



ETO CONSORTIUM NEWSLETTER

January 2014

Dear reader,

Welcome to our first newsletter of 2014. The ETO Secretariat has prepared a rather ambitious program this year with regional ETO meetings in Europe, the Middle East, the Americas and the global meeting in Thailand in September. Moreover a topical conference is planned in Geneva for June around ETO issues of regulating TNCs. Please watch out for the next Newsletter and further details. There is good news from the months of November and December 2013 concerning the increasing role of ETO concepts with the UN, CSOs and the French Human Rights Commissions. Two new ETO-related books were released in the period.

Please enjoy reading the newsletter - and stay connected.

Best regards from the ETO Consortium Secretariat.

December-18-2013

[UN Committee urges Austria, Belgium and Norway to comply with their extraterritorial obligations](#)

The UN Committee on Economic, Social and Cultural Rights concluded its 51st working session, held from 4 to 29 November in Geneva, adopting several recommendations directed towards each of these specific European countries' compliance with their extraterritorial obligations under the International Covenant on Economic, Social and Cultural Rights (ICESCR). The recommendations adopted by the Committee strongly reflect the concerns highlighted in the [submissions](#) made by FIAN and other civil society organizations on this issue.

In its Concluding Observations to Austria, the Committee voices concern over decreases in official development assistance (ODA) and the failure of the State party to ensure that ODA-financed projects as well as trade and agricultural policies do not result in human rights violations in recipient countries. It recommends that Austria adopt a human rights approach to its development cooperation, trade and agricultural policies. This should include the conduct of prior human rights impact assessments, to carry out regular human rights monitoring of policies and programmes, and to ensure that victims of ESCR violations in other countries have access to complaint mechanisms. The Committee also expresses concern about the lack of oversight over Austrian companies operating abroad and urges the State to put into place regulatory and accountability mechanisms that effectively protect rights holders from corporate violations of their economic, social and cultural rights. *Read the [Concluding Observations on Austria](#).*

With regard to Norway, the Committee recommends that the State party ensures the institutionalization of comprehensive human rights impact assessments of investments by the Government Pension Fund in companies operating abroad. Moreover, Norway should adopt policies and other measures to ensure that companies under its jurisdiction do not infringe human rights in other countries. *Read the [Concluding Observations on Norway](#).*

In relation to Belgium, the Committee expressed concern about State policies promoting agrofuels leading to extensive cultivation of such in third countries where Belgian companies operate, with potential negative consequences for local farmers' human rights. It called on the Belgian State to conduct systematic human rights impact assessments to ensure that projects promoting agrofuels do not lead to infringements of economic, social and cultural rights in third countries. *Read the [Concluding Observations on Belgium](#).*

"The questions of Committee members on the application of the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights asked during the interactive dialogue with the State delegations and the Concluding Observations adopted by the Committee are an important step towards encouraging States to adopt measures which advance their compliance with their extraterritorial obligations. The implementation of such measures has the potential to close existing gaps in human rights protection" said Ana María Suárez Franco, Permanent Representative of FIAN in Geneva.

For further information visit the [UN treaty body website](#) or watch the [webcast](#) of the sessions.

December-13-2013

[French Human Rights Commission calls for extending the extraterritorial powers of French courts to hold corporations accountable for HR abuses committed abroad](#)

The French National Human Rights Institution (CNCDH), on 24 October, released an advisory opinion on Business and Human Rights. The opinion responds to a request from the Minister Delegate for European Affairs and the Minister Delegate for Development for the CNCDH's contribution to the French action plan on Business and Human Rights. It deals primarily with the State's duty to protect human rights from breaches by third parties (in particular private companies) and the victim's right to have access to remedies. It reflects the long term work of the Commission in this area.

Paragraphs 63 to 70 of the opinion deal with the extension of extraterritorial jurisdiction of French courts and make reference to the Maastricht Principles. The Commission outlines some of the options judges currently have for adjudicating extraterritorial cases, and argues that an extension is urgently needed in order to hold French companies accountable for abuses committed abroad and provide effective remedies to the victims. The Commission refutes arguments that incorporating the notion of extraterritoriality into French law would not be legally feasible or lead to an "economic and industrial desert" in the country, quoting examples from other fields of law and countries where extraterritorial jurisdiction is being applied.

Access the full text from our online Library at www.etoconsortium.org.

December-12-2013

[Two ETO-related books released: Gibney/Vandenhole \(ed.\), 'Litigating Transnational Human Rights Obligations - Alternative Judgements' and Bulto, 'The Extraterritorial Application of the Human Right to Water in Africa'](#)

The increasing impact of State's acts and omissions on human rights in other countries reveals the urgent need for strengthening states' extraterritorial human rights obligations. States, separately and jointly need to speed up developing judicial institutions and monitoring bodies in order to meet their extraterritorial obligations.

