

BACKGROUND PAPER

Mapping States parties' responsibilities to regulate and adjudicate corporate activities under seven of the United Nations' Core Human Rights Treaties: Main trends and issues for further consideration

A. Background of the mapping project

1. This background paper highlights trends based on a series of reports examining States' obligations in relation to corporate activity under seven of the United Nations' core human rights treaties.¹ Each report in the series is specific to a particular treaty and maps the scope and content of States parties' responsibilities to regulate and adjudicate the actions of business enterprises under that treaty, and as clarified by the relevant treaty body.

2. The mapping of States' obligations under the human rights treaties was undertaken to assist the SRSG on Human Rights and Business in implementing paragraph (b) of his mandate from the then Commission on Human Rights to "elaborate on the role of States in effectively regulating and adjudicating" business enterprises with regard to human rights.²

3. The reports are based on references by the treaties and treaty bodies to States parties' duties to regulate and adjudicate corporate activities.³ However, as it is less common for the treaties and treaty bodies to refer explicitly to corporations, the reports also highlight more general references to State obligations regarding acts by non-State actors, especially where they help identify patterns and measures relevant to business enterprises. Further, the reports focus on States' obligations in relation to rights impacted by corporate activities, rather than on corporate entities as possible rights-holders.

4. This background paper highlights trends from the individual reports, as well as issues for further consideration by the treaty bodies. Some issues outlined below, such as regulation with extra territorial effect, are of great relevance to the SRSG mandate. While acknowledging that these issues may not always be at the core of the treaty bodies' respective mandates (and as a result may not have been addressed in much detail), this research nevertheless highlighted any reference made to them in treaty bodies' General Comments or Recommendations, Concluding Observations, Decisions and Opinions, with the aim of supporting the SRSG in the fulfillment of his mandate.

¹ To date, reports have been completed and posted on the SRSG's website <http://www.business-humanrights.org/Gettingstarted/UNSpecialRepresentative> for the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD); the International Covenant on Civil and Political Rights (ICCPR); the International Covenant on Economic, Social and Cultural Rights (ICESCR); and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families (ICRMW). Reports remain forthcoming on the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW); the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT); and the Convention on the Rights of the Child (CRC). The International Convention on the Rights of Persons with Disabilities (ICRPD) and the International Convention for the Protection of All Persons from Enforced Disappearances, which had not entered into force at the time of completing the research, have not been included.

² Commission on Human Rights resolution 2005/69. Note that the reports were completed for research purposes on behalf of the SRSG's mandate and do not represent his final views or recommendations in relation to the treaty bodies' consideration of business and human rights issues.

³ Drawing on the SRSG's mandate, the reports use "regulation" to refer to language recommending legislative or other measures designed to prevent or monitor abuse by business enterprises, and "adjudication" to refer to judicial or other measures to punish or remediate abuse.

5. Please refer to the individual reports for further detail on specific treaties.⁴ Any views or recommendations expressed in these reports do not necessarily represent the views of the Office of the United Nations High Commissioner for Human Rights or the various treaty monitoring bodies.

B. Methodology of the mapping project

6. The reports analyze a representative sample of primary materials associated with the particular treaty, including the treaty provisions; General Comments or Recommendations by the treaty bodies; Concluding Observations on States parties' periodic reports; and Opinions on Communications as well as Decisions under Early Warning Measures and Urgent Procedures where available.

7. Due to time and resource constraints, research was generally limited to examination of Concluding Observations, Opinions and Decisions from the eight most recent sessions of the various treaty bodies at the time of writing.⁵

C. Main trends

8. These are general trends that can be derived from the work of most of the treaty bodies in their consideration of corporate activities. Given the specificity of their respective treaties, some treaty bodies, such as for example the Committee Against Torture (CAT), will only rarely have considered these issues in any level of detail.

Duty to protect against interference by business enterprises and other duties

9. The treaties, as interpreted by their respective treaty bodies, require States to play a key role in effectively regulating and adjudicating corporate activities with regard to rights capable of abuse by private parties, at least in relation to activities affecting individuals within States' effective control. This role is generally considered as being part of the State duty to protect against abuse by third parties.

