

REPORT OF THE 3RD CONFERENCE OF THE ETO-CONSORTIUM

Lancaster, 9-11 September, 2009





FIAN INTERNATIONAL

Willy-Brandt-Platz 5
69115 Heidelberg, Germany
Tel.: +49-6221-6530030
Fax: +49-6221-830545
contact@fian.org
<http://www.fian.org>

The report was prepared by Rolf Künnemann, Mariana Rocha, Ana-Maria Suárez Franco

Cover Photo:

A view on parts of the Ahafo gold mine in Ghana. The mine is owned by an Australian mining company. The mining led to large scale displacement of the local population without proper rehabilitation and compensation. Ahafo is one of the cases studied by the ETO-Consortium.

Printed on recycled paper
Published December 2009

The ETO-Consortium would like to express its gratitude and appreciation to Brot für die Welt, Icco, Misereor, Lancaster University, Lancaster University Law School, and the Leitner Center for funding the 3rd ETO-conference and part of the related case-work.



Lancaster University Law School



REPORT OF THE 3RD CONFERENCE OF THE ETO-CONSORTIUM

Lancaster, 9-11 September, 2009

Table of Contents

1 Introduction	5
3 Programme	7
4 Proceedings	9
4.1 Welcome and introduction	
4.2 Report on the development of the Consortium	
4.3 Lessons learnt from the substance of the ETO cases. Achievements made and identification of gaps	
4.4 Lessons learnt from the conceptual studies. Achievements made and gaps identified	
4.5 Conference opening	
4.6 Keynote speech – Extraterritorial human rights obligations: “A useful tool to address the challenges of globalisation?”	
4.7 Session Thursday morning, Public Conference - Panel discussion “ETOs in a wider global picture”	
4.8 The human rights effect of states’ extraterritorial acts and omissions – theoretical issues	
4.9 The human rights effect of states’ extraterritorial acts and omissions – empirical issues	
4.10 Working Groups on ETOs in policy areas	
4.11 Special Workshop organised by the FIAN International and the UK Food Group on ETOs and the right to food of African peasants.	
4.12 Plenary with reports of the working groups – Discussion	
4.13 ETO Principles in action. The way forward.	
4.14 Consortium Meeting. Summary of Discussions, and Plans towards Maastricht 2010	
5 List of Participants	27

1 Introduction

States hold certain obligations to observe the human rights of persons outside of their territorial scope. These extraterritorial obligations (ETOs) have often gone unrecognized either in law, policy and practice of many states. States have tended to limit obligations to their own territory, which does justice neither to the regulatory needs of the international community nor to upholding the principle of universality of human rights. The problem is not merely academic: a state's actions or omissions can and frequently do have substantial and often adverse impact on persons abroad.

This reductionism to territorial obligations has led to a vacuum of human rights protection in a number of international political processes and a paucity of regulations based on human rights in order to promote their protection. The situation is particularly challenging in the field of economic, social and cultural rights (ESCR).

Human rights proponents, including from intergovernmental and non-governmental organisations, independent experts and academia have identified gaps in human rights protection which have become more severe in the context of globalisation during the past 20 years, including:

- the human rights regulation and accountability of transnational corporations (TNCs)
- the human rights accountability of Intergovernmental Organizations (IGOs), in particular international financial institutions
- the ineffectiveness in application of human rights law in the face of investment and trade law which has developed over the past 20 years
- the implementation of corresponding duties to protect and fulfil ESCR abroad [inter alia through international cooperation and assistance]
- clarity on the nature and scope of ETOs.

These shortcomings need to be addressed and extraterritorial obligations have to be mainstreamed in the human rights community, at the UN and its human rights bodies, but also in policy fields such as investment, trade, development cooperation, the regulation of transnational corporations and the accountability of intergovernmental organisations.

First steps were taken ten years ago: Since 1999 the UN Committee on Economic, Social and Cultural Rights (CESCR) has consistently in its general comments referred to this dimension of human rights obligations in multilateral and bilateral context. Since 2001, several civil society organizations (CSOs) have submitted parallel reports to the CESCR focusing exclusively on ETOs. In 2003 Maastricht University held an international expert conference on the extraterritorial scope of human rights treaties. Although this conference focused on CPR, ESCR were taken up in the context. At the same time Brot für die Welt, FIAN International and others screened German development cooperation on the basis of ETOs and came up with two reports exploring the context. In 2005 the UN Special Rapporteur on the Right to Food analysed ETOs in his report. The special rapporteur on the right to health addressed these issues in particular in his 2008 report. In academia and in civil society, a number of papers and books have been elaborated on the subject. Nevertheless, there remains some lack of clarity and some hesitation among many states to meaningfully address ETOs. Many CSOs working in the field increasingly see the strengthening of ETOs as an essential human rights response to globalisation and to the evolving situation of international human rights law.

