

**UN Committee on Economic, Social and Cultural Rights Day of General Discussion
on State Obligations under the ICESCR in the Context of Business Activities**

February 21, 2017

Comments of the International Labour Office

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- The ILO welcomes the opportunity to participate in the discussion of a draft General Comment on state obligations under the Covenant in the context of business activities. As the specialized UN agency dealing with the world of work, the ILO works with its Member States to set and operationalize international standards that address business activity in the world of work. These standards aim to ensure humane conditions of labour and freedom from exploitation while creating opportunities for economic growth and decent jobs in ways that affect a significant range of Covenant rights within the scope of ILO's mandate.
- Nearly all States Parties to the Covenant are also Members of the ILO.¹ They are working in the ILO in tripartite partnership between Governments and workers' and employers' organizations to develop international labour standards, review reports by States on their application, and address complaints submitted by workers' or employers' organizations. To promote the implementation of standards, the ILO also provides technical assistance to its Members in adopting laws and other appropriate measures, strengthening the capacity of labour administration and inspection systems, and addressing labour market basics like monitoring and data gathering to inform national plans and policies that tackle challenges like informality and skills mismatch.
- Our comments seek to enhance coordination and coherence between the ILO and Covenant regimes in the context of business activities to assist States and other duty-bearers to respect both sets of commitments, as other General Comments have done.

Introduction (Draft GC, paras. 1-4)

- The work of the ILO and its Members – now 187 - has resulted in a corpus of international labour standards and practice that covers a range of State obligations and Covenant rights in the context of business activities in the world of work. These sources of international law encompass Conventions that are binding on States that ratify them and Recommendations that provide guidance to all ILO Members. States have constitutional obligations to report to the ILO on effect given to the instruments at national level through law, policy, and other measures as well as various administrative structures such as labour administration, labour inspection, social security administration and employment services. International labour standards also serve as a source of good industrial relations applied by labour dispute resolution bodies, and as models for collective agreements. The non-binding ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration) uses the principles of these standards to encourage

¹ Three States Parties are not ILO Members: Democratic People's Republic of Korea, Lichtenstein, and Monaco.

positive contributions of enterprise and minimize and resolve difficulties in its guidance to States, multinational and other enterprises, and employers' and workers' organizations.

- International labour standards help States Parties to meet their Covenant obligations on a wide range of Covenant rights including, for example: full, productive and freely chosen employment without discrimination, and vocational guidance and training (art. 6); remuneration and equal opportunity at work, and decent terms and conditions of work (art. 7); forming, joining and functioning of trade unions (article 8); social security (art. 9); freedom from exploitation of children and young persons (art. 10); and non-discrimination and equality in access to and at the workplace. Steps taken by States to meet their standards obligations also help implement other Covenant rights relating to adequate standard of living (art. 11), highest attainable standard of health (art. 12), and compulsory primary education (art 13). Some of these Covenant rights concern obligations of immediate effect as recognized by this Committee, such as monitoring and planning action, and others involve on-going progress toward full realization of the rights.
- *Given the scope and impact of international labour standards and action on States Parties' law and practice relevant to Covenant rights, and its role as "international cooperation and assistance" under article 2 of the Covenant, it is suggested that the General Comment explicitly include international labour standards as part of the "various legal instruments and standards adopted by the international community." (para. 2)*

Context and Scope (Draft GC, paras 5-6)

- In relation to non-State actors (draft, para. 6), the role of representative employers' and workers' organizations is essential to delivering respect for the relevant Covenant rights in the workplace and in society. The challenges we face cannot be solved by one party alone. These organizations' contributions include bargaining to reach agreements on terms and conditions of work that operationalize Covenant rights, participating in workplace relations and consultations to inform decision-making, and establishing workplace and sectoral grievance mechanisms for addressing alleged violations. The right to organize and form employers' and workers' organizations is the prerequisite for sound social dialogue, collective bargaining. These rights are guaranteed at national level by application of the provisions of ILO's core Conventions on freedom of association and collective bargaining and related instruments (see also art. 8, para 3 of the Covenant).
- *In light of the impact on national law and practice of representative mechanisms for workplace relations, collective bargaining and grievance resolution, it is suggested that the General Comment refer to the active role of workers' and employers' organizations in strengthening the capacity and accountability of business entities to respect and contribute to realization of Covenant rights, including by addressing violations of the right to organize or provisions of collective agreements. (para. 6)*

