



The Global Initiative

for Economic, Social and Cultural Rights

United Nations Committee on Economic, Social and Cultural Rights

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Consideration of State Party Reports: Second Periodic Report of the People's Republic of China

Oral Statement by Global Initiative for Economic, Social and Cultural Rights

1. My statement on behalf of the Global Initiative for Economic, Social and Cultural Rights, addresses the extra-territorial obligations of the People's Republic of China (PRC) under the ICESCR and in particular in relation to:
 - a. the regulation of corporate entities domiciled within its territory and operating overseas;
 - b. entities acting under its authority outside its territory, including State-Owned Enterprises (SOEs) operating overseas;
 - c. its policies on official development assistance, on international agriculture and trade and for State-Owned overseas investment or credit entities (including International Financial Institutions such as the proposed BRIC Development Bank) for decisions affecting human rights outside its territory.
2. The extra-territorial application of State obligations under human rights treaties is well established in international law: it is supported by the UN Charter¹, the International Law Commission's Articles on Responsibility of States for Internationally Wrongful Acts² and the International Court of Justice.³ The Committee has recently affirmed the extra-territorial obligations of States under the Covenant in its Concluding Obligations in respect of Germany⁴, Austria⁵ and Norway⁶ and in its General Comments and Statements.⁷

¹ Charter of the United Nations, Art. 55 & 56, 26 June 1945, 59 Stat. 1031, T.S. 993, 3 Bevans 1153, entered into force 24 October 1945.

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

³ International Court of Justice, Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory (9 July 2004).

⁴ EC/C.12/AUT/CO/4 of 2011

⁵ E/C.12/AUT/CO/4 of 2013

⁶ E/C.12/NOR/CO/5 of 2013

⁷ See: E/C.12/2002/11, General Comment 15 (2002) on the Right to Water; E/C.12/GC/18, General Comment 18 (2005) on the Right to Work; E/C.12/GC/19, General Comment 19 (2008) on the Right to Social Security; and E/C.12/2011/1, Committee on Economic, Social and Cultural Rights *Statement on the obligations of States parties regarding the corporate sector and economic, social and cultural rights* (2011).

3. The extent and nature of States' extra-territorial obligations have been helpfully summarized in the Maastricht Principles on Extra-Territorial Obligations in the Area of Economic, Social and Cultural Rights.⁸

Non-state actors

4. In relation to business entities domiciled in the PRC, but acting outside its territory, we submit that the PRC has obligations to take measures to ensure that such entities do not nullify or impair the enjoyment of economic, social and cultural rights of persons outside its territory affected by the entity's operations.⁹
5. Our supplementary report provides examples of Chinese domiciled companies that have operations overseas that have allegedly been involved in serious violations of the ICESCR in other countries. The lack of Chinese regulation or oversight of these companies has meant that there is no accountability for these human rights abuses.
6. Many Chinese companies operating overseas are SOEs and therefore acting under the State's authority. Clearly the PRC has Covenant obligations to respect and protect human rights in respect of those entities' overseas operations.
7. For instance Chinese transnational corporation Sinohydro which is wholly owned by the State is a partner in a hydroelectric dam construction project in Honduras, which has involved violent forced evictions in contravention of international law and violations of the rights to food, water and indigenous people's rights. The projects failed to consult with local communities or obtain their free, prior and informed consent to the taking of their traditional lands, leading to loss of livelihoods and forcing the community into poverty.
8. We urge the Committee to affirm China's extra-territorial obligations to **respect** and to **protect** Covenant rights abroad by, *inter alia*, regulating the activities of business entities domiciled in its territory, including State-Owned entities, for activities undertaken abroad and to ensure that accountability mechanisms and remedies are available to victims of those violations.

International development assistance and investments

9. The financial support and other development decisions of international financial institutions and investment entities such as the proposed BRICs Development Bank and the China Africa Development Fund can both contribute to the fulfillment of human rights as well as result in violations of human rights outside the territories of the member States.
10. Our report provides examples of serious ICESCR violations associated with development projects funded and supervised by Chinese State-Owned development and investment

⁸ 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.

⁹ As was found by the Committee in respect of Norway in 2013 . see note 6 above.

entities.¹⁰ In part as a consequence of the PRC's lack of human rights regulation, human rights impact assessment, monitoring mechanisms and complaints mechanism, there has been no accountability for those human rights abuses.

11. For example a number of oil exploration projects in Kenya financed by various Chinese SOEs, including the China Development Bank and undertaken by the China National Offshore Oil Company which was granted exclusive exploration rights to more than half of Kenya's substantial exploration oil blocks. The project has involved forced evictions, and violations of the rights to food and water. Similarly, copper and cobalt mining projects in the DRC undertaken by Chinese SOEs and financed by Chinese development and investment banks have reportedly involved forced evictions of local communities into poverty and homelessness, violations of the right to food and water (depriving subsistence farmers of their land and water resources and forcing them into reliance on other food sources and into poverty) and appalling working conditions. They have also been connected to child labor.
12. These violations may have been prevented had China had in place, as is required by the Covenant, legislation and policies that require SOEs and Chinese officials representing the PRC in international development assistance and financing entities, to:
 - a. undertake human rights impact assessments prior to project/ funding approval;
 - b. put in place and implement effective monitoring mechanisms in respect of projects;
 - c. ensure the effective and accessible accountability mechanisms are in place and remedies available for victims of violations.

Conclusion

13. In summary, the GI-ESCR urges the Committee to make recommendations highlighting the PRC's extra-territorial obligations to respect, to protect and, where relevant, to fulfill ICESCR rights in relation to:
 - a. entities acting under its authority outside its territory, including State-Owned Enterprises;
 - b. corporations and business entities domiciled in China, acting outside its territory; and
 - c. its policies on official development assistance, on agriculture and trade and State-Owned overseas investment or credit entities (including International Financial Institutions such as the proposed BRIC Development Bank) for decisions affecting human rights outside its territory - through human rights impact assessments and effective monitoring and complaint mechanisms.

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¹⁰ Such as the Export-Import Bank of China, the China Development Bank, the China Construction Bank and the China Africa Development Fund.