



The Global Initiative

for Economic, Social and Cultural Rights

**Parallel Report submitted by the
Global Initiative for Economic, Social and Cultural Rights (GI-ESCR)
to the Human Rights Committee
on the occasion of the consideration of the
Sixth Periodic Report of Germany
during the Committee's 106th Session**

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1. INTRODUCTION

1. The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) is an international non-governmental human rights organization which seeks to advance the realization of economic, social and cultural rights throughout the world, tackling the endemic problem of global poverty through a human rights lens. The vision of the GI-ESCR is of a world where economic, social and cultural rights are fully respected, protected and fulfilled and on equal footing with civil and political rights, so that all people are able to live in dignity.

2. The mission of the GI-ESCR is to strengthen the international human rights framework through creative standard setting, so that all people, and in particular marginalized individuals and groups, are able to fully enjoy their economic, social and cultural rights, and are able to do so without discrimination and on the basis of equality; provide innovative tools to policy makers, development actors and others on the practical implementation and realization of economic, social and cultural rights; enforce economic, social and cultural rights through international, regional and national mechanisms and seek remedies for violations of these rights, with a focus on creating beneficial jurisprudence aimed at transformative change; engage networks of human rights, women's rights, environmental and development organizations and agencies to advance the sustainable enjoyment of economic, social and cultural rights at both national and international levels; and work with advocates, social movements and grassroots communities at national and local levels to more effectively claim and enforce economic, social and cultural rights, including by engaging international mechanisms for local impact.

2. Mubende-Neumann case: Forced Evictions in Uganda

3. In August of 2001, the Uganda military forcibly evicted 392 peasant families (approximately 2,041 persons) from their homes and land in the villages of Kitemba, Luwunga, Kijunga and Kirymakole in Naluwondwa-Madudu, Mubende District, Uganda (Mubende communities) to make way for a large-scale coffee plantation owned by Kaweri Coffee Plantation Ltd., a wholly-owned subsidiary of Neumann Kaffee Gruppe ó a Hamburg-based German corporation.

4. The forced eviction was carried out at gun point and several of those evicted were beaten in the process. Houses were set afire and demolished and crops were destroyed. A community health care clinic and six churches were also destroyed and moveable property was looted. One of the few structures to survive, the school for the communities' children, was taken over and is now the office building for Kaweri Coffee Plantation Ltd.

5. The Kaweri Coffee Plantation Ltd. and Neumann Kaffee Gruppe knowingly accepted the consequences of the forced eviction and were involved in the destruction of property and taking over of land without compensation to the persons concerned. To date those evicted have received no compensation for their losses. The companies rejected any dialogue with those evicted and have obstructed court proceedings as well as attempts to reach an extrajudicial settlement.

6. Today most of those evicted live in extreme poverty near the Neumann Kaffee Gruppe coffee plantation. They continue to live in extreme poverty since the forced eviction as it destroyed their only means of livelihood which was derived from the land that they lost. The forced eviction has also cut them off from access to health care and clean water.

3. Prohibition on Forced Evictions under the International Covenant on Civil and Political Rights

7. The Human Rights Committee has previously concluded that forced eviction violates Article 17 of the Covenant, and at times may rise to violations of Article 7 as well. For instance, in its Concluding Observations on Kenya in 2005 the Committee found violations of Article 17 (protection from unlawful or arbitrary interference with the home) because of forced evictions.¹ It did so again in its Concluding Observations on Israel in 2010, where it also found that forced eviction could rise to violations of Article 7 (prohibition on cruel, inhuman or degrading treatment or punishment).² The Committee also found violations of Article 26 (equal protection of the law).

4. Extra-Territorial Obligations under the International Covenant on Civil and Political Rights

8. Extraterritorial obligations are supported by the language of the Charter of the United Nations, and this language supports the application of extraterritorial obligations in all other treaties.

9. Article 55 of the Charter states in relevant part:

With a view to the creation of conditions of stability and well-being which are necessary for peaceful and friendly relations among nations based on respect for the principle of equal rights and self-determination of peoples, the United Nations shall promote: í

3. Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.³

10. Article 56 requires that "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55."⁴

¹ See, Human Rights Committee, Concluding Observations: Kenya, UN Doc. CCPR/CO/83/KEN (29 April 2005);

<<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G05/413/83/PDF/G0541383.pdf?OpenElement>>.

² See, Human Rights Committee, Concluding Observations: Israel, UN Doc. CCPR/C/ISR/CO/3 (2 September 2010);

<<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/448/06/PDF/G1044806.pdf?OpenElement>>.

³ Charter of the United Nations, Art. 55, 26 June 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, *entered into force* 24 October 1945.

