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### THE REVIEW OF CONCLUDING OBSERVATIONS OF HRC AND CESCR ADOPTED IN 2022

In 2022 the Human Rights Committee (HRC) held three sessions and considered the reports of Ethiopia, Japan, Kyrgyzstan, Nicaragua, Philippines, Russian Federation, China (Hong Kong), China (Macau), Georgia, Ireland, Luxembourg, Uruguay, Bolivia, Cambodia, Iraq, Israel and Qatar<sup>1</sup>. It analyzed the problems of forced labour, discrimination (particularly of women, Roma and disabled people), protection of the freedom of association and the restrictions of the right to strike. The Committee on Economic, Social and Cultural Rights (CESCR) held two sessions and adopted the concluding observations in respect of Bahrain, Belarus, Czech Republic, Democratic Republic of the Congo, Serbia, Uzbekistan, El Salvador, Guatemala, Italy, Luxembourg, Mongolia and Tajikistan<sup>2</sup>. It focused, in particular, on the issues of minimum wage, discrimination and unemployment. Provided the wide scope of the concluding observations, we will first focus on the topic of business and human rights, then on the issue of labour exploitation in Qatar in the HRC's observations, and in the end, the problem of human trafficking in the observations of both committees, and sexual harassment in the CESCR concluding observations will be discussed.

#### I - BUSINESS AND HUMAN RIGHTS

The review of the jurisprudence of the HRC and the CESCR began almost 10 years. We started it when the UN has already adopted the UN Global Compact initiative<sup>3</sup> in 2000 and the famous Ruggie principles - UN Guiding principles on business and Human Rights (UNGPs) in 2011. Both are instruments for the promotion of the commitment of business to respect human rights. Also, in 2014, the UN Human Rights Council took steps to elaborate an international legally binding instrument to regulate the activities of transnational corporations and other business enterprises<sup>4</sup>, which is being discussed for almost 7 years. There is nothing in the Human Rights Covenants on the obligations of the business, or on the obligations of

1 Sessions No. 134-136: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/SessionsList.aspx?Treaty=CCPR](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/SessionsList.aspx?Treaty=CCPR)

2 Sessions No. 71-72, all the concluding observations are available at: [https://tbinternet.ohchr.org/\\_layouts/15/TreatyBodyExternal/SessionsList.aspx?Treaty=CESCR](https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/SessionsList.aspx?Treaty=CESCR)

3 <https://www.unglobalcompact.org/what-is-gc/mission/principles>

4 <https://www.business-humanrights.org/en/big-issues/binding-treaty/>

the states to ensure that business has the duty of vigilance. However, the movement within the UN towards bringing businesses to at least human rights accountability (if not yet responsibility) recently impacted the activities of the HRC and the CESCR. Shortly after the adoption of the UNGPs, CESCR adopted a brief statement on the responsibility of state parties in the area of business and human rights<sup>5</sup>, calling on states to include information on their regulation and remediation of business impacts on human rights in their periodic reports<sup>6</sup>. It was noted in the previous reviews that CESCR was pushing the developed states towards implementing in national legislation and practice the UN Guiding Principles on Business and Human Rights adopting a framework that inter alia holds business entities liable for violations of economic, social and cultural rights and enables victims to seek remedies through judicial and non-judicial mechanisms in the State party (Switzerland, Denmark)<sup>7</sup>.

In 2021, already both committees adopted the conclusions on the issue of business and human rights. In 2022 the trend strengthened in the activities of CEACR but remained almost unnoticed in the concluding observations adopted by HRC. In particular, CEACR in almost all the observations adopted this year in respect of both developed (e.g. Italy) and developing countries (e.g. Mongolia, El Salvador and Guatemala) mentioned the need to follow its General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities. The Committee recommended the states (e.g. Serbia, Guatemala, Uzbekistan) to adopt appropriate legislative and administrative measures to ensure that companies that operate in the State party conduct human rights due diligence so as to prevent their activities from hindering the exercise of economic, social and cultural rights; take all measures necessary to ensure the legal liability of companies that operate in, are headquartered in and/or are under the jurisdiction of the State party for violations of economic, social and cultural rights resulting from their activities and to ensure that appropriate reparations are provided to victims.

Thus, the Committee through its interpretation of the International Covenant on Economic, Social and Cultural Rights is transforming a UN soft law approach to the obligations of business in the field of human rights to a harder version, following the European trend of adopting laws on due diligence.<sup>8</sup> The CESCR was particularly

5 CESCR, Statement on the obligations of States parties Regarding the Corporate Sector and Economic, Social and Cultural Rights, U.N. Doc. E/C.12/2011/1.

6 T. Van Ho, « Introductory note to general comment no. 24 (2017) on state obligations under the international covenant on economic, social and cultural rights in the context of business activities (Cescr) », *International Legal Materials*, vol. 58, no. 4, 2019, p. 872.