All of this points to a need for a concise systematic presentation and summary of standards on ETOs in ESCR to be made available to decision makers in governments and at the UN. Such an international expert-elaborated legal document would follow in the tradition of the 1986 Limburg Principles on the implementation of the Covenant on Economic, Social and Cultural Rights and the 1997 Maastricht Guidelines on Violations of ESCR. When Maastricht University, FIAN International and

others came forward in early 2007 with the idea of mainstreaming ETOs on the basis of a Maastricht ETO Principles document, there was a highly positive response both from human rights experts, civil society and academia. In the summer of 2007, an “ETO-Consortium” was set up by 30 CSOs and universities and held its first meeting in Geneva, in November 2007. Two years later the ETO Consortium has become a network of some 50 human rights related NGOs, universities and institution-based individuals including Abo Akademi University, Amnesty International, Brot für die Welt, CapeTown University, CIEL, COHRE, DeJusticia, FIAN International, HIC, Icco, the International Commission of Jurists, Maastricht University, Misereor, Lancaster University, Rights and Democracy, SERAC, U of Antwerp, U of North Carolina and many others – and the Consortium keeps growing.

The Consortium is led by a steering group consisting of persons from Åbo Akademi University, Amnesty International, Brot für die Welt, FIAN International, Human Rights Watch, ICJ, Lancaster University, Maastricht University, University of North Carolina. The secretariat of the steering group is at FIAN International (kuennemann@fian.org).

In 2007 the Consortium started to study cases and conceptual issues concerning ETOs under economic social and cultural rights. This work was intensified after the Consortium had held its second conference in Heidelberg in September 2008. An internet platform was set up for discussion. For its third conference in Lancaster, September 2009, the Consortium produced a 200 page internal Reader with studies on conceptual legal issues, on the implications of ETOs in the different policy fields mentioned above and on cases. Studies were prepared by individuals or groups and many of these studies were commented upon by other members of the Consortium.

The publication at hand provides a report of the third Consortium conference in Lancaster. It gives an impression of the ideas presented and the type of issues debated. In this sense they also provide a challenging introduction into the state of the art on ETOs.

2 Executive Summary

The ETO-Conference in Lancaster was significant for a number of reasons.

The first point here is that it included a public conference as its central part. Hence it benefited from the participation of many persons and organisations which were not members of the Consortium and provided an “outside view” of ETOs which was very helpful.

Secondly the conference witnessed the growth of the Consortium, in particular in Africa. Africa provided the biggest non-European continental group of participants.

Thirdly the ETO-Consortium showed progress on a number of conceptual issues. Even though a number of challenges remained, there was a feeling that mainstreaming of ETOs could soon be started. The Consortium welcomed the initiative announced by Maastricht University, the ICJ and others to call for an expert meeting in December 2010 in order to issue the “Maastricht Principles on ETOs under Economic, Social and Cultural Rights”. The ETO-Consortium in Lancaster saw the announced new document as a perspective for settling a number of conceptual challenges in the field.

Moreover the ETO-Consortium expressed its interest to make the future Maastricht ETO Principles a key term of reference for its work in mainstreaming ETOs. The Consortium will be consulted in the drafting process which will start long before the Maastricht Conference of December 2010.

The ETO-Consortium decided in Lancaster that it will launch a promotional campaign in 2011 among civil society, academia and experts to draw attention to the Maastricht ETO Principles. The aim of this campaign will be to mainstream the document world wide. Most importantly the ETO Principles will be used in the day-to-day work of the consortium members individually and in cooperation, seeking new avenues to address some of the most pressing problems in the field of Economic, Social, and Cultural Rights.

A number of papers were commissioned and working groups set up, for example on strategy, case-work, and fund raising. In the last part of the conference, which was again internal, the main elements of the work plan for 2010 were agreed upon.

3 Programme

WEDNESDAY 9TH OF SEPTEMBER

CONSORTIUM MEETING

- 12:00 *Registration*
- 12:00 – 1:00 *Lunch*
- 1:00 - 1:30 **Welcome and introductions.**
Chair: Sigrun Skogly - Lancaster University
- 1:30 – 2:15 **Consortium work since Heidelberg Conference and aims and objectives of the Lancaster Conference** - Rolf Künneman- FIAN, Fons Coomans –Uni. Maastricht.
Chair: Sigrun Skogly
- 2:15 – 3:30 **Lessons learnt from the substance of the ETO cases. Achievements made and identification of gaps**
Michael Windfuhr – BfW.
Chair: Ian Seiderman – ICJ
- 3:30 – 3:45 *Tea/Coffee*
- 3:45 – 5:00 **Lessons learnt from the conceptual studies. Achievements made and gaps identified** - Mark Gibney- Uni. Asheville.
Chair: Ian Seiderman
General discussion

PUBLIC CONFERENCE

- 5:30 – 5:45 **Welcome** - Sigrun Skogly
- 5:45 – 6:00 **Conference opening** – Trevor McMillan, Pro-Vice Chancellor, Lancaster University
- 6:00 – 7:00 **Keynote speech: “Extraterritorial human rights obligations: A useful tool to address the challenges of globalisation?”** -
Miloon Kothari – HIC, former UN Special Rapporteur on the Right to Adequate Housing.
Chair: Sigrun Skogly
- 7:30 *Dinner – Cafe 21, Info lab, Lancaster University*

