

THE RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK (ARTICLE 7)

**SUBMISSION TO THE
COMMITTEE ON ECONOMIC,
SOCIAL AND CULTURAL
RIGHTS**

**AMNESTY
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INTRODUCTION

Amnesty International thanks the Committee for the opportunity to provide comments on the draft General Comment on Article 7 of the International Covenant on Economic, Social and Cultural Rights: Right to just and favourable conditions of work (E/C.12/54/R.2). Amnesty International's submission focuses on three issues: international cooperation and assistance, abusive labour migration policies and visa regimes as violations of the right of migrant workers to just and favourable conditions of work, and corporate accountability.

1. INTERNATIONAL COOPERATION AND ASSISTANCE

The draft General Comment provides useful guidance on international cooperation and assistance in the context of the right to just and favourable conditions of work ('the right'). However, Amnesty International recommends that in line with precedents in previous General Comments, the document use clearly imperative terms, such as 'obligation', 'must' and 'have to', in order to clearly indicate that States have obligations to respect, protect and fulfil the right outside its borders, including in their actions as members of international organisations and in formulating and implementing international agreements.

The respective section of the draft uses a clearly imperative term only in paragraph 65 – where it indicates that States must take steps to realise the right including through international cooperation and assistance – and in paragraph 66 where it refers to the obligation of States requiring international assistance to seek it. In the rest of the section, the term 'should' is used.

A close reading of the Committee's General Comments shows that the Committee routinely uses the term 'should' before asking States to carry out actions that it clearly considers mandatory.¹ For example, it has stated that States 'should' ensure that national water strategies and plans of action respect the principle of non-discrimination² and refrain from limiting access to health services as a punitive measure, for example in armed conflicts.³ However, the use of the term 'should' is likely to be confusing for many readers, particularly when referring to legally binding obligations that are contested by some States.⁴ This risk is heightened by the fact that many readers may review only limited parts of a General Comment in isolation from others and therefore misunderstand the Committee's overall intentions.

Because the Committee has used the term 'should' in many of its references to State obligations in regard to rights abuses abroad, some scholars (albeit a minority) have

¹ In discussing territorial obligations, Sepúlveda noted some of the specific forms of non-interference with rights listed in General Comment 14 that are preceded by 'should' are treated as mandatory in Concluding Observations. M. Sepúlveda, *The Nature of the Obligations under the International Covenant on Economic, Social and Cultural Rights* (Intersentia 2003) pp. 204-205.

² General Comment 15, para 48.

³ General Comment 14, para 34. See also General Comment 3, para 3.

⁴ For example, Canada stated that international cooperation and assistance was a moral obligation, not a legal one (thereby seeking to contradict the express text of Article 2 (1) of the ICESCR), Report of the Open-ended Working Group to consider options regarding the elaboration of an Optional Protocol to the International Covenant on Economic, Social and Cultural Rights on its Third Session (2006) UN Doc E/CN.4/2006/47, para 82.

concluded (wrongly) that the Committee is merely encouraging or advising States to carry out the specified conduct rather than indicating that this is a legal obligation.⁵ For example, the former Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, after reviewing the Committee's General Comments, concluded that "the Committee seems to be encouraging the State to regulate corporate acts both within and outside its borders."⁶ Another scholar assessing the Committee's output on extraterritorial obligations took the view that "the mandatory language of obligations is rarely used in the case of the obligation to protect and hardly ever in the case of the obligation to fulfil ...".⁷ Such conclusions are not correct as the Committee has previously used imperative language in regard to extraterritorial obligations in some General Comments, including extraterritorial obligations to protect and fulfil rights.

In General Comment 14, the Committee stipulated that: "*To comply with their international obligations* in relation to article 12, States parties *have to respect* the enjoyment of the right to health in other countries, and to *prevent third parties* from violating the right in other countries, ...".⁸ In its 2013 Concluding Observations on Austria, the Committee "urges" Austria to protect ESC rights in the context of corporations operating abroad, including through regulation.⁹ General Comment 3 stated that "international cooperation for development and thus for the realization of economic, social and cultural rights *is an obligation* of all States. It is particularly *incumbent upon* those States which are in a position to assist others in this regard."¹⁰ The Committee has repeatedly referred to the 'duty' or the 'obligation' of States to provide international assistance.¹¹

Furthermore, in General Comments 12, 14-19 and 21, text on international cooperation and assistance was included under the sub-title 'International *obligations*', thereby helping to clarify that it referred to legal requirements rather than policy advice. However, the present draft General Comment uses the sub-title 'International cooperation and assistance'. To retain the imperative language, and to be consistent with other sub-titles under Part III of the draft General Comment, it would be useful to use the sub-title, 'International cooperation and

⁵ However, many of the leading scholars who have written academic analyses on extraterritorial obligations in regard to ESC rights have understood the Committee's General Comments as elaborating extraterritorial obligations to respect, protect and fulfil ESC rights. See the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, adopted on 28 September 2011 by 40 experts. The Guiding Principles on Extreme Poverty and Human Rights, adopted by the Human Rights Council in Resolution 21/11 (27 September 2012), indicates that States have obligations to respect and protect human rights beyond their borders, to create an international enabling environment conducive to poverty reduction and cooperate to mobilize the maximum of available resources for the universal fulfilment of human rights, paras 91, 92 and 96.

