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CESCR Secretariat

Palais Wilson

Rue des Paquis 52

Geneva

**Submission for Day of General Discussion on the Draft General Comment**

**on State Obligations under the International Covenant on Economic, Social and Cultural Rights**

**in the Context of Business Activities**

The British Institute of International and Comparative Law (“BIICL”) welcomes the Draft General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities (“the draft”). The draft is comprehensive and contains coherent and well-structured approaches.

We believe the draft may benefit from the following suggestions:

*Paragraph 18:*

1. The draft discusses the obligation of State parties to adopt a legal framework in order to protect rights-holders from human rights infringements by business activities. It should be clarified that the adoption of a National Action Plan is not in itself sufficient to discharge a State party's Covenant obligations.

2. It is to be noted that regulatory reporting requirements do not replace substantive requirements such as a statutory duty to undertake human rights due diligence. In our work (see especially <http://www.biicl.org/duediligence>) we have found that business enterprises want clear regulation on their human rights obligations, to provide legal certainty and clarity.

*Paragraph 37:*

3. The draft refers to four scenarios contained in paragraph 15 of the present General Comment. These four scenarios should be included in the text of this draft or as an annexure. A reader of the final General Comment may be unlikely to research previous documents and so remain uninformed of these scenarios.

*Paragraphs 41 to 47:*

4. Legislation which allows for corporate criminal or civil liability but which limits its own application to harms which occurred within the territory of the State party, is insufficient to meet the State party’s obligation to provide access to remedy for violations by business enterprises domiciled within the State party’s territory. It is essential that this be extended to extraterritorial consequences of corporate activities, perhaps including an obligation on all companies to act to prevent human rights abuses.

*Paragraph 48*:

5. Non-judicial bodies such as OECD National Contact Points cannot substitute courts or judicial tribunals for the purposes of meeting the State party’s duty to provide access to remedy.

*Generally:*

6. The draft could emphasise examples of the impact of business on cultural rights, and ways in which State parties’ Covenant obligations manifest themselves in the context of cultural rights.

*BIICL has long-standing expertise in providing independent and authoritative analysis of business and human rights issues. It works with law firms, companies, governments, international organisations, scholars and non-governmental organisations. Some of its work can be found at the following link:* [*http://www.biicl.org/pilresearch*](https://ex2010.biicl.org/owa/redir.aspx?C=31BAskKa6ka6Cn-EYvEP4k-yWOw7RdQIZHa2xc-mqHo3oEDLhyDGe1MD5G6WAMP88YPn1vsaNF4.&URL=http%3a%2f%2fwww.biicl.org%2fpilresearch)*.*

**Submitted by Professor Robert McCorquodale, BIICL Director, and Lise Smit, Research Fellow in Business and Human Rights**