



# Global Economy, Global Rights

A practitioners' guide for interpreting human rights obligations in the global economy



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## About this publication

This report synthesizes and analyses the interpretation of extraterritorial obligations (ETOs) in the context of corporate human rights violations from the perspective of United Nations (UN) treaty bodies. The resource is built on the concluding observations of UN treaty bodies issued between 2007 and 2014, as well as the general comments issued by UN treaty bodies from 2000 onwards. This overview of the practice of interpreting and implementing ETOs by United Nations human rights treaty bodies ('UN treaty bodies') is designed to support and inform the activities of human rights stakeholders, particularly UN special procedure mandate holders, treaty bodies and other agencies.

Several members of the Corporate Accountability Working Group (CAWG) of the International Network for Economic, Social and Cultural Rights (ESCR-Net), with significant experience in advocating for application of ETOs in situations of corporate human rights violations around the world, were involved in the development of this publication. In particular, the CAWG would like to thank the following members for their commitment and contribution to this publication:



ESCR-Net is also especially grateful to Olivier de Schutter and Sylvain Aubry for their contributions to this publication.

## About ESCR-Net

The International Network for Economic, Social and Cultural Rights (ESCR-Net) connects over 270 NGOs, social movements and advocates across 70 countries, facilitating strategic exchange and collective advocacy to build a global movement to make human rights and social justice a reality for all. The Corporate Accountability Working Group of ESCR-Net brings together over 70 ESCR-Net members to undertake coordinated member-to-member skill and capacity exchange, collaborative research and global advocacy aimed at establishing greater human rights accountability for corporations.

## Foreword



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### ***The advance of ETOs in international law – A silent revolution or a return to the original promise?***

This publication brings together a body of jurisprudence emanating from the United Nations human rights treaty bodies in the area of extraterritorial human rights obligations of States. It documents the silent revolution that has taken place in recent years, as human rights doctrine has sought to adapt to the challenge posed by the ‘transnationalization’ of economic activities, and the resulting increased interdependence of States. As such, it shall be a key resource both for the human rights treaty bodies themselves, whose positions are presented in a systematic fashion – thereby providing a much-needed analytical framework, but also for all human rights actors, including activists who increasingly rely on human rights in their quest for a more equitable form of globalization.

In a way, the growing recognition of extraterritorial obligations is indeed a revolutionary change. The mainstream view has long been that there exists no general international legal obligation imposed on States to exercise extraterritorial jurisdiction outside their national territory in order to protect and promote internationally recognized human rights. By this approach, the international responsibility of a State was considered to have not been engaged by the conduct of actors that did not belong to the State apparatus, unless they were acting under their instructions, direction or control. The private-public distinction on which this rule of attribution has been understood is in part mooted, though not exactly contradicted, by the positive international legal obligations on States, which imply that they must accept responsibility for the acts and omissions that its organs have undertaken, where such acts or omissions result in insufficient protection for private persons against violations by other non-State actors.

Until recently, such positive obligations had been affirmed only in situations falling under the ‘jurisdiction’ of the State, i.e. in situations on which the State exercises ‘effective control’.

In this sense, it has hitherto been presumed that only in exceptional circumstances do organs of a State have effective control outside the national territory to degree which establishes their jurisdiction and engage their positive legal obligations. Thus, there was no clear obligation for States to control private actors operating outside their

national territory, in order to ensure that these actors will not violate the human rights of others. This was the case even as regards those private actors with the nationality of the State concerned, and whose behaviour therefore a State may decisively influence, and on whom it may impose obligations in conformity with international law.

This is changing. In a number of general comments, recommendations and concluding observations, as well as in decisions adopted on the individual communications addressed to them, the UN human rights treaty bodies have accepted that States cannot ignore the fact that they may influence situations outside their borders, even in the absence of territorial control, and that with this power comes responsibility. The Committee on Economic, Social and Cultural Rights, for instance, repeatedly took the view that the States parties to the International Covenant on Economic, Social and Cultural Rights should respect the enjoyment of the rights stipulated in the Covenant in other countries, inter alia, by preventing third parties from violating the right in other countries, 'if they are able to influence these third parties by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law'. Specifically in regard to corporations, this committee has further stated that 'States Parties should also take steps to prevent human rights contraventions abroad by corporations that have their main seat under their jurisdiction, without infringing the sovereignty or diminishing the obligations of host states under the Covenant'. Similar views have been expressed by, among others, the Committee on the Elimination of Racial Discrimination, by the Committee on the Elimination of Discrimination against Women, and by the Human Rights Committee.

To some this may look like a silent revolution – a fundamental transformation of the role of human rights, and of their relationship to notions such as national territory or jurisdiction, which are familiar to all international lawyers. But, revolutionary as it seems, this shift is the opposite of a betrayal of the original values on which human rights were originally founded. Instead, it is a return to the promise that was made when the international protection of human rights was seen as part of the New World Order established following World War II. The “revolution” of extraterritorial obligations in the area of human rights means little else in fact than re-establishing human rights in the position they were occupying more than sixty years ago, when the Charter of the United Nations and the Universal Declaration of Human Rights were adopted. Under the UN Charter, all Members of the United Nations pledge to “take joint and separate action in cooperation with the Organization” to achieve the purposes set out in Article 55 of the Charter, which include “universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”

When it was adopted three years later, the Universal Declaration of Human Rights not only provided a catalogue of rights concretizing the requirements of the United Nations Charter, but in Article 22 it also set out a duty of international cooperation for the realization of economic, social and cultural rights. This objective, it states, must be achieved “through national effort and international co-operation and in accordance with the organization and resources of each State.” Article 28 of the Universal Declaration of Human Rights also stipulates that “everyone is entitled to a social and international

order in which the rights and freedoms in this Declaration can be fully realized”. Today, it is these promises that are finally being revived. This publication shall contribute to the understanding of the transformation that is taking place, and to make it more concrete. It further strengthens the case for the systematic inclusion, in the future development of international human rights law, of the Maastricht Principles on the extraterritorial obligations of States in the area of economic, social and cultural rights. A range of academic experts and non-governmental organisations endorsed these principles in September 2011, and they have been acknowledged in paragraph 61 of the Guiding Principles on Extreme Poverty and Human Rights, which were adopted by consensus by the Human Rights Council (resolution 21/11) in September 2012.

The recognition of States’ extraterritorial human rights obligations, and their gradual codification in soft law instruments, fits within a broader attempt to ensure that economic globalization contributes to human development, the eradication of poverty, and the realization of all human rights. International organisations, whose establishment has played such a major part of the process of economic globalization, are increasingly developing mechanisms to ensure accountability towards human rights. Transnational corporations are aware that they are now expected to respect human rights, and to ensure that they have a positive impact on their realization: the OECD Guidelines on Multinational Enterprises were revised in 2000, and again in 2011, in order to refer to human rights, and they now have dedicated human rights section; in June 2011, the Human Rights Council adopted a set of Guiding Principles implementing the “Protect, Respect and Remedy” Framework proposed by the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprises. Furthermore, the Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements have been presented to the Human Rights Council in 2011, which fill a gap in the search for greater coherence between the conclusion of trade and investment agreements on the one hand, and human rights obligations on the other. While human rights treaty bodies, as well as special procedures of the Human Rights Council, have regularly called upon States to prepare human rights impact assessments in connection with the trade and investment agreements that they conclude (emphasizing that States should take into account their human rights obligations when negotiating or ratifying such agreements), these Guiding Principles aim at providing guidance as to how to go about preparing such assessments, focusing on the methodological and procedural aspects.

Human rights treaty bodies have sought to play their part in this agenda to recapture the process of economic globalization. The systematic analysis of their contribution that is presented here shall have an important role in supporting this development. It is my hope that it will be broadly read, built upon, and taken into account by those to which it is primarily addressed: the policy-makers who are responsible for shaping the world in which we live.

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# I. Introduction

- **1.** Decades of growth in transnational business activities have had a decisive influence on the realisation of the human rights of people in States that host foreign investment projects. The system of international human rights law has needed to respond to this development. As a result, the understanding of the scope of a States’ human rights obligations has progressively evolved to include duties to exercise jurisdiction over activities that are connected to one State but have an impact in another. Extraterritorial obligations (ETOs) derive their name because they refer to obligations arising from activities that take place or have effect outside of a state’s territory, but are in some way associated with that state.<sup>1</sup>
- **2.** Extraterritorial obligations are grounded in the text of a number of international documents, such as the Charter of the United Nations,<sup>2</sup> the Universal Declaration of Human Rights,<sup>3</sup> the International Covenant on Economic, Social and Cultural Rights (ICESCR),<sup>4</sup> the International Covenant on Civil and Political Rights (ICCPR),<sup>5</sup> and the Convention on the Rights of Persons with Disabilities (CRPD),<sup>6</sup> which all include provisions with elements of extraterritorial character.

.....  
**1** For more background, see also Gibney, M. & Skogly, S., *Universal Human Rights and Extraterritorial Obligations*, Philadelphia: University of Pennsylvania Press, 2010; Coomans, F. & Kühnemann, R., *Cases and Concepts on Extraterritorial Obligations in the Area of Economic, Social and Cultural Rights*, Cambridge: Intersentia Publishing Ltd., 2012; Langford, M., Vandenhoe, W., Scheinin, M., & Van Genugten, W., *Global Justice, State Duties: The Extraterritorial Scope of Economic, Social and Cultural Rights in International Law*, Cambridge: Cambridge University Press, 2013; Olivier De Schutter, Asbjørn Eide, Ashfaq Khalfan, Marcos Orellana, Margot Salomon and Ian Seiderman, “[Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights](#)”, 29 February 2012 [‘Maastricht Principles Commentary’].

**2** *Article 56 of the Charter of the United Nations*, “All Members pledge themselves to take joint and separate action in cooperation with the Organization...” to achieve purposes set out in article 55 of the Charter. Such purposes include: “... universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion.”

**3** *Article 28 of the Charter of the United Nations reads*, “Everyone is entitled to a social and international order in which the rights and freedoms in this Declaration can be fully realised”.

**4** *Article 2(1) of the International Covenant on Economic, Social and Cultural Rights (ICESCR)* requires States parties to the Covenant to “take steps, individually and through international assistance and co-operation, especially economic and technical”.

**5** *Article 2(1) of the International Covenant on Civil and Political Rights (ICCPR)* reads, “Each State Party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognised in the present Covenant”.

**6** *Article 32 of the Convention on the Rights of Persons with Disabilities (CRPD)* reads, “States Parties recognize the importance of international cooperation and its promotion, in support of national efforts for the realization of the purpose and objectives of the present Convention, and will undertake appropriate and effective measures in this regard”.



