

Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights



ETOs
for human rights beyond borders

Imprint

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Introduction

Despite the universality of human rights, many States still interpret their human rights obligations as being applicable only within their own borders. This attempt to limit obligations territorially has led to gaps in human rights protection in various international political processes and a lack of adequate regulation for the protection of human rights.

Gaps in human rights protection have become more severe in the context of globalisation over the past 20 years. These gaps include:

- the lack of human rights regulation and accountability of transnational corporations (TNCs)
- the absence of human rights accountability of Intergovernmental Organizations (IGOs), in particular international financial institutions (IFIs)
- the ineffective application of human rights law to investment and trade laws, policies and disputes
- the lack of implementation of duties to protect and fulfil ESCRs abroad, inter alia through the obligations of international cooperation and assistance

Extraterritorial obligations (ETOs) are a missing link in the universal human rights protection system. Without ETOs, human rights cannot assume their proper role as the legal bases for regulating globalization and ensuring universal protection of all people and groups. A consistent realization of ETOs can generate an enabling environment for Economic, Social and Cultural Rights and guarantee the primacy of human rights among competing sources of international law. ETOs provide regulation of transnational corporations, hold Inter-Governmental Organizations accountable for their impacts, and ultimately stop the destruction of eco-systems and the climate.

As the challenges have grown in size and number, the human rights community has increasingly paid attention to these issues, as reflected for instance in the numerous pronouncements relating to ETOs in human rights law.

Efforts of experts have focused on careful research on the underlying principles of ETOs and have resulted in the 'Maastricht Principles on Extraterritorial Obligations in the area of Economic, Social and Cultural Rights' (Maastricht Principles).

The Maastricht Principles constitute an international expert opinion, restating human rights law on ETOs. The Maastricht Principles were issued on 28 September 2011 by 40 international law experts from all regions of the world, including current and former members of international human rights treaty bodies, regional human rights bodies, as well as former and current Special Rapporteurs of the United Nations Human Rights Council.

The Maastricht Principles do not purport to establish new elements of human rights law. Rather, the Maastricht Principles clarify extraterritorial obligations of States on the basis of standing international law.

Time has come for civil society including social movements, for States and intergovernmental organisations, to apply the Maastricht Principles as an integral part of any human rights analysis and policy making to ensure universal protection of human rights.

Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights

On 28 September 2011, at a gathering convened by Maastricht University and the International Commission of Jurists, a group of experts in international law and human rights adopted the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights.

The experts came from universities and organizations located in all regions of the world and include current and former members of international human rights treaty bodies, regional human rights bodies, and former and current Special Rapporteurs of the United Nations Human Rights Council.

Based on legal research conducted over a period of more than a decade, the undersigned experts adopted the following principles:

Preamble

The human rights of individuals, groups and peoples are affected by and dependent on the extraterritorial acts and omissions of States. The advent of economic globalization in particular, has meant that States and other global actors exert considerable influence on the realization of economic, social and cultural rights across the world.

Despite decades of growing global wealth, poverty remains pervasive and socio-economic and gender inequalities endure across the world. Moreover, individuals and communities face the continuing deprivation and denial of access to essential lands, resources, goods and services by State and non-State actors alike.

Countless individuals are subsequently unable to enjoy their economic, social and cultural rights, including the rights to work and decent working conditions, social security and care, an adequate standard of living, food, housing, water, sanitation, health, education and participation in cultural life.

States have recognized that everyone is entitled to a social and international order in which human rights can be fully realized and have undertaken to pursue joint and separate action to achieve universal respect for, and observance of, human rights for all.

In the Vienna Declaration and Programme of Action, all States affirmed the importance of an international order based on the principles of equal rights and self-determination of peoples, peace, democracy, justice, equality, rule of law, pluralism, development, better standards of living and solidarity. In pursuit of these objectives, States reaffirmed in the Millennium Declaration their collective responsibility to uphold these principles at the global level.

