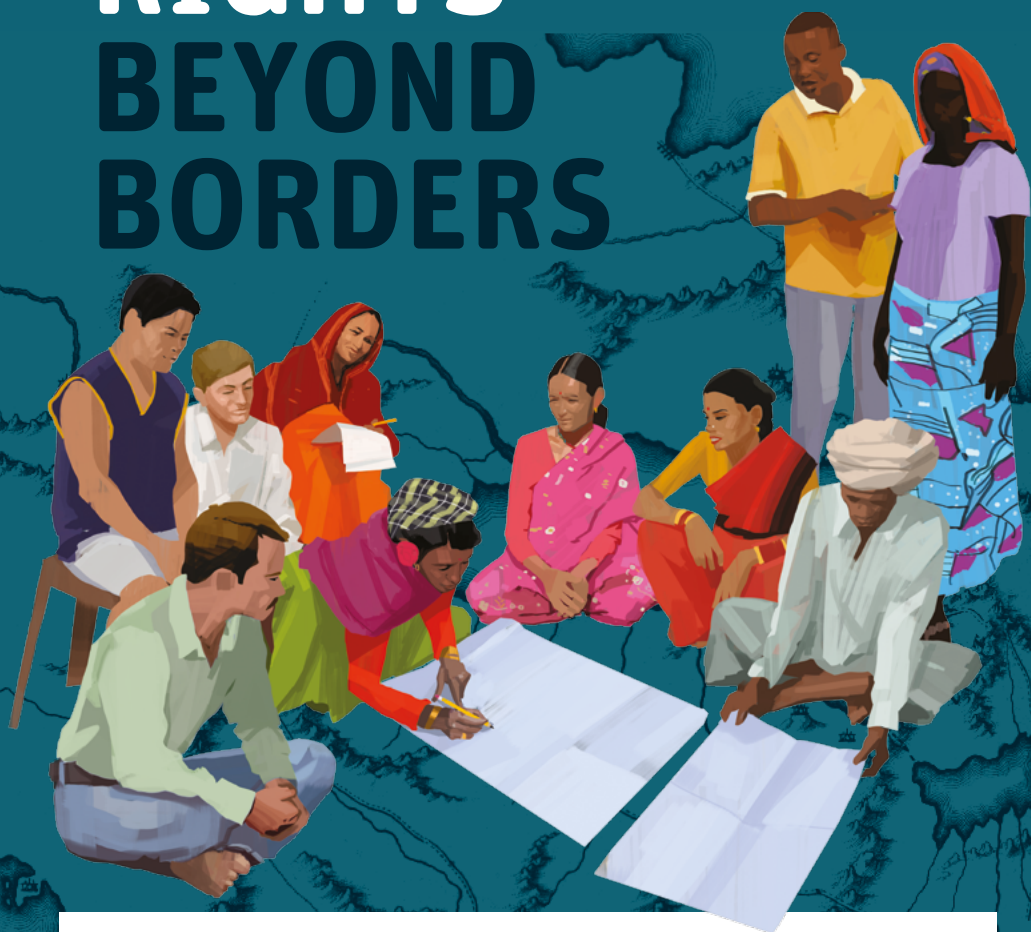


FOR HUMAN RIGHTS BEYOND BORDERS



**How to hold States accountable
for extraterritorial violations**

TOOL KIT

This Tool Kit contains three practical tools that can support civil society and social movements in the documentation, analysis and advocacy around concrete cases of human rights violations involving foreign actors.

Tool 1 provides a step-by-step guide to analysing situations in which foreign actors have contributed to human rights violations and abuses, identifying the States who carry extraterritorial obligations (ETOs) to respect, protect and fulfil human rights in the specific case, and developing legal arguments based on the *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights* (short: Maastricht Principles or ETOPs) to hold these States accountable for their acts and omissions.

Tool 2 provides an overview of the various bodies and mechanisms at national, regional, and international levels that can be approached to hold States accountable for breaches of their ETOs and to proactively advance the implementation of ETOs in policy, law and practice.

Tool 3 provides a list of frequently asked questions on ETOs that can help clarify the basic concepts.

The Tool Kit is part of the Handbook “For Human Rights beyond Borders: How to Hold States Accountable for Extraterritorial Violations”, which provides an in-depth introduction to ETOs and the Maastricht Principles, as well as examples on how these can be applied to specific policy fields and cases of human rights violations. Sometimes chapters or specific case studies of the Handbook will be referenced. You can download the Handbook from the website of the ETO Consortium (www.etoconsortium.org).

The Maastricht Principles and its Commentary (which explains the legal sources of the different Principles) can equally be found on the website of the ETO Consortium (www.etoconsortium.org).

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Tool 1

Analysing and Arguing ETO Cases

The following Step-by-Step Guide will orient you in analysing concrete cases of human rights violations involving foreign actors. It will allow you to determine the State(s) who hold extraterritorial obligations (ETOs) in the specific case, and assess in how far they have complied with these obligations by taking measures to prevent, cease and remedy harm. In each of the steps, the relevant extraterritorial obligations, as summarized by the Maastricht Principles, will be indicated in brackets as **ETOPs** (short for 'ETO Principles'). These can be used – together with the Commentary to the Maastricht Principles which spells out the international law sources for each of the Principles – to develop legal arguments to support claims against the foreign State(s) responsible for the human rights impairments in your country.

In **Step One** you will identify and categorize the foreign actors who through their actions (or failure to act) have contributed to the impairment of human rights. In **Step Two** you will determine the States who hold extraterritorial obligations to respect and protect human rights in cases involving non-State/private actors and intergovernmental organisations (IGOs). In **Step Three** you will assess in how far the implicated States have complied with their obligations to *prevent harm* resulting from their own policies and practices, or those of private actors and intergovernmental organisations. In **Step Four** you will determine whether the States have complied with their ETOs to *provide effective remedies*.

Section A of the step-by-step guide focusses on States' obligations to *respect* and *protect* human rights in other countries. **Section B** provides guidance on assessing State compliance with obligations to *fulfil* human rights in other countries (e.g., through international cooperation).

