



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 Pre-Sessional Working Group
of the Committee on Economic, Social and Cultural Rights
on the occasion of the consideration of List of Issues related to the
Sixth Periodic Report of Canada
during the Committee's 55th Session**

Submitted January 2015

1. INTRODUCTION

1. The Global Initiative for Economic, Social and Cultural Rights (GI-ESCR) is an international non-governmental human rights organization which seeks to advance the realization of economic, social and cultural 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. The mission of the GI-ESCR is to strengthen the international human rights framework through creative standard setting, so that all people, and in particular marginalized individuals and groups, are able to fully enjoy their economic, social and cultural rights, and are able to do so without discrimination and on the basis of equality; provide innovative tools to policy makers, development actors and others on the practical implementation and realization of economic, social and cultural rights; enforce economic, social and cultural rights through international, regional and national mechanisms and seek remedies for violations of these rights, with a focus on creating beneficial jurisprudence aimed at transformative change; engage networks of human rights, women's rights, environmental and development organizations and agencies to advance the sustainable enjoyment of economic, social and cultural rights at both national and international levels; and work with advocates, social movements and grassroots communities at national and local levels to more effectively claim and enforce economic, social and cultural rights, including by engaging international mechanisms for local impact.

3. The GI-ESCR is a member of the Extra-Territorial Obligation Consortium (ETO Consortium) and serves on the Consortium's Steering Committee.

2. Extra-Territorial Obligations under the International Covenant on Economic, Social and Cultural Rights

4. 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.

5. 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: ¹

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

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.

6. 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

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

8. 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

9. 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

10. Furthermore, the Articles on Responsibility of States for Internationally Wrongful Acts address violations of preemptory norms, which could include gross or systemic 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 obligation⁷ in question. And Article 41 addresses consequences for such serious breaches, including cooperating to bring to an end

² *Id.* at Art. 56.

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.

through lawful means any serious breach within the meaning of Article 40⁸ 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

11. This application of extraterritorial obligations under the ICESCR 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*.¹⁰

12. The Maastricht Principles on Extra-Territorial Obligations in the Area of Economic, Social and Cultural Rights 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.¹¹ 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”¹² and that “States must desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially. The responsibility of States is engaged where such nullification or impairment is a foreseeable result of their conduct. Uncertainty about potential impacts does not constitute justification for such conduct”¹³ and that “All States have the obligation to refrain from conduct which nullifies or impairs the enjoyment and exercise of economic, social and cultural rights of persons outside their territories.”¹⁴

13. Furthermore, Principle 24 makes clear that the 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.”¹⁵ 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

⁸ *Id.* at Art. 41(1).

⁹ *Id.* at Art. 41(2).

¹⁰ International Court of Justice, *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* (9 July 2004).

¹¹ 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.

¹² Maastricht Principles on Extra-Territorial Obligations of States in the Area of Economic, Social and Cultural Rights, Principle 3 (adopted 28 September 2011).

¹³ *Id.* at Principle 13.

¹⁴ *Id.* at Principle 20.

¹⁵ *Id.* at Principle 24.

activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned;¹⁶

14. Regarding the extra-territorial obligation to fulfil Covenant rights abroad, Principle 29 requires that:

States must take deliberate, concrete and targeted steps, separately, and jointly through international cooperation, to create an international enabling environment conducive to the universal fulfilment of economic, social and cultural rights, including in matters relating to bilateral and multilateral trade, investment, taxation, finance, environmental protection, and development cooperation.

The compliance with this obligation is to be achieved through, inter alia:

- a) elaboration, interpretation, application and regular review of multilateral and bilateral agreements as well as international standards;
- b) measures and policies by each State in respect of its foreign relations, including actions within international organisations, and its domestic measures and policies that can contribute to the fulfilment of economic, social and cultural rights extraterritorially.¹⁷

15. Principle 15 makes clear that:

As a member of an international organisation, the State remains responsible for its own conduct in relation to its human rights obligations within its territory and extraterritorially. A State that transfers competences to, or participates in, an international organisation must take all reasonable steps to ensure that the relevant organisation acts consistently with the international human rights obligations of that State.¹⁸

16. In the event that a State Party fails to abide by Covenant rights extra-territorially, access to justice, including accountability mechanisms and effective remedies, must be provided. According the Maastricht Principle 37:

States must ensure the enjoyment of the right to a prompt, accessible and effective remedy before an independent authority, including, where necessary, recourse to a judicial authority, for violations of economic, social and cultural rights. Where the harm resulting from an alleged violation has occurred on the territory of a State other than a State in which the harmful conduct took place, any State concerned must provide remedies to the victim.

To give effect to this obligation, States should:

- a) seek cooperation and assistance from other concerned States where necessary to ensure a remedy;

¹⁶ *Id.* at Principle 25.

¹⁷ *Id.* at Principle 29.

¹⁸ *Id.* at Principle 15.

- b) ensure remedies are available for groups as well as individuals;
- c) ensure the participation of victims in the determination of appropriate remedies;
- d) ensure access to remedies, both judicial and non-judicial, at the national and international levels; and
- e) accept the right of individual complaints and develop judicial remedies at the international level.¹⁹

17. In its 2014 Concluding Observations on China, the Committee on Economic, Social and Cultural Rights applied the extra-territorial obligations under the Covenant. Regarding business and economic, social and cultural rights, the Committee recommended the establishment of a clear regulatory framework to ensure that corporations' activities promote and do not negatively affect the enjoyment of human rights, and to adopt appropriate legislative and administrative measures to ensure legal liability of corporations regarding violations of human rights, including abroad.²⁰

18. Similarly, regarding international cooperation, the Committee called for the adoption of a human rights-based approach to policies of international cooperation, including undertaking systematic and independent human rights impact assessment prior to making funding decisions, establishing effective monitoring mechanisms to assess human rights impact of policies and projects, to take remedial measures if necessary, and to ensure access to complaint mechanisms for violations of relevant human rights abroad.²¹

19. Consequently, Canada has extra-territorial obligations under the ICESCR and these obligations include the extra-territorial obligation to respect Covenant rights abroad, the extra-territorial obligation to protect Covenant rights by regulating the activities of corporations and other business entities incorporated or domiciled in its territory and/or its jurisdiction for activities undertaken abroad, and the extra-territorial obligation to fulfill Covenant rights abroad through both bilateral and multilateral decision-making, including within the context of decisions taken within inter-governmental organizations including international financial institutions. Additionally, Canada has the obligation to investigate and appropriately sanction any activities that violate human rights abroad and ensure access to justice including ensuring that accountability mechanisms and remedies are available to victims of those violations.

¹⁹ *Id.* at Principle 37.

²⁰ Committee on Economic, Social and Cultural Rights, Concluding Observations: China, UN Doc. E/C.12/CHN/CO/2 (23 May 2014) at para. 6.

²¹ *Id.* at para. 5.

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

20. 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?

21. 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?

22. What steps has the State Party taken to ensure that it meets its extra-territorial obligation to fulfil Covenant rights, including through decisions and actions related to bilateral and multilateral development cooperation and assistance, including undertaking systematic and independent human rights impact assessment prior to making funding decisions, establishing effective monitoring mechanisms to assess human rights impact of policies and projects, and to take remedial measures if necessary?

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 exists access to justice including accessible accountability mechanisms and effective remedies for victims of those violations?

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