States have repeatedly committed themselves to realizing the economic, social and cultural rights of everyone. This solemn commitment is captured in the Charter of the United Nations, and is found in the Universal Declaration on Human Rights and numerous international treaties, such as the International Covenant on Economic, Social and Cultural Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child, the Convention on the Rights of Persons with Disabilities, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, as well as in the International Covenant on Civil and Political Rights and many regional human rights instruments.

These commitments include the obligation to realize progressively economic, social and cultural rights given the maximum resources available to States, when acting individually and through international assistance and cooperation, and to guarantee these rights without discrimination on the basis of race, colour, gender, sexual orientation and gender identity, language, religion, political or other opinion, national or social origin, property, birth, disability or other prohibited grounds in international law.

Drawn from international law, these principles aim to clarify the content of extraterritorial State obligations to realize economic, social and cultural rights with a view to advancing and giving full effect to the object of the Charter of the United Nations and international human rights.

These Principles complement and build on the Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights (1986) and on the Maastricht Guidelines on Violations of Economic, Social and Cultural Rights (1997).

I. General principles

1. All human beings everywhere are born free and equal in dignity and are entitled without discrimination to human rights and freedoms.
2. States must at all times observe the principles of non-discrimination, equality, including gender equality, transparency and accountability.
3. All States have obligations to respect, protect and fulfil human rights, including civil, cultural, economic, political and social rights, both within their territories and extraterritorially.
4. Each State has the obligation to realize economic, social and cultural rights, for all persons within its territory, to the maximum of its ability. All States also have extraterritorial obligations to respect, protect and fulfil economic, social and cultural rights as set forth in the following Principles.
5. All human rights are universal, indivisible, interdependent, interrelated and of equal importance. The present Principles elaborate extraterritorial obligations in relation to economic, social and cultural rights, without excluding their applicability to other human rights, including civil and political rights.
6. Economic, social and cultural rights and the corresponding territorial and extraterritorial obligations are contained in the sources of international human rights law, including the Charter of the United Nations; the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; and other universal and regional instruments.
7. Everyone has the right to informed participation in decisions which affect their human rights. States should consult with relevant national mechanisms, including parliaments, and civil society, in the design and implementation of policies and measures relevant to their obligations in relation to economic, social and cultural rights.

II. Scope of extraterritorial obligations of States

8. Definition of extraterritorial obligations

For the purposes of these Principles, extraterritorial obligations encompass:

- a) obligations relating to the acts and omissions of a State, within or beyond its territory, that have effects on the enjoyment of human rights outside of that State's territory; and
- b) obligations of a global character that are set out in the Charter of the United Nations and human rights instruments to take action, separately, and jointly through international cooperation, to realize human rights universally.

9. Scope of jurisdiction

A State has obligations to respect, protect and fulfil economic, social and cultural rights in any of the following:

- a) situations over which it exercises authority or effective control, whether or not such control is exercised in accordance with international law;

b) situations over which State acts or omissions bring about foreseeable effects on the enjoyment of economic, social and cultural rights, whether within or outside its territory;

c) situations in which the State, acting separately or jointly, whether through its executive, legislative or judicial branches, is in a position to exercise decisive influence or to take measures to realize economic, social and cultural rights extraterritorially, in accordance with international law.

10. Limits to the entitlement to exercise jurisdiction

The State's obligation to respect, protect and fulfil economic, social and cultural rights extraterritorially does not authorize a State to act in violation of the UN Charter and general international law.

11. State responsibility

State responsibility is engaged as a result of conduct attributable to a State, acting separately or jointly with other States or entities, that constitutes a breach of its international human rights obligations whether within its territory or extraterritorially.

12. Attribution of State responsibility for the conduct of non-State actors

State responsibility extends to:

a) acts and omissions of non-State actors acting on the instructions or under the direction or control of the State; and

b) acts and omissions of persons or entities which are not organs of the State, such as corporations and other business enterprises, where they are empowered by the State to exercise elements of governmental authority, provided those persons or entities are acting in that capacity in the particular instance.