- **3.** The application of extraterritorial obligations has been supported by the International Court of Justice in its *Advisory Opinion on the Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*. The Court observed that “while the jurisdiction of States is primarily territorial, it may sometimes be exercised outside the national territory”.<sup>7</sup> Specifically with regards to the ICCPR, it added that: “...the travaux préparatoires of the [ICCPR] show that, in adopting the wording chosen, the drafters of the [ICCPR] did not intend to allow States to escape from their obligations when they exercise jurisdiction outside their national territory”.<sup>8</sup> This decision has far-reaching consequences since other treaties, such as the ICESCR, do not have any explicit provision limiting their jurisdiction, thus making the reasoning of the International Court of Justice all the more applicable to the full range of human rights.
- **4.** Thus, the notion of jurisdiction has progressed towards a firm recognition of States’ duties beyond their borders. Regional courts and human rights bodies have taken positions confirming this trend. For instance, the American Convention on Human Rights extends to persons “subject to [the] jurisdiction” of the State Party, and the Inter-American Commission on Human Rights held that in relation to the American Convention, “jurisdiction [is] a notion linked to authority and effective control, and not merely to territorial boundaries.”<sup>9</sup> The European Court of Human Rights has also indicated that “as an exception to the principle of territoriality, a Contracting State’s jurisdiction under article 1 may extend to acts of its authorities which produce effects outside its own territory.”<sup>10</sup>
- **5.** UN treaty bodies<sup>11</sup> have addressed extraterritorial human rights issues in their various reports, statements and general comments. In so doing, these bodies have played an important role in developing and consolidating the understanding of how to apply the concepts of jurisdiction to the actions and omissions of States.

<sup>7</sup> [The Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory \(Advisory Opinion\) \[2004\] ICJ Rep., p. 136](#), para 109.

<sup>8</sup> *Ibid*, para. 109. See also [Armed Activities on the Territory of the Congo \(Democratic Republic of the Congo v. Uganda\)](#), 19 December 2005 at paras. 178-180 and 216-217.

<sup>9</sup> [Victor Saldano v. Argentina](#), Report No. 38/99, 11 March 1999, para. 19.

<sup>10</sup> [Al-Skeini and Others v. the United Kingdom \(Appl. No.. 5572/107\)](#), judgment of 7 July 2011 (citations omitted), para. 133.

<sup>11</sup> The UN treaty bodies referred to in this publication that monitor the implementation of international human rights treaties are the Human Rights Committee (HRC), the Committee on Economic, Social and Cultural Rights (CESCR), the Committee on the Elimination of Racial Discrimination (CERD), the Committee on the Elimination of Discrimination against Women (CEDAW), the Committee against Torture (CAT) and the Committee on the Rights of the Child (CRC).

- **6.** In total, UN treaty bodies have addressed extraterritorial issues twenty six times in their concluding observations in the last seven years, in relation to a wide range of topics, actors and rights, demonstrating the applicability of ETOs in many situations. UN treaty bodies have considered the ETOs of States with regards to a number of rights, including both economic, social and cultural rights (ESCR) and civil and political rights (CPR). These include the following examples:
  - The right to social security<sup>12</sup>
  - The right to food<sup>13</sup>
  - The right to not be tortured or ill-treated<sup>14</sup>
  - The rights to water and housing<sup>15</sup>
  - The right to a remedy and reparation<sup>16</sup>
  
- **7.** Addressing States’ ETOs has allowed UN treaty bodies to express their concerns and make recommendations on a number of issues crucial to the enjoyment of human rights, which may have otherwise remained unaddressed. For instance, UN treaty bodies have made comments on the human rights impact of the exploitation of natural resources in third countries;<sup>17</sup> the role of multinational corporations in large-scale development projects and forced land evictions;<sup>18</sup> the potential of State regulations in importing countries to address

<sup>12</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), [General Comment No. 19: The right to social security](#) (Art. 9 of the Covenant), E/C.12/GC/19, 4 February 2008, para. 54.

<sup>13</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), [Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: Concluding observations of the Committee on Economic, Social and Cultural Rights : Germany](#), 12 July 2011, E/C.12/DEU/CO/5

<sup>14</sup> UN Committee Against Torture (CAT), [General Comment No. 2: Implementation of Article 2 by States Parties](#), 24 January 2008, CAT/C/GC/2; UN Committee Against Torture (CAT), [General Comment No. 3: Implementation of Article 14 by States parties](#), 19 November 2012, CAT/C/GC/3.

<sup>15</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Republic of Korea](#), 6 October 2011, CRC/C/KOR/CO/3-4 para. 26.

<sup>16</sup> UN Committee on the Rights of the Child (CRC), [Concluding observations on the initial report of Paraguay submitted under article 12 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted by the Committee at its sixty-fourth session \(16 September–4 October 2013\)](#), 29 October 2013, CRC/C/OPSC/PRY/CO/1.

<sup>17</sup> E.g. UN Committee on the Elimination of Racial Discrimination (CERD), [Reports submitted by States parties under article 9 of the Convention : International Convention on the Elimination of All Forms of Racial Discrimination: addendum: Information provided by the Government \[of\] Canada on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination - Canada](#) (CERD/C/CAN/CO/18), 27 October 2009, CERD/C/CAN/CO/18/Add.1, para. 17.

<sup>18</sup> E.g. UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Australia](#), 28 August 2012, CRC/C/AUS/CO/4, para. 27-28; UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention:](#)

child labour in exporting countries;<sup>19</sup> and the relationship between trade and human rights. By doing so, UN treaty bodies have contributed to the protection of the rights of groups such as indigenous peoples,<sup>20</sup> children,<sup>21</sup> and small farmers,<sup>22</sup> whose rights are routinely disregarded by foreign States and private actors based in third countries.

- **8.** Likewise, in recent years many UN Special Procedure Mandate-Holders have also built on these developments to inform their reports and address crucial issues (see Box One).
- **9.** The evolution in understanding and interpreting ETOs is embodied in the formation of the *Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights* (the Maastricht Principles).<sup>23</sup> In September 2011, these principles were agreed upon by a group of international human rights law experts, including a mix of 12 former and current members of various UN treaty bodies and Special Procedure Mandate-Holders, following a multi-year process of consultation and drafting. The Maastricht Principles draw on existing international law in order to clarify the content of extraterritorial State obligations. Guidance on the scope and the interpretation of the Maastricht Principles can be found in the commentary published with the Principles.<sup>24</sup> Elements of the Maastricht Principles are referenced in this publication where they echo the interpretation of ETOs by UN treaty bodies.

[Concluding observations: Turkey](#) CRC/C/TUR/CO/2-3, 20 July 2012, paras. 22-23.

<sup>19</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations - Italy](#), 31 October 2011, CRC/C/ITA/CO/3-4, paras. 20-21; UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Republic of Korea](#), 6 October 2011, CRC/C/KOR/CO/3-4, paras. 26-27; Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations - Finland](#), 3 August 2011, CRC/C/FIN/CO/4, para. 24.

<sup>20</sup> E.g. UN Committee on the Elimination of Racial Discrimination (CERD), [Consideration of reports submitted by States parties under article 9 of the convention: Concluding observations of the Committee on the Elimination of Racial Discrimination: Australia](#), 27 August 2010, CERD/C/AUS/CO/15-17, para. 13.

<sup>21</sup> E.g. UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations - Malta](#), 28 February 2012, CRC/C/MLT/CO/2, para. 25.

<sup>22</sup> E.g. UN Committee on Economic, Social and Cultural Rights (CESCR), [Concluding observations concerning the fourth periodic report of Belgium](#), 23 December 2013, E/C.12/BEL/CO/4, para. 22.

<sup>23</sup> [Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights](#).

<sup>24</sup> De Schutter, O., Eide, A., Khalfan, A., Orellano, M., Salomon, M. & Seiderman, I. '[Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights](#)', *Human Rights Quarterly* 34 (2012) 1084-1169.

## Box One

**Corporate Accountability Cases where UN Special Procedure Mandate-Holders Have Applied ETOs**

The UN Special Procedure Mandate-Holders have sent many communications to States concerning the application of their extraterritorial obligations, especially in cases involving allegations of corporate abuse of human rights in host states. For instance, following reports that a large-scale steel plantation of a South Korean company (POSCO) in India would potentially force 20,000 people to leave their homes and land in Odisha State,<sup>25</sup> eight UN Special Procedure Mandate-Holders wrote to the Republic of Korea (as well as India and the company) in June 2013 urging them to adhere to their extraterritorial obligations.<sup>26</sup>

There are many other examples of UN Special Procedure Mandate-Holders explicitly reminding States of their extraterritorial obligations. For instance, the Independent Expert on the effects of foreign debt expressed his concern about the fact that some of the projects that the Australian Export Credit Agency supports may have adverse environmental and social impacts in the countries where they are implemented.<sup>27</sup> The Special Rapporteur on toxic waste encouraged Canada to take measures against acts which negatively impact the rights of indigenous peoples outside Canada, and to explore ways of holding the corporations accountable for such violations abroad.<sup>28</sup> The Working Group on Mercenaries found that the South African regulatory regime for private military and security companies operating abroad faced serious challenges in

<sup>25</sup> International Network for Economic, Social & Cultural Rights (ESCR-Net) & the International Human Rights Law Clinic of the Center for Human Rights & Global Justice (2013) ‘[The Price of Steel: Human Rights and Forced Evictions in the POSCO-India Project](#)’.

<sup>26</sup> Collective communication sent to the Republic of Korea on 11 June 2013 from the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, Working Group on the issue of human rights and transnational corporations and other business enterprises, Special Rapporteur on extreme poverty and human rights, Special Rapporteur on the right to food, Special Rapporteur on the rights to freedom of peaceful assembly and of association, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, Special Rapporteur on the situation of human rights defenders and the Special Rapporteur on the human right to safe drinking water and sanitation . Available at: [https://spdb.ohchr.org/hrdb/24th/public\\_-\\_OL\\_Korea\\_11.06.13\\_\(1.2013\).pdf](https://spdb.ohchr.org/hrdb/24th/public_-_OL_Korea_11.06.13_(1.2013).pdf)

<sup>27</sup> [Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephias Lumina: Addendum – Mission to Australia](#) (7–11 February 2011), A/HRC/17/37/Add.1, para. 99.

<sup>28</sup> [Adverse effects of the illicit movement and dumping of toxic and dangerous products and wastes on the enjoyment of human rights Report, Mission to Canada](#), 17-30 October 2002, E/CN.4/2003/56/Add.2, para. 126.

terms of implementation.<sup>29</sup> In her ‘Annual Report 2013’, Catarina de Albuquerque, the UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, described how households, agriculture and industry contribute to water pollution and stressed the value of integrating human rights into wastewater management and water pollution control.<sup>30</sup>

## II. In what types of situations does a State have ETOs?

- **10.** The situations in which UN treaty bodies have recognised the ETOs of States can be classified according to the tripartite set of States’ duties to respect, protect and fulfil human rights (Part ‘A’), and by analysing the concept of “jurisdiction” used by the treaty bodies (Part ‘B’). The diverse UN treaty bodies that monitor implementation of the different international human rights treaties interpret the scope of States’ jurisdiction, and therefore extraterritorial obligations, in varying ways. However, the general trend regarding interpretation has moved towards an expanding vision of States’ ETOs.

