

INFORMAL CONSULTATION ON TRADE AND HUMAN RIGHTS: DEVELOPING A SET OF TRADE RELATED QUESTIONS FOR STATE REPORTING

NOTE TO READERS

The following questions and comments are a result of internet based research of the Lists of issues and Concluding Observations posed by the Committee on Economic, Social and Cultural Rights to States parties between May 2000 and May 2008.

Sources used:

OHCHR, *Committee on Economic, Social and Cultural Rights – Sessions*,
<<http://www2.ohchr.org/english/bodies/cescr/sessions.htm>>

OHCHR Treaty Body Database, *CESCR – Committee on Economic, Social and Cultural Rights*,
<<http://www.unhcr.ch/tbs/doc.nsf>> [sections used: Concluding Observations/Comments and List of Issues]

We have also referred to:

Robert Howse and Ruti Teitel, *Beyond the Divide: The Covenant on Economic, Social and Cultural Rights and the World Trade Organization*, Geneva: Friedrich-Ebert-Stiftung, 2007,
<<http://library.fes.de/pdf-files/iez/global/04572.pdf>>

Lucie Lamarche, 'The Right to Social Security in the International Covenant on Economic, Social and Cultural Rights,' in Audrey Chapman and Sage Russell (eds.), *Core Obligations: Building a Framework for Economic, Social and Cultural Rights*, Antwerp: Intersentia, 2002.

Stephen A. Hansen, 'The Right to Take Part in Cultural Life: Toward Defining Minimum Core Obligations Related to Article 15(1)(a) of the International Covenant on Economic, Social and Cultural Rights,' in Audrey Chapman and Sage Russell (eds.), *Core Obligations: Building a Framework for Economic, Social and Cultural Rights*, Antwerp: Intersentia, 2002.

IBSA, *Right to Food Indicator Description*, <http://ibsa.uni-mannheim.de/5_-_Right_to_Food_Indicator_Description.pdf>

The Committee on Economic, Social and Cultural Rights is referred to throughout this document as 'the Committee.' The International Covenant on Economic, Social and Cultural Rights is referred to as 'the Covenant.'

The document is organized according to the List of issues framework generally used by the Committee, which in turn largely follows the Covenant.

In cases where the Committee has posed the same or similar questions in the past, examples are indicated in parentheses, for example, (c.f. List of issues Kenya 2007) or (c.f. List of issues Netherlands 2006, Concluding Observations Nepal 2001, Algeria 2001, Egypt 2000). In the latter example, only the Netherlands 2006 is taken from the List of issues; the other examples are taken from Concluding Observations. The examples given are not exhaustive.

GENERAL LEGAL FRAMEWORK WITHIN WHICH HUMAN RIGHTS ARE PROTECTED

There are numerous cases where the Committee has asked States parties to provide information on the measures taken to ensure public officials, law enforcement officers etc are aware of the provisions of the Covenant (c.f. List of issues UK 2008, Ireland 2001, Yugoslavia 2000). Such questions could usefully be supplemented with reference to trade and economic officials.

→ Please provide information regarding the measures taken to ensure that government officials responsible for economic and trade policy know about their State party's obligations under the Covenant.

→ Please provide information regarding the extent to which the various ministries of the government coordinate (to ensure, for example, that trade policy does not undermine health policy or that decisions in intellectual property offices do not undermine the policies of the education ministry).

PART I Article 1

THE RIGHT TO FREELY DISPOSE OF NATURAL WEALTH AND RESOURCES AND MEANS OF SUBSISTENCE

The Committee regularly asks States parties to provide information on measures taken to ensure that indigenous peoples, minorities, and peasants have guarantees with regard to:

- their traditional livelihoods and means of subsistence (including local methods of production, among them planning, harvesting, animal husbandry, and traditional market systems that provide the means to acquire and exchange food items in order to obtain a balanced diet)¹
- the use, control, and management of the environment and other natural resources
- the land they use and occupy, particularly for their subsistence
- participation in decision-making procedures that affect them (c.f. List of issues Bolivia 2007, Norway 2004, Colombia 2000).

Trade concerns could be included in requests for information on this matter.

→ Please provide information on the measures taken to ensure that indigenous peoples, minorities, and peasants have guarantees with regard to their traditional livelihoods, the use, control and management of the environment and other natural resources, the land they use and occupy, and participation in decision-making procedures that affect them, and that these guarantees are not undermined by trade, investment or economic policies.

