of illustration, in 2011, the World Bank temporarily suspended all lending to the Government of Cambodia following a series of forced evictions that left many families impoverished and many of which remain unresolved today. Had human rights and human rights risk information – including information generated by the Committee – been considered at an early stage of project design, such harm may have been minimized or avoided altogether.

Recalling that the Committee’s General Comment 7 on Forced Evictions calls for full respect of the guidelines on relocation and/or resettlement adopted by institutions such as the World Bank, with a view to limiting the scale of and human suffering associated with forced evictions,[[2]](#footnote-2) State Parties to the Covenant as Board members of multilateral development banks and international financial institutions also exercise significant influence over the design and requirements for compliance with the social and environmental safeguards to which lending decisions are subject, including on housing and other rights provided for under the Covenant. Such decisions have particular bearing on the realization of rights under the Covenant, in particular as human rights are generally not reflected in current safeguard policies. The Theme Group therefore suggests the addition of a stand-alone article on the obligation of State Parties to align their decisions over lending, technical assistance and safeguard policies on third parties with their human rights obligations under the Covenant. In addition, human rights due diligence and the integration of human rights risk information (including information generated by the Committee), should be formally integrated into the project design and implementation.

The Theme Group suggests the following addition at an appropriate place:

“The duty of States parties to comply with the Covenant extends to all the roles they may assume, including as Board members of multilateral development banks taking decisions over lending and technical support. Such decisions have great potential for the realization of human rights – or dire consequences if human rights considerations do not factor in the lending process. As Board members, States parties should also, to the extent possible, influence the design of social and environmental safeguards to which lending decisions are subject, which could potentially affect a number of rights provided for under the Covenant, as well as encourage the adoption of requirements by borrowers to comply with those safeguards.”

In addition to a stand-alone paragraph suggested above, the requirement for States to ensure consistency with their human rights obligations in decisions as Board Members could be cross-referenced throughout the General Comment, including by adding the following text to para. 12 (in italics):

12. The obligation to respect means that domestic laws, policies, or any other measures pertaining to business entities and activities under the jurisdiction of States Parties, *including decisions made by State Parties as members of multilateral development banks and other international financial institutions*, must conform to the economic, social and cultural rights provisions under the Covenant …

and to para. 33 (suggested addition in italics):

33. The extraterritorial obligation to respect requires States Parties to refrain from interfering directly or indirectly with the enjoyment of the rights under the Covenant by persons outside their territories. As part of this obligation, States Parties should ensure that they do not obstruct another State from complying with its obligations under the Covenant. This duty is particularly relevant to the negotiation and conclusion of trade and investment agreements or of financial and tax treaties, *lending decisions of multilateral development banks and international financial institutions*,as well as in judicial cooperation.

**b) Extraterritorial obligations – the ability to exercise leverage over business relationships**

With regard to States’ extraterritorial obligations in the context of business activities, the Theme Group on Human Rights in Cambodia notes that, according to the UN Guiding Principles on Business and Human Rights, the appropriate action in response to any human rights risks identified depends on one’s degree of leverage. A number of options should be considered to use or enhance leverage to ensure better respect for human rights, including zero-tolerance for any existing harmful practices.[[3]](#footnote-3)

In light of the above, the Theme Group suggests the following addition to para. 32 (in italics):

32. Extraterritorial obligations arise when a State Party may exercise control, power, authority *or leverage* over business entities or situations located outside its territory, in a way that could have an impact on the enjoyment of human rights by individuals or groups affected by such entities’ activities or by such situations. In this regard, the Committee also takes note General Comment 16 of the Committee on the Rights of the Child and of the Maastricht Principles on the Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, which provide a partial restatement of international human rights law as developed in this area in recent years.

1. **Sexual and reproductive rights**

Women’s sexual and reproductive health is related to multiple human rights covered by the Covenant, including the right to health, the right to education, and the prohibition of discrimination. The Committee on Economic, Social and Cultural Rights has also affirmed that women’s right to health encompasses their reproductive *and* sexual health. To ensure that both reproductive and sexual rights are covered by the General Comment the Theme Group recommends that relevant articles (18 and 21) of the draft be amended as follows (additions in italics):

18. … However, it is also gaining importance in other areas relating to social protection, water, sanitation, health - *including sexual and reproductive health and rights* - education and cultural life. The increased role and impact of private actors in what used to be predominantly public sectors pose new challenges….

21.... The private sector has long played an important role in the sectors closely related to certain Covenant rights, such as the right to work and the right to food. However, it is also gaining importance in other areas relating to social protection, water, sanitation, health - *including sexual and reproductive health and rights* - education and cultural life. ….

**IV. Human rights defenders**

The Theme Group on human rights in Cambodia appreciates the Committee’s consideration of the challenges that human rights defenders may face in the context of business-related human rights impacts. The Theme Group suggests strengthening this part as follows (suggested additions in italics):

22. ... In addition, trade union leaders, indigenous *peoples’ representatives*, and anti-corruption activists are often subject *to harassment for* their *legitimate* *human rights work*. The Committee recommends States Parties to take all necessary measures to protect human rights *defenders* and *ensure that they are able to carry out* their work, and to refrain from imposing criminal penalties on them or enacting new criminal offences with a purpose of hindering their work.

**V. Occupational Health and Safety**

The Theme Group on human rights in Cambodia echoes with the Committee’s comment on effective monitoring, investigation and accountability mechanisms to be harnessed through enabling infrastructure. The Theme Group suggests strengthening this part as follows (suggested additions in italics):

20. …Such enforcement systems require not only legal measures but also enabling infrastructure, such as independent national human rights institutions, competent inspectorates in the area of food safety*, occupational health and safety* and working conditions, and consumer protection agencies, with the authority and resources necessary to adequately discharge their duties.

1. Members include RCO, FAO, UNFPA, WHO, UNHCR, ILO, UNDP, WFP, UNICEF, UNAIDS, UNESCO, UN Women, chaired by OHCHR. [↑](#footnote-ref-1)
2. ## Committee on Economic, Social and Cultural Rights: General comment No. 7: The right to adequate housing (art. 11 (1) of the Covenant): Forced evictions Sixteenth session (1997), paragraph 18.

   [↑](#footnote-ref-2)
3. See OHCHR, The issue of Applicability of the Guidelines on Human Rights on Minority Shareholders, April 2013, available at

   [http://www.ohchr.org/Documents/Issues/Business/LetterSOMO.pdf](https://www.ohchr.org/Documents/Issues/Business/LetterSOMO.pdf) for further elaboration of this requirement, in particular how it applies to minority shareholdings of institutional investors. [↑](#footnote-ref-3)