



ETO CONSORTIUM NEWSLETTER

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ETOs discussed during 3rd session of the OEIGWG on TNCs and other business enterprises with respect to human rights

The third session of the open-ended intergovernmental working group (OEIGWG) whose mandate is to elaborate an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights took place from the 23-27 October 2017. As opposed to the first two deliberative sessions, this session marked the beginning of the negotiation phase on the basis of the [“Elements for the draft legally binding instrument”](#) presented by the Chairmanship of the OEIGWG.

The session took a difficult start with some States obstructing the smooth adoption of the programme of work for procedural reasons. Despite this, many States and civil society (with approximately 200 members of the [Treaty Alliance](#) and the [Global Campaign to Dismantle Corporate Power](#) present in Geneva) engaged in content discussions on the elements paper. In total, some 100 States were present during the session, a record for an intergovernmental working group, which illustrates the importance of this process for States.

ETOs were included throughout the elements paper and discussed during the session in the sections on the obligations of States, preventive measures, legal liability, access to justice, jurisdiction and on international cooperation.

The inclusion of ETOs for States in the legally binding instrument continues to remain a strong and common call from all areas of civil society. Certain States, for instance Namibia, also called for the legally binding instrument to include and clarify States' ETOs and even explicitly made reference to the Maastricht Principles. However, for industrialized States and representatives of the business sector, ETOs continue to be a contentious issue.

The OEIGWG closed the session by agreeing to undertake informal consultations on the way forward in order to comply with the mandate of Human Rights Council Resolution 26/9, which is to elaborate and international legally binding instrument.

See report of the session [here](#)

[CESCR publishes General Comment No. 24 on State obligations in the context of business activities](#)

With the issue of business and human rights currently being addressed in multiple fora and through different types of regulations, action plans and self-imposed codes of conduct, the [General Comment](#) seeks to recall and clarify what is already obligatory for States and define their role in regulating corporate conduct.

The General Comment dedicates an entire section (Part III. C.) to clarifying States' extraterritorial obligations in this context: "Extraterritorial obligations arise when a State Party may influence situations located outside its territory, consistent with the limits imposed by international law, by controlling the activities of corporations domiciled in its territory and/or jurisdiction, and thus may contribute to the effective enjoyment of economic, social and cultural rights outside its territory" (para. 28).

As part of their *extraterritorial obligation to respect* economic, social and cultural rights (para. 29), "States must ensure that they do not obstruct another State from complying with its obligations under the Covenant". The General Comment highlights that this obligation is particularly relevant to the negotiation and conclusion of trade and investment agreements, to financial and tax treaties and to judicial cooperation.

States' *extraterritorial obligation to protect* (paras. 30-35), entails the regulation of "corporations that are domiciled in their territory and/or jurisdiction: this includes corporations incorporated under their laws, or which have their statutory seat, central administration or principal place of business on their national territory" (para. 31). The General Comment furthermore emphasizes the importance of international cooperation especially in transnational cases, which can reduce conflicts of jurisdiction, forum-shopping by litigants and the inability for victims to obtain redress (para. 35).

Finally, the General Comment deals with the issue of abusive tax practices and financial secrecy policies when elaborating on States' *extraterritorial obligation to fulfil*. As part of this obligation, States must avoid contributing to the race to the bottom by lowering the rates of corporate taxes which "ultimately undermines the ability of all States to mobilize resources domestically to realize Covenant rights" (para. 37).

Read General Comment No. 24 in our [library](#)

[UN Treaty Bodies recall Norway's and Australia's ETOs in the context of climate destruction](#)

The Committee on the Elimination of All Forms of Discrimination against Women (CEDAW) published this month its [recommendations](#) (officially called “concluding observations”) to Norway which it reviewed during its 68th session.

The Committee expressed concern about the State's policy on oil and gas extraction in the Arctic. Under the heading “Extraterritorial State Obligations” in para. 14, CEDAW recalled Norway that: “continuing and expanding extraction of oil and gas in the Arctic by the State party and its inevitable greenhouse gas emissions undermines its obligations to ensure women's substantive equality with men, as climate change disproportionately impacts women, especially in situations of poverty, since they are more reliant on natural resources for their livelihoods than men and have lesser capacity to deal with natural hazards”.

This is an important recognition by the Committee that States have human rights obligations to avoid further destruction of the climate, which as the Committee pointed out, does not stop at the State's border. The Committee therefore recommends under para. 15 that Norway reviews its energy policy, in particular its policy with regard to the extraction of oil and gas in order to avoid contributing to gas emissions which disproportionately impact women's rights around the world.

Whilst the greenhouse gas emission requirements under the UN Framework Convention on Climate Change and the recent Paris Agreement are of a territorial nature, CEDAW and other UN Treaty Bodies have called upon States to take measures to reduce emissions which can result from a State's fossil fuel extractive policy and subsequent exports. In June 2017, the Committee on Economic, Social and Cultural Rights had [recommended Australia](#) “to review its position in support of coal mines and coal exports”. These recommendations confirm that States hold human rights obligations with regards to the climate impacts from fossil fuel exports, affecting around the world the rights of women as well as people's economic, social and cultural rights.

