

Bangkok Declaration on Extraterritorial Human Rights Obligations

The Roundtable on Extraterritorial Human Rights Obligations of States, held in Bangkok on 10 and 11 October 2014, brought together representatives of National Human Rights Institutions (NHRIs) from the Philippines, Indonesia, Malaysia and Thailand, observers from the Government of the Republic of the Philippines and the Government of the Republic of Indonesia, a representative of the ASEAN Commission on Women and Children, and civil society from the region. The UN Independent Expert on Human Rights and International Solidarity, a member of the UN Committee on Economic, Social and Cultural Rights, and a member of the UN Committee on Elimination of all Forms of Discrimination against Women were also present in their personal capacity as resource persons. The Roundtable aimed to strengthen the implementation of extraterritorial human rights obligations, and was convened by the Asia Pacific Forum on Women, Law and Development (APWLD).

We recognise the urgency of advancing the implementation of extraterritorial obligations (ETOs) given the accelerating pace of trade, investment, and broader economic integration between States in south-east Asia; the impending creation of the ASEAN Economic Community; increasing levels of migration and human trafficking in the region; and an increasing amount of cross-border economic, political, social, and military activity in the region and globally.

We note that the adoption by States next year of a new global development agenda presents an important opportunity to affirm the extraterritorial obligations of States and the need to consistently implement those obligations.

We therefore welcome the progress being made at regional and international levels concerning ETOs, including through the recent relevant steps taken by the UN Human Rights Council towards the elaboration of a legally binding instrument to regulate the activities of transnational corporations and business enterprises.

We emphasise that ETOs are not a new or novel development in international law; they are a fulfilment of the original promise of human rights and a critical expression of solidarity between states in the region and globally.

We therefore welcome the expert restatement of human rights law on ETOs in the 2011 Maastricht Principles, which clarify the extraterritorial obligations of States on the basis of standing international law.

To fully realise the human rights obligations of States and to ensure that regional economic integration contributes to equitable and sustainable development, we make the following joint statement:

1. We call on States in south-east Asia that have not yet done so to ratify the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination against Women, and the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families, and their Optional Protocols where relevant.
2. We invite States to promote and participate in multi-stakeholder dialogue regarding the implementation of ETOs and States' human rights obligations, such as the Bangkok Roundtable on Extraterritorial Human Rights Obligations.

3. We welcome the role played by National Human Rights Institutions (NHRIs) in south-east Asia in advancing the implementation of ETOs.¹ We call on Singapore, Brunei Darussalam, Lao PDR, Vietnam, and Cambodia to establish independent NHRIs, and for the Myanmar National Human Rights Commission and Provedor de Direitos Humanos e Justica of Timor Leste to ensure that their mandate and functions are in accordance with the Paris Principles.
4. We encourage countries in south-east Asia that have established NHRIs to ensure that they have strong mandates to monitor and enforce all human rights, including economic, social and cultural rights, as well as adequate human and financial resources. This includes specialised NHRIs, such as institutions dedicated to the promotion of women's human rights.
5. We encourage all NHRIs to strengthen their work in relation to ETOs by adopting their own statements and integrating ETOs into their plans of action, including in collaboration with the Asia Pacific Forum on National Human Rights Institutions; the Commonwealth Forum of National Human Rights Institutions; and NHRIs from other sub-regions.
6. We encourage the South East Asia National Human Rights Institutions Forum to deepen its work on ETOs and to consider issuing a joint statement affirming the importance of the implementation of ETOs in south-east Asia.
7. We recognise the valuable contribution of civil society in south-east Asia to the promotion of the implementation of ETOs and call on governments and NHRIs to ensure an enabling environment for civil society groups to effectively and substantially participate in discussions concerning ETOs and human rights.
8. We call on NHRIs and civil society to share their knowledge of States' fulfilment of ETOs with UN treaty bodies in order to provide them with reliable information on the impact of ETOs on people's lives.

ETOs in the context of ASEAN

9. We welcome the impending reviews of the three pillars in ASEAN regional cooperation; the development of the ASEAN post-2015 Blueprint; the reviews of the ASEAN human rights bodies—namely the ASEAN Intergovernmental Commission on Human Rights and the ASEAN Commission on the Promotion and Protection of the Rights of Women and Children—and the development of a binding ASEAN instrument on the protection and promotion of the rights of migrant workers, which we hope will lead to greater attention to ETOs among ASEAN member States.
10. We also hope that the impending reviews of the ASEAN human rights bodies will ensure adequate material and human resources for those bodies to carry out their work effectively and efficiently.
11. We look forward to the results of the baseline thematic study on corporate social responsibility and human rights in ASEAN being undertaken by the ASEAN Intergovernmental Commission on Human Rights and hope that it will affirm the understanding that States may be responsible for human rights violations outside their borders, even in the absence of territorial control.

