

Extraterritorial Impacts of Spanish Transnational companies
On the rights enjoyed under the
International Covenant on Economic, Social and Cultural Rights

Introduction

In this globalised economy, human rights violations can occur cross-border and cannot be successfully addressed if the legal response does not take into account this transnational character.

For this reason, States' duty to protect human rights is not limited to their territory, but also to their actions that violate human rights extraterritorially as repeatedly affirmed by United Nations Treaty Bodies¹, legal doctrine and by the International Court of Justice itself². In addition, the obligation of States to protect human rights encompasses the duty of States to control the conduct of private actors³, including that of business enterprises incorporated under their laws, wherever these corporations operate. The Human Rights Committee in its concluding observations on the sixth periodic report of Canada recently reaffirmed this duty and its extraterritorial scope⁴.

The Committee on Economic, Social and Cultural Rights (the "**Committee**") also affirmed that States parties are expected to "*prevent third parties from violating the right protected under the International Covenant on Economic, Social and Cultural Rights in other countries, if they are able to influence these third parties by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law*"⁵.

In addition with regard to enterprises, this Committee has further stated that: "*States Parties should also take steps to prevent human rights contraventions abroad by corporations that have their main seat under their jurisdiction, without infringing the sovereignty or diminishing the obligations of host states under the Covenant*"⁶

The present report aims at drawing the Committee's attention to Spain's state of compliance with its extraterritorial obligations under the International Covenant on Economic, Social and Cultural Rights (the "**Covenant**") with regards to the activities of Spanish multinational companies outside of Spain.

¹ Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000), The right to the highest attainable

² Advisory Opinion, Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, 9 July 2004, para. 109 ; Armed Activities on the Territory of the Congo, Democratic Republic of the Congo v. Uganda) 19 Dec. 2005 paras. 178-180 and 216-217

³ Human Rights Committee, General Comment No. 31, Nature of the General Legal Obligation Imposed to States Parties to the Covenant (CCPR/C/21/Rev. 1/Add. 13), 26 May 2004, para. 8 ; Committee on Economic, Social and Cultural Rights, General Comment No. 12 (1999): The right to adequate food (Art. 11), UN doc. E/C.12/1999/5, para. 15

⁴ Human Rights Committee Concluding observations on the sixth periodic report of Canada, 13 August 2015, paragraph 6. The Committee recommended that : "*The State party should (a) enhance the effectiveness of existing mechanisms to ensure that all Canadian corporations under its jurisdiction, in particular mining corporations, respect human rights standards when operating abroad; (b) consider establishing an independent mechanism with powers to investigate human rights abuses by such corporations abroad; and (c) develop a legal framework that affords legal remedies to people who have been victims of activities of such corporations operating abroad*"

⁵ Committee on Economic, Social and Cultural Rights, General Comment No. 14 (2000), The right to the highest attainable standard of health (article 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2000/4 (2000), para. 39; Committee on Economic, Social and Cultural Rights, General Comment No. 15 (2002), The right to water (arts. 11 and 12 of the International Covenant on Economic, Social and Cultural Rights), E/C.12/2002/11 (26 November 2002), para. 31

⁶ Committee on Economic, Social and Cultural Rights, "Statement on the obligations of States Parties regarding the corporate sector and economic, social and cultural rights", E/C.12/2011/1 (20 May 2011), para.5

In recent years, Spanish companies have focused a great part of their efforts on internationalisation, which has translated into a search for new markets abroad, but also on the outsourcing of a large part of its production.

This internationalisation effort has been accompanied by the Spanish government, which dedicated a large portion of its foreign policy on the promotion of Spanish companies abroad.

One of the public policies of promotion of these companies abroad is known as "Marca España" (Brand Spain), which has as its objective the improvement and promotion of Spain's image abroad. One of the fundamental aspects of this policy is the active participation of Spanish companies. Various companies are part of the so-called Forum for Renowned Spanish Brands, which consists of an alliance between Spanish companies and the public administration to establish collaborative strategies in matters such as intellectual property, human resources, financing, innovation, marketing and markets.

As part of the Brand Spain policy, it is acknowledged that the "private sector has a lot to contribute to the generation of national and international development through means of wealth creation and dignified employment, as well as parallel activities for improving the surroundings and well-being of host populations".