10. Nevertheless, other duties are also mentioned in relation to business activities. For instance, it is not unusual for the treaty bodies to mention business enterprises in discussing promotion of rights. Some treaty bodies also mention business enterprises in relation to the duty to respect, especially in relation to States' obligations in entering into trade and other commercial agreements.

Reference to business enterprises

11. No treaty body has dedicated General Comments or Recommendations specifically to duties vis-à-vis corporate activities. Rather, the tendency has been to discuss measures to protect against corporate abuse as part of discussions about specific rights or issues. Even the Day of General Discussion by the Committee on the Rights of the Child (CRC) on the private sector as a service provider noted that it was focusing on businesses performing traditional state functions rather than the wider impacts of business on rights.⁶

12. Nevertheless, the treaty bodies have increasingly referred to business enterprises while discussing State Party obligations. General Comments and Recommendations, Concluding Observations, Opinions and Decisions from the past decade indicate increasing pressure on

⁴ For a more detailed summary of the main findings and trends from the treaty specific reports, see also Addendum 1 to the SRSG's latest report to the Human Rights Council: A/HRC/4/35/Add.1.

⁵ See each report for information on the specific research sample. The research for most of the reports was concluded by Nov 2006.

⁶ The CRC held its 2002 Day of General Discussion on "The private sector as service provider and its role in providing child rights". See CRC, Report on its thirty-first session, Sept-Oct 2002, CRC/C/121, 2002, Day of General Discussion on "The private sector as service provider and its role in implementing child rights," paras. 630-653.

States to fulfill the duty to protect in relation to corporate activities, regardless of whether the entities in question are privately or publicly-owned or controlled.

13. Moreover, while older treaties are more likely to speak generally about the duties of States to protect against interference with rights, more recently-adopted treaties such as the ICRMW and the ICRPD⁷ explicitly mention private businesses in this respect. All of this indicates increased attention by the international community of the ways in which business enterprises may affect rights as well as the emergence of clear State obligations to prevent and punish corporate abuse, where failure to do so will be considered a violation of treaty obligations.

Discussion of specific rights and companies

14. The treaty bodies indicate that the duty to protect against non-State abuse applies to all rights capable of abuse by private parties. Nonetheless, different treaty bodies have discussed some rights more frequently in relation to State duties vis-à-vis corporate activities. This is understandable given the different focus of each treaty (see individual reports for more detail).

15. Treaty bodies also tend to focus on certain types of companies and business sectors requiring regulation, although this does not detract from States' broad duties to protect against abuse by all types of entities. For instance, States are frequently recommended to take steps to regulate and adjudicate the acts of extractives, logging and property development companies, especially in the context of resource exploitation in the lands and territories of indigenous peoples. In relation to health, there are references not only to private health-care providers but also to pharmaceutical companies, marketing companies and extractive and manufacturing companies engaging in activities which could threaten food and water resources. The media and communication networks, including Internet service providers, are discussed with respect to preventing the dissemination of harmful information; combating economic and sexual exploitation, especially of children; and even limiting market concentration which could unduly affect the right to freedom of expression. Most treaty bodies refer to a wide range of employers when discussing protection of rights in the labor market. Discussions on other sectors or types of companies could be helpful, where appropriate.

Measures to regulate and adjudicate private corporate acts

16. According to the treaty bodies, while States ultimately have discretion in relation to implementation, they should take a variety of measures to effectively regulate and adjudicate corporate activities. States must generally monitor compliance by third parties and in most cases introduce legislative measures to prohibit abuse and proscribe certain behavior. Further, they should establish administrative and judicial mechanisms to effectively and impartially investigate all complaints and bring perpetrators to justice.

17. The treaty bodies also call for the provision of effective remedies and have said that reparation may include compensation where appropriate. Further, they have recommended measures to increase awareness amongst the private sector of the human rights impacts of their activities and to encourage the development by private businesses of codes of conduct in respect of human rights.

18. Newer treaties, in particular the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography (OPSC) and the ICRMW seem at a minimum to contemplate liability for business enterprises. In fact, in Concluding Observations in relation to the OPSC, the CRC has encouraged States parties to extend liability for the Protocol offences to legal persons.⁸ However, the other treaty bodies very

⁷ Note that the ICRPD was not examined in detail.