Step 1

Identify the actors

- *Who are the 'foreign' actors (based in or linked to another country) who have contributed to the impairment of human rights in your country?*

Make sure you identify all relevant actors – governmental and private – who have either directly or indirectly contributed to the situation. This could be either through their policies and actions or through failing to take necessary action to protect human rights. Make a list of all relevant actors and allocate them to the categories described below (some might fall into several categories).

REMEMBER: There may be some actors who are not very visible at the country level. For example, foreign investors who finance the activities of a company causing human rights abuses, or foreign States who, through their policies or diplomatic pressure, contribute to the privatization of essential goods and services. Identifying these may require additional research but can be important for advocacy.

CATEGORY A: STATE ACTORS

Institutions or individuals who act with a public mandate/on behalf of the State. Includes: ministries, public authorities/administrations, police, army, development agencies, public pension funds and banks, state enterprises, etc.

————→ **Go to Step 3a**

CATEGORY B: NON-STATE/PRIVATE ACTORS

Includes private companies (domestic, transnational) and financial institutions, individuals (acting in private capacity), private foundations, non-governmental organisations, etc.

————→ **Go to Step 2a for companies (incl. financial institutions)**

————→ **Go to Step 2b for other private actors**

CATEGORY C: INTERGOVERNMENTAL ORGANISATIONS

International bodies composed of or controlled by governments. Includes: UN agencies and funds, international financial institutions and development banks (e.g., International Monetary Fund, World Bank), regional bodies (European Union, African Union, Organisation of American States, etc.)

————→ **Go to Step 2c**

Step 2

Identify the States with regulatory powers or influence over non-State actors and IGOs

Step 2a: Companies

Answering the questions below will allow you to identify the so-called ‘**home States**’ of companies. Home States are States that are in a **position to** and therefore have an **obligation to regulate** a company to prevent it from infringing on human rights, at home and in other countries (**ETOP 24 and 25**).

- › *Which is the country (or countries) in which the company or its ‘parent’/controlling company:*
 - *has its centre of activity;*
 - *is registered or domiciled; and/or*
 - *has its main/substantial business activities?*

REMEMBER:

A corporation can have more than one home State!

Beyond the home State(s), there might be other States that have a **'reasonable link'** to the harmful company conduct and must therefore equally take measures to protect human rights (**ETOP 25d**). Ask the following questions to find out if there are other countries with a reasonable link:

- > *Does the company have assets in another country that can be seized to implement a judgment of a court?*
- > *Is there evidence or are there eyewitnesses in another country? Are accused company officials present in that country?*
- > *Has the company carried out part of the incriminated operations in another country?*
- > *Is the company linked to another country through a global supply chain (e.g., by supplying products to a company in that country)?*

There might also be States that, while not in a position to regulate, are in a **position to influence** the conduct of non-State actors (e.g., through their public procurement system). These States should equally use their influence to protect ESC rights (**ETOP 26**).

—————> **Once you identified the relevant States, proceed to Step 3b.**

Step 2b: Private actors other than companies

When foreign private actors other than companies (e.g., a private investor) have committed human rights abuses, ask the following questions to identify the States responsible for taking regulatory measures (ETOP 24 and 25):

- *Did the harm originate on another State's territory?*
- *Does the actor carry the nationality of another State?*
- *Is there a 'reasonable link' with another State (e.g., the individual has assets in that country)?*

————→ Once you have identified the relevant States, proceed to Step 3b.

Step 2c: Intergovernmental organisations

States have obligations to ensure that IGOs in which they participate or have transferred competences to act in accordance with their human rights obligations (**ETOP 15**). The first step in holding States accountable for their actions and omissions within IGOs is to identify the States that:

- > *participate in or have transferred competences to the respective IGO;*
 - > *are particularly influential within the respective IGO (e.g., sit on the board of directors or hold the presidency) and hence hold an even greater responsibility for the organisation's conduct.*
- Once you have identified the relevant States, proceed to Step 3c.

Step 3

Assess if the State(s) have taken measures to prevent harm

Step 3a: Policies and practices by State actors

States must avoid that their policies and actions cause harm to the enjoyment of human rights in other countries (**ETOP 13**). One can distinguish between *direct* and *indirect* interference with human rights in another country.

DIRECT INTERFERENCE (**ETOP 20**):

- *Has a policy or action – or the lack thereof – of the State contributed to the impairment of human rights?*



EXAMPLES: *Policies* that promote cheap agricultural exports that cause small-scale food producers in other countries to lose their source of livelihood. *Lack of policies* to regulate/reduce greenhouse gas emissions. *Actions* such as the dumping of toxic water in another country or economic sanctions/embargoes (see also **ETOP 22**) that prevent essential medicines or food from entering a country. Collaboration with or support provided to private corporations that are involved in human rights abuses in other countries.

INDIRECT INTERFERENCE (ETOP 21):

- > *Has the State **impaired the ability** of another State to comply with its human rights obligations?*
- > *Has the State **knowingly assisted, directed, or coerced** another State to breach its human rights obligations?*



EXAMPLES: Trade and investment policies that reduce another State's ability to implement measures to protect and progressively realize human rights. Imposition of austerity measures that force another State to reduce spending on public services resulting in violations of economic, social and cultural rights (ESC rights). Financial and other assistance that contributes to the conduct of human rights violations. Obstructionism and 'forum shifting' in relation to key international policies. For example, the blocking of discussions on a fair system of international sovereign debt settlement or international tax reform by powerful States in inclusive forums, like the UN and the Financing for Development process, and the shifting of these to exclusive forums such as the OECD.

A State breaches its extraterritorial obligations wherever the harm caused in another country can be considered a **‘foreseeable result’** of its conduct (ETOP 13). To determine whether impacts were foreseeable, ask:

- › *Was the State aware—or should it have been aware—of the potential risks but failed to take necessary measures to prevent these from materialising?*

As consequences are not always obvious from the outset, States must take steps to assess and prevent potential human rights risks (ETOP 14). The following questions will help you determine whether the State has complied with its duty to assess and act upon risks and (potential) negative impacts to ESC rights in other countries.

