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

by Emmaus Aurinkotehdas ry, Finland

This draft General Comment is very valuable and we think it needs to be approved.

We think however that it would be good to reflect and complement further the issues presented below.

**I.** While most of the draft General Comment considers that difference of business activities from human rights due to which the business activities might need to be limited by human rights in addition to that the General Comment also considers the need to ensure that business activities would need to be shaped so that they would fulfill human rights and promote their realisation:

The draft "clarifies the duties of the State under the International Covenant on Economic, Social and Cultural Rights to ensure that the activities of businesses contribute to and do not impede the realization of economic, social and cultural rights." (paragraph 1)

Governments need to secure that the corporations' business activity which is under the influence of the governments will be "contributing to State ability to mobilize resources for the realization of economic, social and cultural rights". (paragraph 40)

But how we should understand the relation between economic human rights and other economic rights ?

**1.** Whereas the Covenant covers 'economic rights' as human rights, that is quite understandable foundation for economic rights and a reasonable way of seeing 'economic rights'.

However, if some rights of trade, business or corporations are also called 'economic rights', but are not represented as universally equal human rights on economic activity, then one may wonder:

What rights are such 'economic rights' which are not human rights? Whose rights are they if not rights basically belonging to humans?

It is quite reasonable that economic rights on production, trade or investment must be primarily rights of human beings to sustain life.

If there are such corporations' rights to economic activities which would not be derived from human rights of any human beings, would such rights then consist of rights of some dead wares ?

Are not economic rights always rights to sustain life - life for living beings - whereas dead wares, like cars or coins can not have rights in any due sense.

**2.** Economic rights must be accordingly expressed - as rights of human (or other living) beings - also as the realisation of human rights duly presupposes certain type of economic activity.

As far as there can be rights of trade, investment or corporations, such rights are primarily some type of economic rights.

Economic rights are already agreed under the International Covenant on Economic, Social and Cultural Rights (ICESCR) as human rights.

Only from such fundamental economic human rights (set by ICESCR) one can derive people's rights to economic activity, economic exchange or investments of corporations and of any other actors.

Why so? Because economic rights are rights of humans - or of other living beings - whereas dead wares like cars or coins can not have rights in the same sense.

By speaking about rights of trade and investment which would not be derived from people's equal human rights, one misuses the meaning of the word "right" - as if dead wares, money, factories, or corporations etc. could have rights which are not derived from universally equal economic human rights of equal human beings.

Rights of economic activities (like exchange or investment) exist thus as derived from economic human rights - and only to the extent how far economic exchange or investment promote the realisation of economic rights; the rights to work, food, health, housing, etc. as human rights.

What is 'economic' in terms of rights? What are rights in respect to economy ? What is economic activity which has right as being economic?

Activity is economic compliant to how it sustains life (and what is necessary for life and subsistence/ livelihood) - realising equal economic human rights that are basis for people's rights in economy.

**3.** Economic rights must be thus rights of human beings - also as the realisation of human rights duly presupposes certain type of economic activity.

Rights to activities as economic activities are thus rights to sustain life and livelihood to fulfill basic economic human rights as equal for all.

As far as there can be rights of trade, investment or corporations, such rights are essentially economic rights.

**The purpose which trade and such related economic activities "should serve is the objective of human well-being to which the international human rights instruments give legal expression."** (CESCR Statement to the Third Ministerial Conference of the World Trade Organization, 26 November 1999, paragraph 5-6)

**II.** It is thus equally important not just to set limits from outside but to challenge and change the inner structure of the corporate activity - by requiring **the rights of economic exchange and investment** not only to be limited by human rights but **also to be derived from human rights - from promoting "human well-being to which the international human rights instruments give legal expression."** (CESCR Statement to the Third Ministerial Conference of the World Trade Organization, 26 November 1999, paragraph 5-6)

**This becomes currently in an alarming way all the more important** because whereas the relation of the trade and investment agreements to the obligations of states under the human rights agreements has been left usually non-defined in trade and investment agreements when states have been agreeing such new agreements, now however at the same time when the Comprehensive Economic and Trade Agreement (CETA) was signed between Canada and the EU, they signed also "EU-Canada Strategic Partnership Agreement", which determines CETA to be related to the human rights agreements in the following way **explicitly** **subordinating and undermining human rights under the rights of foreign investors** secured by the CETA investment court system.

EU-Canada Strategic Partnership Agreement subordinates and undermines human rights under the rights of foreign investors by saying about "respect for democratic principles, human rights and fundamental freedoms" that the parties shall "uphold these rights and principles in their own policies" but only to the extent that:   
  
Only when CETA investments would "constitute a “particularly serious and substantial violation" of democracy, human rights and fundamental freedoms - like "a coup d’État or grave crimes that threaten the [...] security and well-being of the international community" only then CETA could be terminated **but only** **compliant to how CETA's "provisions of Chapter Eight (Investment) shall continue to be effective for a period of 20 years after the date of termination of this Agreement in respect of investments made before that date."** (EU-Canada Strategic Partnership Agreement articles 1-2 and 28 and CETA article 30.9)

**So if the CETA rights for foreign investments which force states to pay enormous amounts to foreign investors thus violate human rights and destroy democracy like "a coup d’État" type of threat to "peace, security and well-being of the international community", such rights of investors shall continue to rule at least 20 years more !**

III. It is thus all the more crucial to secure 'economic rights' equally for all compliant to the economic human rights.

Rights of economic activities (like exchange or investment) can only exist as derived from economic human rights - only to the extent how far economic exchange or investment promote the realisation of economic rights; the rights to work, food, health, housing, etc. as human rights.