⁸ See e.g. Concluding Observations for Iceland, CRC/C/OPSC/ISL/CO/1, 2006, paras. 13 and 14(d). See also Concluding Observations for Andorra, CRC/C/OPSC/AND/CO/1, 2006, paras. 12 and 13; and Kazakhstan, CRC/C/OPSC/KAZ/CO/1, 2006, para. 15.

rarely specify whether regulation and adjudication of corporate activities should focus on the corporate entity itself or natural persons acting on behalf of that entity. This is unsurprising given the discretion provided to States parties regarding implementation under the treaties – however, it also raises questions as set out below.

Business "responsibilities"

19. The reports focused on the State duty to protect vis-à-vis business activities rather than any direct obligations for business enterprises under international law. Nevertheless, some treaty bodies have said that while they consider that only States parties are ultimately accountable under the respective treaties, other actors, including business enterprises, have "*responsibilities*" in relation to respecting and ensuring rights. They have stressed that business enterprises have, at a minimum, an important *role* to play with respect to human rights.

20. The committees emphasize that business enterprises do not have *direct* obligations under the treaties. For instance, the Committee on Economic, Social and Cultural Rights (CESC) and the CRC have reiterated that only States are parties to the treaties and can be held accountable. And while the Human Rights Committee (HRC) does not make any reference to business responsibilities, it does suggest that only States parties have direct obligations under the Covenant when it says in General Comment 31 that "the article 2, para 1, obligations are binding on States [parties] and do not, as such, have direct horizontal effect as a matter of international law. The Covenant cannot be viewed as a substitute for domestic criminal or civil law..."⁹

21. All of the treaty bodies apart from the HRC and CAT have mentioned business responsibilities. However, they have referred to such responsibilities in quite different ways (see below).

State-owned or controlled enterprises and privatization

22. Most treaty bodies do not explicitly address the issue of States' responsibilities for rights violations by State owned or controlled enterprises. Rather, in line with broader concepts of international law, it seems that the committees see States parties as having the same types of obligations regarding both State and non-State owned companies – the differentiating factor is usually government control rather than ownership. For instance, Concluding Observations by the HRC recommend that States parties should prevent abuse by all types of business enterprises,¹⁰ and the HRC has also discussed situations where State control of a corporation facilitates direct attribution of the corporation's acts to the State.

23. CESCR has discussed "State-owned facilities" in relation to the duty to respect, although it does not specifically mention State-owned "enterprises." It is unclear whether these facilities are similar to State-owned or controlled enterprises.

24. Several treaty bodies, including the HRC and particularly the CRC, have also expressed concerns about the lack of accountability which could result from the privatization of certain governmental functions, when the State delegates them to private companies. In fact, as mentioned above, the CRC devoted an entire discussion day to the subject and has also stressed in various General Comments that States parties must ensure that non-State service providers, including businesses, act in accordance with the Convention.¹¹

⁹ HRC General Comment 31 on 'The Nature of the General Legal Obligation Imposed on States Parties to the Covenant,' para. 8 [hereinafter HRC General Comment 31].

¹⁰ See e.g. Concluding Observations for Finland, CCPR/CO/82/FIN, 2004, para. 17.

¹¹ CRC General Comment 5 on 'General measures of implementation of the Convention on the Rights of the Child (arts. 4, 42 and 44, para. 6),' para. 43 [hereinafter CRC General Comment 5]. General Comment 5 draws States parties' attention to the recommendations from the 2002 day of general discussion on the private sector as service providers.

Territorial scope

25. The treaty bodies have interpreted the treaties to apply both to individuals within a State Party's national territory as well as those outside the State's national territory but within its effective control. The treaty bodies vary in their level of explanation of the concept of "effective control," with the HRC providing the most detailed pronouncements. In particular, the Committee has said that a State may gain "power or effective control" through the acts of its "agents" abroad, including State forces operating as part of peacekeeping operations.¹²

26. It does not appear that any of the treaty bodies have explicitly addressed the situation where a corporation acts on the State's behalf (exercising elements of governmental authority or acting under the instructions, direction or control of the State) outside the national territory, and exercises a degree of control over individuals such that, were such control to be exercised by State agents, the State's treaty obligations would apply in full.

27. This situation differs from scenarios in which corporate actors affect the rights of individuals outside the State's territory or effective control where the State is able to influence the actions of those corporations. This is considered immediately below.