- › *Has the State carried out a prior human rights impact assessment of the respective law, policy or practice in other countries? Has there been public participation in carrying out the assessment? Have the results been made public?*
- › *Are measures in place to monitor and regularly assess the risks and impact of the concerned policies, laws and actions on ESC rights in other countries?*

- > *Do human rights impact assessments (if carried out) inform measures that the State must adopt to prevent, cease or remedy human rights harm?*
- > *Has the State acted upon the outcomes of impact assessments and taken measures to prevent identified risks from materializing or to cease harm?*

REMEMBER: Uncertainty about potential impacts does not constitute justification for harmful conduct. Even in cases where there is no full certainty that ESC rights will be threatened by a certain action, States must take precautionary measures to prevent potential serious or irreversible damages.

—————> Go to Step 4 on effective remedies

Step 3b: Measures to prevent abuses by non-State actors (including companies)

After having identified the States that are in a position to and hence with an obligation to regulate the responsible non-State/private actors including companies (**Steps 2a and 2b**), assess in how far these States have taken necessary steps to **prevent** these actors from impairing ESC rights (**ETOP 24**).

- *Does the State have an administrative and legislative framework in place that requires companies (including their subsidiaries and suppliers) and other private actors to refrain from human rights abuses in other countries?*
- *What mechanisms are in place to ensure compliance with existing laws in this regard? How effective are they?*
Does the State:
 - *monitor companies' conduct and impact on human rights;*
 - *allow for complaints by people from other countries;*
 - *adequately investigate complaints and impose sanctions?*
- *Does the State cooperate with other States in regulating and holding companies accountable (ETOP 27)?*

You may also want to assess if the State has taken any policy or action that **encouraged or facilitated the harmful conduct** of the company (e.g., provision of economic incentives or diplomatic support). In such cases the State not only breaches its extraterritorial obligation to *protect* human rights (**ETOP 24**), but also its obligation to *respect* human rights (**ETOP 13, 20, 21, see Step 3a**).

REMEMBER: A State must not only take measures to protect human rights in other countries, but must also ensure that its policies and actions do not interfere with another State's capacity to comply with its protect obligations (e.g., by curtailing another State's regulatory space through investment treaties) (ETOP 24).

—————> Go to Step 4 on effective remedies

Step 3c: Measures to prevent harm by IGOs

Once you have identified the States which are in a position to influence the IGO's decisions, assess in how far they have complied with their obligations to take '**all reasonable steps**' to ensure that the relevant organisation acts consistently with human rights (ETOP 15 and 21). Examples of such steps include:

- *Abstain from proactively conducting the organisation to commit human rights abuses*
- *Oppose policies and programmes that pose a risk to human rights*
- *Demand robust 'due diligence' procedures to identify, prevent and address negative human rights impacts (including prior human rights impact assessments)*
- *Take measures to immediately cease policies and actions that cause harm*

REMEMBER: In addition to Member States' human rights obligations within IGOs, you can also argue with the direct obligations of IGOs. This is particularly relevant for UN bodies and the EU (see Chapter 2 in Handbook).

————→ Go to Step 4 on effective remedies

Step 4

Step 1
Step 2
Step 3
> Step 4

Assess if the State(s) have complied with their obligation to provide effective remedies

Independent of whether the harm was foreseeable, once human rights have been infringed upon due to a State's acts or omissions – or those of a private entity or IGO over which the State holds regulatory powers or influence – the State has obligations to ensure the provision of effective remedies to the people affected (ETOP 37 and 38). This responsibility is shared with other States involved in the case, including the State where the harm took place. To assess whether the concerned State(s) have complied with their obligations to provide effective remedies, ask:

- *Have steps been taken to ensure access to effective remedies for those affected?*
- *Has there been collaboration with other States concerned to this effect?*
- *Have States made use of inter-State complaint mechanisms to seek reparations on behalf of the affected individuals or communities?*
- *Have the groups affected been able to participate in the determination of appropriate remedies?*
- *Have the State(s) taken measures to avoid repetition of the harm?*

In cases concerning **human rights abuses by private actors**, including corporations, assess in how far the State has taken effective measures to hold these actors accountable and ensure the provision of effective remedies to those affected (where relevant in cooperation with other States concerned).

The following questions will help you assess the extent to which a State has complied with its obligations to contribute to the **fulfilment of human rights** in other countries.

Creation of an “enabling international environment”

An important element of States’ extraterritorial obligation to *fulfil* human rights is to contribute to the creation of an **enabling international environment** for the universal fulfilment of ESC rights (ETOP 29). Assess in how far a State has done so, by asking:

- › *Has the State, individually or in cooperation with other States, taken deliberate, concrete, and targeted steps towards the creation of an international environment that is conducive to the universal fulfilment of human rights?*
- › *Has it elaborated, interpreted, and applied multilateral and bilateral agreements and standards in areas such as trade, investment, finance, taxation, environmental protection, and development cooperation in line with this purpose? Does it take measures to ensure existing bi- and multi-lateral treaties contribute to an enabling environment (e.g., through regular review)?*
- › *Do its domestic and foreign policies and actions contribute to the fulfilment of ESC rights in other countries?*
- › *Has the State proposed policies and actions within IGOs that contribute to an enabling international environment for the universal fulfilment of ESC rights (e.g., international tax reform)? Has it blocked or resisted such policies?*

International cooperation for the fulfilment of ESC rights

States have obligations to cooperate internationally, including through development cooperation, to assist each other in the fulfilment of ESC rights (ETOP 31-33). To assess whether a State is complying with its obligations in this context, ask:

- › *Has the State contributed to the fulfilment of human rights in other countries in accordance with its economic and technical capacities, and its influence in international decision-making processes? (ETOP 31,33)*
- › *Has the State sought the cooperation and support from other States where such is necessary for the fulfilment of ESC rights in its territory (ETOP 34)?*
- › *Have the following principles and priorities been respected in cooperating internationally towards the fulfilment of ESC rights, including through development cooperation (ETOP 32):*
 - prioritization of rights of disadvantaged, marginalized and vulnerable groups;*
 - prioritization of core obligations to ensure “minimum essential levels” of ESC rights;*
 - observance of international human rights standards and principles (e.g., participation, self-determination, non-discrimination and equality);*
 - avoidance of retrogressive measures (i.e., measures that reduce existing enjoyment of rights)?*

Tool 2

Denouncing Violations and Advancing the Implementation of ETOs

This Tool presents an overview of the various mechanisms through which affected communities and support organizations can hold States – individually or as members of intergovernmental organizations – accountable for failure to comply with their extraterritorial human rights obligations. These include administrative, political, quasi-judicial and judicial mechanisms. Due to their diverse nature, engagement with these mechanisms also requires different types of resources (human resources, financial resources, partnerships, etc.), which need to be taken into consideration before deciding on one or the other option. While not exhaustive, the intention here is to provide ideas on possible entry points for denouncing violations of ETOs and proactively seeking their implementation in State law, policy and practice.

