**NORWEGIAN NGO FORUM FOR HUMAN RIGHTS**

## **Committee on Economic, Social and Cultural Rights (CESCR)**Human Rights Treaties Division (HRTD)Office of the United Nations High Commissioner for Human Rights (OHCHR)Palais Wilson - 52, rue des PâquisCH-1201 Geneva (Switzerland)

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## Oslo 18 January 2017

**Submission to the CESCR Day of General Discussion on the Draft General Comment on State Obligations under the ICESCR in the Context of Business Activities (“Submission for DGD Feb. 2017”)**

Dear Madams/Sirs,

The Norwegian NGO Forum for Human Rights appreciates the opportunity to provide a submission prior to the Day of General Discussion on the Draft General Comment on State Obligations under the International Covenant of Economic, Social and Cultural Rights in the Context of Business Activities.

The Norwegian NGO Forum welcomes the Committee’s engagement in emphasizing the significant role of private businesses in furthering enjoyment of economic and social rights in any society. In particular, we recognize the Committee’s concern for the growing impact of transnational business activities which may have both positive as well as adverse impact on economic and social rights.

This paper will in particular draw the attention to the increasing trend by States Parties of the Covenant in giving priority to private sector development and investments as part of international development cooperation. This trend must be accompanied by increased efforts by states of ensuring that human rights principles are respected fully by private sector actors taking part in international development cooperation.

This point has been made even more relevant, as also the 2030 Agenda for Sustainable Development and the Sustainable Development Goals (SDGs) gives the private sector an important role in contributing to social development and inclusive growth. It is of great importance to emphasize that businesses effort to contribute to the fulfilment of the SDGs does not substitute the responsibility to respect human rights. Rather, respect for human rights and, indeed, businesses determination to contribute to the enjoyment of economic, social and cultural rights is pivotal for the realization of the 2030 Agenda and several of the SDGs.

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The Norwegian NGO Forum for Human Rights is a network of 41 Norwegian organizations working on human rights issues. It endeavors to influence Government policies in applying a comprehensive approach towards strengthening human rights principles within the framework of international cooperation and at national levels.[[1]](#footnote-1) One of the Forum members, FIAN Norway, has signaled that it does not endorse all parts of this letter.

### “Submission for DGD Feb. 2017”

### The relevance of the Sustainable Development Goals (SDGs): inviting the business community into a partnership for realizing economic and social rights

The 2030 Agenda for Sustainable Development provides the private sector with an important role in contributing to social development and inclusive growth. As we see it, a range of Covenant rights are formulated as goals in the SDGs framework, including the rights to education, health and employment. Human rights cut across the 17 SDGs, including core human rights principles of non-discrimination, participation and inclusion. These principles tie together human rights and the SDGs. Human rights, notably reinforced by the UN Guiding Principles for Business and Human Rights and the OECD Guiding Principles for Responsible Business Conduct, offer a legally-binding framework for states and globally recognized and government-backed expectations to businesses.

It is, however, a concern that businesses may interpret their efforts to contribute to the fulfilment of the SDGs as a substitute for their responsibility to respect human rights. As pointed out by Professor John Ruggie in his address to the UN Global Forum for Business and Human Rights on 14 November 2016,[[2]](#footnote-2) there is a risk that the interlinkage between human rights and the SDGs are being weakened in practice. There may be a tendency that businesses are “cherry-picking” the SDGs that they want to support and that their (erroneous) interpretation of the 2030 Agenda is used as basis for a move from “responsibility” to “opportunity”. To counter this, it should be emphasized that the linkage between the duty to respect human rights and the realization of the 2030 Agenda and several of the SDGs is strong, and that, indeed, the fulfillment of economic, social and cultural rights is a necessary precondition for the achievement of this ambitious agenda.

The SDGs emphasize multi-stakeholder cooperation between states, private companies and civil society. They represent an important opportunity to engage in a conversation about consequences for human rights of private sector actions, on-the-ground impacts of businesses and on how to ensure that the private sector comply fully with economic and social rights. We agree that achieving effective partnership between states and private sector actors is among the key requirements for effective implementation of the SDGs. The aim of ensuring that businesses respect economic and social rights should be guiding the work of such partnerships.

The ***CESCR*** *Draft General Comment on State Obligations under the ICESCR in the Context of Business Activities* rightly points to the growing trend of privatization of social services related to Covenant rights among States Parties. As we understand the SDGs, they further contribute to giving the private sector an important role in contributing to the realization of these rights. The SDGs framework seeks to mobilize all stakeholders around the 2030 Agenda for Sustainable Development.

In our view, there is no doubt that a multi-stakeholder partnership between States Parties and the private sector may contribute positively to the realization of economic, social and economic rights.

