

**Comments on the draft General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities**

The Uganda Consortium on Corporate Accountability (UCCA) is a national civil society Consortium aimed at enhancing accountability by Corporations, States, International Financial Institutions and Development Partners for violations or abuses of Economic Social and Cultural Rights (ESCRs). The Consortium has a founding membership of four organizations specializing in different areas of rights protection, including the Public Interest Law Clinic, (PILAC), School of Law, Makerere University, the Initiative for Social and Economic Rights (ISER), the Center for Health Human Rights and Development (CEHURD) and Legal Brains Trust (LBT). It is an open consortium for membership of any other organization with interest or working around corporate accountability in Uganda. The UCCA is a member of the African Coalition of Corporate Accountability (ACCA) and the International Network for Economic Social and Cultural Rights (ESCR-Net).

1. **General Remarks**
2. The UCCA welcomes the invitation of the Committee for Economic, Social and Cultural Rights (“the Committee”) to make submissions on the draft *General Comment No. 24 on* *State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities* (General Comment No. 24). The General Comment No.24 is a welcome step in reinforcing state and extraterritorial obligations in the protect, respect and fulfil framework espoused under the Covenant on Economic, Social and Cultural Rights (the Covenant) and will be critical in defining states party obligations in enhancing corporate accountability for abuses and violations of human rights. Following the adoption of the 2011 UN Guiding Principles on Business and Human Rights (UNGPs), the General Comment No. 24 will provide more binding influence on states parties to ensure that business activities employ human rights standards in their operations. Overall, the UCCA commends the Committee on the draft General Comment No. 24 and concurs with much of the text and broader extent of its application.
3. The present submission highlights three major areas of concern to UCCA, including the broader context of General comment No.24 as it relates to developing countries in light of increased foreign direct investment and corporate capture, secondly, strengthening mechanisms that protect community rights to land and natural resources and clear engagements with affected communities before exploitation and lastly the need for effective remedies in case of violations—tying in the states parties obligations under extraterritorial obligation principles.
4. In the global world today, Business enterprises wield a lot of financial power and political influence. The General Comment No. 24 should clearly emphasize to the states their obligation to reinforce the corporate responsibility to respect as expounded within the UNGPs and also make clear provisions for meaningful involvement of business in the development of state policy and regulations on business and human rights. It is through these engagements that enforcement and implementation of the set standards will be respected and lead to the realization of enjoyment of ESCRs.
5. General Comment No. 24 can further expand and clarify the Remedy pillar within the UNGPs. The implementation and progress of the UNGPs through development of the National Action Plans on Business and Human Rights is one that is currently taking wave and should not entirely be rendered nugatory, and as such the General Comment No. 24 needs to reinforce and build on the steps being taken from the UNGPs clearly linking the Protect, Respect and Fulfil framework to the Protect, Respect and Remedy framework—highlighting and clarifying state obligations and other non-state actors responsibilities.
6. There is also need to clarify the normative content of the corporate responsibility to respect in terms of business related human rights impact. This will assist in setting clear indicators and benchmarks to formulate and assess human rights impact of business enterprises.
7. **Increased Foreign Direct Investment in Developing Countries and Corporate Capture**
8. The State obligation to protect against human rights abuses by non-State actors, including business enterprises, is largely tested in developing countries especially where corporate entities and business enterprises as key drivers in state development projects often use investment as a tradeoff and in complicit with the state to avoid accountability. It is for this that extending the state obligation to protect extraterritorially, is an effective measure to ensure states monitor and regulate business enterprises incorporated in their state but operating outside their own territory.
9. In most developing countries, especially in the global south, there is increased foreign direct investment, and the failure of the state in promotion and ensuring enjoyment and realization of economic, social and cultural rights (ESCRs) has led to a significant percentage of ESCRs related services and goods being owned, managed or implemented by corporate entities. Although this investment is critical to economic growth, which, if well directed can lead to further realization of human rights, we continue to witness certain corporate practices and forms of investment being associated with human rights abuses.[[1]](#footnote-1) This in itself has created tensions between balancing human rights and development. The fact that many of the investments require large pieces of land has fuelled land grabs and illegal evictions in the country,[[2]](#footnote-2) while the need to maximize profits has increased incidents of human rights abuses on communities and individuals who either work for or are affected by the activities of the various companies.[[3]](#footnote-3) In Uganda today, for example, even with an already weak regulatory framework, we continue to witness government’s proposal to amend the law to remove the requirement for compensation prior to acquisition of land for public works. Experts have argued that if this proposal is not discarded it will further have connotations for the right to property, which facilitates enjoyment of other economic social and cultural rights.[[4]](#footnote-4)
10. **Community Engagements**
11. In most developing countries, business activities and development projects largely impact communities. Implementation of business activities has always greatly affected the enjoyment of human rights within communities of operations. Business entities often sign agreements and concessions with central governments without community consultations and engagement. There is no free prior and informed consent and access to information is always met with stiff resistance. In Uganda today, especially with the exploitation of natural resources, companies have consistently failed to secure indigenous communities’ free, prior, and informed consent before starting operations and the national and local governments have failed to insist on this established international standard. Even where there has been consent to a project, compensation and resettlement is neither adequate and fair, nor prompt, as required by the Constitution and international human rights standards. Most projects trigger resistance and conflict within the communities resulting in security deployments to either forcefully evict communities off land or offer protection to corporate entities.
12. In August 2014, more than 200 families were brutally evicted from their land in Rwamutonga, Hoima District, for the construction of a wastage management plant by the American company, McAlister. In October 2015, the High Court ruled the eviction was unlawful, but did not make an order for restoration.[[5]](#footnote-5) In December 2014, the government signed a deal with Guangzhou Dongsong Energy Group Ltd, a Chinese company, to develop phosphates in Sukulu, Tororo District. A total of 4,800 people are expected to be displaced by the project. Affected persons claim they did not understand the terms of the surface land rights lease agreements and were duped by ‘middlemen’ to sign them.[[6]](#footnote-6) General Comment No 24 should clearly indicate the State obligation to ensure free prior and informed consent principles and access to information that is in the hands of both the state and business entities.
13. Similarly, human rights due diligence must be undertaken by both the state in attracting business partners and also by corporations in implementation of activities. They should with meaningful engagement with communities, identify, prevent, mitigate and account for the harms they cause or are linked to and come up with clear specific and agreed to restoration plans. The General Comment No. 24 should also emphasize the state obligation to define and breakdown the normative content of the concept of human rights due diligence.
14. **Access to Effective Remedies**
15. In May 2016, the UN Human Rights Council endorsed the recommendations of the United Nations High Commissioner for Human Rights (OHCHR) on improving accountability and access to remedy for victims of business-related human rights abuse.[[7]](#footnote-7) The recommendations note that state-based judicial mechanisms are not the only means of achieving accountability and access to remedy in cases of business-related human rights abuses. Other possibilities may include State-based non-judicial mechanisms and non-State grievance mechanisms, such as operational level grievance mechanisms. However, effective State-based judicial mechanisms are “at the core of ensuring access to remedy”. The General Comment No. 24 should reflect on these recommendations to strengthen the state obligation to ensure effective remedies are put in place—including operational grievance mechanisms that are swift and effective but not a bar to judicial mechanisms.
16. In Para 46 of the General Comment, the Committee notes the particular challenges that victims of transnational corporate abuses face in accessing available and effective remedy. Whereas it is true that some corporate groups are organized in a manner that makes accountability hard, and that some business entities routinely escape liability by hiding behind the so-called corporate veil, in developing countries, corporate capture and complicit of the state in some of the abuses and violations arising out of business activities, make access to judicial and non-judicial mechanisms a far cry as these systems tend to be largely controlled and influenced by the state. Similarly, the weakness of legal and policy frameworks—both in design and implementation affect access to effective remedies.
17. The General Comment No. 24 should also as in the Committee’s General Comment No. 10 on the role of national human rights institutions (NHRIs) in the protection of economic, social and cultural rights (ESCRs), reemphasize the need for NHRIs, to give full attention to economic, social and cultural rights in their work, and ensure that violations of ESCRs by businesses are vigorously addressed as they address violations of civil and political rights.
18. Lastly, whereas we commend the comprehensive reflection on extraterritorial jurisdiction in the draft General Comment No. 24, we feel that emphasis should be put on the need for a strengthened national remedial mechanism to improve access to effective remedies. In developing countries, extraterritorial obligations are sometimes weakened by political underpinnings. States outside the territory of violations are not quick to engage on these matters of violations especially where the state in control is not willing to pursue the matter. There are also key challenges of costs involved in pursuing remedies in foreign courts against powerful corporate entities that have the financial power to delay cases.

