



ETO CONSORTIUM NEWSLETTER

May 2014

Dear reader,

Here comes the fifth edition of our ETO Update.

Preparations for the Bangkok ETO Conference, August 31 to September 3, are in full swing. The conference will in fact comprise a series of conferences and workshops - an internal ETO Consortium Conference on Aug. 31 to Sept. 1, a public conference on "Rights-based governance beyond borders" on Sept. 2, and a CSO strategy workshop "ETOs at the frontline - challenges in South East Asia and internationally" on Sept. 3. The conference is convened by the Asia Pacific Forum on Women, Law and Development (APWLD), Chulalongkorn University, ETO Consortium, Focus on the Global South, and the Stockholm Environmental Institute.

The meetings will discuss our visions of rights-based governance beyond borders and how ETOs can and must be used in this context. The future structure of the international community of states and its institutions, and how these can be based on human rights as a basic element of international law, will equally be subject for discussion. This will be contextualized in the Asian and, in particular, ASEAN experience over the past decade and the visions developed in this part of the world. Up-to-date information on the Bangkok ETO Conference(s) can be found at www.etoconsortium.org. If you would like to participate in the conference, please contact secretariat@etoconsortium.org.

Enjoy the Newsletter.

Best regards from the ETO Consortium Secretariat.

May-16-2014

[Release of "Fourteen misconceptions about extraterritorial human rights obligations"](#)

After "Twelve reasons to strengthen extraterritorial human rights obligations", published in June 2013 (Spanish: October 2013), another basic booklet on ETOs was released in March 2014 (English and Spanish): "Fourteen misconceptions about extraterritorial human rights obligations". The author is Rolf Künemann, Human Rights Director of FIAN International. On 20 pages, the author formulated fourteen main misconceptions sometimes heard in discussions around ETOs.

The misconceptions relate to the links between ETOs, State sovereignty and jurisdiction, international order and chaos. Claims addressed in the booklet include that international human

rights instruments do not recognize ETOs, that ETOs are not well-defined, and that they are unwieldy and expensive. The booklet also explains that ETOs are not new but have been part and parcel of the human right concept from the very beginning - and this for good reasons.

Read 14 misconceptions in [English](#) and [Spanish](#) in our library

May-08-2014

[GLOTHRO Final Conference in Turku](#)

Cases about ETOs always involve several duty-holders in international human rights law: The foreign State(s) holding the ETOs and the domestic State with its territorial obligations towards the victims/ rights holders. The question how to attribute obligations and how to apportion responsibility in a given case is highly relevant for ETOs. The Maastricht Principles provide the framework for dealing with these questions, but further detail is necessary. GLOTHRO's final conference, held in Turku from March 27 to 29, made some progress in this area. GLOTHRO was a research project on "Globalisation and Transnational Human Rights Obligations". About one hundred participants - mostly academics and some CSOs - had come to Turku at the invitation of Abo Akademi, the host, and the University of Antwerp, the European University Institute, and European Science Foundation as co-conveners. In a series of panels and working groups the participants discussed how to advance towards common principles on multiple global actors in international human rights law, considered the human rights obligations of companies and of international financial institutions, investigated shared obligations, and further elaborated on ETOs.

There is good news for those readers who have been unable to participate in the Turku meeting: The group of organizers currently prepares the publication of a book covering the areas of the conference and containing some of the papers presented at the conference.

April-18-2014

[Human Rights Committee calls on the United States to acknowledge extraterritorial application of CCPR](#)

In its [Concluding Observations](#) on the fourth periodic report of the United States, the UN Human Rights Committee (HRC) expresses concern over the position maintained by the U.S. that its obligations under the International Covenant on Civil and Political Rights (ICCPR) do not apply with regard to persons living outside its territory. It calls on the State party to:

“Interpret the Covenant in good faith, in accordance with the ordinary meaning to be given to its terms in their context, including subsequent practice, and in the light of the object and purpose of the Covenant, and review its legal position so as to acknowledge the extraterritorial application of the Covenant under certain circumstances, as outlined, inter alia, in the Committee’s general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the Covenant;”

Already during its [constructive dialogue](#) with State party delegates, the Committee considered the United States’ unilateral interpretation of the Covenant’s extraterritorial applicability highly

problematic and found it “worrying that the United States presented such an example to the international community.” It stressed that the Covenant clearly required the protection of rights of all persons under a State's jurisdiction and that the U.S. had not made any reservations with regard to its territorial application at the time of ratification.