THURSDAY 10TH OF SEPTEMBER

- 9:00 – 11:00 **“ETOs in a wider global picture”.**
Chair: Fons Coomans
Panellists:
“Global Structural Impediments” - Margot Salomon, London School of Economics
“Trade and BITs” - Carole Samdup, Rights and Democracy, Canada
“Development Policies in light of human rights in Africa” - Christopher Mbazira, Makerere University
“Experience from environmental law” - Marcos Orellana, Centre for International Environmental Law (CIEL)
“The role of transnational corporations”- Nicholas Lusiani, ESCR-Net
- 11:00 – 11:30 *Tea/Coffee*
- 11:30 – 1:00 **“The human rights effect of states’, extraterritorial acts and omissions – empirical and theoretical issues”**- Rolf Künnemann, Sigrun Skogly.
Chair: Fons Coomans
Discussion
- 1:00 – 2:00 *Lunch - Lancaster House Hotel*

2:00 – 3:30 **Working Groups on ETOs in policy areas:**
1. Trade and investment.
Chair: Christian Courtis. – OHCHR.
Rapporteur: César Rodríguez- DeJusticia
2. Transnational Corporations.
Chair: Wouter Vandenhole – Uni. Antwerp
Rapporteur: Eline Wrzoncki - FIDH
4. International Financial Institutions and other IGOs.
Chair: Giorgiana Rosa-Al.
Rapporteur: Ute Hausmann-FIAN
5. Bilateral assistance and international resource transfers.
Chair: Sisay Alemahu- Yeshanew-Åbo University.
Rapporteur: Ida Eline Engh – Plan Norway

3:00 – 3:30 *Tea/Coffee*

3:30 – 5:00 **Working Groups continue**

5:30 – 7:30 **“ETOs and the Right to Food of African Peasants” -**
FIAN International and the UK Food Group.

7:30 *Dinner – Lancaster House Hotel*

FRIDAY
11TH OF SEPTEMBER

9:00 – 10:30 **Plenary on working groups.**
Chair: Mark Gibney
Discussion

10:30 – 11:00 *Tea/Coffee*

10:30 – 12:00 **“ETO Principles in action: The way forward” -Michael Windfuhr.**
Chair: Mark Gibney

12:00 – 1:00 *Lunch – Lancaster House Hotel*
End of public conference

1:00 – 3:00 **Consortium meeting.**
Summary of discussions, and plans towards Maastricht 2010

3:00 **Steering Group meeting**

4 Proceedings

Wednesday, September 9, 2009

4.1 WELCOME AND INTRODUCTION

Participants were welcomed by Sigrun Skogly to the 3rd Consortium Conference. Sigrun referred to the contribution and help of all participants in the organisation of the Consortium Conference and the Public Conference sessions, which would be part of the Consortium Conference. The work that had been developed was substantially represented by the Reader, which is an internal Consortium document sent in advance to Consortium members, containing the conceptual papers and case analysis. She emphasised that the work of the Consortium was ongoing and the momentum would continue by documentation and development of principles. Lobbying would also continue to broaden the Consortium and make ETOs known.

Sigrun Skogly took the chair for the afternoon session and handed the word to Rolf Künneemann and Fons Coomans for reporting on work that had been done in the past 12 months.

4.2 REPORT ON THE DEVELOPMENT OF THE CONSORTIUM

(Rolf Künneemann and Fons Coomans)

Rolf Künneemann recalled how the Consortium came into existence out of the experience of academia and human rights organizations over the past two decades. At the beginning human rights were developed in a broader way on the basis of universality, but over the past 60 years it came to a “domestication” of human rights as if human rights obligations were limited to the state's territory. One of the main focuses of the Consortium was to deal with this “domestication” of human rights, to avoid a very restrictive approach, as well as to avoid dealing with issues in a defensive way.

Another task is to try and engage in dialogue process with NGO's and academia through case analysis as well as through conceptual analysis. In order to guarantee a real and holistic human rights protection it is essential to appreciate the universality of human rights and the effects of globalisation on human rights. Human rights are indivisible. Even though the focus is on economic, social and cultural rights, it is necessary to maintain a coherent approach, working together to ensure that the interdependence of rights in the different tasks and positions be defended. This Consortium also takes into consideration that it is not the only group doing this type of work. Conceptual progress can be seen in the Committee on Economic, Social and Cultural Rights and its useful General Comment on the Right to Food and subsequent general comments. After the 1986 Principles of Limburg and the 1997 Guidelines of Maastricht, one aim would be to have a third set of Maastricht Principles – the Maastricht ETO Principles.

At the Heidelberg Conference in 2008, two working groups were formed on the following areas: conceptual issues and case studies. The work that has been undertaken since the 2008 conference includes the conceptual work as well as outreach work. The outreach work has impacted the growth of the Consortium. This outreach has included attendance at conferences such as a conference on the ‘Global Food Challenges’ in Geneva, November 2008, as well as at the strategy conference of the ESCR-net in Nairobi, December 2008.