Regulation with extraterritorial effect

28. Given that the SRSG's mandate looks specifically at the acts of transnational businesses, an important question is whether a State Party has any duties under the treaties to regulate its corporate actors abroad whose activities affect individuals who are both outside the State's national territory and effective control. Such regulation is generally labeled "prescriptive extraterritorial jurisdiction" – i.e. the regulation of persons or activities outside a State's territory, usually through legislation. A related question is whether the committees have encouraged or indicated that such regulation is at least permissible.

29. As noted in the SRSG's March 2007 report, prescriptive extraterritorial jurisdiction is generally permissible under international law provided there is a recognized basis of jurisdiction: including where the alleged offender or victim is a national; where the acts have substantial adverse effects on the State; or where specific international crimes are involved.¹³ An overall reasonableness test must also be met, which includes non-intervention in other States' internal affairs.¹⁴

30. The treaty bodies have only had limited discussion of regulation with extraterritorial effect and when they have done so, their discussions have been varied (see below). Therefore, while it is difficult to generalize in relation to their thoughts on this subject, it does not appear that they have yet firmly expressed the view that a States Party is required to regulate and adjudicate the acts of corporations affecting individuals outside its effective control, even if such corporations classify as "nationals." However, it also does not appear that the treaty bodies oppose such regulation. Indeed some treaty bodies, including CESCR, seem to encourage action to prevent companies from abusing rights overseas.

D. Cross-cutting issues that would benefit from further elaboration

31. This section highlights issues across all treaties where further clarification could assist States, business enterprises and individuals to better understand their rights and obligations. Other issues specific to each treaty are highlighted in individual reports. No suggestion is made as to whether and how these issues may be addressed – they are highlighted as much

¹² HRC General Comment 31, para. 10.

¹³ Under the principle of "universal jurisdiction" States may be obliged to exercise jurisdiction over individuals within their territory who allegedly committed certain international crimes. It is unclear whether and how such obligations extend jurisdiction over juridical persons, including corporations. See A/HRC/4/35/Add.2 and A/HRC/4/35, para. 15.

¹⁴ The entire human rights regime may be seen to challenge the classical view of non-intervention. The debate here hinges on what is considered coercive. See A/HRC/4/35/Add.2.

to indicate the various views expressed by the treaty bodies in considering State duties vis-à-vis corporate activities as to point out areas which could pose difficult questions for States parties, businesses, individuals and civil society.

The duty to protect and "due diligence"

32. An examination of commentaries by the treaty bodies shows that they consider States parties to have a duty to protect against third party abuse, including acts by business enterprises. More insight would nevertheless be helpful on the committees' views regarding the scope of this duty, especially the relevance, if any, of the concept of "due diligence." Only the HRC refers generally to the need for States parties to act with "due diligence" in fulfilling the duty to protect – it considers States parties should act with due diligence to prevent, punish, investigate or redress harm caused by private entities.¹⁵ While the Committee on the Elimination against Women (CEDAW) has also adopted the concept, mainly in relation to violence against women,¹⁶ other references by treaty bodies are more piecemeal. CESCR refers to "due diligence" only with respect to domestic violence and the Committee on Racial Discrimination (CERD) only refers to it in passing.

33. It is unclear whether the committees envisage that due diligence applies to all rights under their respective treaties, or whether this is a concept limited to specific issues or rights, or relevant to some committees only.

Relevance of the duty to respect

34. As suggested above, the treaty bodies are far more likely to discuss State regulation of corporate activities as part of the duty to protect. However, some treaty bodies have referred to corporate acts in relation to the duty to respect, particularly in relation to obligations States parties may have when entering into commercial agreements.

35. CESCR in General Comment 18 on the right to work provides that States parties can violate the duty to respect if they fail to take into account their Covenant obligations "when entering into bilateral or multilateral agreements with other States, international organizations and other entities such as multinational entities."¹⁷ Similarly, the CRC has recommended that States parties consider rights, particularly rights related to health, when entering in bilateral trade agreements, including how related "commercial agreements" could affect rights.¹⁸

36. It is unclear if such remarks apply to all commercial agreements States enter into as well as whether other treaty bodies have similar views even if they have not explicitly discussed the duty to respect in light of commercial agreements. Therefore, it would be helpful to further understand the committees' views on the implications of States entering into agreements with corporations, including as part of bilateral or multilateral agreements, and measures that States should take in this respect. For example, it would be beneficial to gain further insight into whether the committees expect States parties to assess the impacts of all commercial agreements, including through human rights impact assessments, as well as take action to terminate such agreements where rights are threatened.