Financialisation, Eco-destruction and Human Rights beyond Borders

Financialisation, Ecodestruction and Human Rights beyond Borders was the title of a European Conference of the ETO Consortium held in Brussels on September 28-29, 2017.

Besides the two policy fields a number of related fields in the context of ETOs were also touched: Austerity, climate, degrowth, monetary reform, land grabbing, the power of TNCs and the investment/trade regime. Some 45 participants from 11 European countries discussed in 6 sessions and subsequent working groups how human rights beyond borders (could) impact in these policy fields.

Financialisation describes the erosion of democracy and the increasing power of financial institutions over elected governments (including those in foreign countries). What is increasingly at stake is human rights themselves establishing, obligating and controlling the powers of States and ensuring that the political sovereign is the people. Financialisation ran almost like a red thread through the

different sessions of the conference. The context of sovereign debt and imposed austerity in Europe was considered with an ETO lens.

National and global GDP is a rough indicator for the level of greenhouse gas emissions and eco-destruction – and the depletion of resources. Does this imply an imperative for economic degrowth? Which challenges emerge for ETOs? Government debt and the push for GDP growth are also driven by banks and the way money is created. Is there a need for monetary reform? Predatory credit has even reached the very poor - via microfinance supported by the home states of financial power.

These issues are of global importance, but they also relate to the European project and its current impasse. For the concept of human rights beyond borders and their related ETOs to be useful here, it was said that Europeans would have to rediscover the political meaning of human rights beyond borders for their own sovereignty as citizens and communities.

The conference was very dense. Each of the six sessions featured 2 to 5 panelists (in general 2 from CSOs, 2 from academia). CSOs focused on their cases/campaigns. Academics and researchers shared their views (including comments on cases/campaigns presented). Each panelist had 10 minutes – so that there was ample time for clarification and discussion. In the panels, CSOs started off by presenting their cases/campaigns and academics then commented. Afterwards the floor was open. Working groups towards the end of the conference consolidated the results. A conference report is expected in December.

ETO Consortium members in Latin America met in Quito

25 Latin American members of the Consortium met in Quito, Ecuador the 16-17 August 2017 to exchange on the latest developments in the region on ETOs and to plan joint activities. It was made clear during the meeting that ETOs are particularly used by social movements and organizations in the region in their work on cases involving human rights abuses by transnational corporations. The organizations recognized the work that remains to be done at the regional level in order for grassroots organizations to fully understand how to work on ETOs, and committed to develop tools and methodologies in this sense. The members agreed to continue to push for the recognition of ETOs within the Inter-American human rights system and to engage in the monitoring of the UN Human Rights system.

Discussion with European Parliament Subcommittee on Human Rights on land grabbing outside the EU

In 2016, members of the ETO Consortium ([FIAN International](#) and [TNI](#)) were commissioned by the European Parliament's Subcommittee on Human Rights (DROI) to produce a study entitled "[Land Grabbing and Human Rights: The Involvement of European Corporate and Financial Entities in Land Grabbing outside the European Union](#)". The study describes the mechanisms by which EU actors are involved in land grabbing in third countries and which cause human rights abuses. The study concludes with a series of recommendations with regards to the EU and its Members States' extraterritorial human rights obligations (ETOs).

As a follow up, DROI invited the authors of the study on 11 October 2017 to one of its regular meetings to elaborate further on the findings and recommendations of the study. During the meeting, the Chair of DROI picked up on several of the recommendations in the study and committed to discuss them within the Subcommittee. These were i) the link between the EU's and EU Member States' ETOs and the ongoing process towards an international binding instrument on TNCs and other business enterprises with respect to human rights at the UN in Geneva, ii) the possibility for the European Parliament to carry out human rights impact assessments of EU policies and actions, iii) the creation of a registry at EU level of EU-based companies involved in land-related investments abroad, and iv) the establishment of a complaint mechanism at EU level for people affected by the activities of EU-based actors and/or EU external policies and actions.

At the request of DROI's Chair, the study's authors sent further information on these four points to DROI members so as to foster concrete parliamentary work on these issues. It is encouraging to see the European Parliament take up the EU's and its Member States' ETOs.

You can access the study in our library [here](#)

[Handbook and toolkit on how to monitor States' compliance with their extraterritorial obligations](#)

The handbook and toolkit "Human Rights beyond Borders: How to hold States accountable for extraterritorial violations" were published during the month of October. These two documents aim to serve as practical guides for human rights advocates and social movements in monitoring and holding States accountable on their compliance with extraterritorial obligations (ETOs).

The intention of the [handbook](#) is to make the Maastricht Principles on the ETOs of States more accessible and relevant to civil society by illustrating, with concrete examples, how they relate to specific policy fields and social struggles, and can be used in these contexts to hold States accountable for extraterritorial violations.

The handbook is the result of a collaborative effort by members of the ETO Consortium whose experiences and insights in working with ETOs are reflected. The handbook goes hand in hand with a [toolkit](#) which contains practical tools for analyzing and arguing ETO cases, as well as for identifying entry points at the national, regional and international levels for denouncing extraterritorial violations of human rights and promoting State adherence to ETOs.

You can download the English version of the handbook [here](#) and of the toolkit [here](#).

The Spanish and French versions of the handbook and toolkit will be circulated soon.

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