### Part A: States must respect, protect and fulfil their ETOs

- **11.** It is widely accepted that the obligation to comply with internationally recognised human rights imposes three levels of obligations on States: to respect, protect and fulfil human rights.<sup>31</sup> The obligation to respect requires States parties to refrain from interfering, directly or indirectly, with the enjoyment of human rights. The obligation to protect requires States parties

<sup>29</sup> [Report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination, Addendum – Mission to South Africa](#), 4 July 2011, A/HRC/18/32/Add.3, para 64.

<sup>30</sup> UN Human Rights Council, [Report of the Special Rapporteur on the human right to safe drinking water and sanitation](#), 5 August 2013, A/68/264, p. 1.

<sup>31</sup> UN Sub-Commission on the Promotion and Protection of Human Rights, (1987), *The Right to Adequate Food as a Human Right: Final Report by Asbjorn Eide*. UN Doc. E/CN.4/Sub.2/1987/23. See also: Eide, A., Eide, W.B., Goonatillake, S., Gussow, J. & Omawale (1984) ‘Food as a Human Right’, The United Nations University, Tokyo; Shue, ‘*The Interdependence of Duties*’ in Alston & Tomaševski, eds., *The Right to Food* (Utrecht: Stichting Studie- en Informatiecentrum Mensenrechten, 1984); the [Limburg Principles on the Implementation of the International Covenant on Economic, Social and Cultural Rights](#) (1986), para. 6.

to take steps to prevent third parties from interfering in human rights. Finally, the obligation to fulfil requires States parties to take appropriate legislative, administrative, judicial, budgetary, promotional and other measures aimed at the full realisation of the rights.<sup>32</sup>

- **12.** International law recognises that a State is obliged to abide by its international legal obligations extraterritorially,<sup>33</sup> and the UN treaty bodies have reviewed these circumstances by examining the tripartite obligations of States to respect, protect and fulfil. There have been instances in which UN treaty bodies have highlighted the obligation of States to respect with regard to ETOs, such as outlining the requirement to undertake impact assessment prior to the conclusion of trade agreements.<sup>34</sup> However, most of the extraterritorial cases that UN bodies have had to review concern the obligation to protect.
- **13.** For the most part, these are cases in which private companies are impacting human rights in third countries. For instance, the CRC has

<sup>32</sup> See UN Committee on Economic, Social and Cultural Rights (CESCR): [General Comment No. 12: The Right to Adequate Food \(Art. 11 of the Covenant\)](#), 12 May 1999, para. 15; [General Comment No. 13: The Right to Education \(Art. 13 of the Covenant\)](#), 8 December 1999, E/C.12/1999/10, paras. 46 and 47; [General Comment No. 14: The Right to the Highest Attainable Standard of Health \(Art. 12 of the Covenant\)](#), 11 August 2000, E/C.12/2000/4, para. 33; [General Comment No. 15: The Right to Water \(Arts. 11 and 12 of the Covenant\)](#), 20 January 2003, E/C.12/2002/11, para 20; [General Comment No. 16: The Equal Right of Men and Women to the Enjoyment of All Economic, Social and Cultural Rights \(Art. 3 of the Covenant\)](#), 11 August 2005, E/C.12/2005/4, para 17; [General Comment No. 17: The Right of Everyone to Benefit from the Protection of the Moral and Material Interests Resulting from any Scientific, Literary or Artistic Production of Which He or She is the Author \(Art. 15, Para. 1 \(c\) of the Covenant\)](#), 12 January 2006, E/C.12/GC/17, para. 28; [General Comment No. 18: The Right to Work \(Art. 6 of the Covenant\)](#), 6 February 2006, E/C.12/GC/18, para. 22; [General Comment No. 19: The right to social security \(Art. 9 of the Covenant\)](#), 4 February 2008, E/C.12/GC/19 para 43; [General Comment No. 21, Right of everyone to take part in cultural life \(art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights\)](#), 21 December 2009, E/C.12/GC/21, para. 48.

<sup>33</sup> [Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory \(Advisory Opinion\)](#) [2004] ICJ Rep 136, p. 180: “The Court considers that the International Covenant on Civil and Political Rights is applicable in respect of acts done by a State in the exercise of its jurisdiction outside its own territory. The International Covenant on Economic, Social and Cultural Rights contains no provision on its scope of application. This may be explicable by the fact that this Covenant guarantees rights which are essentially territorial. However, it is not to be excluded that it applies both to territories over which a State party has sovereignty and to those over which that State exercises territorial jurisdiction”.

<sup>34</sup> E.g. UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Azerbaijan](#), 12 March 2012, CRC/C/AZE/CO/3-4, para 29; UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Australia](#), 28 August 2012, CRC/C/AUS/CO/4, para. 28; UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Republic of Korea](#), 6 October 2011, CRC/C/KOR/CO/3-4, paras. 26, 27.

expressed concerns “at reports on Australian mining companies’ participation and complicity in serious violations of human rights” in third countries,<sup>35</sup> recommended that Bahrain “provide for appropriate national institutions and mechanisms to address cases of non-compliance, including extraterritorially, by Bahrain multinational enterprises”<sup>36</sup> and has noted its concern that in Monaco “legislation does not explicitly state the obligations of companies acting under the State party’s jurisdiction or control to respect the rights of the child in operations carried out outside of the State party’s territory and that legislation does not provide for accessible procedural safeguards in the case of such violations”.<sup>37</sup> Similarly, the CERD was concerned that Canada “has not yet adopted measures with regard to transnational corporations registered in Canada whose activities negatively impact the rights of indigenous peoples outside Canada, in particular in mining activities”.<sup>38</sup> Section III below largely deals with cases involving the obligation to protect.

- **14.** The obligation to respect has also been consistently addressed by UN treaty bodies. General Comments 12-19 and 21 of the CESCR state that to comply with their international obligations in relation to economic, social and cultural rights, States have to respect the enjoyment of the rights by refraining from actions that interfere, directly or indirectly, with the enjoyment of those rights in other countries.<sup>39</sup> Practices of UN treaty bodies include the following: examination of cases involving State-owned corporations or entities, such as Australia’s Export Credit Agencies;<sup>40</sup> as well as the concerns expressed by the CERD with regards to the introduction of a legislative bill in the United Kingdom which could restrict the rights of foreign claimants seeking redress against transnational corporations in the State’s courts.<sup>41</sup> In a number of other cases,

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 35 UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Australia*, 28 August 2012, CRC/C/AUS/CO/4, para. 27.

36 UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Bahrain*, 3 August 2011, CRC/C/BHR/CO/2-3, para. 20-21.

37 UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Monaco*, 29 October 2013, CRC/C/MCO/CO/2-3, para. 20.

38 UN Committee on the Elimination of Racial Discrimination (CERD), *Reports submitted by States parties under article 9 of the Convention : International Convention on the Elimination of All Forms of Racial Discrimination: addendum: Information provided by the Government [of] Canada on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination - Canada* (CERD/C/CAN/CO/19-20), 4 April 2012, para 14.

39 See Fn 32 above.

40 UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Australia*, 28 August 2012, CRC/C/AUS/CO/4, para. 28.

41 UN Committee on the Elimination of Racial Discrimination (CERD), *Reports submitted by States parties under article 9 of the Convention : International Convention on the Elimination of All*

UN treaty bodies have also recommended that States terminate actions that are in the process of causing harm extraterritorially. For instance, this was the case when the CRC expressed concerns regarding Germany’s significant use of coal in the production of power, and the negative impact that coal emissions have on children’s health.<sup>42</sup>

- **15.** Finally, the obligation to fulfil has been dealt with less frequently, but there are references in some cases. For example, in addressing the “facilitate” dimension of the obligation, the CRC has recommended that Italy use its leverage to ensure that children’s rights are respected within European trade agreements.<sup>43</sup>

### **Part B: Three categories of situations which engage the extraterritorial obligations of States**

- **16.** While not explicitly divided as such by UN treaty bodies, their findings have addressed various extraterritorial situations which can be classified into three categories (which reflect those of the Maastricht Principles) – involving situations where:

- A State’s acts or omissions bring about foreseeable effects on the enjoyment of human rights;
- A State exercises authority or effective control; and
- A State is in a position to exercise decisive influence.

Accordingly, a State has obligations to respect, protect and fulfil economic, social and cultural rights both within its territory and abroad in any of these three circumstances:

#### **a) Situations over which State acts or omissions bring about foreseeable effects on the enjoyment of human rights**

- **17.** This category is intended to take into account situations where a State may, through its conduct, influence the enjoyment of human rights outside its national territory, even in the absence of effective control or authority

*Forms of Racial Discrimination: addendum: Information provided by the Government [of] Canada on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination – Great Britain*, 14 September 2011, CERD/C/GBR/CO/18-20, para 29.

<sup>42</sup> UN Committee on the Rights of the Child (CRC), *Concluding observations on the combined third and fourth periodic reports of Germany*, 25 February 2014, CRC/C/DEU/CO/3-4, para. 22.

<sup>43</sup> UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations - Italy*, 31 October 2011, CRC/C/ITA/CO/3-4, para. 21.



over a situation or a person.<sup>44</sup> Most of the practices of UN bodies in relation to extraterritorial obligations would fall within this category, and thus, more examples can be found below. For example, the situations mentioned above concerning the impact of trade agreements on human rights in third countries or States' failure to regulate businesses creating harm abroad would fall in this category. The case of a State promoting the export of subsidised agricultural products to developing countries, thereby affecting the enjoyment of the right to an adequate standard of living in the receiving countries, is typical of this category.<sup>45</sup>

## b) Situations over which a State exercises authority or effective control

- **18.** This category relates to situations in which the State in question has effective control over territory and/or persons, or otherwise exercises State authority. The CAT has clarified this category in its General Comment 2.<sup>46</sup> Article 2(1) of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, declares that “[e]ach State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction”.<sup>47</sup> The CAT has taken the view that “any territory” includes all areas where the State party exercises, directly or indirectly, in whole or in part, de jure or de facto effective control, in accordance with international law.<sup>48</sup> According to the CAT, the words “any territory’... *[refers] to prohibited acts committed not only on board a ship or aircraft registered by a State party, but also during military occupation or peacekeeping operations and in such places as embassies, military bases, detention facilities, or other areas over which a State exercises factual or effective control[...]. The Committee considers that the scope of ‘territory’ under article 2 must also include situations where a State party exercises, directly or indirectly, de facto or de jure control over persons in detention.*”<sup>49</sup>
- **19.** Similarly, in its General Comment 31, the HRC indicated that “a State Party

<sup>44</sup> De Schutter, O., Eide, A., Khalfan, A., Orellano, M., Salomon, M. & Seiderman, I. ‘[Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights](#)’, *Human Rights Quarterly* 34 (2012) 1084–1169, p. 16.

