

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

Introduction

The Maastricht Principles on States' extraterritorial obligations (ETOs) summarize the **human rights obligations States have towards people living in other countries**.¹ They focus on economic, social and cultural rights (ESC rights) but can to a large extent also be applied to civil and political rights. The Principles do not create new standards; rather they restate and clarify the obligations States already have under international law.²

Main Pillars of States' ETOs

According to the Maastricht Principles, States have ETOs whenever:

- they exercise authority or effective control over a territory and/or persons;
- their actions or omissions have a foreseeable effect on ESC rights abroad;
- they are in a position to exercise decisive influence or take measures to realize ESC rights abroad (in accordance with international law).

States' ETOs include the obligation to respect ESC rights abroad. In this context, States must take measures to avoid that their conduct undermines the enjoyment of ESC rights in other countries, by, for example, conducting human rights impact assessments of laws, policies and practices. They must also, in case that their policies or actions have caused harm in other countries, ensure access to effective remedies for those affected.

When entering and implementing international agreements, States must ensure that these are consistent with their human rights obligations and do not interfere with the

¹ Available in different languages at <http://www.etoconsortium.org/en/library/maastricht-principles/>

² For a detailed account of the legal sources of the Maastricht Principles, see De Schutter et al., 'Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights' (2012), available at http://www.etoconsortium.org/nc/en/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=63

enjoyment of ESC rights in other countries. This includes ensuring, for example, that trade and investment agreements do not curtail the policy space of other States to implement measures aimed at the realization of human rights, such as public health regulations or food security policies.

States' ETOs also include obligations to *respect, protect* and *fulfil* ESC rights abroad. States must, for example, take measures to ensure that corporations that are under their regulatory powers do not impair the enjoyment of human rights abroad. The basis for protection is given if the corporation (or its parent or controlling company) is domiciled in or carries out substantial business activities in the State concerned.

States moreover have an obligation to individually and jointly develop international policies conducive to the realization of ESC rights. This applies, among others, to the fields of trade, investment, taxation, finance, ecology, and development cooperation.

Another important aspect highlighted by the Maastricht Principles is that States remain responsible for their own conduct when acting through international organisations and financial institutions, such as the World Bank, the International Monetary Fund, or the European Union. When participating in or transferring competences to such organisations, States must ensure that these act in accordance with their human rights obligations.

Using the Maastricht Principles in the Context of RTaFN

The Maastricht Principles provide an important tool for monitoring States' compliance with their ETOs and for holding them accountable for extraterritorial violations of the right to adequate food and nutrition (RtAFN) and related human rights. There are many examples of RtAFN violations with an extraterritorial dimension, including:

- international trade and investment agreements that undermine local food sovereignty and curtail States' abilities to implement measures to protect and promote the RtAFN;

- land and resource grabbing by foreign investors, facilitated by international agreements in the area of investment, intellectual property rights, or development;
- displacements induced by large-scale infrastructure and extractive industries projects, financed by international financial institutions;
- austerity measures imposed by foreign creditors that curtail States' abilities to implement policies that promote and guarantee the RtAFN;
- failure to effectively regulate transnational corporations and prevent practices that have an adverse impact on the enjoyment of the RtAFN (e.g., abusive labour policies, eco-destruction, marketing of unhealthy food products).

Advocacy efforts towards the realization of the RtAFN should therefore not only be directed towards the State in which the people affected live, but also towards foreign States (sometimes multiple) that have caused or contributed to the violation(s). Collaboration between civil society groups based in these countries can help address the violations from multiple sides, by referring to both States' domestic obligations and their extraterritorial ones.

Germany's ETOs in the Mubende case³

In 2001, the Ugandan army forcefully evicted over 390 peasant families in the Mubende District in Uganda to make space for a large coffee plantation owned by Kaweri Coffee, a subsidiary of the German Neumann KaffeeGruppe (NKG). Houses, fields, and food were destroyed and families forced to camp out in the forest. One year later, the African Development Bank (AfDB) approved a loan of USD 2.5bn to finance the project. The displaced families, who were stripped of their homes and livelihoods without receiving adequate compensation or social assistance, continue to suffer hunger and malnutrition. While they finally – after a ten year long delay – won a case against Kaweri in the Ugandan High Court, they have not yet received adequate compensation, nor has their land been returned to them.

³ For further information on the case, see <http://www.fian.org/what-we-do/case-work/uganda-mubende/>. See also Coomans and Künnemann (eds.), 2012, Cases and Concepts on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights, Intersentia: Cambridge.

The Ugandan State not only failed to protect the peasant families, but was directly involved in the eviction of the peasant families and hence responsible for violating their human rights. The German State however equally carries responsibility. According to ETO Principle 25c, Germany has an extraterritorial obligation to ensure that companies over which it holds regulatory power, such as the NKG, do not impair the ESC rights of people living in other countries. Both NKG and the German authorities could and should have known about the potential human rights risks and should have taken steps to avert these (ETOP 14).

Germany also failed to comply with its ETOs in relation to ensuring that the affected families have access to effective remedies by, on the one hand, not acting when the case was brought to the attention of its National Contact Point (NCP) for the OECD Guidelines for Multinational Enterprises and, on the other hand, not providing for the option of having the case examined before a German court. Moreover, Germany, as a ruling member of the AfDB, should have refused the commissioning of the loan to a plantation project that is built on human rights violations (ETOP 15).