7 E. Sychenko, « Actualités - Organisation des Nations Unies », *Revue de droit comparé du travail et de la sécurité sociale*, n°2020/2, p. 130.

8 See the proposal for the EU Directive on corporate sustainability due diligence which will provide corporate due diligence duty to identify, bring to an end, prevent, mitigate and account for negative human rights and environmental impacts in their own operations, subsidiaries and value chains. See also the Child [Labour](#) Due Diligence Act 2019 in the Netherlands, the Supply Chain Due Diligence Act in Germany (comes into force in January 2023), the Corporate Duty of Vigilance Act 2017 in France, Modern Slavery Act in the UK.

rigorous in evaluating the business and human rights policy in Italy and Luxemburg. In respect of the former, it noted that Legislative Decree No. 231/2001 about the administrative liability for offences does not adequately cover corporate abuses of human rights and provides for exemption from liability if companies demonstrate that they have adopted an adequate model of risk prevention and management. Also, that due diligence obligation does not sufficiently encompass subsuppliers, including foreign ones.

In respect of Luxemburg, the CESCR stated that its second National Action Plan does not adequately adhere to the provisions of the Guiding Principles on Business and Human Rights concerning access to an effective remedy, in particular with regard to human rights violations committed abroad that are linked to companies domiciled in the State party. It recommended adopting the norms which would require companies domiciled in the State party, including those in the financial sector, to exercise human rights due diligence in their operations both in Luxemburg and abroad; hold companies liable for violations of economic, social and cultural rights, including those committed abroad; and enable victims, including non-citizens, to have access to effective remedies in the State party and to seek redress through judicial and non-judicial mechanisms.

The HRC, on the contrary, attached no attention to the issue of business and human rights considering the reports of Japan, China (Hong Kong), China (Macau), Ireland, Luxemburg and Israel. It remains unclear how the HRC committee is choosing the country for making recommendations in this sphere, as last year Germany received a set of recommendations<sup>9</sup> which are very much in line with those expressed this year by CESCR in respect of Italy and Luxemburg.

## II - LABOUR EXPLOITATION IN QATAR

Qatar had been widely discussed by Human Rights NGOs<sup>10</sup>, in the academic community<sup>11</sup> and condemned for the exploitation of migrant workers during the preparations for FIFA 2022. This year HRC dedicated a number of paragraphs of the concluding observations to this issue. In particular, it stated that it lacked clear information regarding the number of migrant workers deceased, the investigations conducted and the reparations provided for the families (arts. 2 and 6). It urged the state to intensify its efforts to prevent the death of migrant workers, including on

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9 In particular, HRC recommended Germany to enhance the effectiveness of existing mechanisms to ensure that all corporations under its jurisdiction respect human rights standards when operating abroad. It also proposed to establish an independent mechanism with the power to investigate human rights abuses committed abroad. See E. Sychenko, « Actualités - Organisation des Nations Unies », *Revue de droit comparé du travail et de la sécurité sociale*, no. 2021/2, p. 116.

10 « Rights Abuses Stain FIFA World Cup “Reporters’ Guide” Highlights Key Labor Rights Issues, Needed Reforms », *HRW, Qatar*, 14 November 2022: <https://www.hrw.org/news/2022/11/14/qatar-rights-abuses-stain-fifa-world-cup>

11 See, for example, I. Ashraf, « Emerging Issues: FIFA World Cup 2022: Enjoying the Game at the Suffering of Migrant Workers », *University of Baltimore Journal of International Law*, vol. 4, no. 2, 2016, p. 7.

construction sites, in particular by effectively enforcing the measures adopted to protect the safety and health of workers as well as the legal framework concerning investigations into workplace incidents and reparations for the families. Welcoming the abolition of the sponsorship (kafala) system, HRC remained concerned about widespread violations of the prohibition on confiscating passports and withholding salaries of employees, abuse and exploitation. It recommended Qatar to investigate allegations of abuse, prosecute and sanction abusive employers and recruitment companies provide reparation to victims; and provide access to effective legal remedies for the protection of the rights of migrant workers, including domestic workers, without fear of reprisal, detention or deportation.

### III - HUMAN TRAFFICKING AND FORCED LABOUR

Human trafficking and forced labour remain a concern for both Committees and a set of recommendations in this field was formulated in respect of all developing countries and a number of developed ones. Interestingly, CESCR considered this problem only in respect of Serbia, while HRC included recommendations on the efficient prohibition of human trafficking and forced labour in almost all observations. In respect of Serbia, the CESCR was concerned with the lack of support and protection provided to victims of trafficking, and the insufficient level of funding allocated for the prevention of trafficking in persons. It stated that the State has to strengthen the work of Labour Inspections and referred to the case of labour exploitation in Linglong Tyre Plant, where violations of labour regulations were not detected despite a number of labour inspections being carried out. At this factory around 500 Vietnamese workers were hired to build the first Chinese car tyre factory in Europe, the press stated that their passports had been confiscated and they had been housed in dirty, cramped dormitories with two toilets for 500 men and a lack of clean, warm water<sup>12</sup>. CESCR recommends Serbia to improve the protection and physical, psychological and legal support for victims, in coordination with civil society organizations and allocate sufficient funding for the prevention of trafficking in persons and for support for victims.

