



## ETO CONSORTIUM NEWSLETTER

### February 2016

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02/04/2016

#### [UN Independent Expert urges Pacific Rim countries not to sign TPP amid human rights concerns](#)

In a [public statement](#) released on the eve of the gathering of trade ministers in Auckland, New Zealand to sign the Trans-Pacific Partnership (TPP) agreement, Alfred de Zayas, UN Independent Expert on the promotion of a democratic and equitable international order, called on governments not to sign the TPP unless provisions are included “to guarantee the regulatory space of States”. Mr. de Zayas urged the parties to the agreement to reaffirm their human rights obligations and their pledges to achieve the Sustainable Development Goals. The UN Independent Expert described the TPP as “fundamentally flawed” and expressed his concern that “notwithstanding enormous opposition by civil society worldwide, twelve countries are about to sign an agreement, which is the product of secret negotiations.”

For Mr. de Zayas, the “disturbing experience” of Investor-State Dispute Settlement (ISDS) arbitrations during the last thirty years has demonstrated the serious asymmetry between investors and States in trade agreements, which should convince States not to sign the TPP.

Already in previous reports submitted to the UN Human Rights Council and General Assembly in [July](#) and [August](#) 2015, the Independent Expert has been highly critical of the current international trade and investment regime. He has repeatedly called for a new generation of trade agreements that incorporate and ensure the primacy of human rights. Moreover, he has called for the abolition of ISDS due to the chilling effect it has on States that adopt legislation to protect the environment and human rights.

According to Mr. de Zayas, the TPP will also bring with it a “regulatory chill” which threatens the primacy of human rights in the international order.

Read the Independent Expert's statement [here](#)

Read Mr. de Zayas' report on ISDS in our [library](#)

01/29/2016

### **[Jakarta workshop explores role of ETOs in context of investment agreements](#)**

Civil society organisations, social movements, academia and government representatives met in Jakarta from January 21 to 22 to explore the role that human rights and in particular States' extraterritorial obligations (ETOs) could play in strengthening resistance against an international investment regime that protects corporate profits over people and severely curtails States' ability to comply with their human rights obligations.

Organised jointly by Indonesia for Global Justice, the ETO Consortium, Madhyam and the EU-ASEAN FTA Campaign Network, the workshop brought together trade and investment, human rights and corporate accountability advocates to share and learn about experiences from countries that have engaged in review processes of their bilateral investment treaties (BITs) and are exploring alternative investment models. Attention was also drawn to a new generation of trade agreements currently negotiated by ASEAN countries that are likely to further expand investor protection in the region, as well as civil society resistance to these.

The keynote speech delivered by Mr. Sornarajah from the National University of Singapore as well as insights from the Indonesian BITs review process and from other speakers illustrated the inherent flaws of the current international investment and ISDS system and the immense costs – social and financial – posed to society. While several proposals for reform were discussed, the question was also raised whether BITs were needed in the first place, given the lack of evidence regarding their positive effect on investment flows.

A central focus of the discussion evolved around how the Maastricht Principles on States' Extraterritorial Obligations could be applied to the investment context and used to strengthen arguments by civil society and governments seeking reform of the current investment regime. The UN Human Rights Council process on an international treaty to regulate transnational corporations was also discussed as a complementary effort to curb corporate power and capture of public policy space.

The workshop programme can be found [here](#)

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01/14/2016

### **[Extraterritorial obligations in African Charter General Comment No. 3 on the Right to Life](#)**

During its 57th Session held last November, the African Commission on Human and Peoples' Rights adopted [General Comment No. 3](#) on the right to life (recognized in Article 4 of the [African Charter on Human and Peoples' Rights](#)) which is intended to provide States, National Human Rights Institutions and civil society with guidance on the range of application of this article of the Charter. Paragraph 14 of the General Comment outlines the extraterritorial obligations of States with regards to the right to life. This right entails both respect and protect obligations, within the States territory and jurisdiction as well as extraterritorially:

“A State shall respect the right to life of individuals outside its territory. A State also has certain obligations to protect the right to life of such individuals. The nature of these obligations depends for instance on the extent that the State has jurisdiction or otherwise exercises effective authority, power, or control over either the perpetrator or the victim (or the victim’s rights), or exercises effective control over the territory on which the victim’s rights are affected, or whether the State engages in conduct which could reasonably be foreseen to result in an unlawful deprivation of life.” (Paragraph 14).

The extraterritorial scope of the right to life is furthermore developed in paragraph 18 of the General Comment where States’ obligation to hold accountable nationals or businesses domiciled in their territory or jurisdiction responsible for committing or contributing to arbitrary deprivations of life extraterritorially is affirmed (Paragraph 18).