Read the HRC's Concluding Observations in our [library](#)

A summary of the dialogue with State party delegates can be found [here](#)

Read the Parallel Report on ETOs submitted by the Global Initiative for Economic, Social and Cultural Rights in our [library](#)

March-31-2014

[HRC side event on a binding treaty for TNCs](#)

On March 11 and 12, the Permanent Missions of Ecuador and South Africa held a workshop on Human Rights and TNCs that brought together government representatives, CSOs and experts to discuss opportunities for the negotiation of legally-binding norms for TNCs. The workshop follows the initiative for a binding instrument on human rights and transnational corporations (TNCs) called for by a group of CSOs at the first regional meeting of the UN Working Group on Business and Human Rights (August 2013, Medellin) and at the People's Forum (October 2013, Bangkok) and referred to in a statement read by Ecuador during the Human Rights Council session in September 2013, which was supported by 85 States and 200 CSOs.

During the workshop, the proposal for a binding instrument on TNCs and human rights was supported by the delegations of Ecuador, South Africa, Bolivia, Cuba, and Chile as well as by the majority of panelists, mainly based on the ineffectiveness of self-regulation and voluntary approaches in guaranteeing human rights accountability of TNCs. The insufficiency of existing standards was highlighted in particular with regard to two crucial aspects: ensuring effective remedies and complaint mechanisms to victims of human rights abuses and balancing asymmetries in the rights and obligations of States and companies. It was emphasized that the adoption of a hard-law instrument, coupled with the establishment of strong and appropriate enforcement mechanisms, would strengthen States' obligation to protect human rights at the same time as recognizing companies' responsibility for human rights abuses.

The importance of including ETOs in the treaty was highlighted by various interventions, with their recognition being considered fundamental for tackling power imbalances between home and host States, and ensuring access to justice for victims of corporate-related human rights abuses.

Statements made by CSOs supporting the treaty focused on:

- [The obligation of States to cooperate internationally to implement human rights and corresponding need to regulate TNCs through international cooperation \(FIAN International\)](#)
- [Impunity for violations committed by TNCs and existing asymmetries between soft law protecting human rights and hard law protecting companies' interests and investments \(CETIM\)](#)

- [Recourse to justice and redress mechanisms for affected communities and TNCs privileges arising from bilateral investment treaties, international trade and investment arbitration panels \(FoEI\)](#)
- [The importance of an intergovernmental process for the elaboration of new international standards, protection of the full range of human rights, and ETOs of States \(ESCR-Net\)](#)

Opposition to the Treaty was expressed by the delegations of the UK, Ireland and European Union, which proposed to concentrate efforts on the implementation of the UN Guiding Principles on Business and Human Rights instead of transferring resources towards a new negotiation processes. Finally, a cautious approach was adopted by the delegation of Ethiopia, which emphasized the need to discuss the Treaty initiative taking into account the right to development and the context of developing countries that need to promote and attract foreign investment.

More detailed information on the workshop and the general context of the Treaty initiative can be found at the [Business and Human Rights Resource Centre](#)

Some of the interventions from the panelists and written comments have been published on the same website:

- [Carlos Lopez, ICI](#)
- [Michael Addo, Working Group on Business and Human Rights](#)
- [FIDH](#)

March-28-2014

[New book by Amnesty International examines challenges in securing effective remedy in cases of human rights abuses by multinational companies](#)

A newly published book by Amnesty International “Injustice incorporated: corporate abuses and the human right to remedy” explores the challenges related to accessing justice in cases where multinational companies have committed or aided human rights abuses and violations. Based on the lived experiences of victims of such human rights abuses in four emblematic cases, the book illustrates how corporate political and financial power is used to create or exacerbate legal obstacles, evade accountability and deny or limit remedy. In all of the cases, States instead of protecting the victims have colluded with the corporations responsible for the abuses.