In respect of Hong Kong, China, the HRC was concerned with the problem of migrant workers who must find new employment or leave Hong Kong, China, within two weeks of the end of an employment contract. This rule, in the opinion of the Committee, puts migrant domestic workers at high risk of abuse and exploitation by their employers and employment agencies and prevents them from reporting exploitative employment and abuse, owing to fears of losing their jobs and having to leave Hong Kong.

Considering the report of Japan, the HRC again attached attention to the problem of so-called « comfort women » - victims of sexual exploitation by Japanese military forces during the Second World War. The Committee regretted the lack of criminal investigation and prosecution of perpetrators and the lack of effective

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12 S. Dragojlo, *Documents Reveal Extent of Exploitation at Chinese Tire Site in Serbia*, Belgrade, BIRN, 29 November 2021: <https://balkaninsight.com/2021/11/29/documents-reveal-extent-of-exploitation-at-chinese-tire-site-in-serbia/>

remedies and full reparation to all victims of past human rights violations. It urged Japan to address these shortcomings and ensure education about the issue, including adequate references in textbooks, and strong condemnation of any attempts to defame victims or to deny the events.

In respect of Kyrgyzstan, the HRC welcomed the establishment of the National Referral Mechanism for Victims of Trafficking in Persons, in 2019. But it noted that no cases had been referred through the National Referral Mechanism by October 2022. In the Concluding observations of the Philippines' report, the HRC was particularly concerned about the cases of online sexual exploitation of children and called the State to ensure due protection from this type of exploitation.

## IV - SEXUAL HARASSMENT

There are no norms in either of the Covenants about the prohibition of sexual harassment in the workplace. However, particularly this year, the CESCR attached attention to this problem and addressed a set of recommendations in respect of Mongolia and Czechia. These recommendations, particularly those addressed to Czechia, have much in common with the norms of the recent ILO Violence and Harassment Convention, 2019 (No. 190), even though it was not mentioned in the text of concluding observations. In particular, the Committee expressed concern about insufficient information concerning a strategy to tackle sexual harassment in the workplace in the public and private sectors in Czechia, beyond a handbook for public authorities and the provision of awareness-raising courses.

CESCR recommended ensuring that the Czech laws against sexual harassment, including the Labour Code, are effectively enforced and that it adopts preventive and protective measures to combat sexual harassment in the workplace, including awareness-raising campaigns, a monitoring system and ongoing training; ensure that reports of sexual harassment are duly investigated and prosecuted, that perpetrators are adequately punished and that victims have access to appropriate redress, including compensation. The Committee did not use this opportunity to encourage the state to ratify the mentioned ILO Convention, as it sometimes does with some other conventions. For example, this year it recommended Congo to ratify the International Labour Organization (ILO) Indigenous and Tribal Peoples Convention, 1989 (No. 169).

## Conclusion

Concluding this brief review several main points should be outlined. Firstly, CESCR continues to require that States oblige business to conduct human rights due diligence, including in the operations with subcontractors. Also, it largely relies on its General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities. This instrument outlines due diligence obligations but also explains that the States have an extraterritorial obligation to protect human rights. It means that States have to take steps to prevent and redress infringements of Covenant rights that occur outside their territories due to the activities of business entities over which they can exercise control, especially in cases where the remedies available to victims before the domestic courts of the State where the harm occurs are unavailable

or ineffective<sup>13</sup>. This approach resembles the norms of Article 9(Adjudicative Jurisdiction) of the third draft of the Legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises<sup>14</sup>.

Finally, the CESCR follows the trend of a broad interpretation of the Covenant and relies largely on its General Comment No. 23, where it established, in particular, that States have to ensure protection from sexual harassment at the workplace. The regular reference to the General Comments in the concluding observations means that as one scholar stated, « CESCR soft law is becoming a more widely accepted model for articulating the content of economic and social rights »<sup>15</sup>.

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13 General comment No. 24 (2017) on State obligations under the International Covenant on Economic, Social and Cultural Rights in the context of business activities (§ 30).

14 <https://www.ohchr.org/sites/default/files/LBI3rdDRAFT.pdf>

15 M. Bódig , « Soft Law, Doctrinal Development, and the General Comments of the UN Committee on Economic, Social and Cultural Rights », in S. Lagoutte, T. Gammeltoft-Hansen and J. Cerone (ed.), *Tracing the Roles of Soft Law in Human Rights*, Oxford, 2016: <https://doi.org/10.1093/acprof:oso/9780198791409.003.0005>