<sup>45</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: Concluding observations of the Committee on Economic, Social and Cultural Rights : Germany*, 12 July 2011, E/C.12/DEU/CO/5, para. 9.

<sup>46</sup> De Schutter, O., Eide, A., Khalfan, A., Orellano, M., Salomon, M. & Seiderman, I. ‘[Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights](#)’, *Human Rights Quarterly* 34 (2012) 1084–1169, p. 15.

<sup>47</sup> [Article 2\(1\) of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.](#)

<sup>48</sup> UN Committee Against Torture (CAT), [General Comment No. 2: Implementation of Article 2 by States Parties](#), 23 November 2007, CAT/C/GC/2, para. 16.

<sup>49</sup> *Ibid.*

must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State Party, even if not situated within the territory of the State Party [...] This principle also applies to those within the power or effective control of the forces of a State Party acting outside its territory, regardless of the circumstances in which such power or effective control was obtained, such as forces constituting a national contingent of a State Party assigned to an international peacekeeping or peace enforcement operation”.<sup>50</sup>

### c) Situations in which the State is in a position to exercise decisive influence

- **20.** This category takes into account that there are situations in which a State is required to take positive measures in order to support the realisation of human rights outside its national territory. This largely corresponds to the cases already identified in relation to the obligation to fulfil. Additional examples include the requirement noted by the CESCR that, “*where States parties can take steps to influence other third parties to respect the right [to water], through legal or political means, such steps should be taken in accordance with the Charter of the United Nations and applicable international law*”.<sup>51</sup>

#### Box Two

### UN Treaty Bodies’ General Comment References to ETOs and the Activities of Corporations

In several General Comments, the Committee on Economic, Social and Cultural Rights (CESCR) has noted that States have obligations to ensure that non-state actors operating outside of their territory, including corporations, do not violate economic, social and cultural rights. In the CESCR’s General Comment No. 12 on the Right to Food, the Committee clearly indicates that, without limitation to territorial limitations, “as part of their obligations to protect people’s resource base for food, States parties should take appropriate steps to ensure that activities of the private business sector and civil society are in conformity with the right to food”.<sup>52</sup> Later in the CESCR’s General Comment No. 14 on the Right to Health, the Committee explains that “States parties have to respect the enjoyment of the right to health in other countries, and

<sup>50</sup> Human Rights Committee, [General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant](#), U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 10.

<sup>51</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), [General Comment No. 15: The Right to Water \(Arts. 11 and 12 of the Covenant\)](#), 20 January 2003, E/C.12/2002/11, para. 33.

<sup>52</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), [General Comment No. 12: The Right to Adequate Food \(Art. 11 of the Covenant\)](#), 12 May 1999, para. 27.

to prevent third parties from violating the right in other countries, if they are able to influence these third parties by way of legal or political means, in accordance with the Charter of the United Nations and applicable international law”.<sup>53</sup> Similarly, in CESCR General Comment No.15 on the Right to Water, the Committee states that “steps should be taken by States parties to prevent their own citizens and companies from violating the right to water of individuals and communities in other countries”.<sup>54</sup> In the CESCR’s General Comment 19 on the Right to Social Security, the Committee also points out that “States Parties should extraterritorially protect the right to social security by preventing their own citizens and national entities from violating this right in other countries”.<sup>55</sup> Drawing on many of these references to General Comments, the CESCR stated in its 2011 ‘*Statement on the obligations of States Parties regarding the corporate sector and economic, social and cultural rights*’ that “States Parties should also take steps to prevent human rights contraventions abroad by corporations which have their main seat under their jurisdiction, without infringing the sovereignty or diminishing the obligations of the host States under the Covenant”.<sup>56</sup>

In addition, General Comment 16 of the Committee on the Rights of the Child points out clearly that “Home States also have obligations, arising under the Convention and the Optional Protocols thereto, to respect, protect and fulfil children’s rights in the context of businesses’ extraterritorial activities and operations, provided that there is a reasonable link between the State and the conduct concerned”.<sup>57</sup> Echoing the text of the Maastricht Principles, the CRC elaborates further that “a reasonable link exists when a business enterprise has its centre of activity, is registered or domiciled or has its main place of business or substantial business activities in the State concerned”.<sup>58</sup>

<sup>53</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), [General Comment No. 14: The Right to the Highest Attainable Standard of Health \(Article 12 of the Covenant\)](#), 11 August 2000, para. 39.

<sup>54</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), [General Comment No. 15: The Right to Water \(Arts. 11 and 12 of the Covenant\)](#), 20 January 2003, para. 33.

<sup>55</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), [General Comment No. 19: The right to social security \(Art. 9 of the Covenant\)](#), 4 February 2008, para 54.

<sup>56</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), ‘[Statement on the obligations of States Parties regarding the corporate sector and economic, social and cultural rights](#)’, 20 May 2011, para. 5.

<sup>57</sup> UN Committee on the Rights of the Child (CRC), [General comment No. 16 \(2013\) on State obligations regarding the impact of the business sector on children’s rights](#), 17 April 2013, CRC/C/GC/16, para 43.

<sup>58</sup> [Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights](#), Principle 25 (2012).

### III. Trends in ETO practice related to corporate accountability

- **21.** The vast majority of the UN treaty body references to extraterritorial issues relates to corporate accountability. This section provides a detailed outline of how UN treaty bodies have applied ETOs in the case of corporate human rights violations and the specific recommendations that they have made.

#### A. On what grounds have States been held responsible for companies’ conduct?

- **22.** States must adopt and enforce measures to influence the conduct of non-State actors that might otherwise result in the violation of the human rights of individuals located in the territory of another State. Examining trends in the ETO jurisprudence of UN treaty bodies reveals several circumstances which require States to regulate companies. These circumstances, discussed below, are in line with elements of Principle 25 of the Maastricht Principles.<sup>59</sup> A failure by a State to adequately regulate companies in any of these circumstances constitutes a violation of a State’s obligation to protect human rights.

#### 1. Where the non-State actor has the nationality of the State concerned;

- **23.** A number of UN treaty bodies qualify the types of companies that should be regulated according to their nationality. For instance, the CERD encouraged Australia “to regulate the extraterritorial activities of Australian corporations abroad”,<sup>60</sup> and the CESCR was concerned “at the lack of oversight over

<sup>59</sup> Principle 25 reads, “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.”

<sup>60</sup> UN Committee on the Elimination of Racial Discrimination (CERD), [\*Consideration of reports submitted by States parties under article 9 of the convention: Concluding observations of the\*](#)

*Austrian companies operating abroad with regard to the negative impact of their activities on the enjoyment of economic, social and cultural rights in host countries”.*<sup>61</sup>

**2. 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;**

- **24.** As distinct from the category above, the nationality of a company and the centre of its activity might not necessarily be the same State. This category of circumstances relates to cases involving States where a corporation (or its controlling/parent corporation) has established its centre of activity. This is the most common set of circumstances which UN treaty bodies have used to trigger States’ responsibility for the conduct of private actors abroad. For instance, the CRC recommended that a legislative framework requiring companies to pay particular attention to respecting child rights be established for companies domiciled in Azerbaijan.<sup>62</sup> In addition, the CERD encouraged Canada to take measures to regulate companies registered in Canada.<sup>63</sup>

*Committee on the Elimination of Racial Discrimination: Australia*, 27 August 2010, CERD/C/AUS/CO/15-17, para 13.

<sup>61</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: Concluding observations of the Committee on Economic, Social and Cultural Rights: Austria*, 13 December 2013, E/C.12/AUT/CO/4, para. 12.

<sup>62</sup> UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Azerbaijan*, 12 March 2012, CRC/C/AZE/CO/3-4, para 29. See also: UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Bahrain*, 3 August 2011, CRC/C/BHR/CO/2-3, para. 21; UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations - Italy*, 31 October 2011, CRC/C/ITA/CO/3-4, para. 25; UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Republic of Korea*, 6 October 2011, CRC/C/KOR/CO/3-4, para. 27; UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Thailand*, 14 September 2011, CRC/C/THA/CO/3-4, para. 30; UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Turkey* CRC/C/TUR/CO/2-3, paras. 23.

<sup>63</sup> UN Committee on the Elimination of Racial Discrimination (CERD), *Reports submitted by States parties under article 9 of the Convention : International Convention on the Elimination of All Forms of Racial Discrimination: addendum: Information provided by the Government [of] Canada on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination - Canada* (CERD/C/CAN/CO/18), 27 October 2009, CERD/C/CAN/CO/18/Add.1, para 17; UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Denmark*, 7 April 2011, CRC/C/DNK/CO/4, para. 30.

In the more recent General Comment 16, the CRC refers to business enterprises which are “*registered or domiciled or [have their] main place of business or substantial business activities in the State concerned*”, using wording similar to that of the Maastricht Principles.<sup>64</sup> Other comparable terms used to qualify which companies should be regulated under these circumstances include companies “*headquartered*” in the home State and “*subsidiaries [...] managed from*” a State.<sup>65</sup>

### **3. 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;**

- **25.** This set of circumstances addresses situations not covered by the previous categories, but where a State’s regulation of a non-State actor should, nonetheless, prevent a human rights abuse abroad.<sup>66</sup> Some broad wording used by UN treaty bodies falls under this category, such as the recommendations by UN treaty bodies that States regulate companies “*domiciled in [the State’s] territory and/or jurisdiction*”.<sup>67</sup> Similarly, the CESCR recommends the regulation of “*corporations that have their main offices under the jurisdiction of the State party*”,<sup>68</sup> where the term “jurisdiction” may be understood more broadly than in the situations outlined above.
- **26.** Aside from the categories above, the UN treaty bodies have considered

<sup>64</sup> [Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights](#), Principle 25 c) reads: “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”.

<sup>65</sup> Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations - Finland](#), 3 August 2011, CRC/C/FIN/CO/4, para. 24.

<sup>66</sup> Olivier De Schutter, Asbjørn Eide, Ashfaq Khalfan, Marcos Orellana, Margot Salomon and Ian Seiderman, “[Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights](#)”, 29 February 2012, p. 38.