National Level

NATIONAL HUMAN RIGHTS INSTITUTIONS (NHRIS)

National Human Rights Institutions (NHRIs) are independent bodies, funded by States, with a mandate to promote, monitor and protect human rights. They can take different forms across countries: Human Rights Commission, Human Rights Institute, Ombudsperson, Public Defender, and so on.

NHRIs can play an important intermediary role between civil society and government. The level of independence, competencies and room for manoeuvre of NHRIs though varies significantly across countries.



WHAT YOU CAN DO:

File an individual complaint alleging violations of ETOs:

- › Some NHRIs have the mandate to receive and investigate complaints from individuals or from groups who allege violations of their rights.
- › Collaborate closely with organisations based in the country that has breached its ETOs in preparing and submitting the complaint, and in related advocacy activities with the NHRI.

Encourage NHRIs to include ETOs in their monitoring activities:

- › NHRIs produce periodic reports on the human rights situation in their country, but also other periodic and thematic publications. Push for ETOs to be considered in NHRI publications.

- NHRIs carry out systematic human rights monitoring of State policies and legislations, and may have influence in the drafting or review of such. Use this space to raise ETO gaps, and encourage NHRI to systematically include ETO indicators in their monitoring.

Organize joint events with NHRIs and foster collaboration on ETOs

- NHRIs also have the mandate to *promote* human rights, for example, through events, seminars, or informational material. Organize a joint event on ETOs with your NHRI.
- Encourage collaboration and exchange between NHRIs in different countries to draw attention to and address cross-border violations of rights.



EXAMPLE: A group of 20 individuals and 14 civil society organisations filed a petition with the Commission on Human Rights of the Philippines calling for fossil fuel and cement producers ('Carbon Majors') to be held accountable for fuelling climate change and ocean acidification resulting in transboundary human rights impairments. **See Case Study 5.1 in Handbook.**

MINISTRIES

Relevant ministries, for example, those in charge of foreign affairs, human rights, environment, trade and investment, or development cooperation, can also be addressed to highlight ETO inconsistencies in public policies or programmes that fall under their area of competence.

**WHAT YOU CAN DO:****Engage with ministries to raise awareness on ETOs and to highlight gaps**

- Organise capacity buildings, private meetings, or public events on ETOs.
- Prepare written inputs and petitions, ideally jointly with other CSOs, including from the country where the harm occurs (possibly collaborating with Members of Parliament).

PARLIAMENTS

As they are the key actors in the adoption and review of laws, and are in a position to question and request information on government action, it is important to raise Members of Parliaments' (MPs) awareness on States' ETOs in different policy areas.

**WHAT YOU CAN DO:****Organize events and meet with MPs**

- Participate in public hearings organized by parliamentary (sub-) committees on specific thematic issues and raise ETOs in this context.
- Hold an informative event on ETOs with MPs. Invite MPs who sit in parliamentary committees on foreign affairs, human rights, trade, or development policies. Where relevant, invite people from the country in which the harm takes place to inform the MPs on the human rights impact of their country's policies. If these events are public, they can also contribute to raising the public's awareness on ETOs and increasing pressure on MPs.

- Private meetings with MPs can create a 'safe space' for both CSOs and MPs to openly discuss ETOs.
- Study trips of parliamentary committees on specific topics could also be an opportunity to invite MPs to examine extraterritorial impacts of their State's policies.

Questions to the Government

- MPs can usually put oral or written questions to members of the Government. This is another opportunity to raise awareness of ETOs. Convince MPs to raise such questions. Provide them with supporting analyses/evidence.

Participate in public consultations during the development of legislation

- CSOs can sometimes participate in consultations (oral or written) in the process of drafting new laws. Prepare joint inputs with other CSOs. Engage CSOs that do not have experience working on ETOs to collaborate with you. (This is a way to enhance ETO awareness among other CSOs.)



EXAMPLE: FIAN Sweden has been drawing attention on ETOs with regards to Sweden's pension fund policy inside the Swedish parliament. Pension funds in Sweden are a parliamentary issue as six political parties are responsible for the development of a new framework law on pension funds. FIAN Sweden organized seminars with MPs as well as the ministers responsible for the framework law. In addition to these seminars, they arranged personal meetings with MPs who form the Pensions Group of the Swedish Parliament in which people affected by the investments of Swedish pension funds abroad participated. They also contacted MPs who are not part of the working group and asked them to raise a question on

ETOs and States' pension funds to the government in a public debate in the parliament. They also participated in written consultations on the new framework law proposal.

EMBASSIES

Embassies of the foreign State(s) involved in extraterritorial human rights violations present a first contact point for CSOs in the country where the harm takes place. They have important political leverage for raising issues with their own government. They can furthermore play a role in putting an end to ongoing abuses or violations, assisting affected people and communities to access justice, and monitoring the implementation of remedies.



WHAT YOU CAN DO:

Contact the embassy of the foreign State(s) involved in the violations

- Collaborate with CSOs from the same State as the embassy. This can help in obtaining access to and increase pressure on the State, and can also contribute to presenting better documented evidence of the State's responsibility.
- MPs or ministry officials can be helpful in establishing contact with the embassy and organizing a meeting with the ambassador or other high level embassy representatives.
- If it is not possible to hold a meeting with embassy officials, send written information. It can be helpful to have various CSOs, including from the country of the embassy, co-sign petitions.