Two books released this month present cases where extraterritorial issues have emerged, drawing on existing international human rights law.

The GLOTHRO book 'Litigating Transnational Human Rights Obligations - Alternative Judgments', edited by Mark Gibney and Wouter Vandenhole, shows that there are a number of judicial and quasi-judicial systems where extraterritorial human rights claims can, and should be enforced, already now. These include: the World Trade Organization; the International Court of Justice; the regional human rights monitoring bodies; domestic courts; and the UN treaty bodies.

In the book 'The Extraterritorial Application of the Human Right to Water in Africa', Takele Soboka Bulto challenges the established analytic boundaries of international water law and international human rights law. International water law has regulated the use of shared rivers, and only states qua states could claim rights and bear duties towards each other. By demonstrating the ensuing utility of regime coordination for the establishment of the human right to water and its extraterritorial application, he shows that human rights law and the international law of watercourses can apply in tandem with the purpose of protecting non-national non-residents in Africa and beyond.

The book will be published this month and can already be preordered online.

December-05-2013

[De Schutter: Extraterritorial dimensions of the right to food remain underdeveloped](#)

Last week the Special Rapporteur on the right to food, Olivier de Schutter, submitted his final report to the UN General Assembly. In the report entitled "Assessing a decade of progress on the right to food" he takes stock of important achievements and challenges in implementing the right to food in different regions of the world and presents the key actors who have been driving the change.

While commending the overall progress made in recent years towards the realization of the right to food, he notes that the extraterritorial dimensions of this right remain particularly underdeveloped. While the Maastricht Principles and the Guiding Principles on Extreme Poverty and Human Rights reaffirm the extraterritorial obligations States have in relation to economic, social and cultural rights, there are barely any mechanisms through which victims in extraterritorial situations can claim redress for violations of their right to food.

Access the full press release from our online Library at www.etoconsortium.org.

November-21-2013

[Participants of Peoples' Forum request binding instrument to regulate TNCs including ETOs](#)

The Peoples' Forum on Human Rights and Business in Bangkok, November 6 and 7, was the first such global forum by civil society organizations and social movements on the challenges posed by TNCs' abuses of human rights. It was convened by ESCR-net and Forum Asia. Participants drafted a Joint Statement calling for an international legally binding instrument on human rights, transnational corporations and other business enterprises. The Statement is currently circulating among CSOs and social movements and is open for signatures until November 28.

The elements of the envisaged treaty interestingly include extraterritorial States' obligations:

Under this instrument States Parties would be required to monitor and regulate the operations of business enterprises under their jurisdiction, including when acting outside their national territory, with a view to prevent the occurrence of abuses of human rights in the course of those operations and to provide legal liability for business enterprises. Moreover the treaty requires States Parties to provide for access to an effective remedy by any State concerned, including access to justice for foreign victims that suffered harm from acts or omissions of a business enterprise in situations where there are bases for the States involved to exercise their territorial or extraterritorial protect-obligations – and provides for an international monitoring and accountability mechanism.

The requirements made by the envisaged treaty reflect elements of the Maastricht Principles on ETOs – in particular relating to the bases for protection (Principle 25c) and the provision of effective remedy by any State concerned (Principle 37).

Further information can be obtained via secretariat@consortium.org.

November-19-2013

[UN Committee to examine European countries' compliance with extraterritorial obligations](#)

A delegation from FIAN International, FIAN Austria, FIAN Norway and the Austrian Forum on ESCR is this week briefing the UN Committee on Economic, Social and Cultural Rights on the findings of two parallel reports on the extraterritorial obligations (ETOs) of Austria and Norway. The two countries will be examined with regard to their human rights performance later this week.

The Austrian report, drafted by a coalition of CSOs, focuses on Austria's ETOs in the fields of development cooperation, trade and agricultural policy, and private sector regulation. The organizations criticize Austria's failure to live up to its Official Development Assistance (ODA) commitments and to meaningfully incorporate gender equality and the rights of people with disabilities into its development policy and practice. The report further recalls Austria's extraterritorial obligations when acting through international financial institutions; pointing to shortcomings in relation to monitoring and the conduct of prior human rights impact assessments. Austria is moreover reminded to take all reasonable steps to ensure that the EU acts in accordance with the country's international human rights obligations. Of particular relevance in this context are the current EU policies on agrofuels and agricultural export subsidies, both of which undermine the right to adequate food and nutrition in third countries.