⁶ Report of Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises, Addendum: State responsibilities to regulate and adjudicate corporate activities under the United Nations core human rights treaties: an overview of treaty body commentaries (2007) UN Doc A/HRC/4/35/Add.1, para 87.

⁷ M. Gondek, *The Reach of Human Rights in a Globalising World: Extraterritorial Application of Human Rights Treaties* (Intersentia 2009) p. 364.

⁸ General Comment 18, para 30. See also General Comment 15, para 31 and General Comment 19 para 53. Note that emphases have been added to quotes from General Comments.

⁹ Adopted 29 November 2013, para 12. See also, for example, Concluding Observations on China (13 June 2014), para 13.

¹⁰ This formulation was repeated in eight subsequent General Comments with some changes (specifically the removal of the reference to 'development' in General Comments 15 and 19. It would be useful for this formulation to be repeated in the present General Comment, although perhaps without a reference to 'development' given the subject matter.

¹¹ For example, General Comment 11, para 10; General Comment 13, para. 56; Statement on the Importance and Relevance of the Right to Development (2011), para 5.

assistance obligations.’

The Committee has a mandate from ECOSOC to adopt General Comments so as to “to develop a fuller appreciation of the obligations of State parties under the ICESCR”.¹² States, civil society and victims of human rights abuses will benefit if the Committee can take the opportunity in this and future General Comments to remove any possible ambiguity about its position on the legally binding nature of obligations related to international cooperation.

In regard to the content on international organisations, Amnesty International recommends that the Committee utilise the formulation used in General Comment 17, which indicated that “States parties *have an obligation to take whatever measures they can* to ensure that the policies and decisions of those organizations are in *conformity with their obligations under the Covenant...*”.¹³ This formulation is apt because States not only have to respect the right, as stated in the current draft, but also fulfil the right by using their influence within these organisations to encourage them to support the realisation of the right in all relevant areas within their mandate. Finally, Amnesty International recommends that the Committee clarifies in paragraph 71, as it has in certain previous General Comments,¹⁴ that the obligation in regard to international agreements applies to both the *conclusion* and *implementation* of such agreements.

2. ABUSIVE LABOUR MIGRATION POLICIES AND VISA REGIMES AS VIOLATIONS OF THE RIGHT OF MIGRANT WORKERS TO JUST AND FAVOURABLE CONDITIONS OF WORK

Amnesty International welcomes the attention paid to migrant workers throughout the draft General Comment, in recognition of their increased vulnerability to labour exploitation. In particular, the organisation welcomes that paragraph 12 of the draft General Comment explicitly mentions migrant status among the grounds of discrimination and recommends using the same language in paragraph 64(a) as well. Additionally, Amnesty International welcomes the recommendation that labour inspectorates should focus on monitoring the rights of workers and not be used for other purposes such as checking their migration status (paragraph 54).

Amnesty International provides the following observations on abusive labour migration policies, i.e. those policies (including visa regimes) that increase migrant workers’ risk of suffering labour exploitation and other abuses at the hands of their employers.¹⁵ In many of the cases of labour exploitation that Amnesty International investigated, the abuses suffered by workers were not only due to the actions or failures of an individual employer, but were linked to systemic problems in the way migrant workers’ employment is regulated in the destination country. For example, temporary, circular or seasonal labour migration programmes are often characterised by restrictions on key workers’ rights, such as the right to freedom of association and to collective bargaining, and can result in abusive practices. In

¹² ECOSOC Res 1990/45 (25 May 1990), para 10.

¹³ General Comment 17, para 56. The phrase ‘have an obligation’ in regard to international organisations was also utilised in General Comment 13, para 56 and General Comment 14, para 39.

¹⁴ This formulation was used in General Comment 15, para 35 and General Comment 19, para 57.

¹⁵ These observations are based on field research on labour exploitation of migrant workers, conducted by Amnesty International in China (Hong Kong), Italy, Qatar and South Korea between 2009 and 2015. For additional information, see: Amnesty International, [Abusive labour migration policies: Submission to the UN Committee on Migrant Workers’ Day of general discussion on workplace exploitation and workplace protection](#), 7 April 2014, Index: IOR 42/002/2014, April 2014.

particular, Amnesty International documented two main types of abusive labour migration policies: policies that give the employer control over the migrant worker's residence status; and policies that tie migrant workers to a specific employer. Amnesty International recommends that the draft General Comment specify that such policies are contrary to the right to just and favourable conditions of work.

(A) LABOUR MIGRATION POLICIES THAT GIVE THE EMPLOYER CONTROL OVER THE MIGRANT WORKER'S RESIDENCE STATUS

In Qatar, the Sponsorship Law gives the employer the exclusive responsibility to complete the administrative procedures to issue or renew migrant workers' visas and work permits. This means that the employer has the power to arbitrarily make migrant workers irregular, even when they meet the relevant legal requirements about entry and stay. Without the documents necessary to prove their migration status, migrant workers find themselves at constant risk of arrest by police, who regularly stop migrant workers to check their papers. This highly precarious situation reduces migrant workers' ability and likelihood to access assistance by the authorities in case of labour exploitation. Similar schemes with some variations operate in other Gulf Cooperation Council countries.