The book advocates for a more radical approach to counter corporate abuses of human rights, arguing that in the light of immense power disparities between multinational companies and victims, legal reforms will not be sufficient to guarantee the right to remedy. Instead these need to be complemented by measures to reduce undue corporate influence on the State and ensure that any legitimate influence is open for public review. Moreover, it challenges certain legal protections afforded to corporations, such as the concepts of separate legal personality and limited liability, and argues that these must be counter-balanced to protect the human rights, for example, by placing parent companies under a legal obligation to undertake due diligence with regard to their global operations.

The book looks at both the obligations of home and host States to protect from and ensure effective remedy in cases of corporate human rights abuses. A particular focus is placed on the legal challenges faced by victims trying to hold multinational corporations accountable through extraterritorial action, and a number of reforms are proposed in this regard.

Read the book in our [library](#)

March-28-2014

[Briefing paper by FIDH calls on the international community to improve standards and ensure redress for corporate human rights abuses](#)

A briefing paper recently released by FIDH entitled “Business and human rights: enhancing standards and ensuring redress” calls on the international community to take measures at national, regional and international levels to improve standards and provide for effective redress mechanisms for corporate-related human rights abuses. Based on five case studies on the human rights impact of corporate activities in Cambodia, Brazil, Libya, the Democratic Republic of Congo and the Occupied Palestinian Territory the paper points to significant protection gaps in the UN Guiding Principles on Business and Human Rights (UNGPs) as well as problems of implementation.

Among the major shortcomings identified are the voluntary nature and diverging interpretations of the UNGPs, the lack of clear guidance on legislative and policy measures States should take, as well as obstacles to accessing remedies for human rights abuses caused by corporations, in particular in cases with an extraterritorial dimension.

FIDH calls on the UN Human Rights Council to move beyond the UNGPs and establish an open-ended intergovernmental working group to explore options for improving standards and ensuring access to effective redress mechanisms. The strengthening of the international normative framework should go hand in hand with that of national and regional frameworks - all of which are essential for ensuring States’ compliance with their extraterritorial obligations.

Read the briefing paper in our [library](#)

March-21-2014

[Feminist Declaration for Post 2015 calls for human rights-based development model](#)

The Feminist Declaration for Post 2015, which is the result of the drafting work of more than 60 women’s, young people’s, indigenous, LGBTI and human rights networks and has been endorsed by over 340 international, regional and national organizations in 143 countries, demands a paradigm transformation from the current neoliberal, extractivist and exclusive development model that perpetuates inequalities of wealth, power and resources between countries, within countries and between men and women.”With this Declaration, the drafters and signatories demand that any sustainable development framework Post 2015 be firmly rooted in human rights principles and state obligations, including extraterritorial state obligations. Specifically, the Declaration calls for a stand-alone goal to achieve gender equality, women’s empowerment

and the full realization of women's human rights and makes specific recommendations in regards to goals around education, health, economic justice, ecological justice, and governance and accountability.

Read the full declaration in our [library](#)

February-04-2014

[ETO Consortium MENA Focal Group Meeting in Beirut](#)

On January 30 and 31, the ETO Consortium held its first MENA focal group meeting in Beirut, Lebanon. Hosted jointly by the Arab NGO Network for Development (ANND) and the ETO Consortium Secretariat, the workshop brought together representatives from civil society organizations as well as academics from Bahrain, Egypt, Iraq, Jordan, Lebanon, Morocco, Sudan, and Tunisia to discuss the relevance of ETOs for the Arab region and to develop an initial strategy for applying and mainstreaming ETOs in the region.

