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Dear United Nations Committee on Economic, Social and Cultural Rights:

I am pleased to submit for publication the revised version of Draft of the General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities. I appreciated the constructive criticisms of the rapporteurs and the reviewers. I have addressed each of their concerns as outlined below.

The most substantial revision concerns about Sector B: Specific Obligations linked to Business Activities, especially the articles 20 and 21 (written in the two paragraphs below), even though the commentaries written below also cover overally the content of the Draft of the General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities.

*20. "States Parties should also adopt policies and other non-legislative measures to ensure that incentives to businesses do not lead to restrict or hinder enjoyment of Covenant rights. This is particularly important in the areas of investment and intellectual property. Investment and trade agreements and national measures defining the investment and trade regimes at domestic level must be designed in a way that the increase in trade volumes and investment flows improve, rather than risk undermining, the rights protected under the Covenant. States Parties should identify any potential conflict between their obligations under the Covenant and subsequent trade or investment agreements, and refrain from entering into such agreements where such conflicts are found to exist. An intellectual property framework should also encourage research and development activities that serve the fulfilment of Covenant rights. Such framework, however, should not deny or restrict everyone’s access to essential medicines as necessary for the enjoyment of the right to health. It should also enable an access to productive resources such as seeds, which is crucial to the right to food and ensure the right to enjoy the benefits of scientific progress. In addition, design and implementation of relevant policies should be accompanied by assessment of their impacts on the enjoyment of Covenant rights."*

*21. "The duty of States Parties is both to create an appropriate legal and policy framework and to enforce these laws, regulations and policies. Therefore, effective monitoring, investigation and accountability mechanisms must be put in place to enable business compliance and accountability and ensure access to remedies for those whose Covenants rights have been violated in the context of business activities. 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 and working conditions, and consumer protection agencies, with the authority and resources necessary to adequately discharge their duties. Effective enforcement also requires robust mechanisms against corruption, the independence of which should be guaranteed and which should be sufficiently well resourced."*

The impulse of creativity is being defeated in modern economies by the poison of corporatism. Innovation is the fundamental engine of a "good economy" - one that not only leads countries to prosperity but opens up prospects for personal fulfillment for individuals. The main threat to development is the submission to corporatism. As an example, in Brazil, my homecountry, as in other countries, the furious response of taxi drivers to the Uber transport application is a symbol of how innovation can cause conflicts.

It is crucial to be on the side of innovators, those who are keen to spot new opportunities, create new products or work processes. Historically, it is impossible to underestimate the role that innovation and entrepreneurship play in economic prosperity. Unfortunately, everywhere the benign force of innovation is blocked by the fear of "disorderly change", which is nothing else than the argument created by interest groups, unions, sindicates and companies comfortably established in their market niches, and by the politicians with whom each one of these actors are strictly related. Measures that block innovation, even on the rare occasions when they are made with the best of intentions, reveal that a poison is running in the veins of society: the poison of corporatism. This results not only in less dynamic and productive economies, but less opportunities for people to have a life full of achievements.

In routinely language, corporatism is the effort of a group to defend their interests above all, whatever the cost. But it also refers to something broader, a set of practices and values. There is a very old element in corporatism, the idea that economics and society function as a body, which each "organ" has an function. This idea metamorphosed over the centuries and gained corollary until it was articulated between the end of the nineteenth century and the beginning of the twentieth, in a philosophy of resistance to the modern economy. The great battle of our time is no longer between capitalism and socialism but between the modern values of free enterprise and innovation at the center of capitalism and the reactive values of corporatism.

Instead of competition, corporatism prefers coordination and control of economic activity. This creates strong links between the state and the business sector, then much of the economic activity depends on negotiations with the government rather than the logic of the market. It is the state that decides which sector should or should not grow at a certain time, using subsidies, tax incentives and loans - generally for those who are better organized to defend their interests, or simply have more access to the higher government levels. Another fundamental value of corporatism is social protection. Protection for companies that gain market reserve and do not have to worry about improving their obsolete products is devastating to innovation, so do as overprotection for many social groups, who take a part of the wealth produced by the country thanks to redistributive policies. In corporatism, taxation is always high, to allow the state to offer a fair share to all. It is a system that always works to maintain the established order, which in economic terms means to kill incentives for innovation and the pursuit of competitiveness. The current Greek crisis, for example, shows this system in full operation.

