Draft General Comment on Economic, Social and Cultural Rights and the Environmental Dimension of Sustainable Development

Contribution by the Republic of Austria

Austria thanks for the opportunity to submit written contributions on the Committee's Draft General Comment (GC) on Economic, Social and Cultural Right and the Environmental Dimension of Sustainable Development, and would like to provide the following comments:

In general, Austria welcomes the Committee's objective of **clarifying the scope of existing rights of rights-holders and obligations** of states derived from the CESCR with regard to the environmental dimension of sustainable development. Furthermore, the Committee's **increased attention to environmental protection and environmental impact and its emphasis on the precautionary principle** within the framework of the CESCR is very timely.

Austria would also like to support the GC's emphasis on the future and on future generations: "A key challenge is how to ensure the progressive and full realization of Covenant rights **now and in the future** without exacerbating the planetary environmental threats to the enjoyment of those rights." **(para. 6; also paras 91 et sqq; see i.a. also paras 14, 18, 26, 58, 65, 78). We would suggest to include a reference to the recently adopted UN Declaration on Future Generations in this regard.**

Austria welcomes the Draft GC's **explicit references to the 2030 Agenda and its Sustainable Development Goals (SDGs)** – in particular the partnership principle (SDG 17); Austria would support even more interlinkages between the Draft GC and the 2030 Agenda and the SDGs. On this occasion, Austria would also like to endorse the standing practice of the Committee to regularly refer to the 2030 Agenda in its work.

Austria also supports the proposed interpretations with regard to **occupational safety and health (OSH)** (esp. paras 51 sq.) and regarding **active labour market policy** (esp. paras 48-50).

However, Austria also observes that the GC formulates rather far-reaching obligations of states, often formulated in (too) broad and general terms. More specifically, it often remains unclear which *specific* obligations are meant and what consequences they entail, e.g.:

- Para. 22 regarding the use of natural resources: economic concerns are mixed with environmental concerns, issues of participation and responsibility
- Para. 39 regarding the formulation of regulatory obligations on States.

Austria would also like to underline that the Draft GCs objective – to *clarify existing state obligations stemming from the CESCR* – seems to be overstepped in at least two instances:

- Several paras of the Draft GC (paras 3, 15, 29) state that compliance with obligations is subject to the "**principle of common but differentiated responsibilities, and respective capabilities, CBDR-RC**". Austria considers this statement as highly problematic: for one thing, there are no differentiated state obligations stipulated in the CESCR itself, and secondly, CBDR-RC is **not a universal or consistent principle of international environmental agreements**. Interpreting the obligations stipulated by the CESCR (dating from 1966) with reference to the Rio Declaration (dating from 1992) is not the proper approach. **All references to CBDR-RC should therefore be deleted from the text without replacement.** As an alternative, references to the (joint) long-term goals of Article 2.1 of the Paris Agreement are proposed.
- Several paras of the Draft GC (e.g. para. 5) states a **"historical" responsibility** of so-called "high income states". Even though it is true that a large part of environmental pollution in past decades can be attributed to industrialized countries, this statement is factually incorrect in 2024. Looking *exclusively* at historical developments ignores current and future developments. These references should be deleted. As an alternative, references to the current and future responsibility of all states, especially large economies, are proposed.

Paras 33 et sq. on extraterritorial obligations and business entities:

- Para. 37: The first sentence requires reformulation/clarification in order to be unequivocal, e.g.: *"States have the national and extraterritorial obligation to protect ~~related to business entities~~ with regards to activities of business entities [...]".*
- Para. 37 provides for **extraterritorial obligation** of states **to protect** the rights stipulated in the CESCR. However, it remains unclear what this obligation entails and how interference into the sovereignty of other states is to be dealt with. Furthermore it seems unclear, *which actions* states must implement with extraterritorial effect, e.g. are states obliged to implement supply chain laws in relation to companies on its territory? Does the obligation of states to hold business entities accountable for damage they cause to Covenant rights and to the environment (para. 39) also have extraterritorial effect? Austria would suggest including a reference to the UN Guiding Principles on Business and Human Rights or to the OECD Guidelines for Multinational Enterprises, which pursue an internationally recognized approach to human rights and environmental due diligence.

In principle, **Chapter VI on remedies and accountability** is supported – Austria is a strong supporter of the rule of law and of accountability for human rights violations. Nevertheless, Austria considers **some formulations under this Chapter as too general and too far-**

reaching, e.g. the formulation to "*ensure public access to remedies in environmental cases including restitution, compensation, and guarantees of non-repetition*" in para. 95; this wording raises too high – and unachievable – expectations.

Also, the Committee should strive to ensure a moderate, balanced structure and ensure consideration of firmly established and highly valuable principles, such as fair trial, mutual right to be heard, equality of arms.

On **para. 94** *("These [remedies] should be available, effective, and expeditious, particularly for disadvantaged and marginalised individuals and groups, [...]"),* Austria submits that the principle of equality requires the Austrian judiciary to treat all people equally – regardless of age, gender, ethnicity, religion and other criteria. Austria therefore suggests reformulating or deleting the underlined passage, in order to clearly highlight the principle of equal access to legal remedies for all.

Gender mainstreaming: Austria welcomes paras 44, 45 regarding equal rights for men and women. Gender equality in all policy areas is a prerequisite for sustainable development. In pursuing sustainable development and substantive equality, states must ensure that women have access to or control over equal resources. **Gender should therefore be mainstreamed** beyond paras 44-47, e.g. in the following paras:

48. In implementing policies to address the PEC, including reducing reliance on fossil fuels, States must ensure the right to work, **while taking a gender perspective into account.**

55. For example, **women**, older persons and persons with disabilities often require additional social support to recover from climate-related disasters.

59. For example, environmental crises are multiplying the drivers of child marriage and related violence, **which particularly affect women and girls.**

69. States should formulate and implement national policies and laws aimed at preventing, reducing, and eliminating pollution of air, water, and soil, including pollution by heavy metals such as lead from gasoline. **A gender perspective needs to be taken into account at all stages of policy making, project programming and in all mitigation and adaption actions.**

71. In the case of transboundary health hazards, such as pandemics, the use of pesticides, herbicides and other chemicals or the impacts of climate change, international assistance and cooperation is critical for the right to health. **The systematic inclusion of a gender perspective in research**

on the effects of climate change and environmental risks on health is crucial.

Further comments on specific paras:

Para. 3: “The full realization of the *Covenant requires States to protect economic, social, and cultural rights ESCRs)* from the harm…” requires reformulation; States are not required to protect these “rights” as such from harm, but to protect the rights of individuals against harm.