A steering group was established in the pilot phase of the project which meets every month by telephone conference. A consultative group to the Consortium was established by the steering group to serve as a dialogue partner on difficult matters. The Reader represents the efforts of the working groups. It is also meant for future reference. Finally, Rolf Künneemann mentioned that the work would not have been possible without the donor agencies’ ideas, resources and commitment, some of which were represented at this third meeting such as Brot für die Welt and Icco.

The word was then passed to Fons Coomans, who affirmed that this meeting is different from the Heidelberg Conference, because it is a mixture of public and private conference. Some meetings are just for the Consortium members and others are open to other interested persons and institutions. The public part is meant to present to a wider audience the empirical work of the Consortium: both case studies and conceptual/thematic work. This is in order to receive objective feedback from those who have not been closely involved with this project. Another objective is to identify the gaps in the work which may indicate need for further research. It is also important to discuss how the conceptual work may affect the thematic work and vice-versa. The conclusions of this meeting will also affect the work that will be done towards Maastricht 2010. It is hoped to achieve agreement about the strategy to be implemented beyond 2010 about what to do with the Maastricht principles. Furthermore, it is hoped that the conference may be instrumental to ‘switch on the lights’ to actors so far ignorant about their obligations and explain how ETO's can be a part of governmental policies.

The work on a book covering a selection of case studies is also envisaged. A commercial publisher has been found to this end. He expects that at the end of the conference it will be possible to identify the missing expertise/experts in the area and collect further expertise from academic experts, NGOs and civil society organisations and members of treaty bodies. Though informal contacts have been made, more is needed. This conference should strengthen the commitment of the Consortium to work on the ETO's in 2010.

The debate on the development of the Consortium and the Conference raised the issue when in the programme the identification of and closing of gaps would take place. Concerns with regard to gaps should be also be an input to be taken up by the drafters of the preliminary

draft of the Maastricht principles, since these conclusions are hard to be reached in such a conference. At the same time, consensus should be achieved on fundamental gaps and matters of terminology, which shall be discussed in additional working groups, depending on the feedback given by participants. Other issues were mentioned with regard to the reader, and the format of the Maastricht guidelines.

4.3 LESSONS LEARNT FROM THE SUBSTANCE OF THE ETO CASES. ACHIEVEMENTS MADE AND IDENTIFICATION OF GAPS

(Michael Windfuhr, Chair: Ian Seiderman)

Michael Windfuhr's welcomed the case-work reflected in the Reader, but identified as methodological challenges that obligations are not fully spelled out, that case descriptions are often either not complete or too long. He mentioned that it was sometimes unclear which of the actor) is responsible and he noted that there are discrepancies in the language especially in the area of the obligation to fulfil.

Altogether there are 10 cases in trade and investment, 5 cases in development assistance, 2 cases involving international governmental organisations, 3 cases on transnational corporations/ private actors, and 4 cross border cases. He noted that the differentiation between the policy fields of the cases often becomes difficult, and that the Policy fields themselves may not be convincing. Maybe categorisation should be done by leading actors who are violating human rights or real policy areas e.g. dams, mining, agriculture, labour law, etc.

He found the thematic papers on policy fields sometimes more explicit than the cases under this policy field. At times the thematic papers and the cases had no links to each other, probably because they were written at the same time by different people.

Moreover Michael Windfuhr commented on the use of the obligations to respect, protect, fulfil. The analysis is striking when it deals with protect and respect, problems, however, come up with fulfil- bound obligations. Obligation levels (respect, protect, fulfil) are not always consistently used. He identified 6 challenges:

Challenge 1- policy space

States have different options to fulfil-obligations, therefore the human rights analysis should not be too limiting especially when the government changes policies. The analysis should fully reflect who may be winning and who may be losing from particular policy decisions. Human rights checks should be done to all cases.

Challenge 2- policy choice

Different choices achieve different effects. It is not always clear or easy to understand from the cases what these choices are or which effects were achieved.

Challenge 3- policy implementation

National strategy assessment is done by considering adequate laws, possibility of implementation, and the effect on vulnerable populations, monitoring and recourse. These modes of assessment may be relevant to the case studies. In one case land management policy of land registration had the effect of concentrating land in the hands of wealthy citizens. It is unclear if this was an intentional or unintentional effect of the policy. It is important to know if there is an actual human rights violation and also if the actors are looking for alternatives to solve the problems.

Challenge 4- causation

Sometimes the obligations are not clear or easy to determine, especially in the trade cases. Yet it is important especially in development policy cases to be precise about the fulfil-bound obligations and the causation of damage in order to define obligations. It also has to be clear if the act or omission has direct and indirect effects and what these are.

Challenge 5 – complicity of actors, especially extra-territorial ones.

The role of actors should be clearly explained especially in the case of the obligation to fulfil.

Challenge 6 – development policy/aid

In this case respect- bound obligations are best documented. The protect-bound obligations are slightly less clear and not completely dealt with. In the case of fulfil-obligations there is often no answer to the extent of the obligation or how to distribute/responsibility for wrongful acts. Is retrogression always forbidden or are there choices? It should be investigated if the effect was intentional or not?