⁴ *Id.* at Art. 56.

11. Furthermore, these articles take precedent over any other international instruments, including bilateral agreements. Article 103 of the Charter of the United Nations states:

In the event of a conflict between the obligations of the Members of the United Nations under the present Charter and their obligations under any other international agreement, their obligations under the present Charter shall prevail.⁵

12. The International Law Commission has adopted Articles on Responsibility of States for Internationally Wrongful Acts. These articles are based on conventional and customary international law and international law jurisprudence. The Articles do not recognize a condition related to jurisdiction for a State to be held responsible for an internationally wrongful act, such as human rights violations, but rather whether an act that violates international law can be attributed to a State.⁶

13. The Articles also recognize that there may be shared responsibility for an internationally wrongful act, in other words while the State in which an internationally wrongful act occurs may also be liable and held accountable for that act, other States that have contributed to that internationally wrongful act share responsibility and consequently can be held accountable. Specifically, Article 16 states that:

A State which aids or assists another State in the commission of an internationally wrongful act by the latter is internationally responsible for doing so if:

(a) That State does so with knowledge of the circumstances of the internationally wrongful act; and

(b) The act would be internationally wrongful if committed by that State.⁷

14. Furthermore, the Articles on Responsibility of States for Internationally Wrongful Acts address violations of preemptory norms, which could include gross violations of human rights.⁸ Article 40 considers serious breaches of preemptory norms as those that involve ða gross or systematic failure by the responsible State to fulfil the obligation⁹ in question. And Article 41 addresses consequences for such serious breaches, including cooperating ðto bring to an end through lawful means any serious breach within the meaning of Article 40¹⁰ and mandates that ðno State shall

⁵ *Id.* at Art. 103.

⁶ *See*, International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, Arts. 1, 2 and 3 (adopted by the ILC in 2001).

⁷ *Id.* at Art. 16.

⁸ The international community has twice stated that forced evictions amount to gross violations of human rights; see UN Commission on Human Rights resolutions 1993/77 and 2004/28.

⁹ *Id.* at Art. 40.

¹⁰ *Id.* at Art. 41(1).

recognize as lawful a situation created by a serious breach within the meaning of Article 40, nor render aid or assistance in maintaining that situation.¹¹

15. The obligations clause in Article 2(1) of the ICCPR reads:

Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹²

16. The phrase "within its territory and subject to its jurisdiction" has been interpreted as meaning "within its territory *or* subject to its jurisdiction.

17. For instance, in its General Comment No. 31, the Human Rights Committee elaborated upon the issue of jurisdiction, stating that:

States Parties are required by Article 2, paragraph 1, to respect and to ensure the Covenant rights to all persons who may be within their territory and to all persons subject to their jurisdiction. This means that a State party must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of the State Party, even if not situated within the territory of the State Party. ¹ This principle also applies to those within the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained. ¹³

18. In its 2003 Concluding Observations of Israel, however, the Human Rights Committee moved away from the effective control test and instead stated that "conduct by [Israeli] authorities or agents in those territories that affect the enjoyment of rights enshrined in the Covenant and fall within the ambit of State responsibility of Israel under the principles of public international law" constitute violations of the ICCPR. In other words, the Human Rights Committee applied the standard adopted by the International Law Commission in the Articles of Responsibility of States for Internationally Wrongful Acts, namely whether or not the act is attributable to a State and a violation of an international legal obligation.

19. The Human Rights Committee has also implied that even where a person is located outside a State's territory, jurisdiction or effective control, States retain their obligation to respect and to protect rights in the ICCPR. For instance, in its Concluding Observations on Iran in 1993, the Human Rights Committee condemned "the fact that a death sentence has been pronounced, without trial, in respect of a foreign writer, Mr. Salman Rushdie, for having produced a literary work and that general appeals have been made or condoned for his execution, even outside the

¹¹ *Id.* at Art. 41(2).

¹² International Covenant on Civil and Political Rights, Art. 2(1), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force 23 March 1976.