During the first session, participants presented various case studies with ETO dimension from their respective countries. Cases touched upon a diverse range of issues, including trade and investment agreements, TNCs, and intergovernmental organizations, including IFIs. Trade and investment issues, in particular the question of how to ensure compliance with human rights in policies related to foreign (direct) investment, were discussed in detail. The relevance of this topic for the region was evident. Other major issues were TNCs, corruption and ETOs related to the Occupied Palestinian Territories.

Following an introduction to the Maastricht Principles and the ETO Consortium, representatives from Habitat International Coalition (HIC), an active ETOC member, presented an ETO analysis of cases from the region, focusing on conflict and occupation, illustrating the usefulness of ETOs as an analytical and advocacy tool. The final session opened the floor for a discussion on possible avenues for promoting ETOs in the region, the establishment of a broader ETO network in the Arab countries and the use of various regional platforms in the coming 12 months. Participants will reach out to other organizations and academics in the MENA region that could be interested in joining the regional focal group on ETOs and apply ETOs in their work.

February-03-2014

[US Congress takes step towards operationalizing human rights accountability of International Financial Institutions](#)

The US House of Representatives has taken a first step towards holding International Financial Institutions (IFIs) effectively controlled by the US accountable for human rights violations. The Consolidated Appropriations Act, 2014, approved on January 13, requires United States executive directors of IFIs to "seek to ensure that each such institution responds to the findings and recommendations of its accountability mechanisms by providing just compensation or other appropriate redress to individuals and communities that suffer violations of human rights, including forced displacement, resulting from any loan, grant, strategy or policy of such institution."

The act also contains specific provisions on reparations for communities affected by IFIs-supported projects in Cambodia, Guatemala and Ethiopia. The United States executive director of the World Bank is required to report on a regular basis on measures taken to provide redress for the Boeung Kak Lake families in Cambodia, who have become vulnerable to eviction because of a World-Bank supported land titling project denying them adjudication of their land rights. Similarly, the U.S. directors of the World Bank and the Inter-American Development Bank are mandated by the Act to report on the implementation of the 2010 reparations plan for damages suffered by Rio Negro communities in Guatemala, who were forcibly evicted through a series of massacres in the early 1980s to give way for the construction of the Chixoy Hydroelectric Dam.

While still weak in terms of scope and language, the Act is an important step towards the implementation of the USA's extraterritorial human rights obligations in the context of IFIs.

Read the [Consolidated Appropriations Act, 2014](#)

January-21-2014

[Special Rapporteur on the HR to safe drinking water and sanitation emphasizes the importance of ETOs in managing wastewater and in controlling pollution](#)

In her annual report 2013 -Wastewater management in the realization of the rights to water and sanitation- UN Special Rapporteur Catarina de Albuquerque “describes how households, agriculture and industry contribute to water pollution and stresses the value of integrating human rights into wastewater management and water pollution control in order to address challenges in the legislative, regulatory and institutional frameworks.” (A/68/264, p. 1)

She links the issue to ETOs in the following paragraph:

“46. The Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, recently adopted by a group of experts in international law and human rights, underscore the obligation of States to avoid causing harm extraterritorially, stipulating that States must desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially. The principles also affirm the obligation of States to protect human rights extraterritorially, i.e., to take necessary measures to ensure that non-State actors do not nullify or impair the enjoyment of economic, social and cultural rights. This translates into an obligation to avoid contamination of watercourses in other jurisdictions and to regulate non-State actors accordingly.” ([See the report](#)).

In another occasion the Special Rapporteur highlighted:

“Sixty percent of global freshwater flow is transboundary. More than 80 percent of all wastewater generated worldwide is not treated. This means we must address extraterritorial issues to ensure the human rights to water and sanitation.”

The following link refers to a joint statement of several special rapporteurs related to ETOs and the Maastricht Principles: [OHCHR](#)

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