The General Comment also emphasizes a broad interpretation of the right to life - defined as the right to a “dignified life” - closely interdependent with the realization of economic, social and cultural rights and which should also encompass chronic threats to life: “Given the role of the State in the enjoyment of a number of other rights [...] its progressive realization of various economic, social and cultural rights will contribute to securing a full and dignified life. Violations of such rights may in certain circumstances therefore also entail violations of the right to life” (Paragraph 43).

Read General Comment No. 3 in our [library](#)

Further information can be found [here](#)

12/01/2015

### **[Call for ETOs in the future TNC treaty at the Forum on Business and Human Rights](#)**

States’ extraterritorial obligations were at the forefront of discussions at the 4th annual [UN Business and Human Rights Forum](#), which took place from November 16 to 18 in Geneva. During panel discussions surrounding the current process towards a binding instrument on transnational corporations and other business enterprises, different panelists and participants stressed the need to integrate ETOs under the future treaty. During the session “Challenges and opportunities of a treaty to address corporate abuse of human rights”, Victoria Tuali Corpuz, UN Special Rapporteur on the rights of indigenous peoples, emphasized the need for ETOs to be included in the treaty as most of the companies involved in human rights abuses are foreign-based. The call for including ETOs in the future treaty also came from Debbie Stothard, Secretary General of FIDH.

Luis Espinosa Sala, from the Ecuadorian Permanent Representation, and Daniel Leader, barrister and partner at Leigh Day law firm saw the treaty as an opportunity to clarify and settle the issue of States’ ETOs. Although Daniel Leader expressed his admiration for the consensus that John Ruggie was able to build around the [UN Guiding Principles on Business and Human Rights \(UNGPs\)](#), he also was in dismay with the little progress that had been made regarding accountability mechanisms.

Mr. Leader explained how it is possible to assert extraterritorial jurisdiction in the UK and how there exists the concept of parent company liability for the acts and omissions of subsidiaries. The ground-breaking case *Owusu v. Jackson* at the European Court of Justice put to a side the doctrine of *forum non conveniens* in European countries, enabling victims to sue companies in their home

or host states. These developments in Europe have however not been followed in other common law jurisdictions such as Australia, Canada and the United States. The future treaty should therefore clarify the international practice regarding the criminal liability of parent companies for the acts and omissions of their subsidiaries as well as the ETOs of States, thus settling the points left hanging by the UNGPs.

More information on the Forum on Business and Human Rights can be found [here](#)

11/06/2015

### **[New UK law requires companies to report on measures to combat modern slavery in supply chain](#)**

Last week, on October 29, the [UK Modern Slavery Act 2015](#) came into force after a two year long process of discussions inside the parliamentary and public arena. [Section 54](#) of the Act has an extraterritorial effect requiring large businesses to publically disclose information and provide evidence of measures they are taking to tackle slavery and human trafficking inside their supply chain. This supply chains provision has been hailed by the UK Home Secretary Theresa May as “groundbreaking” and “world leading”, stating that “it is certainly not acceptable for organizations to put profit above the welfare and wellbeing of its employees and those working on its behalf” [\[1\]](#).

The entering into force of the Modern Slavery Act also coincided with the publication by the Home Secretary of a [practical guide](#) detailing the requirements and expectations which figure under Section 54. Any commercial organization with a total turnover of above £36m and “which supplies goods or services, and carries on a business or part of a business in the UK” will have to produce a statement every financial year setting out the steps taken to ensure that modern slavery and human trafficking is not occurring in its supply chain.

The extraterritorial scope of this provision is exposed in point 3.11 of the guidance provided by the Home Secretary:

“Each parent and subsidiary organisation (whether it is UK based or not) that meets the requirements set out in 3.1 above must produce a statement of the steps they have taken during the financial year to ensure slavery and human trafficking is not taking place in any part of its own business and in any of its supply chains. If a foreign subsidiary is part of the parent company’s supply chain or own business, the parent company’s statement should cover any actions taken in relation to that subsidiary to prevent modern slavery. Where a foreign parent is carrying on a business or part of a business in the UK, it will be required to produce a statement.”

Section 54 of the Act does not require the defined companies to guarantee that their entire supply chains are slavery free. Rather, companies must *communicate* on the steps they are taking towards a slavery free supply chain - even if no such steps have been taken. In other words, the focus of the law is not on holding companies accountable for failure to combat (or even eradicate) modern slavery in their supply chain but on promoting transparency and corporate social responsibility on the issue. If a company fails to comply with its reporting obligations, the Home Secretary can request the High Court to issue an order, which, if not complied with by the company, could result

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in a fine. However, it is expected that the main motive for companies to comply with their reporting obligations will be public opinion.

The Modern Slavery Act can be accessed [here](#)

Read the Practical Guide [here](#)

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