¹ In this regard, we commend the work of the National Human Rights Commission of Thailand in relation to the Xayaburi Dam in Laos and land concessions in Koh Kong Province and Oddar Meanchey Province in Cambodia.

UN Resolution on the elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights²

12. We welcome the support among governments in the region for the recent UN Human Rights Council Resolution on a legally binding instrument for transnational corporations and consider it to be a critical step towards strengthening corporate accountability for human rights violations and ensuring access to justice for victims.
13. We recognise that the coming year will be critical for determining the content, nature and form of the binding instrument, and that the input of communities affected by corporate activity and human rights defenders will be integral to the scope of the instrument.
14. We further recognise the key role of NHRIs in ensuring that the views of affected communities and human rights defenders are reflected in the deliberations of the open-ended Intergovernmental Working Group.

Human Rights Implications of Trade and Investment Agreements

15. We reaffirm the primacy of international human rights law among competing sources of international law, including the legal frameworks governing bilateral and multilateral trade and investment agreements, which continue to proliferate within south-east Asia.
16. We encourage governments and NHRIs to engage in ex ante and ex post human rights impact assessments of trade and investment agreements, including an assessment of the gendered impact of such agreements and the implications for women's human rights.³
17. We express our concern that the powerful dispute-settlement mechanisms that often enforce bilateral and multilateral trade and investment treaties, such as Investor-State Dispute Settlement, threaten to erode the enjoyment of human rights and undermine domestic policy space in signatory States.

International financial Institutions

18. We recognise that when a State participates in an international organisation, including an international financial institution, it must take all reasonable steps to ensure that the relevant organisation acts consistently with the international human rights obligations of the State.
19. We acknowledge the importance of this principle for the conduct of States contributing to the governance of emerging development finance institutions, including the Asian Infrastructure Investment Bank and the BRICS Development Bank.

The Right to International Solidarity

20. We reaffirm that a key dimension of ETOs is the right to international solidarity, which is a human right enjoyed by every person on the basis of equality and non-discrimination and a core value of a just political and economic order.
21. We welcome the Proposed Draft Declaration on the Right of Peoples and Individuals to International Solidarity⁴ as a significant step in the evolution of international solidarity into a concrete right.

² A/HRC/26/L.22/Rev.1

³ We commend the work of SUHAKAM, the Malaysian NHRI, in undertaking a human rights impact assessment of the Trans-Pacific Partnership Agreement.

International Assistance and Cooperation for the Fulfilment of Economic, Social and Cultural Rights

22. We further reaffirm that, as part of the broader obligation of international cooperation, States that are in a position to do so must provide international assistance to contribute to the fulfilment of economic, social, and cultural rights in other States.
23. We reiterate the concern recently expressed by the Group of 77 regarding the erosion of development cooperation and call for a renewed and strengthened global partnership between States as a cornerstone of a transformative, people-centred and sustainable post-2015 development agenda.

UN Treaty Bodies and Special Procedure Mandate Holders

24. We invite UN Treaty Bodies and Special Procedures to build on the advancement of ETOs by issuing a joint statement affirming the critical importance of ETOs for the establishment of a just and equitable international order.

Future role of APWLD

25. We recognise the role of the Asia Pacific Forum on Women, Law and Development in convening the Bangkok Roundtable on Rights-Based Governance Beyond Borders and invite it to build on its work promoting recognition of ETOs in the region. We encourage it to continue to develop its analysis of the implications for women of the failure to fulfil ETOs.

Endorsed by:

National Human Rights Commission of Thailand
Human Rights Commission of Malaysia (SUHAKAM)
Komnas HAM (National Commission on Human Rights Indonesia)
Commission on Human Rights (Philippines)
Komnas Perempuan (National Commission on Violence against Women Indonesia)

Asia Pacific Forum on Women, Law and Development
Ain o Salish Kendra (Bangladesh)
Beijing Zhongze Women's Legal Counseling and Service Centre
Community Resource Centre (Thailand)
IBON International
Indonesia's NGO Coalition for International Human Rights Advocacy
Solidaritas Perempuan (Indonesia)
Social Empowerment Education Programme (Fiji)
Tanggol Bayi-Karapatan (Philippines)
Women's League of Burma
Women's Watch China

Personal endorsements:

Virginia Brás Gomes (Portugal)
Virginia Dandan (Philippines)
Milena Pires (Timor-Leste)
Mai Nguyen (Vietnam)

⁴ Report of the International Expert on Human Rights and International Solidarity, Virginia Dandan, to the UN General Assembly, A/HRC/26/34.

Mikiko Otani (Japan)