Michael Windfuhr concluded with a few suggestions: He said that the case documentation should be rigid in legal and policy analysis and that national policy toolbox for policy assessment can be used. Moreover the typology should be looked into. More cases should be used to illustrate gaps and problems relating to fulfil-obligations and different actors. There should be a 'case editing team' to streamline case description. Limits to ETOs should be defined or described. These should strengthen the cases and block loopholes

In the debate that followed it was suggested that case studies may be presented under several different typologies while maintaining the current order. It was also argued that the present format is easy to understand, and since any re-categorisation comes with its own disadvantages, the quality of discussions on the aspect of cases is what matters most. However, it might be helpful to have subsections under the present sections. It is important that everyone shares a common discipline or idea and terminology, a task which still needs to be handled. Other issues raised were:

- The work of the ILC should be taken into considera-

tion so that the work of the Consortium does not conflict with the ILC. Unity of thought in the Consortium is important.

- The reason why the cases were selected was not written in the Reader. A broader context is missing. For example it may be expedient to follow a state's extra-territorial actions, especially because people are very interested in having some form of data to consult.
- Following state actions may be helpful especially with regard to fulfil-obligations to isolate parameters to monitor them. A matrix may be drawn with a vertical thematic axis and a corresponding horizontal axis of actors to keep abreast of the legal issues involved.
- Issues not dealt with include climate change, currency crises, national resources and security issues.
- It is important to finesse the strong points of the project. There should be limits and scope for the development of principles.
- Analytical rigour could be improved. In the selection of cases for example it will be useful to know if the cases have more impact on the thematic or legal analysis, the added value of ETO analysis.
- There should be a reparation framework. Right to reparation can be used to identify remedies. There was concern on the vagueness of the remedies, which should take place within a reparation framework.

It was also noted that the indivisibility of human rights makes any type of categorisation artificial, and the choice of cases will depend on the audience, bearing in mind that ETO is the thread keeping them together. The rules must be clear and operationalising of these rules is paramount.

In response to the debate, Michael Windfuhr stated the importance of the roster of cases or of a flexible form of categorisation, through the selection of those cases strongly supporting ETO analysis. The selected cases still need a better description. In line with country-centric analysis, parallel reports will be helpful. Additionally, it is important to be careful and not to be too ambitious so harm will not be done in the end.

4.4 LESSONS LEARNT FROM THE CONCEPTUAL STUDIES. ACHIEVEMENTS MADE AND GAPS IDENTIFIED

(Mark Gibney, Chair: Ian Seiderman)

The chairperson for the session, Ian Seiderman, welcomed participants for the last session of the day. He asked Mark Gibney to present his exposition on the conceptual work done over the last year.

On the terminology dilemma of ETO involving

'international', 'trans-national', 'cross border' and 'universal' obligations, Mark Gibney affirmed to consider all these terminologies as synonymous, implying the absence of problems with regard to terminology. Still, he suggested that 'extra-territorial human rights obligations' could be more appropriate. The term 'extra-territorial obligation' had, after all, been part of international law and international human rights law for some time. It had been used frequently in connection with refugees, the environment, extradition, etc, but it could go beyond this and apply equally to economic, social and cultural rights.

He emphasised that the concepts of 'jurisdiction' and 'state obligations' remain confusing. Jurisdiction is often used by states to run away from fulfilling their obligations to respect and protect all human rights. This may be identified in the Bosnia case where the ICJ came up with the idea of 'effective control' and 'absolute control'. This case; however, could also have a positive significance on ETOs in ESCR. Mark Gibney argued that international law had been less important for ESCR than it had for CPR, and then raised the question: "How do you see 'effective control' in terms of economic, social and cultural rights?" As important criteria to consider in terms of jurisdiction he mentioned the influence of a state, the position of a state to assist or not, the contribution of a state to policy failures and the question which states benefit from certain policy measures. Finally he insisted that all states have a duty to prevent human rights violations within their capability, and they should use all available means to do so.

The floor was opened for further discussion. It was affirmed that many of the conceptual problems were not with the international law itself but with its various approaches, schools, definitions and the people around it. It was suggested that jurisdiction should go beyond mere territory, and, whereas governments may have rights to favour one individual over another, human rights apply to everyone equally. At last, it was noted that human rights presented a number of feasible options to governments. What was needed was a formulation of the master principles, and then working agreements in terms of jurisdiction. ETOs should be forward looking, pragmatic and convincing not only for international lawyers and the human rights activists, but also for people with a non-legal background.

Wednesday, 9 September, 2009

Session Wednesday Afternoon, Public Conference

By late afternoon, additional participants from outside the Consortium had arrived and the public conference began.

4.5 CONFERENCE OPENING

(Professor Trevor McMillan, Pro-Vice Chancellor, Lancaster University)

Participants were welcomed by Sigrun Skogly, who then passed the word to the Pro-Vice Chancellor of Lancaster University. Professor McMillan recognised the Consortium as an example of how NGOs and universities can work together to fight global challenges. The University endorses academic input and research philosophy focused on cross-disciplinary interaction. He mentioned as an example the research on food and water sustainability in China. In like manner this Conference addresses cutting edge relevant issues in the world through research.

