



UN Committee on Economic, Social and  
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LETTER

## Written contribution to the CESCR draft General Comment

### Introduction

The Norwegian National Human Rights Institution (NIM)<sup>1</sup> is grateful for the opportunity to provide input to the Draft General Comment on Economic, Social and Cultural Rights and the Environmental Dimension of Sustainable Development. We are thankful to the Committee for extending the deadline for our submission.

NIM believes that the environmental dimension of sustainable development is a key factor in the realisation of human rights and welcomes the proposed General Comment. We will provide input or viewpoints on some key areas.

### Our approach and methodology

NIM recognises that the legal power of treaties is fundamental to the realisation of human rights. We find it useful to rely on the sources and methodology of treaty law when promoting human rights. Both the provisions themselves and the practice of the Committee are important sources when interpreting the Covenant. General Comments, according to the ILC, carry legal weight depending on either their acceptance by the states or the clarity of their arguments.<sup>2</sup> The ICJ has also emphasised the latter, generally ascribing “great weight” to General Comments,<sup>3</sup> but not necessarily following them if they are not firmly based on the rules on treaty interpretation.<sup>4</sup> Furthermore, the Human Rights Committee has justified the legal

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<sup>1</sup> NIM has ‘A status’ accreditation with the Global Alliance of National Human Rights Institutions ([GANHRI](#)), which means we comply with the requirements of independence, impartiality and integrity under the [Paris Principles](#).

<sup>2</sup> International Law Commission (2018) *Draft conclusion on subsequent agreements and subsequent practice in relation to the interpretation of treaties*, UN Doc. A/73/10, conclusion 13 and 9(1) and 9(3), with commentary.

<sup>3</sup> *Ahmadou Sadio Diallo (Republic of Guinea v. Democratic Republic of the Congo)*, Merits, Judgment, I.C.J. Report 2010, p. 369, para 66.

<sup>4</sup> *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar v. United Arab Emirates)*, Preliminary Objections, Judgment, I.C.J. Reports 2021, p. 71, para 101.

weight of their own *views* precisely on their character as a “judicial decision” based on “considered interpretation of the language of the Covenant”.<sup>5</sup>

The Norwegian Supreme Court has stated that the legal weight of General Comments by treaty bodies depends on how well they are anchored in the treaty text and whether the statements reflect *legal interpretations* or *recommendations and best-practice*.<sup>6</sup> The latter, being important guidance to governments on human rights policies, will not necessarily be considered authoritative interpretations of the Covenant.

NIM welcomes the Draft General Comments’ discussions on the wider political and economic issues. NIM would find it helpful if the Committee were to distinguish more explicitly between policy recommendations and legal requirements. In this vein, the use of the terminology “shall” or “must” as opposed to “should” or “can” might be something the Committee could evaluate.

## On extraterritorial jurisdiction

The Draft General Comment states that “The Committee has previously affirmed that States have an obligation to respect, protect and fulfil human rights for all, including when national policies affect those outside their territories.”<sup>7</sup> NIM notes that this seems to be a wider definition of extraterritorial jurisdiction than what has been established by the ICJ, noting in their *Palestinian Wall* Advisory Opinion that:

[ICESCR] contains no provision on its scope of application. This may be explicable by the fact that this Covenant guarantees rights which are essentially territorial. However, it is not to be excluded that it applies both to territories over which a State party has sovereignty and to those over which that State ***exercises territorial jurisdiction***.<sup>8</sup> (Our emphasis)

One typical test for jurisdiction is *effective control*.<sup>9</sup> In applying that test in an environmental context, the Committee might potentially consider the practice of other human rights bodies, such as the Advisory Opinion of the IACtHR, where jurisdiction for environmental damage required *effective control* over an activity

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<sup>5</sup> Human Rights Committee (2009), *General Comment No 33 – Obligations of State parties under the Optional Protocol to the International Covenant on Civil and Political Rights*, CCPR/C/GC/33, paras 11–13.

<sup>6</sup> See HR-2015-342-A, para 42; HR-2015-2524-P (internflukt), para. 151–155; HR-2018-2096-A, para 14.

<sup>7</sup> Draft General Comment para 33, citing General Comment No. 24 (2017), para 27.

<sup>8</sup> *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, Advisory Opinion, I.C.J. Reports 2004, p. 136, para 112; reiterated in *Legal Consequences arising from the Policies and Practices of Israel in the Occupied Palestinian Territory, including East Jerusalem*, Advisory Opinion, General List No. 186, paras 99–100.