See also:

- ❖ progressive realization of ESC rights, page 3 below
- ❖ non-discrimination, page 4 below
- ❖ the right to an adequate standard of living, page 6 below
- ❖ the right to participate in cultural life and benefit from the protection of moral and material interests, pages 8 and 9 below

PART II Article 2

PROGRESSIVE REALIZATION OF ESC RIGHTS

We believe that it would be useful for the Committee to always pose the following question, regarding the steps taken to ensure that economic, trade and development policies promote economic, social and cultural rights, as it has on past occasions:

¹ Stephen A. Hansen, 'The Right to Take Part in Cultural Life: Toward Defining Minimum Core Obligations Related to Article 15(1)(a) of the International Covenant on Economic, Social and Cultural Rights,' in Audrey Chapman and Sage Russell (eds.), *Core Obligations: Building a Framework for Economic, Social and Cultural Rights*, Antwerp: Intersentia, 2002.

→ Please indicate the extent to which the Covenant is incorporated in the State party's economic policies and practices on economic development and to what extent the Covenant is taken into consideration in the State party's bilateral and multilateral trade policies and investment policy formulation (c.f. List of issues Belgium 2007, Costa Rica 2007, Germany 2000).

As often demonstrated by the Committee, this could also include specific mention of States parties' relations with international trade and financial institutions.

→ Please describe the steps the State party has taken, as a member of international financial organizations, in particular the International Monetary Fund, the World Bank, and the World Trade Organization, to ensure that the policies and decisions of those organizations are in conformity with the obligations of States parties to the Covenant (c.f. List of issues Netherlands 2006, Concluding Observations Nepal 2001, Algeria 2001, Egypt 2000).

The Committee has, on several occasions in the past, asked a State party to provide information regarding its actions prior to, during, and after trade negotiations. Such questions could usefully be systematically applied whenever a State party is negotiating or implementing a trade agreement, or changing its economic and development policies.

If a State party is currently negotiating a trade or investment agreement

→ Describe the steps taken by the State party to assess the impacts, particularly on vulnerable groups, of the trade agreement(s) that is currently being negotiated. Please indicate whether human rights impact assessments are conducted as part of the preparations for such negotiations (c.f. List of issues Kenya 2007, Concluding Observations Costa Rica 2007).

→ What steps have been taken to ensure that all those potentially affected by [name of trade agreement or economic policy] have been consulted and given the opportunity to participate in the process of formulating domestic negotiating positions (c.f. List of issues Kenya 2007)? If indigenous or local communities stand to be affected by the trade or economic policy, has ILO Convention 169 been upheld (c.f. Concluding Observations Mexico 2006)?

See also:

- ❖ the right to freely dispose of natural wealth and resources and means of subsistence, page 2 above

During and after the implementation period

→ Please provide information on the specific policy strategies (legal mechanisms, safeguards, social safety nets etc) in place to address the possible negative impacts of trade and economic policies and ensure the fulfilment of the economic, social, and cultural rights of the most disadvantaged and marginalized individuals and groups (c.f. List of issues Angola 2008, Canada 2005, Concluding Observations Czech Republic 2002).

→ Describe the steps taken to ensure consistency of the amended or new legislation resulting from [name of trade agreement] with the Covenant.

What are the impacts of trade agreements and economic policies?

→ Please provide information on the impact of [name of bilateral or multilateral trade agreement or investment agreement] on the enjoyment of the rights recognized in the Covenant in the State party (c.f. List of issues Canada 2006, Mexico 2006).

International cooperation

The Committee has previously raised questions designed to ensure that rich States parties take the human rights impacts of their trade and economic policies into account. Such questions could be asked to *all* States parties of adequate means.

→ Please provide information on the ways the development cooperation and trade policies of the State party contribute to the realization of economic, social and cultural rights in developing countries (c.f. List of issues Sweden 2007, San Marino 2007).

Assistance from UN bodies

The Committee has, in its Concluding Observations, often recommended that States parties seek assistance from the OHCHR and other UN specialized agencies for the purposes of developing policies that promote economic, social and cultural rights, in compliance with States parties' international legal obligations under the Covenant (c.f. Concluding Observations Venezuela 2001, Togo 2001, Morocco 2000, Congo 2000). This assistance is particularly relevant with regards to trade agreements.

→ Has the State party sought technical assistance from the OHCHR relating to its capacity to participate in trade negotiations, or implement its trade commitments and economic policies in a way that is consistent with human rights?

