

## Oral Statement of the South Centre for the Regional Consultation on Sustainable Development and the ICESCR

Geneva, 8 February 2022

The following statement is delivered by the South Centre during the consultation convened by the Drafting Group of the United Nations Committee on Economic, Social and Cultural Rights for the development of a General Comment on Sustainable Development and the International Covenant on Economic, Social and Cultural Rights.

**Thematic Session II, Sustainable development and natural resource governance:**

What is the role of responsible natural resource governance and sustainability in the realization of economic, social and cultural rights for all? How should the State obligations and the role of business and the impact of business operation in the context of natural resource extraction be addressed in the General Comment?

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We would like to thank you for convening this meaningful consultation on how the object and purpose of the International Covenant on Economic, Social and Cultural rights should consider the three pillars of sustainable development, and in particular concerning the role that States, and businesses enterprises should have in the realization of ESCR in the context of natural resource extraction.

First and foremost, it is necessary to recall that the Committee has previously referred to the obligations of States to protect the economic, social, and cultural rights in the context of business activities, emphasizing on the need to guarantee effective prevention of any infringement of these rights (General Comment 24, 2017, para. 14).

Similarly, regional courts have also recognised the obligations of States to prevent the infringement of human rights by private actors, including through the adoption of domestic policies to encourage companies to incorporate good corporate governance practices and guiding business activity towards compliance with domestic norms and human rights (*Vera Rojas vs. Chile*, ICHR, 2021, para. 86; and *Buzos Miskitos vs. Honduras*, ICHR, 2021, para. 49).

As stated by the Drafting Group, the exploitation of natural resources by private or non-state actors is a “major driver of environmental degradation” that threatens the realisation of ESCR. Therefore, it would be useful for the Committee to not only consider the role of the

private sector, but the means and instruments necessary to guarantee human rights compliance throughout their operations.

The Committee could also benefit from considering the linkages between the prevention of human rights violations and foreign investments in the extractive sector. International investment agreements allow foreign investors to use investor-state dispute settlement mechanisms, to circumvent domestic courts and undermine national judicial systems. Most of IIAs do not require the exhaustion of local remedies, which allow foreign investors to initiate claims in international ad-hoc arbitral tribunals directly. Most of these claims have resulted in disproportionate and exorbitant compensations which also increases the 'regulatory chill' of States that limit their regulatory space to ensure the protection of human rights and the environment. Moreover, existing IIAs do not include obligations for investors.

Following this line, the engagement of affected communities should not be limited to consultation for the approval of investment projects concerning the exploitation of natural resources, but should also consider their active participation during the execution and closure of the project, including permanent processes of environmental and human rights impact assessments. The Committee could also consider the mandatory human rights and environmental impact assessments before the signature of IIAs or investment contracts. Likewise, States could consider the need to revise and reform existing investment treaties.

Finally, affected communities require sufficient means and tools to bring responsible businesses to justice for human rights violations committed in the course of their business activities. However, they face practical and procedural hurdles to achieve this objective, particularly the complexity of corporate structures and the fact that most of these cases include an element of transnationality. Access to information, forum non conveniens and other practical and legal obstacles, have limited victims' access to justice. The Committee could consider broader consultations with the Intergovernmental Working Group negotiating a legally binding instrument on business and human rights, as this instrument could serve as a mechanism to address these impacts through effective international cooperation, including among law enforcement agencies and mutual assistance across borders. It could also strengthen the capacity of States to eradicate harmful behaviour by business enterprises and cooperate with each other towards the effective realization of ESCR.