<sup>9</sup> See inter alia: ECtHR, decision in *Ukraine and the Netherlands v. Russia* [GC] (8019/16), paras 555–575; Human Rights Committee (2019), *General Comment No. 36 Article 6: right to life*, CCPR/C/GC/36, para 63.

having a *causal link* to an infringement, amounting to *significant damage*.<sup>10</sup> The CRC adopted this test of the IACtHR and applied it to climate change.<sup>11</sup> It may also be noted that the ECtHR decision on jurisdiction for extraterritorial climate damage of April 2024 emphasised that jurisdiction required *control over the person* rather than *control over the person's interests*, as the latter would lack foreseeability, leaving extraterritoriality “without any identifiable limits”.<sup>12</sup>

NIM believes it would be useful for States if the Committee clarified further on what basis, and when, the Covenant gives rise to extraterritorial obligations, as this raises a series of difficult legal questions in the context of the environment and climate change.

## **The right to a clean, healthy and sustainable environment**

NIM welcomes the recognition by the Committee of a right to a clean, healthy and sustainable environment as an implicit part of Article 11.<sup>13</sup> In our view, that right could also be anchored in Article 12,<sup>14</sup> and could explicitly include, as the ECtHR has recognised, a right to protection against dangerous climate change.<sup>15</sup>

Furthermore, considering that the environment holds cultural value, this right could also be anchored in Article 15.<sup>16</sup> NIM notes and agrees with the clarification that *progressive realisation* of rights must be done in a manner that does not create environmental harm to rights and people.<sup>17</sup>

NIM agrees with the view that certain groups in vulnerable situations will be affected more severely by environmental changes.<sup>18</sup> NIM commends the Committee for exemplifying how the planetary environmental crisis might contribute to serious

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<sup>10</sup> *The Environment and Human Rights (State obligations in relation to the environment in the context of the protection and guarantee of the rights to life and to personal integrity)*, OC-23/17, paras 100–103.

<sup>11</sup> *Sacchi et al. v. Argentina*, 11 November 2021, CRC/C/88/D/104/2019, para 10.7.

<sup>12</sup> Decision in *Duarte Agostinho and Others v. Portugal and 32 Others* [GC] (39371/20), paras. 181–214.

<sup>13</sup> Draft General Comment, para 10.

<sup>14</sup> Cf. in this regard, ACHPR, *Social and Economic Rights Action Center (SERAC) & Center for Economic and Social Rights (CESR) v. Nigeria*, 27 October 2001, Communication No. 155/96, para 52–53.

<sup>15</sup> *KlimaSeniorinnen and Others v. Switzerland* [GC] (53600/20) paras 538–554; See also: ITLOS, Case No. 31, Advisory Opinion 21 May 2024 on *Climate Change and International Law*; HRC, *Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, paras 8.3–8.12

<sup>16</sup> This would be in line with the Committee's views in General Comment No. 21, E/C.12/GC/21, para 16(a), cited approvingly by the IACtHR in *Case of the Indigenous Communities of Lhaka Honhat (Our Land) Association v. Argentina*, Judgement of February 6, 2020, Series C No. 400, para 241. This connection is frequently made regarding indigenous peoples: see inter alia, HRC, *Daniel Billy et al. v. Australia*, CCPR/C/135/D/3624/2019, 8.13–8.14.

<sup>17</sup> Draft General Comment, section III. Cf. also from the ICJ in a different context, *Legality of the Threat or Use of Nuclear Weapons*, Advisory Opinion, I.C.J. Reports 1996, p. 226, paras 29, 35 and 36; *Whaling in the Antarctic*, Separate Opinion of Judge Cançado Trindade, paras 41–47.

<sup>18</sup> Draft General Comment, Section V.

human rights problems for such groups. The Committee could specify this to include groups that economically depend on specific environmental or climactic conditions or resources for their survival.<sup>19</sup>

The Committee could consider specifying to what extent States are obliged to conduct and ensure independent environmental impact assessments that include human rights assessments.<sup>20</sup>

## **Future generations and intergenerational equity**

NIM welcomes the recognition of the need for intergenerational burden-sharing. In line with rules on treaty interpretation, the Committee could possibly point to the explicit recognition of that principle in a wide range of relevant instruments.<sup>21</sup>

The Committee has recognised the rights of future generations under the ICESCR in a number of previous General Comments. NIM welcomes the specification by the Committee that *progressive realisation* requires that current development leaves opportunities to future generations.<sup>22</sup> As the Committee states, this can justify limits on current consumption,<sup>23</sup> and can justify requiring immediate action, to avoid pushing the cost onto future generations.<sup>24</sup>

Due to the *collective* dimension of the rights of future generations, their inability to enforce their rights can justify extending effective remedies (judicial review) to cover organisations representing those interests.<sup>25</sup>

The rights of future generations can justify taking a *precautionary* approach to harm, thus requiring action even in the absence of firm scientific evidence.<sup>26</sup> It can also justify taking future harm into account when balancing rights and obligations.<sup>27</sup>

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<sup>19</sup> See for this, IACtHR, *The Environment and Human Rights*, para 66 and 67; *Lhaka Honhat (Our Land)*, para 209.