Self-determination

Article 1

Transnational Spanish companies have a significant presence in Latin America. Many of the projects of transnational companies in Latin America, particularly those related to mining and energy production, have been opposed by indigenous peoples that seek to protect their land, their means of subsistence and their right to dispose of their natural wealth and resources under the right to self-determination enshrined in article 1 of the Covenant. These populations tend to carry out numerous public protests against these attacks against nature.

This is for example the case in Guatemala, where the use of violence against local activists opposing mining projects, including by security personnel hired by companies, has been extensive⁷. In many cases, the objective of this violence is to intimidate and to silence human rights defenders denouncing abuses committed by transnational corporations.

For instance, in Santa Cruz Barillas, Huehuetenango, the Spanish company Eco Ener Hidralia Energía began a hydraulic energy-production project that was opposed by the population due to its environmental impacts⁸. As the Guatemalan government had declared the state of siege, the company installed armed security guards in the region. Among the violence committed by private security personnel, it has been reported that security forces have sexually attacked women from Santa Cruz Barillas as part of their strategy to suppress protests⁹.

⁷ See the case *Choc v Hudbay Minerals Inc*, 2012 ONSC 1414 and *Adolfo Augustín García et al v Tahoe Resources*, Supreme Court of British Columbia Court File No. S-144726 (Vancouver Registry)

⁸ <http://business-humanrights.org/es/guatemala-represi%C3%B3n-contra-activistas-opuestos-a-la-construcci%C3%B3n-de-una-megapresa-por-parte-de-la-empresa-espa%C3%B1ola-hidralia-energ%C3%ADa>

⁹ <http://oxfamilibrary.openrepository.com/oxfam/bitstream/10546/347438/13/ib-suffering-of-others-international-finance-corporation-020415-en.pdf>

Working conditions of women

Article 7 and 3

Many human rights organisations have expressed their great concern regarding the responsibility that various Spanish companies (including some companies that are part of the Forum of Renowned Spanish Brands) have in serious violations of the human rights of women workers, in clear contradiction of international law in matters relating to workers' rights.

The local companies that supply products to Spanish companies, especially in the textile and food sectors, have maintained practices such as 72-hour work-weeks, failure to provide legal contracts to working women, or placing restrictions on their freedom of movement, as is the case with Eastman Exports Global Clothing, which supplies Spanish companies such as Cortefiel, El Corte Inglés and Inditex.¹⁰ These practices amount to violations of article 7 (right to the enjoyment of just and favourable conditions of work) of the Covenant and of article 3 (non-discrimination between men and women for the rights to be enjoyed under the Covenant) as most workers affected by these practices in the textile industry are women.

In addition, these practices allow Spanish companies to increase their profits as they take advantage of the situation of vulnerable women lacking means to defend themselves and claim their rights, as they are forced into accepting draconian work conditions in order to keep their jobs. Another example is the lack of guarantees to obtain a dignified salary for women workers hired in the supply chains of companies such as Desigual, Mango and Inditex, which salaries do not allow women workers to keep themselves and their families afloat.¹¹

Conclusion

In its Core report, Spain indicates that the topic of business and human rights is one the priorities of its foreign policy on human rights¹². In addition, Spain mentions its firm support to the Guiding Principles on Business and Human Rights, as well as to the various mechanisms and actions associated with them. Spain also began in June 2014 the process of adopting a national action plan on business and human rights, which is still pending to this day¹³.

As highlighted in the present report, the activities of Spanish companies may have adverse human rights impacts, not only nationally but also extra-territorially, on communities located outside of Spain. Corporations may violate for instance the right to self-determination and to the enjoyment of just and favourable conditions of work under the Covenant.

With regards to this topic, we hence suggest the Committee asks the following questions to Spain:

- How does the State party monitor the extra-territorial impacts of activities of Spanish corporations on the enjoyment of Covenant rights?
- What specific measures has the State party undertaken to prevent and to remedy violations of rights under the Covenant, committed outside of Spain by Spanish corporations?

10 Overeem, P., M. Theuvs y N. Coninck, Captured by Cotton. Exploited Dalit girls produce garments in India for European and US markets, SOMO-Centre for Research on Multinational Corporations, LIW/ ICN- India Committee of the Netherlands y Campaign Against Sumangali Scheme, 2011.

11 Anna McMullen et. Al. Dignified Salaries. Is the salary paid by brands to people making our clothes sufficient to get by on? Clean Clothes Campaign, Setem, March 2014.

12 Common core document forming part of the reports of States parties, Spain, page 36

13 Common core document forming part of the reports of States parties, Spain, page 38