From the practical point of view, socialism is over. State ownership of the means of production, which is one of the pillars of the system, is no longer a serious alternative. Corporatism has always wanted something a little bit different. It never rejected private property, if there was a considerable measure of control of economic activity provided by the state or by society. Corporatism is alive wherever the government benefits a company with special incentives or protects a stakeholder group. As for defenders of one system or another, you are likely to identify the corporatist for his nationalistic ideas, for his concern to defend the "community" of all the external forces that are supposed to threaten it, whereas the socialist will tend to be more concerned Inequality. Although they have different philosophies, it is not always easy to distinguish one character from another, because both share the same starting point, which is the aversion to what capitalism has the best, or its instability and "disruptive" character.

Ensuring universal access to education is essential because it helps to equalize the distribution of opportunities. A moderate level of social protection also tends to be harmless if financed by a neutral system of taxation. The problem is that states rarely stop there. In European nations, and in many others, among which Brazil fits, what is seen is the advance of corporatism. The state begins to provide for all, but it is not the poor who benefit most, but the business or union elites with better access to government. Worse than that, the economy loses efficiency and wages grow less than they could. Opportunities for business growth are reduced, and so the chance for new generations to have a life with richer experiences and participate more actively in the flow of the economy. Corporatists are always concerned with balancing the interests of the various social actors in securing some income for all. In capitalism, however, the fundamental concern must be with individual initiative, with what an individual can do with his or her life.

Innovation has never been so discussed. There are whole libraries dedicated to this topic, endless books about startups and entrepreneurs. Nevertheless, there is a considerable drop in innovation levels. There are a lot of discussions about the technology industry. But Silicon Valley, for example, is responsible for something like 3 percent of American income and a tiny rate of jobs. When you look at the economy as a whole, the scenery is not so enthusiastic. The digital revolution has not compensated yet, and we do not know if it will ever compensate, because there is loss of energy and creativity in traditional sectors of industry and services. This loss of dynamism is palpable to those who cross the United States. Instead of innovating, americans try to get some market protection or live from their patents, which, in my point of view, should have a shorter expiration date than they have today, when they have become a tool to discourage anyone who wants to enter a market, and not a temporary protection for those who invested in something new. This loss of dynamism translates into numbers. There are studies that document a major slowdown in the productivity of the American economy, which results in more unemployment, lower wages and, not least, less satisfaction of people with their work.

We need an environment where companies feel estimulated to develop new things. We need to abandon the idea that innovation is something that others do and take up the culture of exploration and experimentation that made innovation explode in countries like the United States, England, Germany and France in the nineteenth century. In these economies, innovation was not restricted to elites. All layers of society were galvanized by the idea of creating a different future. As President Abraham Lincoln said, the United States was a country taken by the "furor of novelty". People without special education, but deeply involved with their work, clinging to their tools, obsessed with the minutiae of their activity contributed to small and large innovations. In that period of history, which was one of the most extraordinary from the point of view of economic growth, the joy of creating, endeavor and taking risks was seen as a path to a full life. I believe that we must recover this eagerness to watch a new "mass flourishing".

Scientific education might be the starting point for this, but the most important thing is to expose people, especially youth, to human history of exploration and innovation. Every country needs people involved with science, engineering, math and computing. But it is not all innovation that comes from these areas. In fact, a spirit of innovation will hardly be forged only with this formula. It is crucial to create an appreciation for adventure, experimentation, a healthy dose of risk. It is not a good idea to have overprotective states that overprotect their national business activities. The greatest reference among economists when it comes to innovation is the Austrian Joseph Schumpeter, who referred to capitalism as a system in which "creative destruction" prevailed.

Schumpeter believed that all innovation comes from science. The entrepreneurs' job was to find commercial applications for scientific discoveries, raise the capital needed for the initiative, and organize production. He said explicitly that business people rarely have imagination or creativity. If you are a disciple of Schumpeter, you tend to think that innovation depends on research institutes or small groups of savvy people. But the concept of innovation must go further. It has to do with ordinary people. It's about bottom-up innovation. There is an impression that for the government to increase innovation, it is enough to invest in scientific research, but the relationship does not happen like this. First and foremost, every person of every origin must have an innovative attitude, that they want to do something new to show the world, and feel excited to change practices. Obviously we should try attempts at innovation by the government. And this is especially true of programs to create some technical leap, such as the internet, created under a contract with the US military that has created a global revolution. But it must be made clear that the innovation did not come mainly from government-funded scientific discoveries, but from millions of people trying to do something better, whether it was a change of procedure in an operating room in a hospital or the method of transporting things. There is a broad spectrum in which no "science" is needed.

Of course the innovator will use whatever technology is available, but I do not think that business will sit around waiting for some engineering improvement and suddenly get up from the chair and think of commercial applications, as Schumpeter imagined. Obviously it's not like this. Innovation is thinking of ideas for new products and methods in the workplace. But it's good to have these engineering advances and the internet is the best example. I do not know if the private sector would have figured out how to create the internet over time, but probably yes.The search for innovation competes with the search for wealth, and that there must be the motivation for discovery, not just profit.