¹⁵ HRC General Comment 31, para. 8.

¹⁶ See e.g. CEDAW General Recommendation 19 on 'Violence Against Women,' para. 9 [hereinafter CEDAW General Recommendation 19].

¹⁷ CESCR General Comment 18 on 'Article 6: the equal right of men and women to the enjoyment of all economic, social and cultural rights,' para 33 [hereinafter CESCR General Comment 18]. It is assumed that the term "multinational entities" includes corporations. See also CESCR, General Comment 12 on 'Right to adequate food,' para. 50 [hereinafter CESCR General Comment 12].

¹⁸ See e.g. Concluding Observations for Peru, 2006, paras. 48 – 49; Concluding Observations for Thailand, CRC/C/THA/CO/2, 2006, paras. 57 – 58; Concluding Observations for the United Republic of Tanzania, CRC/C/TZA/CO/2, 2006, paras. 44 and 45(d); and Concluding Observations for Ecuador, CRC/C/15/Add.262, 2005, para. 21.

Business "responsibilities"

37. As above mentioned, the treaty bodies that have mentioned business responsibilities do so differently, leaving some uncertainties as to the nature and extent of these responsibilities:

- **CESCR** has highlighted responsibilities for business enterprises not only in "*respecting*" rights but also in "*realizing*" rights.¹⁹ It has commented that, among other things, the private business sector should pursue its activities on the basis of codes of conduct conducive to the "respect of rights." CESCR has further directed that States should provide an environment facilitating third parties' fulfillment of any such responsibilities.
- Similarly, the **CRC** has highlighted responsibilities for business enterprises not only in "*respecting*" rights but also in "*ensuring*" rights. It has recognized that responsibilities to "*respect*" and "*ensure*" the rights of children extend in practice beyond the State and State-controlled services to include, among others, non-State services and organizations.²⁰ It has directly addressed private actors, such as private service providers, the media and banks, in recommending certain behavior such as the conduct of impact assessments, the incorporation of human rights protections into codes of conduct, and refraining from acts which might jeopardize rights.²¹
- **CERD** notes the media's "*particular responsibility*"²² to refrain from disseminating prejudices, and recommends self-monitoring, including through codes of conduct in media organizations. The Committee has also said that "large business ventures" involved in projects affecting indigenous communities have a role to play in the "*promotion*" of human rights. However, this comment was only included in the Concluding Observations on Surinam in 2004,²³ and later Concluding Observations have not contained similar recommendations. It is unclear whether CERD would encourage that sort of responsibility more generally.
- **CEDAW** and the **Committee on Migrant Workers (CMW)** seem to generally limit their discussions on business 'responsibilities' or 'duties' to the responsibility to *respect* rights, in relation to private health care providers and recruitment agencies, respectively.²⁴ CEDAW does, however, seem to consider the media to have particular responsibilities in respecting as well as *promoting* rights.

38. Accordingly, it is uncertain whether the committees consider that *any* business responsibilities that do exist go beyond a mere responsibility to "respect" rights, towards also "ensuring" or "realizing" them and what this might mean in practice. It is also unclear what legal and practical consequences the committees see for the recognition of business responsibilities, considering they generally confirm that only States are bound by the Convention.

39. It is unknown whether the committees see "business responsibilities," if any, as only applying to certain businesses in certain situations or whether they see them as applying more generally. And it would be useful to understand whether there are substantive

¹⁹ See CESCR General Comment 12, para. 20; CESCR General Comment 14 on 'The right to the highest attainable standard of health,' para. 42 [hereinafter CESCR General Comment 14]; CESCR General Comment 17 on 'The right of everyone to benefit from the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he or she is the author,' para. 55; and General Comment 18, para. 52.

²⁰ CRC General Comment 5, para. 56 (concurring explicitly with CESCR General Comment 14, para. 42).