<sup>67</sup> UN Committee on the Elimination of Racial Discrimination (CERD), [Reports submitted by States parties under article 9 of the Convention : International Convention on the Elimination of All Forms of Racial Discrimination: addendum: Information provided by the Government \[of\] Canada on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination: Norway](#), 11 March 2011, CERD/C/NOR/CO/19-20, para. 17; UN Human Rights Committee, [Concluding observations on the sixth periodic report of Germany, adopted by the Committee at its 106th session, 15 October to 2 November, ICCPR/C/DEU/CO/6, para. 16; UN Human Rights Council, Report of the Special Rapporteur on trafficking in persons, especially women and children, Joy Ngozi Ezeilo, 18 March 2013, A/HRC/23/48, para. 85 \(b\).](#)

<sup>68</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), [Concluding observations concerning the fourth periodic report of Norway](#), 13 December 2013, E/C.12/NOR/CO/5, para. 6.

that 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, should exercise such influence, which is also the position outlined also in the Maastricht Principles.<sup>69</sup> For example, this includes cases of the importation of products from countries which were under investigation by the ILO for reportedly using forced child labour, which the CRC considered to amount to “*becoming complicit with a serious breach to child rights*” for the importing State.<sup>70</sup> Similarly, the CESCR noted that Belgium’s policies encouraging the large-scale cultivation of agrofuels products could lead to business abuses in third countries.<sup>71</sup>

- **27.** Finally, UN treaty bodies have also considered the ETOs of States with regards to corporate accountability in relation to **international cooperation**. In its General Comment 16 on State obligations regarding the impact of the business sector on children’s rights, the CRC indicated that “*States have obligations to engage in international cooperation for the realization of children’s rights beyond their territorial boundaries [...]*”,<sup>72</sup> which is supported by the text of Principle 27 of the Maastricht Principles. Thus, in its concluding observations on Australia, the CRC recommended that the State “*take measures to strengthen cooperation with countries in which Australian companies or their subsidiaries operate to ensure respect for child rights, prevention and protection against abuses and accountability*”.<sup>73</sup>

### Box Three

#### An example of applying ETOs in the context of the ICCPR: Germany and transnational corporations

<sup>69</sup> [Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights](#), Principle 26 reads: “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”.

<sup>70</sup> CRC/C/KOR/CO/3-4 para. 26. See also CRC/C/ITA/CO/3-4 para. 20; Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations - Finland](#), 3 August 2011, CRC/C/FIN/CO/4, para. 23.

<sup>71</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), [Concluding observations concerning the fourth periodic report of Belgium](#), 23 December 2013, E/C.12/BEL/CO/4, para. 22.

<sup>72</sup> UN Committee on the Rights of the Child (CRC), [General comment No. 16 \(2013\) on State obligations regarding the impact of the business sector on children’s rights](#), 17 April 2013, CRC/C/GC/16, para. 41.

<sup>73</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Australia](#), 28 August 2012, CRC/C/AUS/CO/4, para. 28.

In 2001, residents of the villages of Kitemba, Luwunga, Kijunga and Kirymakole in the Mubende District of Uganda were forcibly evicted from their homes and lands to make way for a coffee plantation operated by Neumann Kaffee Gruppe, a German corporation. The residents lost not only their homes but also access to productive land necessary for their livelihoods. Today they live in extreme poverty.

In 2011 and 2012, the Human Rights Committee considered the extraterritorial obligations of Germany under the International Covenant on Civil and Political Rights, including violations of the obligation to protect, or ensure, human rights by failing to regulate Neumann Kaffee Gruppe, failing to investigate and appropriately sanction Neumann Kaffee Group for its complicity in the forced evictions and failing to provide access to accountability and remedies for those evicted.

The *List of Issues* drawn up by the Human Rights Committee in 2011, which defined the scope of Germany’s periodic review before the Committee, specifically addressed the forced evictions in Uganda. The resulting Concluding Observations, adopted in 2012, include a broad acknowledgement of the extraterritorial application of the ICCPR, including the extraterritorial obligation to protect (or ‘ensure’, in the language of the ICCPR), by regulating and holding transnational corporations accountable.

The Human Rights Committee recommended that Germany clearly set out the expectation that all business enterprises domiciled in its territory and/or its jurisdiction respect human rights standards in accordance with the Covenant throughout their operations. Germany was also encouraged to take appropriate measures to strengthen the remedies provided to protect people who have been victims of activities of such business enterprises operating abroad.

## B. Which types of companies have triggered the ETOs of States?

- **28.** State-owned or controlled companies and private business enterprises both trigger the ETOs of States.

### 1. State-owned or controlled business actors

- **29.** The conduct of certain non-State actors outside of the territorial borders of a State can be attributed directly to a State. These non-State actors are:
  - a) Non-State actors acting on the instructions or under the direction or control of the State; and



b) 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.<sup>74</sup>

- **30.** When these non-State actors are violating human rights, the State connected to them may too be violating its obligation to respect human rights. UN treaty bodies have come across four types of relevant State-corporation relationships:
  - Export Credit Agencies, such as the Export Credit Agency of Australia;<sup>75</sup>
  - State pension funds, such as the national pension funds of Sweden<sup>76</sup> and Norway,<sup>77</sup> where the States should reinforce procedural safeguards to ensure that they do not participate in human rights violations;
  - Private contractors, as mentioned by the CAT in its General Comment 2;<sup>78</sup> and
  - Military forces, such as a State's forces assigned to an international peacekeeping or peace enforcement operation, for which States must respect and ensure the rights laid down in the Covenant to anyone within the power or effective control of that State party, even if not situated within the territory of the State party.<sup>79</sup>

<sup>74</sup> Articles on Responsibility of States for Internationally Wrongful Acts, with Commentaries adopted by the International Law Commission, Report of the International Law Commission on the Work of its 53rd session (23 April to 1 June and 2 July to 10 August 2001), UN Doc. A/56/10, articles 5 and 8.

<sup>75</sup> UN Committee on the Rights of the Child (CRC), Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Australia, 28 August 2012, CRC/C/AUS/CO/4, para. 28.

<sup>76</sup> UN Committee on the Rights of the Child (CRC), Consideration of reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Concluding observations: Sweden, 23 January 2012, CRC/C/OPSC/SWE/CO/1, para. 20-21;

<sup>77</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), Concluding observations concerning the fourth periodic report of Norway, 13 December 2013, E/C.12/NOR/CO/5, para. 6.

<sup>78</sup> UN Committee Against Torture (CAT), General Comment No. 2: Implementation of Article 2 by States Parties, 23 November 2007, CAT/C/GC/2, para. 15.

<sup>79</sup> Human Rights Committee, General Comment 31, Nature of the General Legal Obligation on States Parties to the Covenant, U.N. Doc. CCPR/C/21/Rev.1/Add.13 (2004), para. 10.

- **31.** In its General Comment 16, the CRC has also re-emphasised more generally the requirement that States “*ensur[e] that State agencies with a significant role regarding business, such as export credit agencies, take steps to identify, prevent and mitigate any adverse impacts the projects they support might have on children’s rights before offering support to businesses operating abroad and stipulate that such agencies will not support activities that are likely to cause or contribute to children’s rights abuses*”.<sup>80</sup>

## 2. Private business enterprises

- **32.** The conduct of a wide range of business enterprises may cause States to violate their obligation to protect human rights, particularly where corporate activities are insufficiently regulated. In reference to outlining States’ extraterritorial obligations to regulate business practices, UN treaty bodies have applied various terms to refer to private enterprises, including:

- Transnational corporations”, as used by CERD in Canada;<sup>81</sup>
- Multinational companies”, as used by CRC in Finland;<sup>82</sup>
- Multinational corporations”, as used by CRC in Denmark;<sup>83</sup> and
- Extractive industries, such as mining companies,<sup>84</sup> and gas and oil

<sup>80</sup> UN Committee on the Rights of the Child (CRC), [\*General comment No. 16 \(2013\) on State obligations regarding the impact of the business sector on children’s rights\*](#), 17 April 2013, CRC/C/GC/16, para. 45.

<sup>81</sup> UN Committee on the Elimination of Racial Discrimination (CERD), [\*Reports submitted by States parties under article 9 of the Convention : International Convention on the Elimination of All Forms of Racial Discrimination: addendum: Information provided by the Government \[of\] Canada on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination - Canada\*](#) (CERD/C/CAN/CO/18), 25 May 2007, para. 17.

<sup>82</sup> Committee on the Rights of the Child (CRC), [\*Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations - Finland\*](#), 3 August 2011, CRC/C/FIN/CO/4, para. 24.

<sup>83</sup> UN Committee on the Rights of the Child (CRC), [\*Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Denmark\*](#), 7 April 2011, CRC/C/DNK/CO/4, para. 29.

<sup>84</sup> UN Committee on the Rights of the Child (CRC), [\*Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Australia\*](#), 28 August 2012, CRC/C/AUS/CO/4, para. 27; UN Committee on the Elimination of Racial Discrimination (CERD), [\*Reports submitted by States parties under article 9 of the Convention : International Convention on the Elimination of All Forms of Racial Discrimination: addendum: Information provided by the Government \[of\] Canada on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination - Canada\*](#) (CERD/C/CAN/CO/19-20), 4 April 2012, para 14.

companies;<sup>85</sup> and

> Tourism industries, as pointed out by CRC in Thailand.<sup>86</sup>

- **33.** UN treaty bodies have also addressed the ‘corporate veil’, which refers to legal separation between parent and subsidiary corporations, specifically recommending that States ensure the legal accountability of business enterprises *and their subsidiaries*.<sup>87</sup>

#### Box Four

### An example of applying ETOs in the context of the Right to Water

In her ‘Annual Report 2013’, Catarina de Albuquerque, the UN Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation, described how households, agriculture and industry contribute to water pollution and stressed the value of integrating human rights into wastewater management and water pollution control.<sup>88</sup> She linked the issue to ETOs in paragraph 46 of her report:

*“The Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights, recently adopted by a group of experts in international law and human rights, underscore the obligation of States to avoid causing harm extraterritorially, stipulating that 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 principles also affirm the obligation of States to protect human rights extraterritorially, i.e., to take necessary measures to ensure that non-State actors do not nullify or impair*

<sup>85</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Canada](#), 6 December 2012, CRC/C/CAN/CO/3-4, para. 28. See also UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Azerbaijan](#), 12 March 2012, CRC/C/AZE/CO/3-4, para. 29.

<sup>86</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Thailand](#), 14 September 2011, CRC/C/THA/CO/3-4, para. 29.

<sup>87</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations – Malta](#), 28 February 2012, CRC/C/MLT/CO/2; UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Australia](#), 28 August 2012, CRC/C/AUS/CO/4, para. 28;

<sup>88</sup> UN Human Rights Council, [Report of the Special Rapporteur on the Human Right to Safe Drinking Water and Sanitation](#), 5 August 2013, A/68/264, p. 1.

*the enjoyment of economic, social and cultural rights. This translates into an obligation to avoid contamination of watercourses in other jurisdictions and to regulate non-State actors accordingly.”*

## C. What recommendations have been made with regards to corporate accountability?

- **34.** Based on their analysis of the role of companies, as discussed above, UN treaty bodies have made a number of recommendations to States on how to regulate these actors, which are listed below.
- **35.** The recommendations made by UN bodies can be classified using the following six broad categories, which are based on the type of measure that is recommended.

