



# 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 Committee on Economic, Social and Cultural Rights  
on the occasion of the consideration of the  
Sixth Periodic Report of the  
United Kingdom of Great Britain and Northern Ireland  
during the Committee's 58<sup>th</sup> Session**

Submitted April 2016

## **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 the human rights framework reflects the real world experiences of all of us, effectively furthering social and economic justice and human dignity, and catalyzing change from the local to the global, back to the local.

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. The Committee has increasingly monitored compliance with and provided recommendations related to extra-territorial obligations under the International Covenant on Economic, Social and Cultural Rights. Such scrutiny should be undertaken during the periodic review of the United Kingdom, particularly since that State Party's decisions and actions, whether individually or collectively, often impact Covenant rights abroad.

5. The Maastricht Principles on Extra-Territorial Obligations in the Area of Economic, Social and Cultural Rights provide guidance. The Maastricht Principles 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.<sup>1</sup> Principle 3 makes clear that "All

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<sup>1</sup> 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

States have obligations to respect, protect and fulfill human rights, including civil, cultural, economic, political and social rights, both within their territories and extraterritorially<sup>2</sup> 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"<sup>3</sup> 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."<sup>4</sup>

6. 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."<sup>5</sup> 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 activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned;í .<sup>6</sup>

7. 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

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obligations to realize economic, social and cultural rights but also explicitly apply to the full spectrum of civil, cultural, economic, political and social rights.

<sup>2</sup> Maastricht Principles on Extra-Territorial Obligations of States in the area of Economic, Social and Cultural Rights, Principle 3 (adopted 28 September 2011).

<sup>3</sup> *Id.* at Principle 13.

<sup>4</sup> *Id.* at Principle 20.

<sup>5</sup> *Id.* at Principle 24.

<sup>6</sup> *Id.* at Principle 25.

measures and policies that can contribute to the fulfilment of economic, social and cultural rights extraterritorially.<sup>7</sup>

8. 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.<sup>8</sup>

9. 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;
- 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.<sup>9</sup>

10. 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

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<sup>7</sup> *Id.* at Principle 29.

<sup>8</sup> *Id.* at Principle 15.

<sup>9</sup> *Id.* at Principle 37.

administrative measures to ensure legal liability of corporations regarding violations of human rights, including abroad.<sup>10</sup>

11. Similarly, regarding international cooperation and relevant to the extra-territorial obligation to fulfill Covenant rights, 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.<sup>11</sup>

12. Later, in March 2016 during the periodic review of Canada, the Committee reaffirmed that the ETO to protect requires States to: (1) regulate its transnational corporations for activities abroad to ensure that they do not violate Covenant rights; and (2) to ensure access to accountability mechanisms and remedies in the event of such violations. The Committee added that the ETO to protect also requires that those corporations conduct human rights impact assessments prior to making investment decisions.<sup>12</sup>

13. The Committee then went further with a welcomed focus on the extra-territorial obligations to respect and to fulfill including outside the scope of business and economic, social and cultural rights, notwithstanding the heading under which this text appears. There, the Committee expressed its concern about the lack of impact assessments explicitly taking into account human rights prior to the negotiation of international trade and investments agreements and for the first time stated that the Covenant requires that trade and investment agreements negotiated by Canada recognize the primacy of Canada's international human rights over investors' interests, so that the introduction of investor-State dispute settlement procedures shall not create obstacles to the full realization of Covenant rights.<sup>13</sup>

14. It is hoped that similar scrutiny and recommendation will be applied during the periodic review of the United Kingdom, including further elaboration on the obligation to fulfill Covenant rights generally and on the obligation to respect and to fulfill Covenant rights abroad in the context of decisions and actions taken as a Member State of international financial institutions and other inter-governmental organizations.

Contact information:

Bret Thiele  
Co-Executive Director  
Global Initiative for Economic, Social and Cultural Rights  
Email: [Bret@globalinitiative-escr.org](mailto:Bret@globalinitiative-escr.org)

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<sup>10</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations: China, UN Doc. E/C.12/CHN/CO/2 (23 May 2014) at para. 6.

<sup>11</sup> *Id.* at para. 5.

<sup>12</sup> Committee on Economic, Social and Cultural Rights, Concluding Observations: Canada, UN Doc. E/C.12/CAN/CO/6 (4 March 2016) at para. 16.

<sup>13</sup> *Id.*