**Written submission to**

**UN COMMITTEE ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS**

**Franciscans International contribution to the draft General Comment of the Committee on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities**

Geneva, 19 January 2017

**Introduction**

1. Franciscans International (FI) welcomes the opportunity to contribute to the discussions regarding the future General Comment of the Committee on State Obligations under the International Covenant on Economic, Social and Cultural Rights (hereafter ICESCR or Covenant) in the Context of Business Activities.
2. The present contribution addresses a limited number of both general and specific issues concerning the draft General Comment as made available by the Committee for the day of general discussion to be held on 21 February 2017.

**General remarks**

*Scope and process*

1. FI welcomes the elaboration of a General Comment on the issue of State obligations under the ICESCR in relation to business activities. It is a very timely and necessary endeavour considering the undeniable increase in the impact of business actors on the enjoyment of economic, social and cultural rights (ESCR) as documented and denounced by many civil society organisations in their various submissions to the Committee around the elaboration of the future General Comment on State obligations in the context of business activities, and more generally in their regular inputs into the review of States’ periodic reports.
2. FI wishes to emphasize that with the elaboration of a future General Comment on the issue, the Committee has the opportunity to make a fundamental contribution to improve the protection of the Covenant rights against the growing infringements occurring in the context of business activities, and to respond to the ever-growing challenge of ensuring the accountability of business for their abuses and threats against human rights.
3. In this perspective, the Committee has the duty not only to uphold the protection that has already been recognised in international human rights treaties and related General Comments but also to go beyond and define the necessary provisions for improved State practice with regard to the effective protection of the Covenant rights against business abuses. FI warmly welcomes the useful provisions that are already included in the draft General Comment.
4. As highlighted in the draft General Comment itself, and as it is the norm for such General Comment, the future document will provide an authoritative interpretation and offer guidance and policy recommendations for States parties to the ICESCR to comply with their obligations under the specific legal framework of the Covenant when dealing with the impact of business activities on the realization of ESCR. While it will undoubtedly be consulted and considered by a variety of non-State actors, the future General Comment is addressed first and foremost to States parties, but also to organisations whose genuine mandate and goal is the protection of human rights. The Committee shall refrain from taking any kind of “multi-stakeholder” approach to the process of elaborating its General Comments. The Covenant creates legal obligations for States parties that cannot be undermined by other non-binding instruments or be renegotiated to reassure or satisfy business actors.

*Terminology*

1. In line with the above-mentioned general principle of an always greater protection of human rights, FI recommends refraining from using the term “corporation” in the future General Comment. The latter should address the impact on the rights guaranteed in the Covenant by all business entities and thus use the generic terminology of “business enterprises”, as adopted in other UN instruments, that encompasses a large array of entities, national and transnational, of different sizes, structure, and sector of activity.[[1]](#footnote-1) In fact, the draft General Comment includes a broad understanding of business activities at its paragraph 5 but uses the term “corporations” in various subsequent parts, thus limiting itself to a particular form of enterprises, which creates a certain inconsistency in the draft.

*Human rights defenders*

1. FI is concerned about the absence in the draft General Comment of provisions addressing the need for States to effectively protect human rights and environmental defenders who are opposing abuses of ESCR committed by business enterprises against the growing harassments, attacks, violence, and repression. The Committee has recognised the importance of the role of human rights defenders in the protection of Covenant rights and of the necessity to ensure that they will be able to effectively do their work.[[2]](#footnote-2) The growing threats and obstacles faced by human rights defenders working on cases of violations and abuses involving business actors are a particular matter of concern and ought to be included in the future General Comment.

**Specific remarks**

*Non-discrimination*

1. FI regrets that the paragraph 11 starts addressing intersectional and multiple discrimination but then further only focuses on women and girls. FI is concerned that there is no reference to persons with disabilities or other groups, or in fact to the intersection of multiple grounds for discrimination placing groups and individuals at higher risks of being victims of violations of Covenant rights in the context of business activities.

*Obligation to fulfil*

1. FI is concerned about the formulation of the second part of paragraph 26 of the draft General Comment under the obligation to fulfil which states: “*The obligation to fulfil has three components: the duty to facilitate, the duty to promote, and the duty to provide. The duty to facilitate requires States Parties to take all necessary measures to create an enabling environment for business actors to respect the economic, social and cultural rights enshrined in the Covenant as well as to contribute towards the full realization of these rights.* *Facilitating measures comprise a wide variety of economic and fiscal policy tools and incentives, such as export credit, investment-related insurance and guarantee, tax exemptions and deductibles, and infrastructures necessary for the proper functioning of markets.”*
2. FI considers that the last sentence of paragraph 26 (underlined) may be subject to misinterpretation. It shall be clear that the facilitating measures mentioned shall eventually aim at enabling the respect of human rights by business actors. Whenever necessary, these measures shall be used by States as sanctions against business actors who do not respect human rights, and not only as incentives to convince business to have better human rights records.

*Remedies*

1. In general, the section on remedies is a very important part of the future General Comment. However, the significant part dedicated to non-judicial remedies may give a wrong impression on their real significance for victims. That part could thus be shortened by referring to the source where these elements are to be found, and the saved space could be used to include important elements that are currently missing in the draft and/or could be elaborated further, including as suggested in other parts of this submission.
2. FI holds the view that the future General Comment could possibly provide more guidance to States parties as to measures that can be taken in different areas of domestic law, especially administrative, civil and procedural laws to overcome some of the main obstacles that impede effective access to justice by victims of violations of Covenant rights occurring in the context of business activities.
3. At paragraph 49, FI suggests to avoid using the phrase “individual claim”, and to use only “claim”. The use of the term “individual” claim may be confusing in this context as other provisions of the draft General Comment, e.g. at paragraph 46, acknowledges the importance of allowing for group or class actions to facilitate access to justice by victims of violations of Covenant rights in the context of business activities.

**Conclusion**

1. FI is thankful for the opportunity to contribute to the elaboration of the future General Comment on State obligations under the ICESCR in the context of business activities and warmly welcomes the very helpful provisions that are already contained in the published draft General Comment. With the elaboration of the new document and with due consideration for its reference legal framework that is the ICESCR, FI encourages the Committee to take the opportunity to give an effective response to the growing challenge that the guarantee of the accountability of business enterprises for human rights abuses represents.
1. See for instance General Comment 16 of the UN Committee on the Rights of the Child, UN Doc. CRC/C/GC/16, 2013, at para. 3. [↑](#footnote-ref-1)
2. UN CESCR, Statement on Human Rights Defenders and Economic, Social and Cultural Rights, UN Doc. E/C.12/2016/2, 2016. [↑](#footnote-ref-2)