* However, we recommend that the Committee highlights that this partnership with or reliance on the private sector in order to achieve sustainable development never takes away the responsibility of States Parties to ensure respect of Covenant provisions by all stakeholders, including business companies. Only when this respect is in place can the full potential of the partnership be achieved.

In SDGs 17 on *Means of Implementation*, states have committed themselves to ensure that business companies act in accordance with human rights standards. As business entities infuse the SDGs in their activities, there might be a momentum for integrating human rights in new regulatory programs and thus give impetus to the call for legal reforms as part of the State Parties´ obligations, e.g. as a means to secure that businesses exercise human rights due diligence, including human rights performance as part of the companies´ non-financial reporting obligations. In this way, the 2030 Agenda and the SDGs may contribute to a renewed willingness to take on board human rights obligations.

* Since partnership with the private sector is considered a core strategy for the implementation of the SDGs, we recommend that the General Comment specifically refers to them. It should be emphasized that the linkage between the duty to respect human rights and the realization of the 2030 Agenda and several of the SDGs is strong, and that, indeed, businesses respect for economic, social and cultural rights is a necessary precondition for the achievement of this ambitious agenda.

### Private sector involvement in international development cooperation

Several States Parties of the Covenant, including Norway, are contributing substantially to realizing Covenant rights in low-income countries through international development cooperation and assistance.

There is a growing recognition in developed countries of the role and possibilities of the private sector in contributing to development and economic growth. Many States are scaling up their support to the private sector as part of development cooperation strategies by providing funding schemes for private businesses and creating enabling environments for private sector investments and activities in developing countries. The end goal is closely linked to the outcome of the SDGs and contribution towards realization of Covenant rights in developing countries.

Over the years, international development cooperation has increasingly emphasized the need for applying human rights based approaches in order to mitigate exclusion of vulnerable groups.

On this background, the Norwegian NGO Forum recommends that the General Comment:

* Clearly emphasizes the importance of human rights based approaches in establishing funding mechanisms for the private sector in the framework of achieving the SDGs and in development cooperation;
* Points to the importance of building on experiences in applying human rights based approaches when States Parties integrate support facilities for private companies as part of achieving the SDGs and in development cooperation;
* Underlines that States Parties should ensure that the core principle of the SDGs, *leaving no one behind*, is firmly integrated in private sector activities, which is part of achieving the SDGs and in development cooperation;
* Points to the importance of integrating human rights requirements in States Parties’ funding facilities for private companies as part of achieving the SDGs and in development cooperation. In particular, States Parties should formulate human rights requirements to ensure that the private sector apply non-discriminatory approaches and programs, and in this way contribute to the principle of leaving no one behind.

### Non-discrimination and equality

Unfortunately, vulnerable groups, including persons with disabilities, of whom more than 80% live in poverty,[[3]](#footnote-3) are frequently denied Covenant rights. Discrimination and exclusion of persons with disabilities as well as other vulnerable groups, have been given due attention by the UN Forum on Business and Human Rights. The 2016 Forum meeting underlined the need to step up effort to improve access to remedies and protection of those facing discrimination due to their disabilities.[[4]](#footnote-4)

A similar concern is addressed by the 2030 Agenda for Sustainable Development,[[5]](#footnote-5) as it recognizes increasing inequalities facing persons with disabilities. This framework for global action recognizes the shared principles and commitments that are grounded in the Universal Declaration of Human Rights and international human rights treaties which also include the UN Convention on the Rights of Persons with Disabilities. The 2030 Agenda for Sustainable Development calls on the private sector to contribute to the global commitment for inclusive and equitable growth including inclusive job creation.[[6]](#footnote-6)

On this background, the Norwegian NGO Forum recommends:

* The General Comment should point to the situation of persons with disabilities (in addition to women and girls, indigenous peoples, and ethnic or religious minorities, who are already mentioned), who are denied Covenant rights. It should call upon State Parties to take necessary steps to ensure their inclusion in strategies and actions involving private sector in achieving the SDGs and in development cooperation.
1. For more information, see: <http://www.nhc.no/en/our_work/ngo_forum/> [↑](#footnote-ref-1)
2. http://www.shiftproject.org/resources/viewpoints/globalization-sustainable-development-goals-business-respect-human-rights/ [↑](#footnote-ref-2)
3. WHO/WB, World report on Disability, 2011. [↑](#footnote-ref-3)
4. UN Forum on Business and Human Rights, 2016 program: [http://www.ohchr.org/Documents/Issues/Business/ForumSession5/PoW.pdf](https://www.ohchr.org/Documents/Issues/Business/ForumSession5/PoW.pdf) [↑](#footnote-ref-4)
5. Transforming our World: the 2030 Agenda for Sustainable Development. [↑](#footnote-ref-5)
6. Transforming our World: the 2030 Agenda for Sustainable Development, para 67. [↑](#footnote-ref-6)