Obligations of States Parties under the Covenant (Draft GC, Part III)²

General Obligations (paras. 8-11)

- In relation to the aim of State obligations in the context of business (paras. 7-8), ILO Members' obligations under the Constitution and international labour standards balance two aims: preventing and addressing the negative effects of business on ILO-related Covenant rights and encouraging their positive contributions which are essential to the full realization of those rights. The foundation of these dual obligations are the commitments of all ILO Member States, by virtue of membership, to respect, promote and realize four core categories of rights at work³ regardless of ratification of the relevant conventions, as recognized in the ILO Declaration on Fundamental Principles and Rights at Work (1998). The UN Guiding Principles on business and human rights also recognize the fundamental rights at work as one of the starting points for the responsibility of business enterprises.
- To prevent and address negative effects of business, State obligations in many standards require law, policy, promotional and other measures, and administration of compliance systems, through processes that involve cooperation with employers' and workers' organizations. To enable business contributions to the realization of Covenant rights involve, for example, standards require States to provide institutional and economic environments to encourage all enterprises, public or private, to be sustainable – that is, to enable growth and generate decent employment and income opportunities, skills development, social security and wages that improve standards of living.⁴
- *It is suggested that the draft General Comment clarify that the steps to be taken by States Parties include, beyond addressing abuses, the use of appropriate means to enable business to contribute to implementation of the State's obligations by action, individually and through international assistance and cooperation as, for example, with specialized agencies.* (paras. 7-8)

Non-discrimination

- In the area of non-discrimination (paras. 9-11), ILO standards aim not only to eliminate discrimination but also to promote equality in the workplace, access to the labour market, and society as a whole, and serve as the basis for gender equality strategies in the field of labour. A variety of approaches to State obligations is used to accomplish this dual aim,

² While the draft General Comment places international cooperation under “extraterritorial obligations” (Section III.C), the ILO's comments necessarily reflect the integrated approach taken by international labour standards which coordinates steps taken by States, individually and through international cooperation, including cross-border remedial action.

³ The four categories, as noted in the Committee's 2011 Statement (para 2) are: freedom of association and effective recognition of the right to collective bargaining, elimination of forced or compulsory labour, the abolition of child labour, and elimination of discrimination in employment, as set out in relevant ILO conventions.

⁴ ILO Declaration on Social Justice for a Fair Globalization (2008); Employment Policy Convention, 1964 (No. 122); ILC Conclusions on the promotion of sustainable enterprises (2007).

such as adopting a national policy to promote equality of employment opportunity and treatment and equal remuneration for work of equal value, which includes legislation to eliminate discrimination, educational programmes, vocational training and placement services, and the cooperation of employers' and workers' organizations. To address people disproportionately affected by discriminatory practice in the private sphere, ILO instruments refer not only to prohibited grounds, but also deal in specific industry context or with specific categories of people, such as domestic workers, seafarers, migrant workers, people with HIV/AIDs, indigenous persons, workers in disguised employment relationships, and persons trafficked for forced or compulsory labour.

- In relation to informal economy workers (draft, para 11), the ILO's guidance standard on the informal economy recommends to all Members to adopt, review and enforce national laws and regulations or other measures to ensure protection of rights at work and progressive extension of social security, maternity protection and minimum wage levels. These steps are to be taken in the context of adopting an integrated policy framework covering the informal economy and coordinating its rollout across government ministries as well as initiating changes to employment policy. The aim is to facilitate a just transition to the formal economy in national development strategies and plans and poverty reduction strategies and budgets.⁵
- *The Committee may wish to reflect in its General Comment some of the approaches to discrimination and equality adopted in the ILO standards in relation to preventive, corrective and promotional measures, disproportionately-affected categories of workers and persons at risk, and workers in the informal economy.*

Specific Obligations linked to Business Activities (paras. 12-29)

- Respect, protect, fulfil. While ILO Member obligations are not classified by the “respect, protect, fulfil” typology used by the Committee, ILO standards primarily address State obligations to respect, ensure respect for and take steps to realize ILO-related Covenant rights business entities or activities. The subject matter of the standards in many cases involves obligations of fulfilment by their very nature. Given the tripartite development of the standards, the ILO standards also include provisions that directly address action to be taken at the level of the workplace or undertaking, terms referring to business entities or economic units employing or engaging labour and to workers' organizations. Notably:

