

# Developing the Interpretation of the Covenants Due Diligence and Extraterritorial Obligations

## High-Level Panel on 50<sup>th</sup> Anniversary of Human Rights Covenants

Fifty years after the ground-breaking signature of the Covenants on Human Rights these continue to be as relevant and necessary for humankind as they were in 1966.

We must recognise the vital role of the Human Rights Committee and the Committee on Economic, Social and Cultural Rights in the evolution of the interpretation of the Covenants adapted to the new challenges of our globalised world and to ensure we remain aiming at the highest standards of human rights protection possible.

One of the challenges of the current economic model is that human rights violations can occur cross-border and that actions or inactions of States might have consequences for citizens of other countries. In this context, human rights cannot be successfully addressed if the legal response does not take into account the transnational aspects of human rights law.

Both the Human Rights Committee and the Committee on Economic, Social and Cultural Rights have actively contributed to the monitoring of the due diligence that States must comply regarding the consequences that their policies might have outside of their borders.

Two topics are of specific concern for WILPF in this regard.

### **Corporate Accountability and extraterritorial due diligence**

Firstly, the obligation of States to protect human rights encompasses the duty of States to control the conduct of private actors including that of business enterprises incorporated under their laws, whether these corporations operate within its borders or abroad and ensure accountability for human rights violations committed within or outside their borders.

The challenge of regulating the activities of business enterprises in a way that will effectively prevent human rights violations also outside the borders of the State has been acknowledged by both Committees.

The Human Rights Committee has recognised the extraterritorial scope of the Covenant in General Comment No. 31: Nature of the General Legal Obligation Imposed to States Parties to the Covenant; with regards to obligation not to extradite, deport, expel or otherwise remove a person from their territory, where there are substantial grounds for believing that there is a real risk of irreparable harm. It has also recognised extraterritorial application of the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party.

The Human Rights Committee is increasingly incorporating the obligation to prevent cross-border human rights violations perpetrated by corporations in its review procedure and has already issued recommendations to States Parties requesting States to create mechanisms to ensure that all corporations under their jurisdiction, in particular mining corporations, respect human rights standards when operating abroad.

The Committee on Economic, Social and Cultural Rights has also addressed the obligation to prevent violations by business enterprises in General Comment No. 12 (1999): The right to adequate food; where it has also reminded that "The private business sector – national and transnational - should pursue its activities within the framework of a code of conduct conducive to respect of the right to adequate food, agreed upon jointly with the Government and civil society."

In Comment No. 14 (2000): The right to the highest attainable standard of health, the Committee argued that violations include " such omissions as the failure to regulate the activities of individuals, groups or corporations so as to prevent them from violating the right to health of others."

Finally, in General Comment No. 15 (2002): The right to water; the Committee affirmed that "Steps should be taken by States parties to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries."

### **Arms Transfer and extraterritorial due diligence**

Secondly, States might contribute to human rights violations outside of their borders when transferring weapons regardless of the risk that these might be used in human rights violations. This has been recognised in the Arms Trade Treaty and obligations on human rights assessments prior to arms transfers are contained therein.

The extraterritorial impacts of arms transfer on the rights protected within the Covenants such as the right to life, health, water or adequate housing are still to be addressed by the Committees in a more systematic manner. WILPF encourages them to go further in its analysis of this aspect of human rights protection.