13. Obligation to avoid causing harm

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 responsibility of States is engaged where such nullification or impairment is a foreseeable result of their conduct. Uncertainty about potential impacts does not constitute justification for such conduct.

14. Impact assessment and prevention

States must conduct prior assessment, with public participation, of the risks and potential extraterritorial impacts of their laws, policies and practices on the enjoyment of economic, social and cultural rights. The results of the assessment must be made public. The assessment must also be undertaken to inform the measures that States must adopt to prevent violations or ensure their cessation as well as to ensure effective remedies.

15. Obligations of States as members of international organisations

As a member of an international organisation, the State remains responsible for its own conduct in relation to its human rights obligations within its territory and extra-

territorially. A State that transfers competences to, or participates in, an international organisation must take all reasonable steps to ensure that the relevant organisation acts consistently with the international human rights obligations of that State.

16. Obligations of international organisations

The present Principles apply to States without excluding their applicability to the human rights obligations of international organisations under, *inter alia*, general international law and international agreements to which they are parties.

17. International agreements

States must elaborate, interpret and apply relevant international agreements and standards in a manner consistent with their human rights obligations. Such obligations include those pertaining to international trade, investment, finance, taxation, environmental protection, development cooperation, and security.

18. Belligerent occupation and effective control

A State in belligerent occupation or that otherwise exercises effective control over territory outside its national territory must respect, protect and fulfil the economic, social and cultural rights of persons within that territory. A State exercising effective control over persons outside its national territory must respect, protect and fulfil economic, social and cultural rights of those persons.

III. Obligations to respect

19. General obligation

All States must take action, separately, and jointly through international cooperation, to respect the economic, social and cultural rights of persons within their territories and extraterritorially, as set out in Principles 20 to 22.

20. Direct interference

All States have the obligation to refrain from conduct which nullifies or impairs the enjoyment and exercise of economic, social and cultural rights of persons outside their territories.

21. Indirect interference

States must refrain from any conduct which:

- a) impairs the ability of another State or international organisation to comply with that State's or that international organisation's obligations as regards economic, social and cultural rights; or
- b) aids, assists, directs, controls or coerces another State or international organisation to breach that State's or that international organisation's obligations as regards economic, social and cultural rights, where the former States do so with knowledge of the circumstances of the act.

22. Sanctions and equivalent measures

States must refrain from adopting measures, such as embargoes or other economic sanctions, which would result in nullifying or impairing the enjoyment of economic, social and cultural rights. Where sanctions are undertaken to fulfil other international legal obligations, States must ensure that human rights obligations are fully respected in the design, implementation and termination of any sanctions regime. States must refrain in all circumstances from embargoes and equivalent measures on goods and services essential to meet core obligations.

IV. Obligations to protect

23. General obligation

All States must take action, separately, and jointly through international cooperation, to protect economic, social and cultural rights of persons within their territories and extraterritorially, as set out in Principles 24 to 27.

24. Obligation to regulate

All States must take necessary measures to ensure that non-State actors which they are in a position to regulate, as set out in Principle 25, such as private individuals and organisations, and transnational corporations and other business enterprises, do not nullify or impair the enjoyment of economic, social and cultural rights. These include administrative, legislative, investigative, adjudicatory and other measures. All other States have a duty to refrain from nullifying or impairing the discharge of this obligation to protect.

