



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
Fourth Periodic Report of the United States
during the Committee's 109th 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. 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: ¹

3. Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.¹

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."²

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.³

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

¹ 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.

² *Id.* at Art. 56.

³ *Id.* at Art. 103.

an internationally wrongful act, such as human rights violations, but rather whether an act that violates international law can be attributed to a State.⁴

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.⁵

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.⁶ Article 40 considers serious breaches of preemptory norms as those that involve "a gross or systematic failure by the responsible State to fulfill the obligation" in question. And Article 41 addresses consequences for such serious breaches, including cooperating "to bring to an end through lawful means any serious breach within the meaning of Article 40" and mandates that "no State shall 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."⁹

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.¹⁰

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

⁴ See, International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, Arts. 1, 2 and 3 (adopted by the ILC in 2001).

⁵ *Id.* at Art. 16.

⁶ 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.

⁷ *Id.* at Art. 40.

⁸ *Id.* at Art. 41(1).

⁹ *Id.* at Art. 41(2).

¹⁰ 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.

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. 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.¹¹

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 territory of Iran.¹² 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.¹³

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

¹¹ 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.

¹² Human Rights Committee, Concluding Observations: Iran, UN Doc. CCPR/C/79/Add.25 (3 August 1993) at para. 9.

¹³ Human Rights Committee, *Lopez Burgos v. Uruguay*, Communication No. R 12/52 (6 June 1979) at para. 10.3.

escape from their obligations when they exercise jurisdiction outside their national territory.¹⁴

21. The Maastricht Principles on Extra-Territorial Obligations 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.¹⁵ Principle 3 makes clear that "All States have obligations to respect, protect and fulfill human rights, including civil, cultural, economic, political and social rights, both within their territories and extraterritorially"¹⁶ 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."¹⁷

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: í b) where the non-State actor has the nationality of the State concerned; and c) as regards business enterprises, where the corporation, or its parent or controlling company, has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned;í .¹⁸

23. In its 2012 Concluding Observations on Germany, the Human Rights Committee recognized the extra-territorial obligation to ensure respect for rights enshrined in the ICCPR, stating that:

While welcoming measures taken by the State party to provide remedies against German companies acting abroad allegedly in contravention of relevant human rights standards, the Committee is concerned that such remedies may not be sufficient in all cases (Art. 2, para. 2).

The State party is encouraged to set out clearly the expectation that all business enterprises domiciled in its territory and/or its jurisdiction respect human rights standards in accordance with the Covenant throughout their operations. It is also encouraged to take appropriate measures to

¹⁴ 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.

¹⁵ 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.

¹⁶ Maastricht Principles on Extra-Territorial Obligations of States in the area of Economic, Social and Cultural Rights, Principle 3 (adopted 28 September 2011).

¹⁷ *Id.* at Principle 24.

¹⁸ *Id.* at Principle 25.

strengthen the remedies provided to protect people who have been victims of activities of such business enterprises operating abroad.¹⁹

24. Other treaty bodies have dealt with similar issues. For instance, the Committee on the Elimination of Racial Discrimination (CERD) has called upon States to regulate the extra-territorial actions of third parties registered in their territory. For example, in 2007, it called upon Canada to "take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada", recommending in particular that the State party "explore ways to hold transnational corporations registered in Canada accountable."²⁰ Similarly, in its Concluding Observations on the United States in 2008, CERD stated that:

In light of Article 2, paragraph 1 (d), and 5 (e) of the Convention and of its General Recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in the State party which negatively impact on the enjoyment of rights of indigenous peoples in territories outside the United States. In particular, the Committee recommends that the State party explore ways to hold transnational corporations registered in the United States accountable.²¹

25. Consequently, the United States has extra-territorial obligations under the ICCPR and these obligations include the extra-territorial obligation to respect Covenant rights abroad as well as the extra-territorial obligation to ensure Covenant rights abroad by, *inter alia*, regulating the activities of corporations and other business entities incorporated or domiciled in its territory and/or its jurisdiction for activities undertaken abroad and to investigate and appropriately sanction any activities that violate human rights and ensure that accountability mechanisms and remedies are available to victims of those violations.