The parallel report on Norway, drafted by FIAN, examines Norway's compliance with ETOs on the basis of two case studies in Guatemala and Mozambique, in which projects financed by the Norwegian State pension fund and a (semi-)private Norwegian fund have caused substantial human rights violations in the local communities. It criticises the State's failure to exclude the responsible mining company (in Guatemala) from its pension fund's investment portfolio and to regulate and exert influence over the private Norwegian fund to ensure its investments (in Mozambique) comply with the country's human rights obligations.

Two weeks ago the Committee was already briefed on similar concerns relating to Belgium's compliance with ETOs. The parallel report, drafted by FIAN and the Belgian Human Rights League, criticizes Belgium for not speaking out against EU agrofuels regulations and proceeding to implement these at national level despite being aware of their negative impact on third countries. The report moreover makes reference to a case study in Sierra Leone, in which an agro-energy project co-financed by Belgium has severely undermined the affected communities' access to adequate food and nutrition.

Following the dialogue with the Austrian and Norwegian State delegations this Wednesday and Thursday, the Committee will issue a set of recommendations which will provide guidance to the State parties on the measures they need to take in order to comply with their obligations, territorial and extraterritorial, under the International Covenant on Economic, Social and Cultural Rights.

For more information please contact Ana Maria Suarez Franco at suarez-franco@fian.org

Access the parallel reports on Austria, Norway and Belgium from our online Library at www.etoconsortium.org.

Further information, including the State reports, can be accessed on the [OHCHR website](#).

November-15-2013

[Evento Académico Latinoamericano sobre las Obligaciones Extraterritoriales de los Estados en el Área de los DESC](#)

El pasado lunes 7 y martes 8 de octubre se reunieron en Bogotá, Colombia, investigadoras e investigadores vinculados a la Universidad Nacional de Colombia, la UNAM de México, la Universidad San Francisco de Quito de Ecuador, la Universidad de Pernambuco en Brasil, la Universidad de Chile, el Centro para el Derecho Internacional Ambiental (CIEL) y FIAN. El objetivo del evento fue generar un espacio de reflexión académica para especialistas en derecho internacional público y derecho constitucional de América Latina sobre el desarrollo normativo en torno a las obligaciones extraterritoriales de los estados en el área de los derechos económicos, sociales y culturales. Como resultado del evento, las y los participantes decidieron producir material académico que pueda llevar el pensamiento jurídico de la región al debate internacional de una manera más efectiva, especialmente por vía del Consorcio ETO.

Especialmente interesante resultó el debate sobre la importancia del tema para la realidad Latinoamericana, así como el potencial del trabajo académico en este campo. Durante el mismo se identificaron temas transversales para la región, tales como: el impacto de las industrias extractivas, los tratados de libre comercio y sus cláusulas democráticas, el acaparamiento de recursos, conflictos transfronterizos y migración, el fundamento normativo de las ETOs, el

impacto de las corporaciones transnacionales en los derechos humanos, corrupción, narcotráfico, fuga de capitales y el impacto de la cooperación internacional en los derechos humanos.

Como resultado del intercambio los y las participantes identificaron potenciales oportunidades para la cooperación, se generó una iniciativa de difusión de los Principios de Maastricht, y en general de las ETOs, en instituciones universitarias y redes académicas de la región, y se asumió el compromiso de producir una publicación sobre el tema, en español y a partir de los marcos jurídicos y de las realidades Latinoamericanas. Para más información puede ponerse en contacto con Ana María Suarez Franco en: Suarez-franco@fian.org.

November-06-2013

[Committee on the Elimination of Discrimination against Women reaffirms extraterritorial obligations of States in relation to women and conflict](#)

In its recently published general recommendation No. 30 on women in conflict prevention, conflict and post-conflict situations, the UN Committee on the Elimination of Discrimination against Women stresses the extraterritorial reach of States obligations under the CEDAW Convention. The Committee reaffirms that States parties must apply the Convention and other treaties when exercising extraterritorial jurisdiction, whether individually or as members of international or intergovernmental organizations and coalitions, for example, when engaging in military action, participating in peacekeeping missions or negotiating trade agreements with conflict-affected countries.

States parties moreover have an obligation to regulate the extraterritorial activities of non-State actors over which they exercise effective control. This includes national corporations operating in or providing loans for projects in conflict regions. Apart from their obligations to respect and protect human rights extraterritorially, States may also have an obligation to cooperate internationally to, for example, realize economic, social and cultural rights. In such circumstances, States parties must ensure that their actions are in compliance with the Convention.

Access the general recommendation from our online Library at www.etoconsortium.org.

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