### 1. ‘Take measures’ to address ETO issues

- **36.** Some recommendations are general, giving broad guidance to States, including recommendations to:
  - Take appropriate ‘measures’ or ‘steps’ to ensure that businesses respect human rights
- **37.** Many treaty bodies have recommended to States to take “measures” or “steps” to ensure that they respect their ETOs. Examples include the CRC’s recommendation that Thailand “*take measures to ensure that its companies respect child rights in its territory and when engaging in projects abroad*”<sup>89</sup> and the CRC’s advice that Uzbekistan “*take steps to ensure that domestic legislation enables it to establish and exercise extraterritorial jurisdiction*”.<sup>90</sup> In its General Comment 28, the CEDAW considered that States have an obligation to “*take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise*” – which “*also extend to acts of national corporations operating extraterritorially*”.<sup>91</sup>

<sup>89</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Thailand](#), 14 September 2011, CRC/C/THA/CO/3-4, para. 30.

<sup>90</sup> UN Committee on the Rights of the Child (CRC), [Concluding observations on the initial report of Uzbekistan submitted under article 12 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography, adopted by the Committee at its sixty-third session \(27 May – 14 June 2013\)](#), CRC/C/OPSC/UZB/CO/1, para. 29.

<sup>91</sup> UN Committee on the Elimination of All Forms of Discrimination Against Women, (CEDAW): [General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women](#), 19

- ‘Explore ways’ to ensure accountability

- **38.** In a few instances, UN treaty bodies have used more general language recommending that States “explore ways” to address certain situations. The CERD for instance applied this phrase with regards to Norway, advising that the State “*should explore ways to hold transnational corporations domiciled in the territory and/or under the jurisdiction of Norway accountable*”.<sup>92</sup>

- Comply with human rights standards

- **39.** Treaty bodies have generally recommended States to “*comply with international and domestic standards on business and human rights with a view to protecting local communities, particularly children, from any adverse effects resulting from business operations*”, as the CRC did with regards to Germany.<sup>93</sup>

## 2. Provide a legal framework regulating the activities of a business

- **40.** The UN treaty bodies have frequently specified that States are required to establish and/or adapt their legislative measures “*with a view to improving accountability, transparency and prevention of violations*”.<sup>94</sup> They have done so in different ways:

- Provide a legislative regulatory framework

- **41.** Regarding child rights in Azerbaijan, the CRC declared that the State should “*provid[e] a legislative framework that requires companies domiciled in Azerbaijan to pay particular attention to respecting child rights, particularly those companies involved in the extractive and cotton-producing industries*”.<sup>95</sup>

October 2010, CEDAW/C/GC/28, para. 36.

<sup>92</sup> UN Committee on the Elimination of Racial Discrimination (CERD), [Reports submitted by States parties under article 9 of the Convention : International Convention on the Elimination of All Forms of Racial Discrimination: addendum: Information provided by the Government \[of\] Canada on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination: Norway](#), 11 March 2011, CERD/C/NOR/CO/19-20, para. 17.

<sup>93</sup> UN Committee on the Rights of the Child (CRC), [Concluding observations on the combined third and fourth periodic reports of Germany](#), 25 February 2014, CRC/C/DEU/CO/3-4, para. 23. See also UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Concluding observations: Sweden](#), 23 January 2012, CRC/C/OPSC/SWE/CO/1, para. 20-21.

<sup>94</sup> E.g. UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Australia](#), 28 August 2012, CRC/C/AUS/CO/4, para. 28(a).

<sup>95</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States](#)

In the case of Thailand, the CRC specified that the legislative framework should require companies “to prevent and mitigate adverse human rights impacts in their operations in the country and abroad”.<sup>96</sup> Likewise, in the case of Germany, the CRC indicated that there should be “a clear regulatory framework”.<sup>97</sup> The CESCR took a similar approach, urging Austria to “establi[sh] appropriate laws and regulations” to ensure that all economic, social and cultural rights are fully respected and rights holders adequately protected in the context of corporate activities, including abroad.<sup>98</sup>

- **42.** The CERD has recommended States to take both administrative and legislative measures, as in the case of the United Kingdom, in which it advised “to take appropriate legislative and administrative measures to ensure that acts of transnational corporations registered in the State party comply with the provisions of the Convention”.<sup>99</sup> In one instance, the CERD recommended that a State specifically take legislative measures, in that case “to prevent transnational corporations registered in Canada from carrying out activities that negatively impact on the enjoyment of rights of indigenous peoples in territories outside Canada”.<sup>100</sup>
- **43.** Requirements can be more specific, such as the CEDAW’s statement that States have an obligation to “establish legal protection of the rights of women on an equal basis with men” with regards to national corporations operating extraterritorially.<sup>101</sup> After its review of Finland, the CRC recommended that

*parties under article 44 of the Convention: Concluding observations: Azerbaijan*, 12 March 2012, CRC/C/AZE/CO/3-4, para. 29. See also CRC/C/KOR/CO/3-4 para. 27;

<sup>96</sup> UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Thailand*, 14 September 2011, CRC/C/THA/CO/3-4, para. 30.

<sup>97</sup> UN Committee on the Rights of the Child (CRC), *Concluding observations on the combined third and fourth periodic reports of Germany*, 25 February 2014, CRC/C/DEU/CO/3-4, para. 22.

<sup>98</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), *Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: Concluding observations of the Committee on Economic, Social and Cultural Rights: Austria*, 13 December 2013, E/C.12/AUT/CO/4, para. 12.

<sup>99</sup> UN Committee on the Elimination of Racial Discrimination (CERD), *Reports submitted by States parties under article 9 of the Convention : International Convention on the Elimination of All Forms of Racial Discrimination: addendum: Information provided by the Government [of] Canada on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination – Great Britain*, 14 September 2011, CERD/C/GBR/CO/18-20, para. 29.

<sup>100</sup> UN Committee on the Elimination of Racial Discrimination (CERD), *Reports submitted by States parties under article 9 of the Convention : International Convention on the Elimination of All Forms of Racial Discrimination: addendum: Information provided by the Government [of] Canada on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination – Canada* (CERD/C/CAN/CO/19-20), 4 April 2012, para. 14.

<sup>101</sup> UN Committee on the Elimination of All Forms of Discrimination Against Women, (CEDAW): *General Recommendation No. 28 on the Core Obligations of States Parties under Article 2 of the Convention on the Elimination of All Forms of Discrimination against Women*, 19

*“the State party provide a framework for prohibiting use of child labour by Finnish companies engaged with businesses abroad”.*<sup>102</sup> Similarly, in its concluding observations on Canada, the CRC recommended *“the establishment of a clear regulatory framework for, inter alia, the gas, mining, and oil companies operating in territories outside Canada to ensure that their activities do not impact on human rights or endanger environment and other standards, especially those related to children’s rights”.*<sup>103</sup>

- Supplement voluntary systems with stronger legislative measures

- **44.** Treaty bodies increasingly acknowledge the value of voluntary systems of oversight, but simultaneously recommend that States support these systems with more robust legislative frameworks. In the case of South Korea, the CRC recommended that it *“further promote the adoption of effective corporate responsibility models by providing a legislative framework that requires companies domiciled in Korea to adopt measures to prevent and mitigate adverse human rights impacts in their operations in the country and abroad, whether by their supply chains or associates.”*<sup>104</sup> In reviewing Canada, the CERD acknowledged *“that the State party has enacted a Corporate Responsibility Strategy”*, yet remained *“concerned that the State has not yet adopted measures with regard to transnational corporations registered in Canada whose activities negatively impact the rights of indigenous peoples outside Canada”.*<sup>105</sup> With regard to Australia, the CRC acknowledged the voluntary code of conduct on a sustainable environment developed by the Australian Mining Council, but it considered it *“inadequa[te] [...] in preventing direct and/or indirect human rights violations by Australian mining enterprises”.*<sup>106</sup>

October 2010, CEDAW/C/GC/28, para. 36.

<sup>102</sup> Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations - Finland, 3 August 2011, CRC/C/FIN/CO/4, para. 24.](#)

<sup>103</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Canada, 6 December 2012, CRC/C/CAN/CO/3-4, para. 29.](#)

<sup>104</sup> CRC/C/KOR/CO/3-4, para. 27 (emphasis added). See also UN Committee on Economic, Social and Cultural Rights (CESCR), [Concluding observations concerning the fourth periodic report of Norway, 13 December 2013, E/C.12/NOR/CO/5, para. 6.](#)

<sup>105</sup> UN Committee on the Elimination of Racial Discrimination (CERD), [Reports submitted by States parties under article 9 of the Convention : International Convention on the Elimination of All Forms of Racial Discrimination: addendum: Information provided by the Government \[of\] Canada on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination - Canada \(CERD/C/CAN/CO/19-20\), 4 April 2012, para. 14.](#) See also UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Denmark, 7 April 2011, CRC/C/DNK/CO/4, para. 29 – 30;](#)

<sup>106</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by](#)

- Revise draft or existing laws

- **45.** UN treaty bodies have asked certain States to revise existing laws. The CRC recommended that Malta “*examine and adapt its legislative framework (civil, criminal and administrative) to ensure the legal accountability of business enterprises and their subsidiaries operating in or managed from the State party’s territory*”.<sup>107</sup> The CRC also recommended that Paraguay “*revise its legislation to ensure the criminal liability of legal persons for offences related to the Optional Protocol*”.<sup>108</sup>
- **46.** UN treaty bodies have sometimes asked States to revise draft legislation. With regards to Slovakia, the CRC recommended that it “*revise the draft amendment of the Criminal Code to ensure the full and direct criminal liability of legal persons for offences covered by the Optional Protocol*”.<sup>109</sup> In its concluding observations on Italy, the CRC recommended the “*specific inclusion of child rights concerns in the legislation under consideration by the Senate and the Chamber of Deputies to enact corporate human rights responsibility parameters, with a specific reference to the Convention on the Rights of the Child*”.<sup>110</sup>
- **47.** In some cases, treaty bodies have also gone further in defining what the legal framework should contain. For instance, treaty bodies have required states to:
  - Comply with international and domestic standards on corporate social responsibility, as in the case of Finland, including “*prohibiting*

[States parties under article 44 of the Convention: Concluding observations: Australia](#), 28 August 2012, CRC/C/AUS/CO/4, para. 27.

<sup>107</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations – Malta](#), 28 February 2012, CRC/C/MLT/CO/2, para. 25.

<sup>108</sup> CRC/C/OPSC/PRY/CO/1. See also UN Committee on the Rights of the Child (CRC), [Concluding observations on the initial report of Uzbekistan submitted under article 12 of the Optional Protocol to the Convention on the sale of children, child prostitution and child pornography, adopted by the Committee at its sixty-third session \(27 May – 14 June 2013\)](#), CRC/C/OPSC/UZB/CO/1, 8 July 2013, para. 27.

<sup>109</sup> UN Committee on the Rights of the Child (CRC), [Concluding observations on the initial report of Slovakia submitted under article 12 of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted by the Committee at its at its sixty-second session \(14 January–1 February 2013\)](#), 3 July 2013, CRC/C/OPSC/SVK/CO/1, para 34.