25. Bases for protection

States must adopt and enforce measures to protect economic, social and cultural rights through legal and other means, including diplomatic means, in each of the following circumstances:

- a) the harm or threat of harm originates or occurs on its territory;
- b) where the non-State actor has the nationality of the State concerned;
- c) as regards business enterprises, where the corporation, or its parent or controlling company, has its centre of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned;
- d) where there is a reasonable link between the State concerned and the conduct it seeks to regulate, including where relevant aspects of a non-State actor's activities are carried out in that State's territory;
- e) where any conduct impairing economic, social and cultural rights constitutes a violation of a peremptory norm of international law. Where such a violation also constitutes a crime under international law, States must exercise universal jurisdiction over those bearing responsibility or lawfully transfer them to an appropriate jurisdiction.

26. Position to influence

States that are in a position to influence the conduct of non-State actors even if they are not in a position to regulate such conduct, such as through their public procurement system or international diplomacy, should exercise such influence, in accordance with the Charter of the United Nations and general international law, in order to protect economic, social and cultural rights.

27. Obligation to cooperate

All States must cooperate to ensure that non-State actors do not impair the enjoyment of the economic, social and cultural rights of any persons. This obligation includes measures to prevent human rights abuses by non-State actors, to hold them to account for any such abuses, and to ensure an effective remedy for those affected.

V. Obligations to fulfil**28. General obligation**

All States must take action, separately, and jointly through international cooperation, to fulfil economic, social and cultural rights of persons within their territories and extraterritorially, as set out in Principles 29 to 35.

29. Obligation to create an international enabling environment

States must take deliberate, concrete and targeted steps, separately, and jointly through international cooperation, to create an international enabling environment conducive to the universal fulfilment of economic, social and cultural rights, including in matters relating to bilateral and multilateral trade, investment, taxation, finance, environmental protection, and development cooperation.

The compliance with this obligation is to be achieved through, inter alia:

- a) elaboration, interpretation, application and regular review of multilateral and bilateral agreements as well as international standards;
- b) measures and policies by each State in respect of its foreign relations, including actions within international organisations, and its domestic measures and policies that can contribute to the fulfilment of economic, social and cultural rights extraterritorially.

30. Coordination and allocation of responsibilities

States should coordinate with each other, including in the allocation of responsibilities, in order to cooperate effectively in the universal fulfilment of economic, social and cultural rights. The lack of such coordination does not exonerate a State from giving effect to its separate extraterritorial obligations.

31. Capacity and resources

A State has the obligation to fulfil economic, social and cultural rights in its territory to the maximum of its ability. Each State must separately and, where necessary, jointly contribute to the fulfilment of economic, social and cultural rights extraterritorially, commensurate with, inter alia, its economic, technical and technological

capacities, available resources, and influence in international decision-making processes. States must cooperate to mobilize the maximum of available resources for the universal fulfilment of economic, social and cultural rights.

32. Principles and priorities in cooperation

In fulfilling economic, social and cultural rights extraterritorially, States must:

- a) prioritize the realisation of the rights of disadvantaged, marginalized and vulnerable groups;
- b) prioritize core obligations to realize minimum essential levels of economic, social and cultural rights, and move as expeditiously and effectively as possible towards the full realization of economic, social and cultural rights;
- c) observe international human rights standards, including the right to self-determination and the right to participate in decision-making, as well as the principles of non-discrimination and equality, including gender equality, transparency, and accountability; and
- d) avoid any retrogressive measures or else discharge their burden to demonstrate that such measures are duly justified by reference to the full range of human rights obligations, and are only taken after a comprehensive examination of alternatives.

33. Obligation to provide international assistance

As part of the broader obligation of international cooperation, States, acting separately and jointly, 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, in a manner consistent with Principle 32.

34. Obligation to seek international assistance and cooperation

A State has the obligation to seek international assistance and cooperation on mutually agreed terms when that State is unable, despite its best efforts, to guarantee economic, social and cultural rights within its territory. That State has an obligation to ensure that assistance provided is used towards the realisation of economic, social and cultural rights.

35. Response to a request for international assistance or cooperation

States that receive a request to assist or cooperate and are in a position to do so must consider the request in good faith, and respond in a manner consistent with their obligations to fulfil economic, social and cultural rights extraterritorially. In responding to the request, States must be guided by Principles 31 and 32.