4.6 KEYNOTE SPEECH – EXTRATERRITORIAL HUMAN RIGHTS OBLIGATIONS: A USEFUL TOOL TO ADDRESS THE CHALLENGES OF GLOBALISATION?"

(Miloon Kothari, Chair Sigrun Skogly)

Miloon Kothari said the aim of his presentation was to provide a global overview of the development of human rights up to this moment, how to overcome the current crises, and what role ETOs may have in this context. Six crises were identified which occur simultaneously:

- Global economic crisis: the link to deepening inequality is striking – 15 million people lost their jobs and the crisis has been the result of the dominance of neo-liberal economic policies that have been blind to the human rights of the poor.
- Food and Agricultural crisis: created 44 million people malnourished, landless, while there is insistence on biofuels which will worsen this crisis.
- Security crisis: has led to anti-terrorism laws, criminalisation of the poor, pressure on human rights defenders.
- Crisis of urbanization: a situation where 3 billion people live in cities, and by 2030 the UN predicts this number will be up to 5 billion people. Cities have become spaces marked by urban inequality, growing ghettoization and segregation, setting a clear division between rich and poor. Poor are forcibly evicted from their homes, while there are more and more playgrounds for the rich. Such crisis is worsened by socially controlled policies with an adverse affect on human rights.

- Ecological Crisis: it is estimated that one million people will be displaced in the coming year as an impact of climate change. By 2012 this number could reach up to 15 million people.
- Global displacement and land grabbing crisis: a phenomenon that has been creating many violations of human rights. It is the sweeping and ill-defined powers of the state to cease land for private interests, and use public good for private purpose.

In an ideal world we should be able to address these crises through international cooperation and human rights obligations. With the current global economic crisis, the money for bailouts should have been used for human rights policy measures. There should be mitigation policies, reducing risks, by carrying out better socio-economic assessments.

Challenges:

1) De facto non-recognition of human rights commitments and obligations: It is difficult to imagine a situation where states come together to discuss this.

2) Over specialization of human rights (particularly ESCR): In the work on ESCR there is a great degree of specialisation on budgets, indicators, ETOs.

There is a risk of directing all efforts in one direction, resulting in excessive specialisation, very removed from the ground. Justiciability is still considered too far a bridge, since many hurdles have to be overcome to get there, when often decisions of courts are not even implemented. Additionally, there is also a lack of application in terms of exploring the policy space.

3) Complicity of States: The proliferation of bilateral treaties in the global arena is a reason for great concern. There is no overview in what is done through bilateral treaties. States just serve the dominance of a "neo-liberal economy". This implies assaults on the poor: They are being targeted, moved from where they are. Global policy documents do not show this reality of disaggregation and communities suffering.

There is hope of moving forward: In civil society there are groups taking up global challenges, doing fantastic interdisciplinary work and doing fruitful partnership between environmental and human rights organizations. Other groups among social movements campaign using human rights, and are holding development strategies and states accountable.

Miloon Kothari closed with a quote from Mahatma Gandhi known as "Gandhi's talisman": "Recall the face of the poorest and weakest man that you may have seen and ask yourself if the step you contemplate to take will be of any use to him. Will he gain anything by it? Will it restore him to control over his own life and destiny?" He concluded that it should be in this sense that the ETO Consortium is taking a leading role in demanding the

legal accountability necessary to address these global crises.

During the debate a general lack of faith in international law was mentioned, and how the Consortium represents a hopeful sign to restore this faith. Even though this initiative endorses the application of international law, the latter is often considered a tool for states to defend their interest. This poses the challenge on how to draw support from states when it comes to human rights obligations. The need not to overemphasise justiciability was sustained, and it is to be seen as one among many approaches to enforce rights (advocacy, policy). There are much more strategies, which NGOs or experts use. Justiciability issues are not demanded by the victims, so it was suggested that the Reader should put emphasis on the victims and to establishing the link to them.

When asked how the recent trends of the poor and the people in general losing power, societies being weakened and autocratic regimes being generated should be taken into account in the advocacy for rule of law, Miloon Kothari replied it is difficult to restore the faith in law. It has been used historically, and presently there is no trust in law or lawyers. It results in resistance to a formal legal system, far away and incapable of bringing benefits. In situations where laws or policies offered a benefit, this was so because it was due to grassroots mobilization. So all undertakings, if possible, should start from the ground, and it is important to carry people along in the work. Amongst the poor, there is scepticism as well. They have reasons for being critical about the work of some human rights experts, who - instead of spending their time on enforcement measures, such as talking to authorities - work on more "comfortable" issues like justiciability. Perhaps there is too much reluctance to go beyond our comfortable space. Furthermore, whatever is developed on the work of indicators, the link to the victims has to be there from the beginning, as a principle to work with.