Factors that impede progressive realization

In its Concluding Observations, the Committee has often noted the adverse effects of structural adjustment programmes, foreign debt levels, and lack of diversification of an economy on the enjoyment of the rights enshrined in the Covenant (c.f. Concluding Observations Ecuador 2004, Brazil 2003, Czech Republic 2002, Algeria 2001, Nepal 2001, etc).

→ No such recognition has been made regarding the adverse effects posed by bilateral and multilateral trade agreements.

NON-DISCRIMINATION

The Committee often notes that a particular group of people (e.g. the rural population or the Saami) continue to have markedly lower access to, *inter alia*, stable employment, land, adequate education, health care or housing and requests the State party to indicate the measures being envisaged and implemented to eliminate this inequality (c.f. List of issues Morocco 2000).

→ What steps have been taken to ensure that the State party's trade, intellectual property and/or economic policies do not undermine the access of [name of particular group of people, e.g. the rural population or the Saami] to the rights enshrined in the Covenant?

See also:

- ❖ the right to freely dispose of natural wealth and resources and means of subsistence, page 2 above
- ❖ equal rights of men and women, page 4 below

Article 3

EQUAL RIGHTS OF MEN AND WOMEN

The Committee often notes that certain groups of women (e.g. rural women) continue to have markedly lower access to, *inter alia*, stable employment, land, adequate education, health care and housing and requests the State party to indicate the measures being envisaged and implemented to eliminate this inequality (c.f. List of issues Morocco 2000).

If it is rural women that have markedly lower access to certain goods and services:

→ What is the State party doing to ensure that this discrimination is being progressively eliminated and that these measures are compatible with its trade and economic policies?

→ What steps has the State party taken to ensure that rural women are not disproportionately affected by trade and trade-related policies (including intellectual property policies), particularly as they affect agriculture?

See also:

- ❖ non-discrimination, page 4 above

PART III Article 6

RIGHT TO WORK

The Committee has raised issues relating to the effect of trade agreements and liberalization on employment (c.f. List of issues El Salvador 2005, Czech Republic 2001). This issue could be raised more systematically:

- What steps have been taken to assess and estimate *ex ante* the possible negative employment impacts of a trade or investment agreement or economic policy?²
- What mechanisms have been put in place to ensure that the right to work is protected in the face of a trade agreement, especially when the effects have not been predicted or predictable through *ex ante* assessment?³
- Please provide additional information on the creation of new jobs and on the extent to which the unemployment and real underemployment rates have been reduced, especially within the framework of the free trade agreements (c.f. List of issues El Salvador 2005).

Agricultural Concerns

The Committee might seek to ensure that the questions about the right to work that it asks States parties with significant rural populations are tailored towards the rural population, who are often particularly negatively affected by trade agreements.

- Please report on the measures adopted on behalf of agricultural workers, especially within the framework of trade agreements (c.f. List of issues El Salvador 2005, Colombia 2000).
 - If agricultural sector liberalization is carried out, what measures are taken to ensure that former agricultural workers can find remunerative employment in other sectors?
- See also:

- ❖ the right to an adequate standard of living, page 6 below

Article 7

RIGHT TO JUST AND FAVOURABLE CONDITIONS OF WORK

As stipulated by the Committee's reporting guidelines, States parties should provide information regarding any zones where minimum conditions of occupational health and safety do not apply. Special economic zones and export processing zones are intimately linked to a State party's trade and foreign investment policy.

- Please describe working conditions in Export Processing Zones (EPZs) in the State party. Please provide information on steps taken to address poor working conditions, such as excessive working hours and low minimum wages, in the EPZs or in any export-oriented industry where special rules permitting lower standards apply [such as the Kenyan horticulture industry]. What steps have been taken to extend the application of occupational health and safety regulations and collective bargaining agreements to the EPZ, as well as to ensure respect for trade union freedom in them (c.f. List of issues Kenya 2007, Ukraine 2000)?

Article 9

RIGHT TO SOCIAL SECURITY

The Committee has often raised concerns about the discriminatory effects of social security systems with regard to numerous social groups, including agricultural workers, women and the self-employed (c.f. List of issues Chile 2003, Concluding Observations Yemen 2003, Guatemala 2003). In addition, the Committee sometimes asks a State party to detail its efforts to protect the right to social security in the case of privatization (c.f. List of issues Chile 2003).

If a State Party is negotiating a trade agreement or has indicated plans that will result in the liberalization of its service sector:

- What measures have been taken to assess the impact of the liberalization of social security regimes on the poorest and most vulnerable segments of society, including [as appropriate] informal, part time and short term workers, the self-employed, rural sector workers, young people, women, and members of a certain class or ethnicity?