3. Extra-Territorial Obligations in the Context of Decisions made in Inter-Governmental Organizations including International Financial Institutions

26. States increasingly act collectively within inter-governmental organizations (IGOs) and their decisions within IGOs can have a substantial impact on human rights – whether beneficially or detrimentally – and that impact is often realized in the territory of another State. This fact is quite relevant within the context of international financial institutions (IFIs) such as the World Bank and regional development banks as their financial support and other development decisions can

¹⁹ Human Rights Committee, Concluding Observations: Germany, UN Doc. CCPR/C/DEU/CO/6 (31 October 2012) at para. 16.

²⁰ Committee on the Elimination of Racial Discrimination, Concluding Observations: Canada, UN Doc. CERD/C/CAN/CO/18, paragraph 17 (25 May 2007).

²¹ Committee on the Elimination of Racial Discrimination, Concluding Observations: United States, UN Doc. CERD/C/USA/CO/6, paragraph 30 (8 May 2008).

both contribute to the extra-territorial obligation to fulfill human rights as well as result in violations of the extra-territorial obligations to respect and to protect human rights outside the territories of the Member States that sit on governing boards of IFIs.

27. While Member States of IFIs all have human rights obligations, those IFIs all too often seek to create immunity for human rights violations and it is a challenge to find ways to pierce that immunity. Additionally, while international judicial and quasi-judicial human rights mechanisms are beginning to grapple with the issue of ETOs, the fact that States are acting in concert (or acquiescing) within an inter-governmental organization adds an additional layer of complexity that international human rights mechanisms don't seem ready to address.

28. On the one hand, these States should not be able to ignore, or indeed violate, their respective human rights obligations simply by organizing themselves into IFIs or by using an IFI as an agent to carry out policies or practices that violate their respective international human rights obligations. On the other hand, by ensuring that the human rights-based approach to development is incorporated into all IFI projects, the human development outcomes of those projects can not only be more just but more sustainable.

29. The Maastricht Principles provide a clear articulation of customary and conventional international law as it relates to the obligations of Member States of IFIs regarding their respective human rights obligations, since such Member States make up the decision-making bodies that control or otherwise influence IFIs.

30. Principle 9 addresses the scope of jurisdiction, and states that:

A State has obligations to respect, protect and fulfil economic, social and cultural rights in any of the following:

- a) situations over which it exercises authority or effective control, whether or not such control is exercised in accordance with international law;
- b) situations over which State acts or omissions bring about foreseeable effects on the enjoyment of economic, social and cultural rights, whether within or outside its territory;
- c) situations in which the State, acting separately or jointly, whether through its executive, legislative or judicial branches, is in a position to exercise decisive influence or to take measures to realize economic, social and cultural rights extraterritorially, in accordance with international law.

31. As jurisprudence of the Human Rights Committee demonstrates that Maastricht Principle 9 is also relevant to civil and political rights enshrined in the ICCPR. Indeed, Principle 3 of the Maastricht Principles 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 extra-territorially", while Principle 5 affirms that "All human rights are universal,

indivisible, interdependent, interrelated and of equal importance. The present Principles elaborate extraterritorial obligations in relation to economic, social and cultural rights, without excluding their applicability to other human rights, including civil and political rights.

32. The International Law Commission (ILC) has also addressed the issue of the international responsibility of States for the internationally wrongful act of an international organization. The ILC, in articles it has drafted on the Responsibility of International Organizations, states in Article 1 that the articles apply to the international responsibility of States for the internationally wrongful act of an international organization. Furthermore, the provisionally adopted Article 4 states, *inter alia*, that an internationally wrongful act has occurred when conduct consisting of an action or omission: (a) is attributable to the international organizations under international law; and (b) constitutes a breach of an international obligation.

33. The Maastricht Principles reaffirm the obligations enunciated in the International Law Commission's articles. Regarding State responsibility, Maastricht Principle 11 states that:

State responsibility is engaged as a result of conduct attributable to a State, acting separately or jointly with other States or entities, that constitutes a breach of its international human rights obligations whether within its territory or extraterritorially.

34. Regarding obligations of States as members of international organizations, Maastricht Principle 15 reaffirms that:

As a member of an international organisation, the State remains responsible for its own conduct in relation to its human rights obligations within its territory and extra-territorially. A State that transfers competences to, or participates in, an international organisation must take all reasonable steps to ensure that the relevant organisation acts consistently with the international human rights obligations of that State.

