



# 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  
Second Periodic Report of the People's Republic of China  
during the Committee's 52<sup>nd</sup> Session**

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## **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. This Parallel Report should be read in conjunction with the Joint Parallel Report submitted in the Parallel Report of the Global Initiative for Economic, Social and Cultural Rights and the International Human Rights Clinic at Western New England University School of Law which provides a legal analysis of the State Party's corporate structure as well as emblematic factual situations involving violations by the State Party of its extra-territorial obligations to respect, to protect and to fulfill Covenant rights.

## **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.<sup>1</sup>

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."<sup>2</sup>

7. Furthermore, these articles take precedent over any other international instruments, including bilateral 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.<sup>3</sup>

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.<sup>4</sup>

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.<sup>5</sup>

10. Furthermore, the Articles on Responsibility of States for Internationally Wrongful Acts address violations of preemptory norms, which include gross

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<sup>1</sup> 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.

<sup>2</sup> *Id.* at Art. 56.

<sup>3</sup> *Id.* at Art. 103.

<sup>4</sup> *See*, International Law Commission, Articles on Responsibility of States for Internationally Wrongful Acts, Arts. 1, 2 and 3 (adopted by the ILC in 2001).

<sup>5</sup> *Id.* at Art. 16.

violations of human rights.<sup>6</sup> Article 40 considers serious breaches of preemptory norms as those that involve “a gross or systematic failure by the responsible State to fulfill the obligation”<sup>7</sup> in question. And Article 41 addresses consequences for such serious breaches, including cooperating “to bring to an end through lawful means any serious breach within the meaning of Article 40”<sup>8</sup> 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.”<sup>9</sup>

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*.<sup>10</sup>

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.<sup>11</sup> 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”<sup>12</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>13</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>14</sup>

13. Furthermore, Principle 24 makes clear that 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>15</sup> Principle 25 states that:

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<sup>6</sup> 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.

<sup>7</sup> *Id.* at Art. 40.

<sup>8</sup> *Id.* at Art. 41(1).

<sup>9</sup> *Id.* at Art. 41(2).

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

<sup>11</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 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>12</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>13</sup> *Id.* at Principle 13.

<sup>14</sup> *Id.* at Principle 20.

<sup>15</sup> *Id.* at Principle 24.

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>16</sup>

14. In the event that a State Party fails to respect or to protect Covenant rights extra-territorially, 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>17</sup>

15. Furthermore, 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 extra territorially. 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>18</sup> This Principle applies to conduct of the State Party within the context of, for example, the proposed BRICS Development Bank.

16. Finally, States must conduct prior assessment, with public participation, of the risks and potential extraterritorial impacts of their laws, policies and practices on the

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<sup>16</sup> *Id.* at Principle 25.

<sup>17</sup> *Id.* at Principle 37.

<sup>18</sup> *Id.* At Principle 14.

enjoyment of economic, social and cultural rights. The results of the assessment must be made public. The assessment must also be undertaken to inform the measures that States must adopt to prevent violations or ensure their cessation as well as to ensure effective remedies.<sup>19</sup>

17. The Committee recently recognized extra-territorial obligations under the Covenant in its Concluding Observations on Germany in 2011 and Austria in 2013, and it is hoped that the Committee applies the same analysis with respect to the People's Republic of China.

18. Other bodies have dealt with the issue of extra-territorial obligations. In its 2012 Concluding Observations on Germany, the Human Rights Committee recognized the extra-territorial obligation to ensure rights enshrined in the ICCPR, stating that:

While welcoming measures taken by the State party to provide remedies against German companies acting abroad allegedly in contravention of relevant human rights standards, the Committee is concerned that such remedies may not be sufficient in all cases (Art. 2, para. 2).

The State party is encouraged to set out clearly the expectation that all business enterprises domiciled in its territory and/or its jurisdiction respect human rights standards in accordance with the Covenant throughout their operations. It is also encouraged to take appropriate measures to strengthen the remedies provided to protect people who have been victims of activities of such business enterprises operating abroad.<sup>20</sup>

19. Similarly, the Committee on the Elimination of Racial Discrimination (CERD) has called upon States to regulate the extra-territorial actions of third parties registered in their territory. For example, in 2007, it called upon Canada to "take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in Canada which negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada", recommending in particular that the State party "explore ways to hold transnational corporations registered in Canada accountable".<sup>21</sup> Furthermore, in its Concluding Observations on the United States in 2008, CERD stated that:

In light of Article 2, paragraph 1 (d), and 5 (e) of the Convention and of its General Recommendation No. 23 (1997) on the rights of indigenous peoples, the Committee encourages the State party to take appropriate legislative or administrative measures to prevent acts of transnational corporations registered in the State party which negatively impact on the enjoyment of rights of indigenous peoples in territories outside the United States. In particular, the Committee recommends that the State party

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<sup>19</sup> *Id.* at Principle 14.

<sup>20</sup> Human Rights Committee, Concluding Observations: Germany, UN Doc. CCPR/C/DEU/CO/6 (31 October 2012) at para. 16.

<sup>21</sup> Committee on the Elimination of Racial Discrimination, Concluding Observations: Canada, UN Doc. CERD/C/CAN/CO/18, paragraph 17 (25 May 2007).

explore ways to hold transnational corporations registered in the United States accountable.<sup>22</sup>

20. Consequently, the People's Republic of China has extra-territorial obligations under the ICESCR and these obligations include the extra-territorial obligation to respect Covenant rights abroad as well as 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 to investigate and appropriately sanction any activities that violate human rights and ensure that accountability mechanisms and remedies are available to victims of those violations. The State Party also has an extra-territorial obligation to fulfill Covenant rights, including by ensuring that projects in which it is involved further Covenant rights.

### **3. Recommended Concluding Observations**

21. The State Party should ensure that those individuals, groups and entities acting under its authority respect Covenant rights outside the territory of the State Party.

22. The State Party should 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.

23. The State Party is urged to adopt a human rights-based approach to its policies on official development assistance and on agriculture and trade, by:

(a) undertaking a systematic and independent human rights impact assessment prior to making funding decisions;

(b) establishing an effective monitoring mechanism to regularly assess the human rights impact of its policies and projects in the receiving countries and to take remedial measures; and

(c) ensuring that there is an accessible complaint mechanism if violations of economic, social and cultural rights occur in the receiving countries.

24. The State Party should ensure that the proposed BRIC Development Bank incorporates a human rights based approach to its activities.

25. The State Party is urged to ensure that all economic, social and cultural rights are fully respected and rights holders adequately protected in the context of corporate activities including corporate activities abroad, including by establishing appropriate laws and regulations, together with monitoring, investigation and accountability procedures to set and enforce standards for the performance of corporations, as underlined in the Committee's statement on the obligations of States parties regarding the corporate sector and economic, social and cultural rights (E/C.12/2011/1).

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<sup>22</sup> Committee on the Elimination of Racial Discrimination, Concluding Observations: United States, UN Doc. CERD/C/USA/CO/6, paragraph 30 ( 8 May 2008).

26. The State Party should 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 exist accessible accountability mechanisms and effective remedies for victims of those violations.

27. The Committee calls on the State party to take all appropriate measures to ensure the effective applicability of the provisions of the Covenant in national courts, including by promoting training on economic, social and cultural rights as contained in the Covenant and their justiciability among the professionals of the justice system. Such measures should include the extra-territorial obligations under the Covenant. The Committee requests the State party to provide, in its next periodic report, information on concrete measures taken in this regard, as well as on court cases invoking the provisions of the Covenant.

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