



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 Country Report Task Force
of the Human Rights Committee
on the occasion of the consideration of List of Issues related to
Sixth Periodic Report of Canada
during the Committee's 112th Session**

Submitted June 2014

1. INTRODUCTION

1. The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) is an international non-governmental human rights organization with Special Consultative Status with ECOSOC. The GI-ESCR seeks to advance the realization of the full spectrum of human 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. A key component of the mission of the GI-ESCR is to strengthen the international human rights framework by providing information and analysis regarding emerging understandings of international human rights, including the area of extra-territorial obligations under the existing international law framework.

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

3. 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.

4. 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:

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

5. 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

6. Furthermore, these articles take precedent over any other international instruments, including bilateral and multilateral 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

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.

international agreement, their obligations under the present Charter shall prevail.³

7. 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.⁴

8. 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

9. 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.⁷ 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"⁸ 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

10. 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

³ *Id.* at Art. 103.

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).

race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.¹⁰

11. The phrase “within its territory and subject to its jurisdiction” has been interpreted as meaning “within its territory *or* subject to its jurisdiction.

12. 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. ¹¹ 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.

13. 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.

14. The Human Rights Committee has also implied that even where a person is located outside a State’s territory, jurisdiction or effective control, State’s 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

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.

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.

15. 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:

í 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.¹⁴

16. 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

17. 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

18. In its 2012 Concluding Observations on Germany, the Human Rights Committee recognized the extra-territorial obligation to ensure Covenant 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

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.

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

19. The Committee on Economic, Social and Cultural Rights recently adopted Concluding Observations on China addressing extra-territorial obligations, and these Concluding Observations can serve as persuasive guidance for the extra-territorial application of the International Covenant on Civil and Political Rights. Specifically, the Committee on Economic, Social and Cultural Rights adopted the following:

12. While the Committee welcomes that in the framework of international cooperation, the State party has provided economic and technical assistance to over 2,100 projects in more than 120 developing countries, the Committee is concerned that some of such projects have reportedly resulted in violations of economic, social and cultural rights in receiving countries. (arts. 2 and 11).

The Committee calls upon the State party to adopt a human rights-based approach to its policies of international cooperation, by:

(a) Undertaking a systematic and independent human rights impact assessment prior to making funding decisions;

(b) Establishing an effective monitoring mechanism to regularly assess the human rights impact of its policies and projects in the receiving countries and to take remedial measures when required; and

(c) Ensuring that there is an accessible complaint mechanism if violations of economic, social and cultural rights occur in the receiving countries.

13. The Committee is concerned about the lack of adequate and effective measures adopted by the State party to ensure that Chinese companies both State-owned and private, respect economic, social and cultural rights, including when operating abroad (art. 2, para.1).

The Committee recommends that the State party:

(a) Establish a clear regulatory framework for companies operating in the State party to ensure that their activities promote and do not negatively affect the enjoyment of economic, social and cultural human rights; and

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

(b) Adopt appropriate legislative and administrative measures to ensure legal liability of companies and their subsidiaries operating in or managed from the State party's territory regarding violations of economic, social and cultural rights in their projects abroad.²⁰

20. The above makes clear that Canada 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 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 effective remedies are available to victims of those violations.

3. Suggestions for List of Issues and Questions to State Party

21. What steps has the State Party taken to ensure that those individuals, groups and entities acting under its authority respect Covenant rights outside the territory of the State Party?

22. What steps has the State Party taken 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?

23. What steps has the State Party taken to ensure that, in the event Covenant rights are violated by individuals, groups and entities acting under its authority or by other individuals, groups and entities, including corporations and other business entities incorporated or based in the State Party, there exist accessible accountability mechanisms and effective remedies for victims of those violations?

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²⁰ Committee on Economic, Social and Cultural Rights, Concluding Observations: China, UN Doc. E/C.12/CHN/CO/2 (23 May 2014) at paras. 12 ó 13.