35. IFIs, and their Member States, can also play an important role in the fulfillment of economic, social and cultural rights abroad. As a Specialized Agency of the United Nations, the World Bank is obligated not to defeat the purposes of the Charter of the United Nations (UN Charter). Additionally, the World Bank must work to further the objectives of the UN Charter, and of course must not undermine those objectives.²² This requirement is laid out in Article 59 of the Charter, which mandates that "the creation of any new specialized agencies require[s] accomplishment of the purposes set forth in Article 55."²³ The purposes and objectives articulated in Article 55 include, *inter alia*, the promotion of "universal respect for, and observance of, human rights and fundamental freedoms for all."²⁴ 36.

²² See, e.g., Mac Darrow, Between Light and Shadow: The World Bank, The International Monetary Fund and International Human Rights Law, pp. 127-133, Oxford: Hart Publishing, 2003.

²³ *Id.*

²⁴ Charter of the United Nations, Art. 55(c), *adopted* 26 June 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, *entered into force* 24 October 1945. Other human rights obligations are enshrined in Article 1 and Article 56

Furthermore, Article 103 of the UN Charter makes clear that 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.²⁵ In other words, these UN Charter obligations would trump any contradictory clauses in donor project agreements.

37. Maastricht Principle 29 recognizes the requirement under international law that:

States must take deliberate, concrete and targeted steps, separately, and jointly through international cooperation, to create an international enabling environment conducive to the universal fulfilment of economic, social and cultural rights, including in matters relating to bilateral and multilateral trade, investment, taxation, finance, environmental protection, and development cooperation.

The compliance with this obligation is to be achieved through, *inter alia*:

- a) elaboration, interpretation, application and regular review of multilateral and bilateral agreements as well as international standards;
- b) measures and policies by each State in respect of its foreign relations, including actions within international organisations, and its domestic measures and policies that can contribute to the fulfilment of economic, social and cultural rights extraterritorially.

38. Furthermore, Principle 33 reaffirms elements of the human rights-based approach to development, and is highly relevant to decision-making within IFI governance bodies. Principle 33 requires that:

In fulfilling economic, social and cultural rights extraterritorially, States must:

- a) prioritize the realisation of the rights of disadvantaged, marginalized and vulnerable groups;
- b) prioritize core obligations to realize minimum essential levels of economic, social and cultural rights, and move as expeditiously and effectively as possible towards the full realization of economic, social and cultural rights;

of the UN Charter, and these too are binding upon all Member States of the United Nations. Article 1(3) states that the “purposes and principles” of the United Nations is “to achieve international co-operation in ... promoting and encouraging respect for human rights and for fundamental freedoms for all...” While Article 56 states that “all Members pledge themselves to take joint and separate action ... for the achievement of the purposes set forth in Article 55.”

²⁵ Charter of the United Nations, Art. 103, *adopted 26 June 1945*, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, *entered into force* 24 October 1945.

c) observe international human rights standards, including the right to self-determination and the right to participate in decision-making, as well as the principles of nondiscrimination and equality, including gender equality, transparency, and accountability; and

d) avoid any retrogressive measures or else discharge their burden to demonstrate that such measures are duly justified by reference to the full range of human rights obligations, and are only taken after a comprehensive examination of alternatives.

39. Consequently, the Maastricht Principles not only provide guidance on how IFIs should implement their development projects and their poverty alleviation missions, but this guidance is grounded in international human rights legal obligations to respect and to ensure human rights extra-territorially.

4. Recommended Concluding Observations

40. The State Party must respect and ensure Covenant rights extra-territorially including ensuring that those individuals, groups and entities acting under its authority respect Covenant rights outside the territory of the State Party.

41. The State Party must to ensure that those individuals, groups and entities, including corporations and other business entities incorporated or domiciled in its territory and/or its jurisdiction, respect Covenant rights outside the territory of the State Party.

42. The State Party must abide by its obligations under the Covenant, including extra-territorial obligations, for decisions made within Inter-Governmental Organizations including International Financial Institutions.

43. The State Party must ensure that, in the event Covenant rights are violated by individuals, groups and entities acting under its authority, including within Inter-Governmental Organizations, or by other individuals, groups and entities, including corporations and other business entities incorporated or based in the State Party, there exist accessible accountably mechanisms and effective remedies for victims of those violations.

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