EXAMPLE: The Due Process of Law Foundation has been supporting cases concerning negative human rights impacts of Canadian extractive companies in Latin American countries. One of the strategies used by organizations on the ground has been to bring these cases to the Canadian embassies in their countries. In Argentina for instance, *Conciencia Solidaria* filed a complaint to the Canadian embassy for its complicity in the destruction of glaciers in the *Pascua Lama* project. Lobbying before the embassies and before the Organization of American States was crucial in facilitating a meeting with the representatives of the Canadian foreign affairs ministry in Ottawa, where civil society was able to raise their concerns.

COURTS

Civil and criminal law courts can be used strategically as a way to push States to recognize and implement their ETOs and obtain remedies for victims. For example, lawsuits against companies involved in human rights abuses abroad can contribute to opening up domestic court systems for reviewing the extraterritorial conduct of private actors based in that State and thereby contribute to advancing States' extraterritorial protect obligations. Filing such lawsuits is of course not without its challenges in terms of the financial and human resources required, collecting evidence, and surmounting admissibility hurdles.

Constitutional courts likewise present a space to bring claims regarding State breaches of their ETOs. While this avenue has been rarely used in the past, it certainly is worth exploring further.



EXAMPLE: Following a fire in a textile factory in 2012 in Karachi, Pakistan, 260 people died. Three years later in March 2015, a lawsuit against the German clothing company *Kik* was filed by a survivor and 3 families of victims at a regional court in Dortmund, Germany. They claimed that the company, which is the principle buyer of the textiles produced in the factory, should bear responsibility for the fire safety deficiencies in the factory. The German court accepted jurisdiction for the case in August 2016. *Kik* has agreed to pay \$5.15 million to the affected families and survivors following a negotiation but has refused to accept any responsibility in the disaster and pay any of the damages which are claimed in the lawsuit. To this day, the German court still has to pronounce itself on the merits of the case. For more information see: www.ecchr.eu.

Regional level

European Human Rights System

COUNCIL OF EUROPE

The Council of Europe (CoE), to be distinguished from the European Union, is a European organization mainly working on human rights, democracy and the rule of law, which has a broad membership of 47 States (See list of Member States: www.coe.int). It is home to the European Court of Human Rights as well as the European Committee on Social Rights, which are judicial and quasi-judicial bodies to which claims regarding CoE Member States' ETOs can be brought. It is important however to consider the financial, admissibility and time constraints attached to using these different mechanisms.

EUROPEAN COURT OF HUMAN RIGHTS

The European Court of Human Rights (ECtHR) can receive complaints for violations of the European Convention on Human Rights by a State party to the Convention, which includes all 47 members of the CoE. It is worth noting that the European Convention on Human Rights only covers civil and political rights (CP rights), although there have been efforts to bring economic, social and cultural rights (ESC rights) into the realm of the Court, for instance under the Court's interpretation of the right to life (art. 2). One should furthermore note that the ECtHR's decisions on cases

regarding ETOs have been rather restrictive, and mainly concerned foreign military operations. There are however some exceptions that also touch on ESC rights.¹



WHAT YOU CAN DO:

File a complaint with the European Court of Human Rights

- The individual bringing the case **does not have to be a citizen** of a State party to the Convention. A list of criteria that complaints have to meet to be admissible by the Court can be found here: www.echr.coe.int
- Bringing a case to the ECtHR can be resource and time consuming. It is important to prepare accordingly, seek legal and administrative assistance where necessary, and work jointly with other CSOs or social movements to document and file the case.

EUROPEAN COMMITTEE OF SOCIAL RIGHTS

The European Social Charter is a Council of Europe treaty that guarantees fundamental social and economic rights related to employment, housing, health, education, social protection and welfare as a counterpart to the European Convention on Human Rights, which refers to CP rights. The Charter lays special emphasis on the protection of vulnerable persons such as elderly people, children, people with disabilities and migrants.

1 See for example *Tarakhel v Switzerland* (29217/12) which concerns the return of an asylum seeking family to Italy. For a general though not exhaustive overview of ETO cases, see: www.echr.coe.int

The European Committee of Social Rights is the body in charge of monitoring State compliance with the European Social Charter. There is a collective complaints procedure which is however only available to certain trade union organisations, employer organisations, and non-governmental organisations who hold participatory status with the Council of Europe. Information on the collective complaints procedure and admissibility criteria can be found here: www.coe.int



WHAT YOU CAN DO:

File a complaint to the European Committee of Social Rights concerning extraterritorial breaches of rights enshrined in the European Social Charter

- Check the list of organizations entitled to lodge a complaint and explore their interest in collaborating: www.coe.int.
- Request the Committee to organise a hearing during the examination of the complaint.
- Develop a national advocacy strategy to follow up the decisions adopted by the Committee on the complaint.

European Union institutions

EUROPEAN PARLIAMENT

Members of the European Parliament (MEPs) are elected by voters from all 28 Member States of the European Union. The Parliament shares, with the Council of the European Union, the power to adopt and amend legislative proposals and to decide on the EU budget.



WHAT YOU CAN DO:

Organize a hearing in the European Parliament

- Having a hearing organized by one of the committees of the European Parliament is a useful way to raise the issue of the European Union's and its Member States' ETOs in the context of different policy areas in which the EU has competencies.
- Get in touch with MEPs, including members of the Foreign Affairs Committee, the Human Rights Subcommittee, the Development Committee or the International Trade Committee to convince them to organize a hearing on/related to ETOs. You can find their contacts here: www.europarl.europa.eu.
- Collaborate with CSOs based in Brussels who have experience in dealing with EU institutions.
- Organizing a joint hearing with several committees can be very relevant and effective.
- Invite affected communities or support groups from the countries where the harm takes place to participate in the hearing.

Request the European Parliament to command studies examining ETOs compliance of the EU's external action.

- Convince MEPs from the relevant committee to launch such a study.



EXAMPLE: In April 2016, the Subcommittee on Human Rights organized a hearing upon the request of Oxfam and other CSOs entitled “Human rights defenders and land-grabbing issues in the context of European investments in third countries”, which included speakers from Colombia, Honduras and Liberia.