As to the State *obligation to respect* (paras. 12-16), ILO standards direct States to take action to refrain from abuses, such as forced labour, restrictions on freedom of association, and to ensure that public action is in conformity with ILO-related Covenant rights. ILO standards also provide for State obligations to ensure provisions on labour clauses in public contracts and procurement processes for effective monitoring of the State's role as a market actor (C. 94 and R. 84). In the role of the State as an international actor in other organizations, and in bilateral or multilateral agreements, all ILO Members have

⁵ ILO Recommendation on the Transition from the Informal to the Formal Economy, No. 204, 2015.

committed to coordinate their positions taken with decent work principles of the ILO as recognized by the ILO Declaration on Social Justice for a Fair Globalization (2008).

As to the State *obligation to protect* (paras 17-24), ILO standards include a broad swath of State obligations for direct regulation and intervention (para. 19) including legislative, administrative, educational, policy, and other promotional and programmatic measures to ensure effective protection of the rights and freedoms of workers and society. General topics covered relate to equality and non-discrimination (above), employment, vocational opportunity, occupational safety and health, wages, working time, social security benefits, and industrial relations. To combat trafficking for forced labour, for instance, the State must act with due diligence, including by requiring due diligence of business. Guidance to States explains that this includes taking the most effective preventive measures in relation to ensuring application of their own laws and regulations on employment, social security; coordinating efforts with other States; and providing guidance and support to employers and businesses to take effective measures to identify, prevent, mitigate and account for how they address the risks of forced or compulsory labour in their operations or in products, services, or operations to which they may be directly linked. State obligations to protect also include the duty to establish and maintain governance and other systems to enforce these laws, regulations and policies, including competent labour inspectorates, and tripartite consultation mechanisms, social security administration, employment services.

As to the *obligation to fulfil* (paras 25-29), the State's *duty to facilitate* is reflected in ILO standards providing for the State's creation of an enabling environment and participation in systems to promote freedom of association, full and productive employment, human resource development, minimum wage fixing, occupational safety and health, sustainable enterprises, and social security benefits, among other areas. Such topics are addressed in obligations in international labour standards and as commitments of all ILO Members in the Social Justice Declaration (above). The *duty to promote* includes educating public on their rights and access to remedies and participating in the tripartite consultations that are a feature of ILO standards. The *duty to provide* includes mobilizing resources to provide a basic income to all those in need of such protection and to maintain effective systems noted above.

- Scope of application in relation to domestic and overseas activities of business entities (para 12). State obligations under ILO instruments are designed primarily for application to business entities and work-related activities within the territory and jurisdiction of all Member States, whether operating at national, sectoral, or enterprise levels or in State-to-State contexts. Some standards specifically recommend that Members and their multinational or national enterprises with more than one establishment encourage ILO-consistent conduct and access to remedies in all the enterprise's operations "regardless of the place or country in which they are situated".⁶ More generally, several contextual factors combine to give ILO standards effect over cross-border business operations of multinational and national enterprises of the State concerned, as follows:

⁶E.g., full and productive employment, R. 169; prevention of major industrial accidents, R. 181; safety measures in the use and control of chemicals and of asbestos, R. 177 and R. 172; safety and health in agriculture, R. 192; and occupational health services, R. 171.

Universal application. ILO standards are designed to be implemented universally by all ILO Members in a process that encourages harmonization of national legislation and good industry practice. This universality of application combines Members' constitutional obligations relating to standards adopted, based on the premise that "failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries". Under the Constitution, all Members have the obligation to submit international labour standards to the competent authority "for the enactment of legislation or other action" and report to the ILO on the results. States must periodically report to the ILO on progress in giving effect to its provisions in law and practice in the case of ratified Conventions and even unratified Conventions and all Recommendations. This system encourages national debate and international exchange with on-going monitoring, coordination and international assistance on giving effect in national law and practice.