VI. Accountability and Remedies

36. Accountability

States must ensure the availability of effective mechanisms to provide for accountability in the discharge of their extraterritorial obligations. In order to ensure the effectiveness of such mechanisms, States must establish systems and procedures for the full and thorough monitoring of compliance with their human rights obligations,

including through national human rights institutions acting in conformity with the United Nations Principles relating to the Status of National Institutions (Paris Principles).

37. General obligation to provide effective remedy

States must ensure the enjoyment of the right to a prompt, accessible and effective remedy before an independent authority, including, where necessary, recourse to a judicial authority, for violations of economic, social and cultural rights. Where the harm resulting from an alleged violation has occurred on the territory of a State other than a State in which the harmful conduct took place, any State concerned must provide remedies to the victim.

To give effect to this obligation, States should:

- a) seek cooperation and assistance from other concerned States where necessary to ensure a remedy;
- b) ensure remedies are available for groups as well as individuals;
- c) ensure the participation of victims in the determination of appropriate remedies;
- d) ensure access to remedies, both judicial and non-judicial, at the national and international levels; and
- e) accept the right of individual complaints and develop judicial remedies at the international level.

38. Effective remedies and reparation

Remedies, to be effective, must be capable of leading to a prompt, thorough and impartial investigation; cessation of the violation if it is ongoing; and adequate reparation, including, as necessary, restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition. To avoid irreparable harm, interim measures must be available and States must respect the indication of interim measures by a competent judicial or quasi-judicial body. Victims have the right to truth about the facts and circumstances surrounding the violations, which should also be disclosed to the public, provided that it causes no further harm to the victim.

39. Inter-State complaints mechanisms

States should avail themselves of, and cooperate with, inter-State complaints mechanisms, including human rights mechanisms, to ensure reparation for any violation of an extraterritorial obligation relating to economic, social and cultural rights. States should seek reparation in the interest of injured persons as beneficiaries under the relevant treaties addressing economic, social and cultural rights, and should take into account, wherever feasible, the views of injured persons with regard to the reparation to be sought. Reparation for the injuries obtained from the responsible State should be transferred to the injured persons.

40. Non-judicial accountability mechanisms

In addition to the requisite judicial remedies, States should make non-judicial remedies available, which may include, inter alia, access to complaints mechanisms es-

established under the auspices of international organisations, national human rights institutions or ombudspersons, and ensure that these remedies comply with the requirements of effective remedies under Principle 37. States should ensure additional accountability measures are in place at the domestic level, such as access to a parliamentary body tasked with monitoring governmental policies, as well as at the international level.

41. Reporting and monitoring

States must cooperate with international and regional human rights mechanisms, including periodic reporting and inquiry procedures of treaty bodies and mechanisms of the UN Human Rights Council, and peer review mechanisms, on the implementation of their extraterritorial obligations in relation to economic, social and cultural rights, and redress instances of non-compliance as identified by these mechanisms.

VII. Final provisions

42. States, in giving effect to their extraterritorial obligations, may only subject economic, social and cultural rights to limitations when permitted under international law and where all procedural and substantive safeguards have been satisfied.
43. Nothing in these Principles should be read as limiting or undermining any legal obligations or responsibilities that States, international organisations and non-State actors, such as transnational corporations and other business enterprises, may be subject to under international human rights law.
44. These principles on the extraterritorial obligations of States may not be invoked as a justification to limit or undermine the obligations of the State towards people on its territory.

Annex

Signatories to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights

The Principles were adopted by the experts in their individual capacity. Organisations are listed with the names of experts for the purpose of identification rather than endorsement of the Principles by their institution.