<sup>110</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations - Italy](#), 31 October 2011, CRC/C/ITA/CO/3-4, para. 21.



*use of child labour by Finnish companies engaged with businesses abroad and multinational companies headquartered in Finland by establishing an effective monitoring system of their supply chains”;*<sup>111</sup>

- Exercise due diligence, including State corporations, as in the case of Sweden, where the CRC “*recommends that State corporations, including the State pension funds, that invest abroad or operate through subsidiaries or associates in foreign countries, comply with due diligence requirements to prevent and protect children in those countries from offences under the Convention and the Optional Protocol*”.<sup>112</sup> In the case of overseeing private business in Monaco, the CRC required the State to “*establish and implement regulations to ensure that the business sector complies with international and national human rights, labour, environment and other standards*” and “*give special attention to the requirement of enterprises to undertake child-rights due diligence in their chain of suppliers and customers, including outside of the territory of the State party*”;<sup>113</sup>

- Report on human rights, whether the recommendation is that the State “*provide a framework for reporting on child rights*” as the CRC proposed for Denmark.<sup>114</sup> Alternately, the recommendation could be that the State promote “*child rights indicators and parameters for reporting*” in the legislative framework, and insist that “*specific assessments on business impacts on child rights should be required*”, as South Korea was advised;<sup>115</sup>

- Cooperate with foreign governments in which they operate, such as the when the CRC recommended that South Korea “*cooperate with foreign Governments that are carrying out processes of free, prior*

.....  
<sup>111</sup> Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations - Finland](#), 3 August 2011, CRC/C/FIN/CO/4, para. 24.

<sup>112</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 12, paragraph 1, of the Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography. Concluding observations: Sweden](#), 23 January 2012, CRC/C/OPSC/SWE/CO/1, para. 21.

<sup>113</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Monaco](#), 13 August 2012, CRC/C/MCO/CO/2-3, para. 21.

<sup>114</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Denmark](#), 7 April 2011, CRC/C/DNK/CO/4, para. 30.

<sup>115</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Republic of Korea](#), 6 October 2011, CRC/C/KOR/CO/3-4, para. 27.

*and informed consent when projects affect indigenous peoples or impact assessments on human/child rights”;*<sup>116</sup> and

· Apply best practices, recommending that States’ frameworks for governing business and human rights include relevant provisions of international convention and “*give due consideration to best practices and lessons learnt from around the world*”, as for Bahrain<sup>117</sup> and Denmark.<sup>118</sup>

### 3. Support and encourage the responsibility to human rights of businesses

- **48.** UN treaty bodies have made some recommendations for States to support, encourage and facilitate the responsibility of businesses with regards to human rights. The general framework, as provided in the CESCR’s General Comment 12 for instance, is that:

*“While only States are parties to the Covenant and are thus ultimately accountable for compliance with it, all members of society - individuals, families, local communities, non-governmental organizations, civil society organizations, as well as the private business sector - have responsibilities in the realization of the right to adequate food. The State should provide an environment that facilitates implementation of these responsibilities.”*<sup>119</sup>

- **49.** Accordingly, States have been recommended to take the following types of measures to “*encourage a business culture that understands and fully respects*” human rights:

· Set out clear expectations about the responsibilities of businesses

<sup>116</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Republic of Korea](#), 6 October 2011, CRC/C/KOR/CO/3-4, para. 27.

<sup>117</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Bahrain](#), 3 August 2011, CRC/C/BHR/CO/2-3, para. 21.

<sup>118</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Denmark](#), 7 April 2011, CRC/C/DNK/CO/4, para. 30.

<sup>119</sup> See UN Committee on Economic, Social and Cultural Rights (CESCR): [General Comment No. 12: The Right to Adequate Food \(Art. 11 of the Covenant\)](#), 12 May 1999, para. 20. See also [General Comment No. 21, Right of everyone to take part in cultural life \(art. 15, para. 1a of the Covenant on Economic, Social and Cultural Rights\)](#), 21 December 2009, E/C.12/GC/21, para. 73, which uses a similar wording.

and, more specifically, States should “set out clearly the expectation that all business enterprises domiciled in its territory and/or its jurisdiction respect human rights standards in accordance with the Covenant throughout their operations”.<sup>120</sup> This may be in the form of guidance “that explicitly sets out government expectations for business enterprises to respect children’s rights in the context of its own business activities, as well as within business relationships linked to operations, products or services and activities abroad when they operate transnationally” and “include[s] the implementation of zero-tolerance policies for violence in all business activities and operations”;<sup>121</sup>

- Adopt measures to help businesses, for instance “to help business enterprises prevent and mitigate adverse human rights impacts in their operations in the country and abroad, whether by their supply chains or associates”;<sup>122</sup>
- Raise awareness and sensitize businesses, such as in the cases of the UK which was reminded by the CERD to “sensitize corporations registered in its territory to their social responsibilities in the places where they operate”.<sup>123</sup> Malta has also been asked to undertake awareness-raising campaigns with companies “and the public at large” concerning ethics charters;<sup>124</sup>
- Raise awareness about, and encourage adherence to, relevant corporate responsibility initiatives, as the CRC suggested in its General Comment 16.<sup>125</sup> The CESCR went further by indicating that codes of

.....  
<sup>120</sup> UN Human Rights Committee, *Concluding observations on the sixth periodic report of Germany, adopted by the Committee at its 106th session, 15 October to 2 November*, ICCPR/C/DEU/CO/6, para. 16.

<sup>121</sup> UN Committee on the Rights of the Child (CRC), *General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights*, 17 April 2013, CRC/C/GC/16, para. 73.

<sup>122</sup> UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Azerbaijan*, 12 March 2012, CRC/C/AZE/CO/3-4, para. 29.

<sup>123</sup> UN Committee on the Elimination of Racial Discrimination (CERD), *Reports submitted by States parties under article 9 of the Convention : International Convention on the Elimination of All Forms of Racial Discrimination: addendum: Information provided by the Government [of] Canada on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination – Great Britain*, 14 September 2011, CERD/C/GBR/CO/18-20, para. 29.

<sup>124</sup> UN Committee on the Rights of the Child (CRC), *Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations – Malta*, 28 February 2012, CRC/C/MLT/CO/2, para. 25.

<sup>125</sup> UN Committee on the Rights of the Child (CRC), *General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children’s rights*, 17 April 2013,

conducts which businesses follow should “[be] agreed upon jointly with the Government and civil society”;<sup>126</sup> and

· Assess and consult companies “on their plans to address environmental and health pollution and the human rights impact of their activities and their disclosure to the public”, as the CRC recommended to Canada.<sup>127</sup>

#### 4. Influence non-State actors

■ **50.** The CRC and the CESCR have made recommendations for States to influence non-State actors in order to improve their respect for human rights. In particular, the CESCR and the CRC have made two types of recommendations:

· Influence non-State actors: the CESCR indicated that “where States parties can take steps to influence other third parties to respect the right, through legal or political means, such steps should be taken in accordance with the Charter of the United Nations and applicable international law.”<sup>128</sup>

· Make public support of businesses conditional upon their impact on human rights, conducting human rights impact assessments which the CRC details in its General Comment 16,<sup>129</sup> and applies in its concluding observations on Germany.<sup>130</sup> Such conditioning and influence can also be through Export Credit Agencies, which should “establish mechanisms [...] to deal with the risk of abuses to human rights before it provides insurance or guarantees to facilitate

CRC/C/GC/16, para. 73.

<sup>126</sup> UN Committee on Economic, Social and Cultural Rights (CESCR): [General Comment No. 12: The Right to Adequate Food \(Art. 11 of the Covenant\)](#), 12 May 1999, para. 19.

<sup>127</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Canada](#), 6 December 2012, CRC/C/CAN/CO/3-4, para. 29.

<sup>128</sup> UN Committee on Economic, Social and Cultural Rights (CESCR): [General Comment No. 14: The Right to the Highest Attainable Standard of Health \(Art. 12 of the Covenant\)](#), 11 August 2000, E/C.12/2000/4, para. 39; [General Comment No. 15: The Right to Water \(Arts. 11 and 12 of the Covenant\)](#), 20 January 2003, E/C.12/2002/11, para. 33; [General Comment No. 19: The right to social security \(Art. 9 of the Covenant\)](#), 4 February 2008, E/C.12/GC/19, Para 54.

<sup>129</sup> UN Committee on the Rights of the Child (CRC), [General comment No. 16 \(2013\) on State obligations regarding the impact of the business sector on children’s rights](#), 17 April 2013, CRC/C/GC/16, para. 45.

<sup>130</sup> UN Committee on the Rights of the Child (CRC), [Concluding observations on the combined third and fourth periodic reports of Germany](#), 25 February 2014, CRC/C/DEU/CO/3-4, para. 23.

*investments abroad*".<sup>131</sup> Similarly, the CESCR considered that the Norwegian Government Pension Fund's investments in foreign companies operating in third countries should be subject to a comprehensive human rights impact assessment prior to and during the investments.<sup>132</sup>

- **51.** This approach of using State influence is echoed by Principle 26 of the ETO Principles, which reads:

*"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"*.

## **5. Monitor and redress extraterritorial abuses by non-State actors and ensure victims' access to remedies**

- **52.** Generally, States must provide accountability and redress mechanisms to deal with extraterritorial corporate abuses. The CRC, for instance, put it clearly in its concluding observations on Turkey, urging the country to *"examine and adapt its legislative and administrative framework to ensure legal accountability of business entities domiciled in Turkey and their affiliates operating abroad with regard to violations of human rights, especially child rights, committed in the territory of the State party or overseas, establish monitoring mechanisms, investigate and redress such abuses with a view to improved accountability, transparency and prevention of violations"*.<sup>133</sup> A number of other recommendations have also requested States to ensure that corporations are held accountable for their extraterritorial impact on human rights.<sup>134</sup>

<sup>131</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Australia](#), 28 August 2012, CRC/C/AUS/CO/4, para. 28. See also UN Committee on the Rights of the Child (CRC), [General comment No. 16 \(2013\) on State obligations regarding the impact of the business sector on children's rights](#), 17 April 2013, CRC/C/GC/16, para. 45.

<sup>132</sup> UN Committee on Economic, Social and Cultural Rights (CESCR), [Concluding observations concerning the fourth periodic report of Norway](#), 13 December 2013, E/C.12/NOR/CO/5, para. 6.

<sup>133</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Turkey](#) CRC/C/TUR/CO/2-3, 20 July 2012, para. 23.

<sup>134</sup> E.g. UN Committee on the Elimination of Racial Discrimination (CERD), [Reports submitted by States parties under article 9 of the Convention: International Convention on the Elimination of All Forms of Racial Discrimination: addendum: Information provided by the Government](#)

- **53.** Principle 36 of the Maastricht Principles is consistent with this approach, indicating that “*States must ensure the availability of effective mechanisms to provide for accountability in the discharge of their extraterritorial obligations*”, and Principles 37 to 41 outline, *inter alia*, the obligation to provide effective remedies and reparations, the role of non-judicial accountability mechanisms, and the obligation to cooperate with international and regional human rights mechanisms.
  