State-to-State collaboration through the coordinated exercise of domestic jurisdiction involving regulation, adjudication, and enforcement. By their terms, many ILO standards involve State-to-State coordination of cross-border business activity and its effects. For example, a Member is obliged to adopt laws and all other necessary and appropriate measures within its jurisdiction, and where appropriate in collaboration with other Members, to provide adequate protection for and prevent abuses of workers in vulnerable situations, such as domestic workers recruited or placed in its territory by private employment agencies including penalties for violations; migration for employment, and migrants at risk of disguised employment relationships. Bilateral and other State-to-State agreements among Members to prevent abuses and fraudulent practices in such cross-border business contexts are encouraged.

Sectoral applications. The cross-border effectiveness of collaboration in ILO Members' exercise of domestic jurisdiction is particularly notable in the context of their obligations in standards dealing with transnational service and industry sectors. These standards are tools to harmonize national legislation of Member States and are taken as a basis for good industry practice. In the maritime industry, the Maritime Labour Convention coordinate the exercise of domestic jurisdiction between Flag and Port States: Flag States authorize certificates of compliance with labour conditions to be carried on board their ships, and consent to Port State jurisdiction to conduct inspections upon complaints of seafarers on board. The Convention consolidates over 70 international labour standards dealing with seafarers into a single instrument so the act of ratification covers all areas of decent work and living conditions of seafarers across the global industry. Ratifying States now represent over 90% of the world's gross tonnage of ships.

Guidance for international investment and contractual operations. The MNE Declaration articulates the principles of relevant international standards to guide international investment and contractual dealings. States, multinational enterprises and employers' and workers' organizations are called upon to respect the Covenants and the Universal Declaration on Human Rights. Specific guidance covers such matters as non-discrimination and equality, ensuring against child and forced labour, employment,

training, wages and conditions of work and life, and industrial relations. Governments are urged to study the impact of multinational enterprises on employment in different sectors. Home and host country governments are to consult together when needed.

- *The Committee may wish to refer to examples of the ILO standards and action for State obligations to respect, protect and fulfil Covenant rights in the context of business and of cross-border effects of business activity on Covenant rights, individually, at sectoral industry level, and in the field of international cooperation and assistance.* (paras. 12-29)

National implementation (Part V, paras. 52-53)

- *ILO expertise and development cooperation*, funded by many ILO Members, forms part of the maximum available resources for States Parties to use in addressing challenges they face in the context of business and their Covenant obligations. This cooperation combines sectoral, national, regional and global value chain contexts to assist governments and non-State actors in national implementation of ILO standards – whether ratified or not – in context of cross-border business operations. The ILO-IFC Better Work Program, for example, joins governments with local and multinational enterprise partners in supply chains to improve working conditions and freedom of association in the garment and textile sector. In response to the collapse of the Rana Plaza factor building in Bangladesh just 3 years ago, the ILO is working with the Government, and national and sectoral industry and workers’ organizations, to implement a tripartite-agreed national action plan for reform of labour law, recruitment and training of labour inspectors, rehabilitation of workers, and compensation for the victims and their families. The ILO Helpdesk for Business on International Labour Standards provides advice for any party on applying ILO standards and tools to business operations. An ILO-wide plan of action to reduce governance gaps in global supply chains will encourage business contributions to economic growth and job creation while addressing decent work deficits.⁷
- *National action plans and strategies* to facilitate the obligations in respect of business activities are already established by many State Parties to the Covenant, acting as ILO Members, to promote full, productive and freely-chosen employment; national preventative occupational health and safety culture (policy, programme and system); human resources development; social protection floors and extension strategies; transition from informal to formal economy, and elimination of child labour and trafficking for forced labour. More than 50 developing country ILO Members have agreed multi-year Decent Work Country programmes, with tripartite-agreed national action plans for roll-out of decent work elements involving fundamental rights at work, employment, social security, labour protection in terms and conditions of work and social dialogue. Programs with employers’ organizations focus intensively on skills development and small and medium enterprise development. More than 100 private sector entities have engaged with the ILO

⁷ The plan of action is based on the International Labour Conference Conclusions of Decent Work in Global Supply Chains, 2015.

in public-private partnerships to promote ILO standards, encourage decent work opportunities and strengthen dialogue on work-related issues in business contexts.

- *The Committee may wish to reflect in the General Comment that national implementation of Covenant rights include States' national action plans and strategies developed in cooperation with the ILO which also provides assistance within its mandate to States and non-State actors which helps to build the capacity to implement Covenant obligations.*

Thank you for the opportunity to share our views. The ILO is available for further discussions on the General Comment as desired.