Other questions raised by participants were:

- Whether the full realization is possible in a world dominated by a neo-liberal economy.
- What is the credibility gap? Is there an alternative strategy to look into non-human rights forums so that they focus more on a human rights approach?
- On the topic of justiciability, there is a need to look at the work in a broader perspective than just the pursuit of a litigation strategy. There should be a broader analysis of advocacy cases, considering how the justiciability of rights enables their implementation.

In this context, Miloon Kothari referred to the work the UN Human Rights Council. Although there was an initial scepticism of what such a body would become, the work of the special rapporteurs has been considered a positive aspect, and the Universal Periodic Review has great potential. Experience shows that the output of the

Council is taken very seriously by ambassadors. However, there is still space for more civil society intervention and questions asked from the floor. Altogether the work coming out of the Council, in terms of tackling new issues, indicates that there is good work being done.



Listening (first row from left to right): Ana Maria Suarez Franco, Ute Hausmann, Carole Samdup, Michael Windfuhr, Elin Wrzoncki, Ian Seiderman, Magdalena Sepúlveda.



On the panel: Fons Coomans, Christopher Mbazira, Carole Samdup, Margot E.Salomon.



In session: (from left to right) Christopher Mbazira, Magnus Killander, Danwood Chirwa, Sisay Alemahu, Raymond Salas, Ashfaq Khalfan, Meghna Abraham, Giorgiana Rosa, Stéphanie Bijlmakers.

4.7 SESSION THURSDAY MORNING, PUBLIC CONFERENCE - PANEL DISCUSSION "ETOS IN A WIDER GLOBAL PICTURE"

(Chair: Fons Coomans)

This session was chaired by Fons Coomans, who welcomed all participants and explained the subject matter and basic objectives of the session. Scholars and experts would present a paper within their field of expertise using different criteria but under the same broad heading:

4.7.1 "Global Structural Impediments" – Margot Salomon

Margot Salomon highlighted some conceptual and normative issues, offered suggestions as to their application, in addition to providing challenges presented by global structural impediments. She expressed the view that the present global structure was one of the greatest hindrances to securing basic socio-economic rights among the poor. Citing Paul Krugman she notes that the welfare benefits of neo-liberalism had been oversold, and drawing on the work of Robert Wade highlighted that the generalized tendency of the past several decades was greater global inequality in terms of wealth disparity just as poverty had continued to rise in the world during this same period. As countering economic globalization required collective action, international co-operation was vital.

Looking at the rights to self-determination and to development, she drew attention to the fact that human rights obligations as applied to relations among states is not alien to the international law of human rights. As large numbers of people were affected by poverty, hunger and disease, there is a need to take urgent action at the global level. To tackle these challenges the due diligence doctrine should be applied in order to strengthen policies of world poverty prevention and to facilitate attributing responsibility when there are many actors and complex causal relations. Questions to pose in this regard would include: whether the relevant states acting individually or collectively at the international level ought to have acted differently and thus are wholly or partly at fault for the current state of affairs; could these actors have foreseen that their conduct and decisions would lead to these events occurring (increased poverty, financial crisis); and could they have reasonably averted the harm without substantial costs to themselves?

Margot suggested that any burden of proof should rest with the developed states: it should be for developed states to demonstrate *ex ante* that their policies and decisions – whether taken individually or collectively – are not hurting the world's poor. After offering a few examples, she also proposed that international cooperation indicators be devised to assist in assigning responsibility for the creation of a just international economic order.

4.7.2 "Trade and BITs" – Carole Samdup

Carole Samdup stated that attention to ETOs is particularly relevant for human rights activists seeking to address the impact of international trade and foreign investment. Fifteen years after the creation of the WTO, we are confronted by a myriad of international, regional and bilateral trade and investment agreements that are binding on the states that sign them and that enforce their provisions via powerful dispute settlement procedures far removed from basic human rights principles such as transparency and participation. In fact, in today's world it is far more serious for a government to violate a trade or investment agreement than it is to violate a human right.

There has been insufficient attention to the roles and responsibilities of developed country governments with respect to human rights impacts of trade and investment. Too often, these governments assign all of the human rights responsibility to developing countries where the negative impacts of economic globalization are felt most acutely. Moreover, having negotiated economic treaties from a position of power, developed country governments accept no responsibility for the subsequent activities of their companies operating abroad. And yet, it is clear that the home states of TNCs are key stakeholders in these activities. They have allocated public funds to promote and protect their exporters and their investors for example, by publishing market research, conducting trade missions, providing Embassy services, and by allocating export credit and/or insurance guarantees.

Understanding the nature of ETOs can help human rights activists to more effectively deal with the challenges of international trade and foreign investment. First, the approach offers a "rule-of-law" framework based on international human rights treaties that governments have already agreed upon. Second, enforcement of ETOs could become a strategy to limit the reach of new trade and investment agreements. Third, the ETO initiative emphasizes the responsibilities of developed countries where there is both capacity and resources to drive change.

4.7.3 "Development Policies in the Light of Human Rights in Africa" – Christopher Mbazira.