See: www.europarl.europa.eu

EUROPEAN COMMISSION

The European Commission (EC) represents the **executive branch** of the European Union. The Commission is organized into departments which are each responsible for different policy areas.



WHAT YOU CAN DO:

Request MEPs to prepare written questions to the European Commission

- Members of the European Parliament can send written questions to the European Commission which is obliged to answer within 3 or 6 weeks (depending on whether it is an urgent or a normal question).
- Request a MEP to send written questions on an ETO issue and prompt the debate inside the European Union institutions.
- Collaboration with other CSOs working with EU institutions when getting in touch with MEPs can increase your impact.

Engage in the European Commission's policy discussions

- Civil society can make use of the different spaces available to them to point out inconsistencies in EU policies and agreements with regard to ETOs which bear human rights risks for people outside the EU.

In the context of EU trade policy, you can for example:

- › Contribute to public consultations (trade.ec.europa.eu/consultations).
- › Participate in civil society dialogues (trade.ec.europa.eu/civilsoc) and other events organised by the EC (trade.ec.europa.eu/doclib/events/) to express concerns and highlight ETOs.

EUROPEAN EXTERNAL ACTION SERVICE (EEAS) AND THE HUMAN RIGHTS WORKING GROUP OF THE EUROPEAN COUNCIL (COHOM)

The European External Action Service (EEAS) coordinates the EU's external actions and ensures these are coherent with the EU's policies and human rights. The Human Rights Working Group (COHOM) was created under the European Council to deal with the human rights aspects of the EU's external relations. COHOM also coordinates the position of EU Member States in international fora such as the UN Human Rights Council. Both are relevant spaces to raise issues related to EU foreign policies/ actions that result in human rights violations in other countries.



WHAT YOU CAN DO:

Raise ETOs in dialogues and consultations organised by the EEAS

- › Participate in public consultations, Human Rights Dialogues between the EU and partner countries, or the annual EU-NGO Forum on Human Rights. The latter can represent a good space to engage EU institutions on ETOs. The Human Rights and Democracy Network can serve as a privileged partner during the forum.
- › Make reference to the *EU Action Plan on Human Rights and Democracy 2015-2019*.

Raise ETOs with the EU Special Representative for Human Rights

THE EUROPEAN OMBUDSMAN

The European Ombudsman² is an independent body of the European Union which investigates complaints concerning the maladministration of EU institutions and agencies. Complaints can be lodged on the failure of an EU institution to respect fundamental rights, legal rules or principles, or the principles of good administration. Citizens and residents of the EU and also associations or other bodies registered with the EU can lodge a complaint to the Ombudsman. There is no requirement to be individually affected by the maladministration of an EU institution to lodge a complaint to the Ombudsman.



WHAT YOU CAN DO:

Lodge a complaint with the European Ombudsman

- Submit a complaint to draw attention to the disregard by EU bodies of the EU's and its Member States' ETOs.
- Information on how to lodge a complaint and admissibility criteria can be found here: www.ombudsman.europa.eu.



EXAMPLE: FIDH and its member organization, the Vietnam Committee on Human Rights, lodged a complaint to the European Ombudsman in 2014 concerning the European Commission's refusal to conduct a Human Rights Impact Assessment (HRIA) in the frame of the negotiations of a trade and investment agreement with Vietnam. For more information see: www.fidh.org.

² European Ombudsman is the official title of the institution, this however does not mean that the respective mandate holder is a man.

Inter-American Human Rights System

The Inter-American Human Rights System is part of the structure of the Organization of Americas (OAS). It comprises the Inter-American Commission on Human Rights and the Inter-American Court of Human Rights, which are in charge of monitoring implementation of the American Declaration of the Rights and Duties of Man and the American Convention on Human Rights.

INTER-AMERICAN COMMISSION ON HUMAN RIGHTS

The Inter-American Commission on Human Rights (IACHR) is composed of independent experts and has the mandate to promote and protect human rights. One of the functions of the Commission is to receive petitions filed by individuals or groups against one or several States that have ratified the American Convention on Human Rights. If the Commission finds that a violation took place, it will issue recommendations to the concerned State(s) and may refer the case to the Inter-American Court of Human Rights.



WHAT YOU CAN DO:

File a petition with the IACHR

- Cooperate with CSOs and social movements from the countries in which the harm takes place and/or originates from to document the case and present the petition.

- › Note that you can only file a petition to the IACHR **once domestic remedies are exhausted**. See also the other admissibility criteria: www.oas.org.

Organize a hearing with the IACHR

- › CSOs can request for thematic or case-related hearings and work meetings with the Commission (www.oas.org). These are important spaces to prompt further discussions, publications and statements from the Commission on ETOs.
- › Collaborate with CSOs from countries where the harm takes place and/or originates from.

Advocate for the IACHR to take up ETOs in its reports

- › The participation in hearings and private meetings, and advocacy with members of the Commission can lead to the inclusion of ETOs in a thematic or periodic report by the Commission.
- › Recommendations can serve as basis for national level advocacy on ETOs.



EXAMPLE: A large group of civil society organizations have been making use of the different mechanisms of the IACHR to draw attention to and encourage debate within the Commission on ETOs. **See Case Study 3.2 in Handbook.**

African Human Rights System

The African Human Rights System is under the umbrella of the African Union (AU). The main human rights instrument under the African Union is the African Charter on Human and Peoples' Rights, which covers a broad range of civil, political, economic, social, cultural and collective rights. The two main bodies overseeing implementation of the Charter are the African Commission on Human and Peoples' Rights (quasi-judicial body) and the African Court on Human and Peoples' Rights (judicial body).

AFRICAN COMMISSION ON HUMAN AND PEOPLES' RIGHTS

States Parties to the African Charter are required to submit a report every two years to the African Commission on Human and Peoples' Rights (ACHPR) on legislative and other measures they have taken to give effect to the rights and freedoms enshrined in the Charter. On this occasion, civil society organisations can also present alternative reports on the State's compliance with its obligations under the Charter. The ACHPR can also receive complaints by CSOs and individuals against States Parties. This provides a good basis for the hearing of ETO cases within Africa.