***For more information and clarification please contact Mr. Arnold Kwesiga at Email:*** ***ucca@iser-uganda.org*** ***or Tel: +256 772 446 728***

1. Institute for Human Rights and Business Submission to the United Nations Human Rights Council Universal Periodic Review (UPR) Session Review for Uganda, March 2011. [↑](#footnote-ref-1)
2. For example research by Friends of the Earth in 2013 implicated Palm Oil Giant Wilmar International’s subsidiaries in Uganda to land grabbing on Kalangala Island. [↑](#footnote-ref-2)
3. ##  See, [Uganda: Women working at Royal Van Zanten flower farm poisoned by pesticides - Trade Minister dismisses workers' claims to protect flower industry](https://business-humanrights.org/en/uganda-women-working-at-royal-van-zanten-flower-farm-poisoned-by-pesticides-trade-minister-dismisses-workers-claims-to-protect-flower-industry), accessed at <https://business-humanrights.org/en/uganda-workers-in-royal-van-zantens-farm-develop-health-complications-after-allegedly-inhaling-toxic-fumigant-includes-companys-comments#c148448>.

 [↑](#footnote-ref-3)
4. Rose Nakayi, “Land Acquisition: Why prior Compensation must Stay” accessed at <https://business-humanrights.org/en/uganda-academic-opposes-proposed-removal-of-consent-requirement-before-compulsory-land-acquisition-for-infrastructural-development>. [↑](#footnote-ref-4)
5. Uganda Consortium on Corporate Accountability, “*The State of Corporate Accountability in Uganda*” September 2016. [↑](#footnote-ref-5)
6. CorpWatch, “*Ugandan Villagers Say Chinese Phosphate Mine Cheated Them Over Land Titles”* 2016. [↑](#footnote-ref-6)
7. A/HRC/32/19 [↑](#footnote-ref-7)