²¹ See CRC's recommendations from the Day of General Discussion on the private sector as service providers, *supra* note 6.

²² CERD General Recommendation 27 on 'Discrimination against Roma,' para. 39.

²³ Concluding Observations on Suriname, CERD/C/64/CO/9, 2004, para. 19.

²⁴ See with respect to women's access to health care CEDAW General Recommendation 24 on 'Art.12 of the Convention (women and health),' para. 14; and in relation to recruitment agencies under the ICRMW, 'Protecting the rights of all migrant workers as a tool to enhance development: Contribution by the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families to the High-level Dialogue on Migration and Development of the General Assembly,' A/61/120, para. 10.

differences between the different concepts used by treaty bodies in this context. For example, it is not clear whether CERD's reference to business responsibilities in "promoting" human rights is similar to CESCR and CRC's recognition of responsibilities in "realizing" or "ensuring" rights.

40. Finally, it would be helpful to further understand the committees' views in relation to States parties' roles in helping businesses to fulfill their responsibilities, if any, including whether facilitating fulfillment of such responsibilities means States should take certain steps to promote and equip corporations to enter into private codes of conduct.

Natural v. legal persons

41. There is little discussion as to whether the State may fulfill its duty to protect by focusing on the acts of natural persons within the offending business enterprise or whether it could or should adjudicate the business enterprise as an entity. It would be useful to gain further insight into whether the committees interpret the treaties as requiring legislative or other measures to address legal persons, such as business enterprises, where appropriate or whether they generally consider it is sufficient for States to prosecute or ensure a right to seek reparation from individuals acting on behalf of such enterprises.

State owned or controlled enterprise

42. It would also be valuable to further understand whether the treaty bodies consider States parties to have the same obligations in relation to both State-owned and non-State owned companies as well as their views on the nature of States parties' duties in relation to companies acting under the State's control, instructions or direction.

43. In relation to State-controlled companies in particular, it is unclear under which conditions the treaty bodies consider that a company, while not part of the State apparatus, may nevertheless be considered to engage directly the responsibility of the State because it acts under the State's direction, control or instructions.²⁵ Further, even where this is the case, it is unknown if the State will be held to a different standard than under the duty to protect – i.e. whether it may be held responsible even if it acted with due diligence to protect against the abuse.

Territorial scope

44. The treaty bodies consider that treaty obligations apply in relation to individuals who are within a State Party's effective control even if they are outside the State's national territory. This includes situations where the State's agents exercise such effective control. However, it does not appear that the treaty bodies have considered how this concept could work in the context of corporate activities.

45. Accordingly, it would be helpful to further explore the treaty bodies' thoughts on this matter, including their views on a situation where a corporation acts on the State's behalf (exercising elements of governmental authority or acting under the State's instructions, direction or control) outside the national territory, and exercises a degree of control over individuals such that, were such control to be exercised by State agents, the State's treaty obligations would likely apply in full.

Regulation with extra-territorial effect

46. As above mentioned, the treaty bodies have not yet given significant guidance in relation to regulating corporate acts abroad. The following table illustrates the different ways they have dealt with the issue - see individual reports for further discussion:

²⁵ In certain situations of government control, the committees appear to consider that the company's acts may be directly attributed to the State and discuss the State's obligations with this in mind rather than discussing the duty to protect. See generally Part V of the ICCPR report in this series.