² Robert Howse and Ruti Teitel, *Beyond the Divide: The Covenant on Economic, Social and Cultural Rights and the World Trade Organization*, Geneva: Friedrich-Ebert-Stiftung, 2007, <<http://library.fes.de/pdf-files/iez/global/04572.pdf>>

³ *Ibid.*

Monitoring social security regimes:

→ What measures are taken to monitor the effectiveness of strategies aimed at protecting persons, particularly the poorest and most vulnerable, against social risks?⁴ In what ways do trade and economic policies affect the efficiency of these strategies?

Monitoring is particularly important in States parties where social security systems are partially or totally privatized.

→ What mechanisms has the State party put in place to monitor *all* social security service providers?⁵

Article 11

RIGHT TO AN ADEQUATE STANDARD OF LIVING

Following its reporting guidelines, the Committee often asks States parties to provide disaggregated data on poverty (c.f. List of Issues Ukraine 2007) and outline their poverty reduction strategies, particularly those targeted at the most vulnerable sections of the population (c.f. List of Issues Moldova 2001, Bolivia 2000). These questions could usefully be supplemented with others relating to trade and economic policies.

If a State Party is negotiating a trade agreement

→ What measures have been taken to assess the impact of the [name of draft agreement] on living standards, particularly on the living standards of the poorest and most vulnerable people within the State party?

See also:

- ❖ the right to work, page 5 above

If a State Party is currently implementing a trade agreement

→ What policies are in place to guarantee an adequate standard of living – including through the provision of social safety nets for the most disadvantaged and marginalized groups – for those hardest hit by changes brought about through [name of trade agreement] (c.f. Concluding Observations Zambia 2005, Jamaica 2001)?

Long term: what are the effects of trade policy on living standards?

→ Please provide figures to indicate whether government revenue from trade tariffs has decreased, increased or stayed the same over the last fifteen years.

If government tariff revenues have decreased:

→ Are poverty reduction measures or other social measures affected?

Agricultural Livelihoods

Given that States parties often report that poverty is particularly prevalent in rural areas, and particularly endemic in countries with significant rural populations, the Committee might want to pay particular attention to the impact of trade-related rules on agricultural livelihoods.

→ What steps have been taken to ensure that trade and economic policies do not undermine small farmers' ability to make an adequate standard of living for themselves and their family (c.f. Concluding Observations India 2008, Jamaica 2001, Senegal 2001)?

See also:

- ❖ the right to freely dispose of natural wealth and resources and means of subsistence, page 2 above
- ❖ the right to work, page 5 above

⁴ Lucie Lamarche, 'The Right to Social Security in the International Covenant on Economic, Social and Cultural Rights,' in Audrey Chapman and Sage Russell (eds.), *Core Obligations: Building a Framework for Economic, Social and Cultural Rights*, Antwerp: Intersentia, 2002.

⁵ *Ibid.*

Depending on the specific context in the State party under review, questions could relate to the ability of farmers to:

- gain a fair price for their products on local and domestic markets
- exchange and re-use seeds
- access land
- access credit and other financial extension services
- benefit from increased investment in rural infrastructure
- benefit from social insurances

RIGHT TO FOOD

The Committee often asks States parties to outline measures taken to ensure food security for all populations, including poor, urban and rural communities (c.f. List of issues Angola 2008, Zambia 2003, Ecuador 2003). The Committee has also occasionally requested States parties to provide explicit information regarding the interaction between the right to food and trade policy (c.f. List of issues El Salvador 2005). It would be very helpful to make the linkage between trade and the right to food systematically.⁶

→ What steps have been taken to ensure that economic and trade policy is compatible with the fulfilment of the right to food of every person, including the poorest and most vulnerable?

Intellectual Property Laws

→ Describe any recent or planned changes in the State party's intellectual property laws that could have the result of prohibiting or limiting farmers' ability to exchange or re-use seeds (c.f. Concluding Observations India 2008).

Cropping Practices

→ Please provide data regarding the effect of the expansion of monoculture farming and agro-export sectors (including biofuels and GM crops) on traditional food sources and the right to food of small and medium sized farmers, as well as poor and vulnerable groups throughout the State party (c.f. Concluding Observations Bolivia 2008, Paraguay 2007).

Food Shortages

In its General Comment on the right to adequate food, the Committee has stated that "Food aid should, as far as possible, be provided in ways which do not adversely affect local producers and local markets, and should be organized in ways that facilitate the return to food self-reliance of the beneficiaries."