- **54.** UN treaty bodies have made specific recommendations related to accountability which can be classified into categories of activities that States should undertake: <sup>135</sup>
  - Investigate and provide legal remedies and reparations
  
- **55.** The general principle, as defined by the CRC, is that “*States should enable access to effective judicial and non-judicial mechanisms to provide remedy for children and their families whose rights have been violated by business enterprises extraterritorially when there is a reasonable link between the State and the conduct concerned. Furthermore, States should provide international assistance and cooperation with investigations and enforcement of proceedings in other States*”.<sup>136</sup> The CRC has applied this principle in concrete cases, for instance, in relation to new Italian legislation on corporate social responsibility. The CRC recommended it “*provide for the supervising bodies to be able to refer to the judicial authority in cases of abuses of children and human rights, including regarding activities of companies domiciled in Italy, and of their business partners overseas*”.<sup>137</sup>

[\[of\] Canada on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination: Norway](#), 11 March 2011, CERD/C/NOR/CO/19-20, para. 17; UN Committee on Economic, Social and Cultural Rights (CESCR), [Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: Concluding observations of the Committee on Economic, Social and Cultural Rights: Austria](#), 13 December 2013, E/C.12/AUT/CO/4, para. 12; UN Committee on the Rights of the Child (CRC), [Concluding observations on the combined third and fourth periodic reports of Germany](#), 25 February 2014, CRC/C/DEU/CO/3-4, para. 23.

<sup>135</sup> UN Committee on the Elimination of Racial Discrimination (CERD), [Reports submitted by States parties under article 9 of the Convention : International Convention on the Elimination of All Forms of Racial Discrimination: addendum: Information provided by the Government \[of\] Canada on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination - Canada](#) (CERD/C/CAN/CO/18), 25 May 2007, para. 17.

<sup>136</sup> UN Committee on the Rights of the Child (CRC), [General comment No. 16 \(2013\) on State obligations regarding the impact of the business sector on children’s rights](#), 17 April 2013, CRC/C/GC/16, para. 44.

<sup>137</sup> CRC/C/ITA/CO/3-4 para. 21.

- **56.** Referring to situations in other countries, the CRC has recommended that authorities should both investigate and redress non-State actors' human rights abuses,<sup>138</sup> and remedies should lead to reparations.<sup>139</sup> When the national courts are already able to address corporate abuses, the CERD has recommended that *“no obstacles [should be] introduced in the law that prevent the holding of such transnational corporations accountable in the State party’s courts when such violations are committed outside the State party”*.<sup>140</sup> The Human Rights Committee has also recommended that Germany *“strengthen the remedies provided to protect people who have been victims of activities of such business enterprises operating abroad”*.<sup>141</sup>

- Use indicators and establish monitoring and accountability mechanisms

- **57.** In order for non-State actors to be held accountable for human rights abuses in third countries, the UN treaty bodies regularly recommend their impact be “effectively”<sup>142</sup> monitored.<sup>143</sup> As underlined by the CRC in its review of Canada, States should ensure *“the monitoring of implementation by companies at home and abroad of international and national environmental and health and human rights standards and that appropriate sanctions and remedies are provided when violations occur”*.<sup>144</sup> This includes not just monitoring the conduct of corporations, but also the results of their efforts.<sup>145</sup> The use of indicators and benchmarks can play an important role for this reporting, as

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**138** UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Turkey](#) CRC/C/TUR/CO/2-3, 20 July 2012, para. 23.

**139** UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Thailand](#), 14 September 2011, CRC/C/THA/CO/3-4, para. 30.

**140** CERD/C/GBR/CO/18-20, para. 29.

**141** UN Human Rights Committee, [Concluding observations on the sixth periodic report of Germany, adopted by the Committee at its 106th session, 15 October to 2 November](#), ICCPR/C/DEU/CO/6, para. 16.

**142** UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations - Italy](#), 31 October 2011, CRC/C/ITA/CO/3-4, para. 21.

**143** E.g. UN Committee on Economic, Social and Cultural Rights (CESCR), [Consideration of reports submitted by States parties under articles 16 and 17 of the Covenant: Concluding observations of the Committee on Economic, Social and Cultural Rights: Austria](#), 13 December 2013, E/C.12/AUT/CO/4, para. 12.

**144** UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Canada](#), 6 December 2012, CRC/C/CAN/CO/3-4, para. 29.

**145** UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Azerbaijan](#), 12 March 2012, CRC/C/AZE/CO/3-4, para. 29.

noted by the CRC in its reviews of Azerbaijan<sup>146</sup> and Thailand.<sup>147</sup>

- **58.** States that are party to systems providing grievance mechanisms should support and adequately resource them, as outlined in General Comment 26 of the CRC:

*“States that adhere to the OECD Guidelines for Multinational Enterprises should support their national contact points in providing mediation and conciliation for matters that arise extraterritorially by ensuring that they are adequately resourced, independent and mandated to work to ensure respect for children’s rights in the context of business issues”.*<sup>148</sup>

· Report to treaty bodies

- **59.** Finally, States have also been required to report about the measures they take to comply with their ETOs with regards to non-State actors’ conduct. For instance, CERD requested Canada *“to include in its next periodic report information on the effects of activities of transnational corporations registered in Canada on indigenous peoples abroad and on any measures taken in this regard”*,<sup>149</sup> while the CRC regretted *“the lack of information on the legal and administrative framework for regulating the activities of companies doing business in Turkey and Turkish companies operating abroad to ensure effective responses to respect children’s rights, prevent violations of child rights, and protect children from such abuses”*.<sup>150</sup>

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<sup>146</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Azerbaijan](#), 12 March 2012, CRC/C/AZE/CO/3-4, para. 29.

<sup>147</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Thailand](#), 14 September 2011, CRC/C/THA/CO/3-4, para. 30.

<sup>148</sup> UN Committee on the Rights of the Child (CRC), [General comment No. 16 \(2013\) on State obligations regarding the impact of the business sector on children’s rights](#), 17 April 2013, CRC/C/GC/16, para. 46.

<sup>149</sup> UN Committee on the Elimination of Racial Discrimination (CERD), [Reports submitted by States parties under article 9 of the Convention: International Convention on the Elimination of All Forms of Racial Discrimination: addendum: Information provided by the Government \[of\] Canada on the implementation of the concluding observations of the Committee on the Elimination of Racial Discrimination - Canada](#) (CERD/C/CAN/CO/18), 25 May 2007, para. 17.

<sup>150</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Turkey](#), CRC/C/TUR/CO/2-3, 20 July 2012, para. 23.



## 6. Cooperate internationally to act beyond borders

- **60.** In addition to the measures above, UN treaty bodies have recommended that States work together to address extraterritorial abuses by non-State actors. The general principle, as laid out in the CRC’s General Comment 16, is that “*States have obligations to engage in international cooperation for the realization of children’s rights beyond their territorial boundaries*”.<sup>151</sup> This is also a practice that has been consolidated in Principle 27 of the Maastricht Principles, which notes that “*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*”. Treaty bodies have applied this principle in practice. For instance, with regard to Australia, it was recommended that the State “*strengthen cooperation with countries in which Australian companies or their subsidiaries operate to ensure respect for child rights, prevention and protection against abuses and accountability*”.<sup>152</sup>

# IV. Conclusions & areas for further exploration

- **61.** In the last seven years, UN treaty bodies have built a rich and solid body of concluding observations and general comments which serve to articulate the scope of ETO standards. They have dealt with many key dimensions of ETOs, demonstrating how the obligations to respect, protect and fulfil can be applied extraterritorially. In so doing, UN treaty bodies apply international law in ways that illuminate the contours of States obligations, as well as articulate how they can regulate corporations, in response to changing legal and economic global environment.
- **62.** The Maastricht Principles reiterate and build on the foundation provided by this UN jurisprudence (and other regional and international human rights jurisprudence), and in turn strengthen the application of ETOs by providing a source for broad authoritative interpretation of States’ obligations. This is exemplified by the increasing references to the Maastricht Principles in the reports of UN Special Rapporteurs.<sup>153</sup>

<sup>151</sup> UN Committee on the Rights of the Child (CRC), [General comment No. 16 \(2013\) on State obligations regarding the impact of the business sector on children’s rights](#), 17 April 2013, CRC/C/GC/16, para. 41.

<sup>152</sup> UN Committee on the Rights of the Child (CRC), [Consideration of reports submitted by States parties under article 44 of the Convention: Concluding observations: Australia](#), 28 August 2012, CRC/C/AUS/CO/4, para. 28.

<sup>153</sup> E.g. UN Human Rights Council, [Report of the Independent Expert on the issue of human](#)

- **63.** The existing standards and practices thus offer a suite of options for UN Special Procedure Mandate-Holders and other stakeholders to draw from ensuring that UN experts can identify examples and interpret standards in ways that accurately inform their analysis of extraterritorial human rights violations.
- **64.** While this report demonstrates the evolving understanding of States’ ETOs, there are areas for consideration that are yet to be fully explored by treaty bodies. An increased focus on these areas would benefit States in further understanding how to fully implement their obligations. In particular, it would be beneficial for the following issues to be elaborated in greater detail and, subsequently, applied by treaty bodies and others:
  - More detailed concluding observations specifically addressing States’ ETOs, which outline exactly what is required of States, perhaps drawing on useful resources such as the Maastricht Principles;
  - Further elaboration of the concepts of “foreseeability”,<sup>154</sup> scope of jurisdiction,<sup>155</sup> and “direct/indirect interference”,<sup>156</sup> as well as other useful concepts contained in the Maastricht Principles which have not yet been fully elaborated and applied;
  - With regard to ETOs, greater clarity regarding what is required of States (as well as the corporations they oversee) to meet their ‘obligation of result’, to complement the current understanding (through concluding observations and general comments) of what is currently required for States’ to meet their ‘obligation of conduct’; and
  - Fuller examination of States duty to fulfil in the context of ETOs.

*rights obligations relating to the enjoyment of a safe, clean, healthy and sustainable environment*, John H. Knox, 24 December 2012, A/HRC/22/43, para. 48; UN Human Rights Council, *Report of the Special Rapporteur on the human right to safe drinking water and sanitation*, 5 August 2013, A/68/264, para. 46; UN Human Rights Council, *Final report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights, Cephias Lumina*, 7 March 2014, A/HRC/25/52, paras. 38-42.

<sup>154</sup> *Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights*, Principles 9 & 13.

<sup>155</sup> *Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights*, Principle 9.

<sup>156</sup> *Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights*, Principles 20 & 21.



*A resource developed by the ESCR-Net Corporate Accountability Working Group to assist human rights practitioners' apply UN treaty bodies' jurisprudence to the interpretation of States' extraterritorial obligations, in the context of corporate-related human rights violations*

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