**Comments on “General Comment on State Obligations under the ICESCR in the Context of Business Activities” from the O’Neill Institute for National and Global Health Law, Georgetown University**

**General points**

* Private actors have responsibilities to both their customers and broader society: “Private sector companies are accountable to shareholders and to customers, but they also are increasingly recognized to have corporate responsibilities and to society as a whole.”[[1]](#endnote-1)
* Private actors should give priority to marginalized populations, including women, children, and adolescents: “And we urge the manifold and diverse institutions that make up the private sector as a whole to give higher priority to women, children and adolescents, by supporting actions to promote their health, and avoid those actions that might be detrimental to it.”[[2]](#endnote-2)
* States should avoid designing a system favored by private actors that is driven primarily by profit and business interests, and treats health more as a commodity than a right. [See below for suggested insertion]
* States should be wary of business lobbying that makes it more difficult for states to take regulatory measures necessary to protect the right to health.
* On quality and equality: “In a human rights framework, the state has an obligation to ensure that their conduct meets certain standards, relating to quality and equality.”[[3]](#endnote-3)
* States must be careful not to allow private actors to define the boundaries of political action or regulation, as is often the case of insurance or pharmaceutical companies within the health sector.
* States need to protect people from being displaced from their livelihoods by private sector actors purchasing large tracts of land.
* Industries that create harmful products, notably the tobacco industry, must not set public health policies. Legislators and government staff should resist any attempt by these industries to influence the legislative and executive processes during the development, enactment, and implementation of laws that control the use of these products. State parties should also limit their interaction with these industries and ensure that any interactions that do occur are transparent.
* A responsive regulatory approach may be useful: “In some countries, food manufacturers, retailers, government and public health stakeholders are engaged in voluntary partnerships to reformulate food products and to reduce levels of salt, saturated fat and sugar over time. In circumstances where voluntary processes fail to make timely progress towards public health goals and targets, governments may consider adopting a responsive regulatory approach that includes strengthening their level of oversight of the industry, ‘scaffolding’ voluntary processes with formal targets, or supplementing voluntary standards with legislation.”[[4]](#endnote-4)
* Laws and regulations do not exist in isolation and should be included, where appropriate, as part of broader strategies to promote certain socially beneficial objectives. [See below for suggested insertion.].

**Suggested insertions (in bold)**

**11.** Committee reiterates its grave concern that certain segments of population face a greater risk of suffering intersectional and multiple discrimination. For instance, investment-linked evictions and displacements often result in physical and sexual violence against, and inadequate compensation and additional burden related to resettlement for, women and girls. In addition, women are overrepresented in the informal economy and are less likely to enjoy labor-related and social security protections. Furthermore, despite some improvement, women continue to be underrepresented in business decision-making processes worldwide. **And companies selling and promoting unhealthy products, such as tobacco and unhealthy food, have been found to disproportionately target ethnic and racial minorities**, **promoting a disparate impact on vulnerable groups**. The Committee therefore recommends States Parties to address this issue of specific impacts of business activities on women and girls and to incorporate a gender perspective into all measures to regulate business activities that may adversely affect economic, social and cultural rights, including by consulting the Guidance on National Actions Plans on Business and Human Rights. States Parties should also take appropriate steps, including through temporary special measures, to improve women’s representation in the labour market, including at the upper echelons of the business hierarchy.

19. This obligation to protect at times necessitates more direct regulation and intervention. **Laws and government-mandated regulations should be included, where appropriate, as part of broader strategies to promote an enabling environment for the fulfilment of Covenant rights, such as by encouraging a healthy and environmentally-sustainable diet, reducing poverty, increasing food security.** States Parties should consider measures such as, for instance: restricting marketing, advertising, **sponsorship, and promotion** of certain goods and services in order to protect public health or to combat stereotyping and discrimination; **regulating the contents and availability of products that are detrimental to good population health, such as tobacco, alcohol, and unhealthy food**;[[5]](#endnote-5) exercising rent control in the private housing market to as required for the protection of everyone’s right to adequate housing; establishing minimum wage and fair remuneration practices to ensure adequate working conditions ; and regulating other business activities concerning the Covenant rights to education, employment, and reproductive health, in order to effectively combat gender discrimination.

21. The duty of States Parties is both to create an appropriate legal and policy framework and to enforce these laws, regulations and policies. Therefore, effective monitoring, investigation and accountability mechanisms must be put in place to enable business compliance and accountability and ensure access to remedies for those whose Covenants rights have been violated in the context of business activities. Such enforcement systems require not only legal measures but also enabling infrastructure, such as independent national human rights institutions, competent inspectorates in the area of food safety and working conditions, and consumer protection agencies, with the authority and resources necessary to adequately discharge their duties. **Prior to pursuing any public private partnerships, states must assess and mitigate any potential conflicts of interests. Partnerships with industry must be avoided where business interests and rights conflict, such as in the case of tobacco.** Effective enforcement also requires robust mechanisms against corruption, the independence of which should be guaranteed and which should be sufficiently well resourced.

22. This General Comment is adopted at a time when privatization is a growing trend in many parts of economic, social and cultural life worldwide. The private sector has long played an important role in the sectors closely related to certain Covenant rights, such as the right to work and the right to food. However, it is also gaining importance in other areas relating to social protection, water, sanitation, health, education and cultural life. The increased role and impact of private actors in what used to be predominantly public sectors pose new challenges for States Parties in complying with their obligations under the Covenant. It poses particular challenges as regards the affordability of goods and services that are necessary for the enjoyment of basic economic, social and cultural rights. **For instance, Covenant rights might be violated when states design a system favored by private actors that is driven primarily by profit and business interests, and treats health more as a commodity than a right, making it difficult to ensure access**. In this regard, States Parties should ensure that privatization does not lead to a situation in which the enjoyment of Covenant rights is undermined by the inability to pay, at the risk of creating new forms of socio-economic segregation. They retain the obligation to regulate and ensure that private actors provide affordable access to quality services to all.

1. Independent Accountability Panel for the Global Strategy on Women’s, Children’s and Adolescents’ Health, *2016:* *Old Challenges, New Hopes: Accountability for the Global Strategy for Women’s, Children’s and Adolescents’ Health* (2016), at 59. <https://iapewec.org/>. [↑](#endnote-ref-1)
2. Independent Accountability Panel for the Global Strategy on Women’s, Children’s and Adolescents’ Health, *2016:* *Old Challenges, New Hopes: Accountability for the Global Strategy for Women’s, Children’s and Adolescents’ Health* (2016), at 62. <https://iapewec.org/>. [↑](#endnote-ref-2)
3. Alicia Ely Yamin, *Power, Suffering and the Struggle for Dignity: Human Rights Frameworks for Health and Why They Matter* (Philadelphia: University of Pennsylvania Press, 2016), at 167. [↑](#endnote-ref-3)
4. Roger Magnusson et al., *Advancing the Right to Health: The Vital Role of Law* (Geneva: World Health Organization, 2017), at 186. <http://apps.who.int/iris/bitstream/10665/252815/1/9789241511384-eng.pdf?ua=1>. [↑](#endnote-ref-4)
5. *See* World Economic Forum and World Health Organization, *From Burden to “Best Buys”: Reducing the Economic Impact of Non-Communicable Diseases in Low- and Middle-Income Countries* (Geneva: World Economic Forum, 2011). <http://apps.who.int/medicinedocs/documents/s18804en/s18804en.pdf>. [↑](#endnote-ref-5)