While economic rights can thus be duly established only by deriving them from economic human rights, economic rights on activities have to be determined according to how such activities realize economic human rights.

Only from these fundamental economic human rights (set by ICESCR as equal to all people indepentently from their background) one can derive other rights to economic activity, economic exchange or investments of corporations and of any other actors.

Rights provided only for commercial actors discriminate against less commercial actors' equal economic human rights and discriminate thus against other cultures of economy by favoring the culture of commercial consumption.

Such rights maintain unjust commercal overconsumption, which is unsustainable.

The rights to invest are however expected to be rights to bring the sources of life to such productive use, which sustains more life .

As 'to invest' is an opposite of just wasting or consuming, the right to invest to an area is an economic right to sustain area's life compliant to economic human rights without wasting its sources of life to other purposes.

We need thus to determine the rights of an activity as economic activity or as an investment compliant to how they realise economic human rights.

While it is good to limit such power of corporations and business from outside by human rights, in such external limitation the limited driving force within such activity remains still targeted to act in a manner which violates human rights.

The issue is thus not only whether we manage to limit some investment from violating human rights but rather that an activity is real economic investment only to the extent it fulfills economic human rights and promotes their realisation.

Activities can have rights as investments or economic values in an area only according to how they sustain the diversity of life of that area compliant to what the life is in that area - compliant to what area's diverse life signifies in that area

An activity has thus also rights as economic activity compliant to how much it sustains life compared to how little it wastes or consumes away world’s sources of life and its sustenance. Since it is not economic to waste a lot of money to unnecessary things, or to consume the sources of life's sustenance for other purposes than life's sustenance, thus what is economic is rather what sustains most life for all with least money being wasted unequally.

Activity is economic to the extent it consumes money (or other sources of sustenance) as little as possible per each life sustained as dignified in compliance with economic human rights.

Rights on economic activity must sustain life, food, water, health, etc. in their diverse forms equally for all in an economic manner - by acts that consume as little money as possible.

Some of the key challenges between human rights agreements and trade and investment agreements include also for example the following issues:

**a)** What is 'own' and ownership in terms of economic rights ?

The economic basis of the realisation of all human rights is such use of land and territory by the people who live there that "in no case may a people be deprived of its own means of subsistence", which are thus self-determined by people's life-heritage. (see the first article of the both main human rights treaties and CCPR General Comment 12)

Whereas the diverse ways how peoples may hold land or things as their "own means of subsistence" belong to the economic core and foundation of human rights, the human rights treaties do not provide for commercial ownership any privileged status under human rights commitments.

As under human rights diverse forms of economic cultures and their diverse forms of property have equal rights to the extent how they secure peoples' "own means of subsistence" as economic basis for human rights, the status or form of property is prohibited basis of discrimination.

**b)** What is non-discriminatory freedom in economy

Different cultures of economy and all their diverse forms of property, value, exchange and investment have to be treated equally so that all cultures of economy must be ensured equal rights and freedom to use the Earth to sustain life by their own means of subsistence and as adapted to regeneration of their area’s diverse life.

Commercial as well as others, less commercial ways of sustaining life have to be secured equal rights and equal freedom to use Earth to sustain life according to that how sustainably they secure peoples' own means of subsistence.

Therefore corporate form of economic activity can not have any privileged rights or freedoms compared to other less commercial or non-commercial forms of economic activity, exchange, subsistence economy or investment.

Thus all rights which are provided exclusively only for commercial actors - like those provided by all agreements on trade and commercial investments - are based on discrimination of economic human rights.

**c)** What is investment to a country, to territory or to an area as determined by human rights ?

We have thus to determine and derive all rights of economy, economic exchange and rights of investment from this how well each economic activity, exchange or investment sustains life and its diversity and fulfills the fundamental economic human rights, peoples self-determination and subsistence

Economic right to 'invest' is a right to sustain life as 'to invest' means an opposite of wasting or consuming money or other sources of subsistence. Investment requires the investor to maintain in the area resources which the area needs for renewal of the means of life and production in the area.

To the extent an activity sustains economically the life of an area compliant to the economic human rights and does not waste the sources of life of the area to other purposes it has rights as an investment.

Activities have rights as investments or economic values in an area compliant to how they sustain the diversity of life of that area compliant to what the life is in that area – compliant to what area's diverse life signifies in that area

(Communities have a right to live the local life through the meanings they have adapted to that locally signified diversity of life. This in turn determines, what is economic in that locality, as sustaining the life specific to that area and the regeneration of its environment.)

Activity has thus rights as investment to an area compliant as to how it sustains economically the life specific to that area and realises the economic human rights of such life, and does not waste for other purposes its sources of subsistence that are necessary for its regeneration and self-determination.

The rights to invest are rights to bring the sources of life to such productive use, which sustains more life and its diversity in a manner that fulfills better the main economic human rights to life, food, water, health, housing, work and to all people’s own means of subsistence that sustains such life.