

Netherlands Institute for Human Rights

Written Submission

 on the draft General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities

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# Submission by the Netherlands Institute for Human Rights to the UN Committee on Economic, Social and Cultural rights on the draft General Comment No. 24 on State Obligations under the International Covenant on Economic, Social and Cultural Rights in the Context of Business Activities

### Introduction

1. The Netherlands Institute for Human Rights (NIHR) is the national human rights institute of the Netherlands, operating under the A-status in compliance with the Paris Principles. The NIHR has the legal mandate to advise the government and general society on human rights and to investigate and give opinions in individual cases relating to discrimination, among which disability-related discrimination.
2. The NIHR welcomes the General Comment on State Obligations under the International Covenant on Economic Social and Cultural Rights in the Context of Business Activities and appreciates the opportunity that has been given to comment on the draft General Comment No. 24. The Institute notes with appreciation how the General Comment acknowledges the important role businesses play in the realization of economic, social and cultural rights. The NIHR would like to commend the drafters of the General Comment on their excellent work in giving guidance and clarification on what States Parties can do to ensure that businesses take human rights into consideration in their activities. The NIHR will highlight several aspects of and recommendations for the General Comment below.

### Context and Scope

1. As stated in paragraph 5 the General Comment is primarily addressed at States Parties. The NIHR would like to emphasize that the obligations set out in the General Comment apply to *all* States Parties under the Covenant, no matter their level of development. Every State Party that has ratified the Covenant has the primary obligation to respect, protect and fulfil the human rights of all persons under their jurisdiction. This obligation includes for example that States Parties ensure that men and women get equal remuneration and that States Parties have a clear policy to combat discrimination of pregnant women in the employment sector. In the Netherlands for example 43% of women were confronted with possible discrimination because of pregnancy or motherhood in 2016. Every State Party should eradicate all hindrances to the full enjoyment of economic, social and cultural rights. All States Parties must use all appropriate means to protect against human rights abuses by businesses under their jurisdiction.

### Non-discrimination

1. Some segments of the population of States Parties face greater risks of discrimination. Paragraph 9 states that the categories of persons who are often disproportionately affected by the adverse impact of business activities are women and girls, indigenous peoples and ethnic or religious minorities. An important group that seems to be omitted are people with disabilities. There is a strong link between disability and social exclusion. Like other minorities, people with disabilities often face unequal treatment concerning their economic, social and cultural rights. People with disabilities experience discrimination when they look for work, want to access buildings or are looking for information. Businesses have an important role in the elimination of discrimination of persons with disabilities and physical barriers so that also people with a disability can enjoy their economic, social and cultural rights.
2. States Parties are under the obligation to enable people with disabilities to participate in society. In this respect is access to work very important. Workplaces often need to be adjusted so that people with disabilities can work. One of the options to ensure access to economic, social and cultural rights for all individuals is universal design, as described in the Convention on the Rights of Persons with Disabilities in article 2. Universal design ensures that buildings and products are accessible to people with disabilities and people without disabilities in an equal manner.

### Public procurement

1. Individuals’ human rights can be infringed upon by third parties. Governments have a legal obligation to protect human rights and this also applies in the context of public procurement, as stated in principle 6 of the United Nations Guiding Principles. Governments often use and purchase services or goods from companies or other business actors. Public procurement is an important part of the economy of States. Next to purchasing goods, governments also contract out public services and projects to the commercial sector. The NIHR is of the opinion that when States commit to the realization of the Covenant, they should make sure that human rights are also respected when they enter in commercial transactions with businesses.
2. The NIHR notes that States Parties often have a policy on public procurement. Governments are in a great position to promote awareness and respect for human rights by those companies. Governments can use they leverage and require supplying companies to respect human rights. If a company fails to respect human rights, the company risks exclusion from the public sector.
3. The NIHR believes it is necessary that in public procurement States Parties should ensure policy coherence. Not only the central government but also lower levels of authorities, such as municipal, provincial or regional authorities, should pay attention to human rights abuses in chains and take action to protect human rights. For example by setting requirements concerning human rights when public procurement is at stake.

### Extraterritorial obligations

1. As is stated in paragraph 30, because of the increase in transnational companies and global supply chains, extraterritorial obligations for States Parties are of particular significance. The NIHR finds that scope of the obligations States Parties have regarding extraterritorial activities of businesses is well explained in the General Comment. States should be able to, based on international recognized jurisdictional rules, take steps to prevent abuse of human rights over which they may exercise influence.

### Remedies

1. Effective remedies should enable victims to realize full protection of their human rights. States parties should be well-informed about their obligations concerning remedies for victims of human rights’ abuses. The NIHR approves that the General Comment concisely informs States Parties of their obligation to primarily ensure judicial remedies and that the General Comments notes the duty for States Parties to take the necessary steps for access to remedy, also in the case of transnational abuses.
2. The NIHR acknowledges that information sharing and transparency is also an important part of having access to effective remedy. Companies often have more financial means and greater access to information than individuals. Therefore the NIHR appreciates that the General Comment mentions in paragraph 46 that States Parties should remove this discrepancy. This hiatus in information also applies to the legal uncertainty surrounding the extent to which parent companies have legal responsibilities under domestic law. If there is a lack of clarity because of e.g. information shortage, available and effective remedies cannot be guaranteed.

### National Implementation

1. The NIHR appreciates how the General Comment sets out the requirements for national implementation in paragraphs 52 and 53. Many States Parties have already created or are in the process of creating a National Action Plan on Human Rights. A National Action Plan can ensure a coherent strategy for the national implementation of human rights. Having a National Action Plan must however not be seen as an end goal itself. National Action Plans should include a monitoring mechanism or a plan for follow-up to give effect to the national strategies. It should be the start of a process of fulfilling the human rights stipulated by, among others, the Covenant. National implementation should be an ongoing process. For effective realization of human rights it must be clear who is responsible for the implementation of human rights. States Parties should not only write about their strategy, but also take concrete action to progress.

## Recommendations

1. The NIHR recommends to explicitly mention persons with disabilities as a category of persons who can be disproportionally affected by the adverse impact of business activities. The NIHR also recommends to mention universal design as one of the ways businesses can contribute to the access to economic, social and cultural rights for persons with disabilities;
2. The NIHR recommends to include in the General Comment the obligations for States Parties in procurement policies as it is a great way in which governments can stimulate companies to do business with respect for human rights;
3. The NIHR recommends to emphasize and underline the importance of follow up in National Action Plans so that it does not become the end goal but the start of progress.

The NIHR hopes that its remarks will help to refine the text of the General Comment. If you have any questions concerning this input, please contact Keirsten de Jongh, senior policy adviser, at +31 30 8883855 or k.de.jongh@mensenrechten.nl or Nicola Jägers, Comissioner, at +.31(0)13.466.80.33 or n.jagers@mensenrechten.nl