There is an attitude that people do not want to innovate anymore, so let's leave it to as a government duty. The problem is that, generally speaking, they will not have many good ideas because they are not close to the business world. And it is also very elitist, because if the government tries to make innovation for us, they will create all kinds of institutes and public-private corporations. If you have a great idea for innovation, you're going to be competing against governments, and if you're a person in government, the bureaucracy may find ihard to get the attention of the operations leader at the top. Innovation is not bureaucratic: it is something unstructured that requires freedom and interactions, and the government simply will not be very good at it. It's okay if you want to make some bets, but I think they will have a low probability of success. The best bet is to try to spark innovation in the private sector, which requires correcting business incentives, renovating the financial sector and celebrating exploration and creation. We need to reassume the spirit of pioneering.

Also, using government resources to stimulate consumption is good only for established companies and traditional sectors of the economy. At favorable times, this type of policy can create a positive cycle in which unemployment is low and people have money to buy. But this is a limited view of development. Long-term growth will only be guaranteed if there is clarity about the fact that a country's prosperity depends on innovation and entrepreneurship.

The economic flourishing is the real long-term development, not growth spurts based on other factors. And this flourishing is reachable in a very dynamic economy, which many people are exploring, overcoming challenges, thinking all the time about: how are we going to create? How can we do better? What will be the best product to do? Dynamism creates this economic flourishing. But it is possible to grow a lot and still be less dynamic.

The modern economy "flourishes in diversity". Gender disparities and ethnicities reinforce growth. Phenomena such as the legal acceptance of homosexuals can also have positive economic effects. For example, when blacks were allowed to enter the world of music business in Detroit, they produced a revolution. If people who have jobs and any possibility of contributing to innovation are all the same, then they are as they were are a single person, wherever you look, this does not favor new ideas. Obviously you will have more creativity in the workforce while the more diverse and rich are their interests, tastes and backgrounds.

The idea of intellectual property protected by the state was essential to the modern economy. But another recent phenomenon is piracy and the debate over which intellectual property we can - or should - preserve. There was an abuse of the system: over the years, almost everything was patented, exaggerating a little. Maybe we need to stop, finish all existing patents and start over again just patenting new things. Rebalance the current intelectual property system is recommendable.

The increase in inequality may, among other factors, be attributed to a decrease of innovation, and states should have other proposals than just raise taxes to reduce them. Since everyone is having trouble innovating, established companies do not have to worry about new competitors with new products. And if they do not have to keep their prices low to stop new market players, prices rise, and that bloat helps to increase inequality. This is also bad for employment: if companies have a huge share of the economic production, then the labor share will be lower, and real wages decrease or grow less. It is a network of forces that interact. The fall in innovation was bad for both employment and inequality.

Corporatism has gone through a metamorphosis, but it is still alive and thriving. There is a huge level of lobbying: interest groups constantly negotiating with the government to get protections, allowances and exemptions of some requirements, whatever they need to avoid fair competition. That's why there is a lot of litigation: people, governments and companies looks for legal remedies all the time.

There is a decline of the entrepreneurial spirit. Maybe we have become too comfortable, too rich, and we no longer accept that people need to be pioneers, exploiters, creators. Attitudes have changed, and this makes it harder for people to start businesses and get good results. We need to estimulate a dip in uncertain situation, to create the willing to move towards the unknown without knowing results. This is exciting, makes life interesting. We need to go back to that spirit.

There is a lot of short-term thinking. For example, CEOs of big companies know they will held this position for a short time and need to show service while they can. They are not thinking of innovations to give results 5 or 10 years later; This does not help economic development at all.

The current financial system also has responsibility, deserving special attention from the States. Investment funds put pressure on presidents to reach quarterly profit targets, and banks have largely forgotten how to lend money to companies. They buy corporate debt from large, established companies, but it's not the same as looking at the plan and dreams of a company and financing some of their initiatives.

Even the big capital owners banks are part of that, as they do not have to worry about or survive, and are forced to be very secure so the government does not have to rescue them in the future. But since they are forced to hold so much capital, and they will have very low profit margins, they will not be able to make any kind of risky loan. We may be legislating a great aversion to risk. Some points of this convention, rather than estimulate people, companies and governments to take risks, can increasingly prevent risk-taking, because governments, especially, do not want to deal with these situations.

As an committed Human Rights researcher with extensive experience investigating its potential impacts on business environment, I am honored by the opportunity to submit these commentaries for the Draft of General Comment on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities. I hope these observations are taken into account during the day of general discussion. I would also like to thank so much for the opportunity to participate on the discussion and share points of view that surely will enrich this debate.