<sup>20</sup> See, as the Committee has recommended earlier, *J.T. and Others v. Finland*, 9 December 2024, UN Doc E/C.12/76/D/251/2022, paras 16–17. See also: IACtHR, *Lhaka Honhat (Our Land)*, para 174; *The Environment and Human Rights*, para 169; CRC, *M.E. and Others v. Finland*, CRC/C/97/D/172/2022, paras 9.21–9.22.

<sup>21</sup> UNFCCC article 3(1); *Paris Agreement*, preamble, recital 11; *CBD*, last recital of the preamble and article 2, defining “sustainable use”; *The Kunming-Montreal Global Diversity Framework*, section C(n) and Goal B; *The World Heritage Convention*, Article 4; *The Transboundary Waters Convention*, Article 2(5)(c).

<sup>22</sup> Draft General comment, para 93. Cf. also from the IACtHR, *Case of the Inhabitants of La Oroya v. Peru*, Judgement November 27, 2023, Series C No. 511, para 128.

<sup>23</sup> Cf. also, Décision du Conseil constitutionnel français du 12 août 2022, *Loi portant mesures d’urgence pour la protection du pouvoir d’achat*, n° 2022-843 DC, ECLI:FR:CC:2022:2022.843.DC, paras 12 and 22.

<sup>24</sup> See in this regard: *KlimaSeniorinnen*, para 549; *Neubauer et al. v. Germany*, BvR 2656/18 (Federal Constitutional Court of Germany) 24.03.2021, paras 192–194.

<sup>25</sup> *KlimaSeniorinnen*, paras 458–535; *Aarhus Convention*, Article 9; *Escazú Agreement*, Article 8; Venice Commission, Opinion No. 997/2020, 9 October 2020, CDL-AD(2020)020-e, para 114.

<sup>26</sup> See from the IACtHR, *Inhabitants of La Oroya*, paras 127–128.

<sup>27</sup> See from the BVerfG, *Neubauer*, paras 183, 192 and 193.

## Implications for indigenous people

NIM underlines the importance of recognizing, as the Committee does, the interconnectedness between the rights of indigenous peoples and the environmental dimension of sustainable development. The Draft General Comment appropriately highlights indigenous peoples' cultural and spiritual connection to nature.<sup>28</sup> The Committee might consider anchoring this more firmly in Article 15,<sup>29</sup> as well as underlining the right to transmit that culture to *future generations*.<sup>30</sup>

The Committee recognizes indigenous peoples' inalienable right to their lands and resources,<sup>31</sup> as well as the importance of their stewardship and traditional knowledge for good management. The Committee might consider specifying in the General Comment that development plans that will infringe on the rights of indigenous peoples require effective consultations in order to obtain their free, prior and informed consent (FPIC).<sup>32</sup>

Finally, NIM welcomes the focus on risks of environmental measures infringing on indigenous rights.<sup>33</sup> NIM published a report on this topic last year.<sup>34</sup>

## Conclusion

NIM is grateful for the opportunity to submit this written contribution and emphasize the importance of this General Comment in ensuring that economic development respects and aligns with environmental limitations. We are available for correspondence regarding any of the points raised here.

Best regards  
for the Norwegian Human Rights Institution (NIM)

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<sup>28</sup> Draft General Comment, para 84.

<sup>29</sup> Cf. *J.T. and Others*, paras 14.1–14.11.

<sup>30</sup> *Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua*, Judgement of 31 August 2001, Series C No. 79, para 149; Supreme Court of Canada, *Case of Tsilhqot'in Nation v. British Columbia*, 2014 SCC 44, [2014] 2 S.C.R. 256, paras. 15, 74 and 86.

<sup>31</sup> Draft General Comment, para 85.

<sup>32</sup> ILO C169, article 6; UNDRIP article 19; *J.T. and Others*, paras 14.5–14.6; *M.E. and Others*, paras 9.2 following.

<sup>33</sup> Draft General Comment, para 85.

<sup>34</sup> NIM Report, *The Canary in the Coal Mine – Sami Rights and Climate Change in Norway*. Available here: <https://www.nhri.no/NIM-R-2024-001-EN>.