WHAT YOU CAN DO:

File a complaint under the Communications Procedure of the ACHPR

- Take note of the admissibility criteria, notably that **domestic remedies must be exhausted**. Guidance on how to prepare a complaint can be found here: www.achpr.org.
- Cooperate with CSOs and social movements from the countries where the harm takes place/originates from to prepare and present the petition.

Submit alternative reports under the State review procedure

- Submit a shadow report raising ETOs issues to the Commission at least 60 days prior to the Commission's examination of the State report. Collaborating with CSOs from your country as well as from the country where the harm originates can increase the quality and political weight of your submission.
- Participate during the session. Note that one must hold observer status with the Commission to participate in sessions. See which organisations hold observer status here: www.achpr.org.

Engage with the Special Mechanisms of the Commission

- The Commission can create Special Mechanisms such as Special Rapporteurs, Working Groups or Committees on particular issues. These mechanisms present periodic reports which provide the Commission and States with guidance. For more information on the mandate, competencies and mandate holder of each mechanism see: www.achpr.org
- Submit written information regarding ETOs to the Special Mechanisms.
- Organize a meeting with Special Mechanisms inviting other CSOs working on similar issues. This is an opportunity to present concerns and develop channels of cooperation regarding your case.
- Interact with Special Mechanisms during their country visits and provide them with information.

AFRICAN COURT ON HUMAN AND PEOPLES' RIGHTS

The African Court on Human and Peoples' Rights has similar jurisdiction to the Commission, although complaints can only be submitted against States that have clearly accepted the mandate of the Court to receive complaints from individuals and CSOs. As of March 2017, this is the case only for Benin, Burkina Faso, Côte d'Ivoire, Ghana, Mali, Malawi and Tanzania. An alternative for the other States is to bring the case before the African Commission on Human and Peoples' Rights (see above) and request for the case to be referred to the Court. For further information, see www.african-court.org.

International Level

UN TREATY BODIES/COMMITTEES

Once States have ratified international human rights treaties, they are under the obligation to periodically report to the UN bodies in charge of monitoring the implementation of the respective treaties ('Treaty Bodies' or 'Committees') on their compliance with the treaty obligations. During this process, Treaty Bodies can also receive written and oral information from civil society organizations. Some Treaty Bodies also have the capacity to receive individual complaints (see below).



WHAT YOU CAN DO:

*The Treaty Bodies organize **pre-sessional working groups** prior to the sessions to draft a list of issues and questions they request the State to report on and which will be raised during the session. Civil society can send **a list of issues** to the Treaty Body and can also participate in the pre-session and make an oral statement.*

*During the **session**, the Treaty Body considers the report sent by the State party and holds a constructive dialogue with the State. Civil society can send **parallel or shadow reports** to the State's report for the Treaty Body to consider. They can also participate during the session.*

*At the **end of the session** the Treaty Body emits observations and recommendations to the State under review ('concluding observations').*

Submit a list of issues and parallel report to the Treaty Body raising the issue of ETOs

- Document cases of extraterritorial human rights violations/abuses and present them in the list of issues or parallel report. Make sure that your report provides for sufficient clear proof of the State's responsibility in the cited violation or abuse. Clearly list and highlight the recommendations you want the Treaty Body to make to the State.
- Collaborate with civil society organisations (CSOs) from other countries (where the harm takes place/originates) in documenting cases and preparing joint parallel reports. This will improve the quality of the report and add political weight.
- Use the Maastricht Principles, the sources provided in the Commentary, as well as Treaty Body pronouncements (e.g., General Comments and Concluding Observations) on similar issues to support and add legal weight to your claims. Pronouncements can be found on the website of each Treaty Body: www.ohchr.org.

Engage in national lobbying for the implementation of the concluding observations

- Work with other CSOs to call on the State to implement its ETOs on the basis of the Treaty Body's concluding observations. Approach relevant ministries/State officials in charge of implementing the concluding observations.
- Engage and work with NHRIs and other public bodies towards the implementation of the recommendations.



EXAMPLE: For two reviews of the UK before UN Treaty Bodies, the Global Initiative for Economic, Social and Cultural Rights, the Right to Education Project and partner organizations prepared joint parallel reports on the human rights impact of the UK's development policy on the expansion of private schools in Ghana, Kenya, Uganda and Pakistan. The recommendations issued by the Treaty Bodies were later used in advocacy in the various countries and at the international level. **See Case Study 4.1 in Handbook.**

TREATY BODY COMPLAINTS MECHANISMS

Eight Committees or Treaty Bodies have the capacity to receive petitions from individuals who claim that their rights have been violated by a State party to the treaty. You can only bring a complaint against a State which **has recognized the competence of the Treaty Body to receive and consider complaints from individuals**. Information on each States' treaty ratification status can be found here indicators.ohchr.org.



WHAT YOU CAN DO:

File an individual complaint to a Treaty Body denouncing a violation by a State of its obligations under the treaty

- Make sure to clearly prove that the State in question is responsible for the human rights violation affecting you and your community.
- Make reference to the Maastricht Principles, the legal sources of the Commentary to the Maastricht Principles, and previous jurisprudence and pronouncements of Treaty Bodies.
- Following up the Committee's decision at the national level is very important to make sure that there are effective remedies and that the State acknowledges its extraterritorial human rights obligations.

UNITED NATIONS SPECIAL PROCEDURES

United Nations Special Rapporteurs and Independent Experts (referred to as 'Special Procedures') on specific topics carry out country visits, conduct thematic studies, issue thematic reports, communicate to States on individual and structural cases of human rights violations, engage in advocacy and raise public awareness.



WHAT YOU CAN DO:

Send information to Special Procedures

- Send communications to relevant Special Procedures on individual cases of violations or on patterns of extraterritorial human rights violations. Special Rapporteurs also receive information during their consultations when preparing reports to the Human Rights Council.
- Sending communications to several Special Rapporteurs can increase the impact of the communication and the pressure on the concerned State(s).
- If you are in Geneva, organize a meeting with the assistants of Special Rapporteurs and raise the issue of ETOs. Organizing this meeting along with other CSOs can add weight to your claims.