→ In times of food shortages, what measures are taken to ensure that food aid is donated in such a way to ensure that it does not create dependency and helps to promote food security in the long-term?⁷

RIGHT TO SERVICES ESSENTIAL FOR AN ADEQUATE STANDARD OF LIVING

The Committee has often raised questions regarding the effect of the privatization of water services on the right to adequate water, particularly for the poorest segments of the population (c.f. List of issues Kenya 2007, Morocco 2006, Benin 2002, Concluding Observations Nepal 2001) as well as occasionally the impact of trade agreements on the enjoyment of the right to water (c.f. List of issues Canada 2006). These concerns are relevant for all essential services.

→ Please describe steps taken by the State party to ensure that the impact of privatization and liberalization of services affecting the right to an adequate standard of living (for instance, water services and sanitation services) does not result in retrogression of the rights enshrined in the Covenant, particularly for the most vulnerable sectors of the population.

⁶ Depending on the specific context in the State party under review, useful links could be made with IBSA, *Right to Food Indicator Description*, <http://ibsa.uni-mannheim.de/5_-_Right_to_Food_Indicator_Description.pdf>

⁷ Similar questions could be posed to both providers and recipients of provide food aid.

Article 12

RIGHT TO HEALTH

Medicines

The Committee has regularly noted the potential negative impacts of trade-related intellectual property rules on access to medicines and medical supplies and thus on the right to health (c.f. Concluding Observations Costa Rica 2007, Morocco 2006, Ecuador 2004). In addition, the Committee has explicitly called on States parties to make extensive use of the flexibility clauses permitted in the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) in order to ensure access to lower-cost medicines and more broadly the enjoyment of the right to health for everyone (c.f. Concluding Observations Chile 2004, Ecuador 2004).

→ What steps have been taken to ensure that trade-related intellectual property rules do not undermine the State party's ability to ensure access to affordable medicines for the population?

Health Services

The Committee has often asked States parties to provide information regarding the effects of privatization of health services on the right to health (c.f. List of issues Albania 2005, Canada 2005, Australia 2000). These services are particularly vulnerable to liberalization as a result of a trade agreement.

→ Please provide information regarding any privatization or liberalization of services – including health services and financial services that affect health insurance – on the ability of the State party to provide adequate and affordable health care.

Agro-health

The Committee has twice raised concerns about the negative health and environmental consequences of the use of agro-chemicals (c.f. Concluding Observations Paraguay 2007, Honduras 2001).

→ Please provide data regarding the use of agro-chemicals in the State party and any resulting effects on human and environmental health.

Article 13

RIGHT TO EDUCATION

Given that copyright laws are becoming increasingly stringent and can prevent publication and translation of educational materials, it would be useful if the Committee raised questions about copyright and other intellectual property laws that may threaten the right to education.

→ What steps have been taken to ensure that copyright and other intellectual property laws within the State party promote access to educational materials, including in all minority languages?

See also:

- ❖ the right to participate in cultural life and benefit from the protection of moral and material interests, page 9 below

Article 15

RIGHT TO PARTICIPATE IN CULTURAL LIFE AND BENEFIT FROM THE PROTECTION OF MORAL AND MATERIAL INTERESTS

The Committee has often called on States parties to a) promote the collective rights of indigenous groups to, *inter alia*, their traditional knowledge, folklore, scientific, literary and artistic inventions, traditional medicine, and ancestral lands and b) prevent the unauthorized use of the above (c.f. List of issues Australia 2008, Canada 2006, Azerbaijan 2004, Concluding Observations Bolivia 2008, Mexico 2006). These issues could be raised with the majority of States parties.

Additional questions could explicitly mention the right to participate in cultural life.

→ Given the importance of land, natural resources, traditional practices (including seed exchange), folklore and traditional knowledge to many cultures, what steps are taken, legislative or otherwise, to ensure that trade agreements and intellectual property laws do not undermine the right to take part in cultural life?

See also:

- ❖ the right to freely dispose of natural wealth and resources and means of subsistence, page 2 above

Regarding the right to participate in cultural life, the Committee regularly asks States parties to describe the measures taken to ensure the promotion and protection of minority languages, including in schools, certain public authorities, and official documents (c.f. List of issues Kosovo 2008, Sweden 2007). Questions are also often posed regarding steps taken to promote cultural heritage, history, culture, language, traditions etc (c.f. List of issues Kenya 2007, Benin 2001, Nepal 2000).

→ Please provide information about the measures taken to ensure that copyright and other intellectual property laws promote and protect linguistic and cultural heritage.

See also:

- ❖ the right to education, page 8 above