¹³ Human Rights Committee, General Comment No. 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004) at para. 10.

territory of Iran.¹⁴ In even stronger language contained in individual complaint jurisprudence, the Human Rights Committee asserted that “it would be unconscionable to permit a State to perpetrate violations on foreign territory which violations it could not perpetrate on its own territory.”¹⁵

20. This application of extraterritorial obligations under the ICCPR was also reaffirmed by the International Court of Justice in its *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. In that Advisory Opinion, the ICJ stated that:

“the *travaux préparatoires* of the [ICCPR] show that, in adopting the wording chosen, the drafters of the [ICCPR] did not intend to allow States to escape from their obligations when they exercise jurisdiction outside their national territory.”¹⁶

21. The Maastricht Principles on Extra-Territorial Obligations (see Annex 1) were adopted in 2011 by leading international human rights experts and provide a concise restatement of existing customary and conventional international law in the area of extra-territorial human rights obligations.¹⁷ Principle 3 makes clear that “All States have obligations to respect, protect and fulfil human rights, including civil, cultural, economic, political and social rights, both within their territories and extraterritorially”¹⁸ and Principle 24 makes clear that extra-territorial obligation to protect includes that “All States must take necessary measures to ensure that non-State actors which they are in a position to regulate, as set out in Principle 25, such as private individuals and organisations, and transnational corporations and other business enterprises, do not nullify or impair the enjoyment of economic, social and cultural rights.”¹⁹

22. Principle 25 states that:

States must adopt and enforce measures to protect economic, social and cultural rights through legal and other means, including diplomatic means, in each of the following circumstances: (a) where the non-State actor has the nationality of the State concerned; and (b) as regards business enterprises, where the corporation, or its parent or controlling company, has its centre of

¹⁴ Human Rights Committee, Concluding Observations: Iran, UN Doc. CCPR/C/79/Add.25 (3 August 1993) at para. 9.

¹⁵ Human Rights Committee, *Lopez Burgos v. Uruguay*, Communication No. R 12/52 (6 June 1979) at para. 10.3.

¹⁶ International Court of Justice, *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (9 July 2004) at para. 109.

¹⁷ The Maastricht Principles are a restatement of law based on existing conventional and customary international law. They were adopted by leading experts from around the world, including a former member of the Human Rights Committee and members and former members of other treaty bodies. Drawn from international law, the Maastricht Principles clarify the content of extra-territorial State obligations to realize economic, social and cultural rights but also explicitly apply to the full spectrum of civil, cultural, economic, political and social rights.

¹⁸ Maastricht Principles on Extra-Territorial Obligations of States in the area of Economic, Social and Cultural Rights, Principle 3 (adopted 28 September 2011).

¹⁹ *Id.* at Principle 24.

activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned;²⁰

23. The Committee on Economic, Social and Cultural Rights has taken notice of the failure of Germany to abide by its extra-territorial obligations, including the extra-territorial obligation to protect human rights. In its 2011 Concluding Observations, the Committee on Economic, Social and Cultural Rights expressed concern that the State party's policy-making process in, as well as its support for, investments by German companies abroad does not give due consideration to human rights (Arts. 2.1, 11, 22 and 23 of the ICESCR) and called upon the Republic of Germany to ensure that its policies on investments by German companies abroad serve the economic, social and cultural rights in the host countries.²¹

24. Consequently, Germany has extra-territorial obligations under the ICCPR and these obligations include the extra-territorial obligation to ensure Covenant rights, including Article 17, by regulating the activities of German corporations for activities undertaken abroad and to investigate and appropriately sanction any activities that violate human rights and ensure that remedies are available to victims of those violations.

5. Conclusions

25. Germany failed to effectively regulate Neumann Kaffee Gruppe for activities it was involved in within the territory of Uganda and continues to fail to investigate and appropriately sanction Neumann Kaffee Gruppe for these actions.

26. The failure to effectively regulate Neumann Kaffee Gruppe substantially contributed to the brutal forced eviction of the Mubende community and the failure to investigate and appropriately sanction Neumann Kaffee Gruppe continues to contribute to the denial of the right to a remedy for the Mubende community.

27. The Human Rights Committee should express its concern for the violation of Germany to abide by the extra-territorial obligation to ensure Covenant rights, including Article 17, by failing to regulate the activities of Neumann Kaffee Gruppe which resulted in the forced eviction of the Mubende communities in Uganda.

28. The Human Rights Committee should express its concern for the violation of Germany to abide by the extra-territorial obligation to ensure Covenant rights, including Article 17, by failing to investigate and appropriately sanction Neumann Kaffee Gruppe and by failing to ensure remedies are available to the Mubende communities.

²⁰ *Id.* at Principle 25.

²¹ Committee on Economic, Social and Cultural Rights, Concluding Observations: Germany, UN Doc. E/C.12/DEU/CO/5 (12 July 2011) at para. 10.

6. Recommendations Concluding Observations

29. The State Party should ensure that it meets its extra-territorial obligation to respect and ensure Covenant rights.

30. The State Party should take steps to ensure accountability of Neumann Kaffee Gruppe for the forced eviction of the Mubende communities in Uganda.

31. The State Party should take steps to ensure the right to a remedy for the Mubende communities for the forced eviction of their communities in Uganda.

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