Engage with the Special Procedures during their country visits

- Participate in civil society meetings held by Special Procedures during their country visit. You can find their contacts here: www.ohchr.org.

Tool 3

Frequently Asked Questions on ETOs

1 What are extraterritorial obligations (ETOs)?

ETOs are the human rights obligations States have towards people living in other countries. These include obligations to respect and protect human rights abroad, as well as obligations to cooperate internationally for the universal fulfilment of human rights.

In 2011, a group of 40 international law experts from all regions of the world set out to clarify what States' ETOs are and issued the *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*. You can find the Maastricht Principles here: www.etoconsortium.org

2 Are the Maastricht Principles a legally binding instrument?

No, the Maastricht Principles are not a legally binding international instrument, as they have not been adopted or recognized by States as such. They are an international expert opinion developed by international legal experts that aims to clarify States' ETOs on the basis of current international law. Although the Maastricht Principles themselves are not a binding instrument (or 'hard law'), they clarify and interpret existing human rights obligations which are legally binding upon States. In this sense, **the obligations they spell out are binding**.

3 Do ETOs create new international law?

No, the ETOs outlined in the Maastricht Principles do not establish new elements nor obligations under international human rights law. Neither is this their intention. As mentioned in FAQ 2, they aim to clarify the content of States' ETOs based on *existing international law* and therefore do not create any new international law.

4 Where can I find the legal sources for the Maastricht Principles?

The legal sources used for each of the Maastricht Principles are presented in a legal commentary (*Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights*). The Commentary can be found in the online library of the ETO Consortium: www.etoconsortium.org

5 Have States' ETOs been explicitly recognized by national, regional and international human rights bodies?

States have recognized their ETOs in key international human rights treaties and declarations, including the United Nations Charter, the UDHR and the International Covenant on Economic, Social and Cultural rights. These instruments explicitly or implicitly spell out the obligations States have towards people living in other countries.

International and regional human rights bodies have, in their interpretations and monitoring of States' human rights obligations, on numerous occasions reaffirmed and clarified the extraterritorial reach these have. Virtually all UN Treaty Bodies have taken up ETOs in their State recommendations and general clarifications of treaty obligations (e.g., CESCR General Comment No. 15 on the Right to Water, CRC General Comment No. 16 on State obligations regarding the impact of business on children's rights, CEDAW General Recommendation No. 34 on the Rights of Rural Women).³ ETOs have also been reiterated by UN Special Rapporteurs and Independent Experts (e.g., Special Rapporteur on the right to food, Special Rapporteur on rights of indigenous

3 A comprehensive compilation can be found here: www.globalinitiative-escr.org

peoples, Independent Expert on the promotion of a democratic and equitable international order). Regional human rights bodies, such as the European Court of Human Rights (e.g., *Al-Jedda v. United Kingdom*, 2011), the Inter-American Court of Human Rights (e.g., *Saldaño v. Argentina*, 1998) as well as the African Commission on Human and Peoples' Rights (e.g., General Comment No. 3 on the Right to Life) have equally reaffirmed States' ETOs in their decisions and interpretations of regional human rights treaties.

6 Are the Maastricht Principles only applicable to the area of economic, social and cultural rights?

No. Although the Maastricht Principles are explicitly focused on ESC rights, ETOs are not limited to any particular category of rights. This is clearly spelled out in Maastricht Principle 5: “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”. The legal basis for ETOs is similar for ESC rights and civil and political rights, only that the Maastricht Principles have been drafted with a specific focus on ESC rights. As all human rights are indivisible, interdependent, interrelated and of equal importance, it would not make sense to restrict the application of the Maastricht Principles.

7 Do only States have ETOs?

ETOs are obligations on States, who are the duty-bearers under international human rights law. Individuals, non-governmental organisations, transnational corporations and other business enterprises do not hold extraterritorial human rights obligations. This does not mean that these actors operate in a legal vacuum. States' ETOs to protect human rights means that they must regulate and hold these actors to account when they impair the enjoyment of human rights, including abroad.

While the Maastricht Principles deal with the obligations of States, some of the principles may also apply to international organisations (see Principle 16). This is because international organisations, as subjects of international law, are equally bound by some of the laws that underpin the Principles.

8 Can ETOs represent a threat to State sovereignty?

States cannot use sovereignty as an excuse for failing to take measures to respect, protect or fulfil human rights in their territory. They are not sovereign to violate human rights.

At the same time, the Maastricht Principles are very clear on the fact that ETOs cannot serve as justification for infringing upon the sovereignty of other States. Principle 10 states that ETOs should not be used as an excuse for States to take action that conflicts with the United Nations Charter or general international law. This includes, for example, refraining from the use of force against the territorial integrity of another State in a way that contradicts the purposes of the UN (UN Charter Art. 2(4)).

9 Why do we need ETOs when gaps in human rights protection result primarily from lack of regulation and implementation at a national level?

ETOs are necessary because a purely territorial compliance by States of their human rights obligations does not and would not suffice for human rights to be ensured universally. In a highly globalized world where the acts and omissions of a State can have effects on the enjoyment of the human rights of people in other countries, each State must ensure it respects, protects and fulfils human rights not only within but also beyond its national borders. This is central for closing gaps in human rights protection and realizing human rights universally.

10 What is the ETO Consortium?

Created in 2007, the ETO Consortium is a network of civil society organizations, academics, and independent experts who work together towards mainstreaming, applying and advancing ETOs in different policy and regional/country contexts. Its members work on a wide array of policy areas such as trade and investment, intellectual property rights, development cooperation, public services, finance regulation, tax justice, land grabbing, transnational corporations, climate change, and eco-destruction, as well as on specific rights such as the rights to health, to food and nutrition, and to housing. For more information visit the website www.etoconsortium.org or contact the ETO Consortium Secretariat ([secretariat\[at\]etoconsortium.org](mailto:secretariat[at]etoconsortium.org)).

11 How can extraterritorial obligations be enforced at the international or national level?

There are different mechanisms available at national, regional and international levels to hold States to account for their failures to comply with their extraterritorial human rights obligations. See Tool 2 for an overview and discussion on the opportunities and limitations they each present.

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