Treaty	Views on regulation with extraterritorial effect	Areas for clarification
HRC	No specific guidance. Its most relevant comments are remarks in General Comment 31 that States parties should assist other States to bring perpetrators of certain violations to justice, ²⁶ and that States parties should call on "offending States" to comply with their treaty obligations. ²⁷	The significance, if any, of these comments in relation to extraterritorial regulation is unclear. For instance, it is unknown if the reference to assistance contemplates extraterritorial regulation or merely compliance with extradition treaties or other forms of assistance. Further, it is unknown if the HRC's comments regarding inter-State dialogue suggest encouragement for States parties to prevent abuse overseas by their own nationals, including corporations, especially in situations where the host State is unwilling or unable to act.
CESCR	CESCR seems to have discussed State efforts to influence third party acts abroad in light of "international cooperation." CESCR's General Comment 15 on the right to water provides, under a section on "International Obligations," that States should take steps to prevent "their own companies" from violating rights of individuals and communities in other countries. It notes that where possible, States should also take steps to influence other third parties to respect rights, through legal or political means. ²⁸ Similar comments are made in General Comments 14 on the right to health and 12 on the right to food.	Clarification would be beneficial on some of the terms referred to by the Committee in General Comment 15, including "their own companies" and "prevent." It is also unclear whether the Committee's comments concerning corporate acts abroad apply to other rights than water, health and food. Further, it is unclear whether CESCR sees extraterritorial regulation as part of international cooperation and, if so, whether States could be seen as violating their commitments in relation to international cooperation if they fail to regulate abuse abroad over which they have some influence.
CRC	The CRC – with respect to the OPSC – may be the most explicit about regulation with extraterritorial effect. The OPSC requires extraterritorial regulation of the Protocol offences, at least in relation to individuals. Concluding Observations regularly refer to States parties' duties to exercise extraterritorial jurisdiction. ²⁹ While the Convention also contains provisions referring to international cooperation, the Committee has not made similar comments to CESCR in terms of influencing corporate acts abroad. Rather, CRC has alluded to extraterritorial regulation only in relation to trafficking, the sale of children and other forms of exploitation.	The CRC's comments in relation to the OPSC do not shed significant light on whether jurisdiction should be established over <i>legal persons</i> , including business enterprises, committing Protocol offences abroad. It is unclear if States parties are required to establish extraterritorial jurisdiction over persons, including legal persons, who have committed abuses abroad. It is also unclear whether the Committee considers that action is necessary in relation to abuses other than trafficking and what this might entail.
CEDAW	Similar to the CRC, CEDAW has urged States parties to prosecute and punish those engaging in trafficking and other forms of exploitation.	Same as above.
CAT	Similar to the OPSC, CAT requires States parties to establish and exercise extraterritorial jurisdiction for the offence of torture.	The Committee has not discussed these provisions in light of legal persons, including business enterprises, though the Convention specifically refers to 'persons'.

²⁶ HRC General Comment 31, para. 18.

²⁷ HRC General Comment 31, para. 2.

²⁸ CESCR General Comment 15 on 'The Right to Water,' para. 33.

²⁹ Concluding Observations for Viet Nam under the OPSC, CRC/C/OPSC/VNM/CO/1, 2006, para. 13.

47. Accordingly, it would be helpful to further understand the treaty bodies' views on regulation with extraterritorial effect, including how they see the concepts of international cooperation and extraterritorial regulation interacting, if at all.

48. If the treaty bodies do consider that extraterritorial regulation of corporate acts is required, it would be helpful to know whether they believe such regulation should apply only to corporations domiciled in the particular State party or whether there are more general requirements under the concept of universal jurisdiction. It would also be useful to understand whether the treaty bodies believe there are any limitations on such regulation under the relevant treaties.

Reporting guidelines

49. Despite significant increases in the treaty bodies' consideration of State duties vis-à-vis corporate activities, reporting guidelines tend not to require specific information on steps to regulate and adjudicate corporate activities which could interfere with rights.

50. Nonetheless, the ICERD guidelines ask States parties to describe employment and housing, including in the private sphere, as well as to describe government action to prevent racial discrimination in the enjoyment of work and housing rights.³⁰ Further, the CRC guidelines ask about incorporation of Convention principles into professional codes of conduct and steps to promote the principles amongst the mass media, information and publishing agencies.³¹ The recent OPSC guidelines ask about the private sector's role in implementing awareness measures and also refer to adoption agencies.³²

51. Discussion would be welcome on the committees' views regarding whether updating reporting guidelines to require specific reporting on corporate activities could contribute to the protection and promotion of rights. If the treaty bodies believe that such reporting would be beneficial, it would also be helpful to know what types of information they would ideally like to see reflected in reports, such as information on regulatory measures and/or information on promotional activities.

³⁰ ICERD General Guidelines, CERD/C/70/Rev.5, Dec 2000, para. 11, Art.5(E).

³¹ CRC General Guidelines for Periodic Reports, CRC/C/58, Nov 1996, para. 22.

³² CRC Revised Guidelines, CRC/C/OPSC/2, Nov 2006, paras. 15 and 19.