In Italy, the seasonal permits system has de facto become an unofficial regularisation mechanism for the many migrant workers in an irregular situation. As the procedure can only be initiated by the employer, irregular migrant workers are completely dependent on their employer's willingness to apply for the documents necessary to regularise their status. Amnesty International's research has shown that the promise of regular documents is often used by employers to induce migrant workers to accept exploitative labour conditions.

(B) LABOUR MIGRATION POLICIES THAT TIE MIGRANT WORKERS TO A SPECIFIC EMPLOYER

Some countries impose limitations on the labour mobility of migrant workers, requiring them to obtain permission by their current employer in order to change jobs. In Qatar, such a permission is known as "No objection certificate", or NOC; in South Korea, the employer signs a "release" document. Where permission to change jobs is not granted, migrant workers who leave their job lose their regular migration status, thus risking arrest, detention and deportation. Amnesty International's research has found that the employer's power to prevent workers from leaving their job can be used to pressure them to continue to work in situations where they are subjected to exploitation or when the individual simply wants to resign and return home.

Similarly, visas or work permits that expire immediately or shortly after a migrant worker leaves a job or is fired, placing them in an irregular migration situation, increase the risk of labour exploitation because they greatly reduce the likelihood that the worker would seek help from the authorities in case of abuse, for fear of being detected as irregular and deported. This is the case for visas that do not allow the worker to change employer, thereby expiring when the employment relationship with the current employer ends. However, the same risk of labour exploitation arises with respect to labour migration policies that allow migrant workers only a very short time to find a subsequent employer after the end of the employment relationship with the previous one.

3. CORPORATE ACCOUNTABILITY

Amnesty International welcomes the attention to corporate accountability in the draft General Comment. In regard to references to corporations in paragraph 51, Amnesty International suggests using the widely recognised and stronger standard of "responsibility" (rather than "having a role") as this is the standard adopted by the UN Guiding Principles on Business and Human Rights. Similarly, in paragraph 74 on non-State actors, it would be important to

stipulate that corporations must respect the right to just and favourable conditions of work, including by complying with national laws that give effect to this right.

In addressing the State obligation to respect the right in paragraph 51, it would be important to explicitly refer to State-owned or controlled enterprises. In the draft, these are only referenced in relation to companies operating abroad in paragraph 68, but they are as important and relevant in the domestic sphere. It would be useful to refer, in the same vein, to situations in the domestic sphere in which States conduct commercial transactions with individuals and private companies through public procurement. As part of its obligation to respect the right, a State must ensure that the goods or services provided to it are not linked to violations, directly or indirectly. As one of the steps it must take to protect the right, States have to refrain from procuring goods and services from individuals and enterprises that are abusing rights and suspend existing commercial relationships. At present, the issue of procurement is only referenced in paragraph 68 which discusses extraterritorial obligations, but the issue applies equally to abuses at the domestic level. Principle 6 in the UN Guiding Principles on Business and Human Rights refers to the issue of public procurement; that Principle is of general application and is not limited to extraterritorial operations of a company.

In addressing the extraterritorial obligation to respect the right in paragraph 68, it would be important to refer to cases where a State provides substantial support and services to an enterprise operating in another State party, for example export credit or investment insurance. Credible reports have documented adverse human rights impacts on affected communities as a result of export credit agency-supported projects.¹⁶ Often these operations will not be possible without that support. When these projects result in human rights abuses, the direct responsibility of the home-State is engaged.

Finally, in addressing the State duty to require companies in their territory and/or jurisdiction to respect the right, Amnesty International suggests that the Committee take this opportunity to specify that this duty includes measures, including legislative measures, to require such enterprises to put in place due diligence processes to ensure they do not cause or contribute to abuses to the right throughout their operations extraterritorially. Adverse human rights impact by corporations occurs not only through the direct conduct of corporations, but also indirectly, for example, through abuses of the right in a company's supply chain or through violations by government prompted by requests for their intervention by companies.¹⁷

Amnesty International would like to reiterate its appreciation to the Committee for the opportunity to provide input and looks forward to utilising the final General Comment in its future work.

¹⁶ Amnesty International, [Governments withdraw financial support for Ilisu dam in Turkey](#), 7 July 2009; Horta, Korinna, et al. *The Chad-Cameroon Oil & Pipeline Project: A Project Non-completion Report*, Environmental Defence, Center for Environment and Development, and Chadian Association for the Promotion and Defence of Human Rights, April 2007; Amnesty International, [Contracting out of Human Rights: The Chad-Cameroon pipeline project](#), September 2005.

¹⁷ See for example, Amnesty International, [Myanmar: Open for business? Corporate crime and abuses at Myanmar copper mine](#), February 2015; [The dark side of migration: Spotlight on Qatar's construction sector ahead of the World Cup](#), November 2013.

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