Meghna Abraham – Amnesty International

Catarina de Albuquerque – UN Special Rapporteur on the right to water and sanitation

Theo van Boven – Maastricht University, former UN Special Rapporteur against Torture and former Member of the UN Committee on the Elimination of Racism and Discrimination

Maria Virginia Bras Gomes – Directorate General for Social Security, former Member of the UN Committee on Economic, Social and Cultural Rights

Lilian Chenwi – University of the Witwatersrand

Danwood Chirwa – University of Cape Town

Fons Coomans – Maastricht University

Virginia Dandan – UN Independent Expert on Human Rights and International Solidarity, former Member of the UN Committee on Economic, Social and Cultural Rights

Olivier De Schutter – University of Louvain, UN Special Rapporteur on the right to food

Julia Duchrow – Bread for the World

Asbjørn Eide – Norwegian Centre for Human Rights

Cees Flinterman – Maastricht University, Member of the UN Human Rights Committee and former Member of the UN Committee on the Elimination of Discrimination against Women

Mark Gibney – University of North Carolina

Thorsten Göbel – Bread for the World

Paul Hunt – University of Essex, former UN Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health

Ashfaq Khalfan – Amnesty International

Miloon Kothari – Housing and Land Rights Network, former UN Special Rapporteur on the right to adequate housing

Rolf Künemann – FIAN International

Malcolm Langford – University of Oslo

Nicholas Lusiani – Center for Economic and Social Rights / International Network for Economic, Social and Cultural Rights

Claire Mahon – Geneva Academy of International Humanitarian Law and Human Rights

Christopher Mbazira – Makerere University

Maija Mustaniemi-Laakso – Åbo Akademi University

Gorik Ooms – Institute of Tropical Medicine in Antwerp

Marcos Orellana – Center for International Environmental Law

Sandra Ratjen – International Commission of Jurists

Aisling Reidy – Human Rights Watch

Margot Salomon – London School of Economics and Political Science

Fabián Salvioli – University of La Plata, Member of the UN Human Rights Committee

Martin Scheinin – European University Institute, former Member of the UN Human Rights Committee and former UN Special Rapporteur on human rights and counter-terrorism

Ian Seiderman – International Commission of Jurists

Magdalena Sepúlveda – UN Special Rapporteur on extreme poverty and human rights

Heisoo Shin – Member of the UN Committee on Economic, Social and Cultural Rights and former Member of the UN Committee on the Elimination of Discrimination against Women

Sigrun Skogly – Lancaster University

Ana María Suárez Franco – FIAN International

Philippe Texier – Member of the UN Committee on Economic, Social and Cultural Rights

Wouter Vandenhole – University of Antwerp

Duncan Wilson – Scottish Human Rights Commission

Michael Windfuhr – German Institute for Human Rights

Sisay Yesheanew – Åbo Akademi University

ETO Consortium



The ETO Consortium is a member-led network, comprised by a large number of CSOs and academics interested in human rights promotion and protection.

Established in Geneva in 2007, the purpose of the ETO Consortium is to address the gaps in human rights protection that have opened up through the neglect of extraterritorial obligations (ETOs).

The ETO Consortium mainstreams and applies ETOs, using as a key term of reference the Maastricht Principles on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights. The Consortium is continuously working to advance ETOs in multiple contexts and on various occasions, for instance by virtue of international and regional conferences and capacity building, case-work, research and advocacy.

The ETO Consortium organizes its work in focal groups according to thematic issues and to geographical regions. In addition to the focal groups, there is an academic support group, with a separate mandate to assist the focal groups and members. The ETO Consortium members use the Maastricht Principles in their day-to-day work, individually and in cooperation, with a view to seeking new avenues for addressing some of the most urgent problems related to the protection of economic, social and cultural human rights.

The ETO Consortium is led by an elected Steering Committee with academics and representatives of CSOs from various regions of the world. The Consortium appoints one of its member CSOs to host the ETO Consortium Secretariat for a certain period of time.

CSOs and academics interested in cooperation or membership are invited to contact the ETO Consortium's Secretariat.

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