Christopher Mbazira affirmed the recognition of the right to development. What remains controversial is the precise nature of the right, the nature of benefits it confers, obligations it imposes, and particularly on whom these obligations are imposed. While ETO are mostly referred to as obligations owed by Northern countries towards citizens of Southern countries there are many disparities emerging between Southern countries, and in Africa South Africa would be the example of a country that has become a leading capital exporter in the region. Africa has been strongly affected by the development policies perpetrated by the World Bank and the IMF, with several violations of human rights, which have had a devastating

economic and social impact on the continent. More recently, since the late 1990s, these institutions have encouraged the adoption of Poverty Reduction Strategy Papers or Plans for the Eradication of Poverty without public participation or consultation, while continuing to focus on macro-economic development as a target for development at the expense of social development. The African Charter on Human and Peoples Rights should be used to impose ETO on African countries towards citizens of other African countries. It is most important that trade agreements are subjected to ETO.

The Declaration on the Right to Development does not answer the question whether or not developed countries have a legally binding obligation to provide development assistance to developing countries. The intention here is to argue that the obligation to protect human rights arises as soon as a developed country engages in any relationship with another country. The principles to be followed in cooperation among states, according to the Charter of Economic Rights and Duties of States, allows one to affirm that countries are supposed to follow a human rights based approach in the economic and political relationships between states. The Cotonou Agreement provides as one of its central objectives the reduction and eventual eradication of poverty while at the same time contributing to sustainable development in ACP countries. Christopher Mbazira considered these provisions a clear source of legally binding ETOs. He stressed the importance of African civil society in this context and regretted that it was often hijacked by NGOs. What is needed is people-driven CSOs.

4.7.4 “Experience from Environmental Law” – Marcos Orellana

Marcos Orellana stressed that international environmental law (IEL) chiefly manages trans-boundary and global environmental problems and hence deals with extraterritorial effects. Important instruments and related concepts include: the UN Framework Convention on Climate Change & Global Commons; International Watercourses & Community of Interests; and the Convention on Biodiversity & Common Concern. Up to the present moment, IEL has not been applied to individuals but between states. It features horizontal (state to state) obligations rather than diagonal obligations (such as ETOs) and rarely creates direct individual rights. Exceptions are the North American Agreement on Environmental Coop, 1991 ESPOO (Transboundary EIA), 1998 Aarhus (Info, Participation, Justice). Non-compliance is managed in IEL through tailored mechanisms that highlight capacity-building and cooperation.

He stressed the principles of international environmental law, such as Precautionary Principles, ‘Polluter Pays’ Principles, and the Common Concern of Humankind, the Common Heritage and partnerships. Other principles of IEL are the Duty not to Cause Transboundary Environmental Harm, the Duty to Cooperate to Prevent or Address Environmental Harm (Consultations, EIAs,

Information, Negotiations), Common but Differentiated Responsibilities, Inter-Generational Equity (Rights of Future Generations). Even though Marcos did not expand on the relationship between IEL and human rights, he observed that environmental degradation and pollution across boundaries are justly the subjects of human rights and there ETOs are also concerned. On the issue of direct rights and diagonal obligations from treaties he raised the question, when does an international agreement create direct rights for individuals and/or communities. He concluded by repeating that IEL is chiefly concerned with extra-territorial environmental effects, IEL instruments provide for inter-State rights and obligations, IEL hardly offers direct rights to individuals and/or communities.

4.7.5 “The role of transnational corporations” – Nicholas Lusiani

The nature of the state has changed as trans-national corporations or private actors increased in numbers and size. Respect, protect and fulfil-bound obligations all potentially apply when it comes to the State’s relationship with TNCs. He argued that not only the trans-national corporation but also any kind of company or trade could act negatively and abuse human rights. But are states obliged to protect against such abuse outside their own territory? There is some consensus that the home states must be held accountable for such abuse as to their controlling support and activity in hybrid or private agencies. What procedure should be used to discover the nationality of the corporation concerned? The traditional test of the place of incorporation may no longer be adequate, and given the difficulty to determine the nationality of a corporation, the ‘control test’ seems to be preferred. Yet, either way, there is an outstanding question: Which State(s) have the duty to prevent and protect against business-related violations? There is still a great potential for conflict between well-meaning governments in the assertion of their prescriptive or adjudicative extraterritorial jurisdiction. So, in deepening our understanding of the ETO to protect, it seems that we will need to think on how generally to divide the obligations of the home state(s) and the host state in exerting these types of jurisdiction over companies committing abusive acts.

He discussed procedures how states’ obligations could be divided when several jurisdictions are extended to cover TNCs? He referred to Olivier De Schutter’s proposal of a clarifying international instrument providing some certainty with regard to the boundaries of inter-state adjudication and prescription so as to strengthen corporate accountability. Current deficiencies in existing redress and accountability mechanisms have the effect of creating a permissive environment of abuse. This denial of justice to those suffering harm—and these glaring protection gaps—further compound the original abuses, too often opening the door for their recurrence. Addressing these clear gaps in the protection of universally-recognized human rights is a matter of urgency. The protection could be judicial, with

monitoring and compensation on the one hand, but on the other hand Niko proposed integrating and applying the principles of Erga Omnes through international co-operation and assistance. It is in the legal interest of all State Parties to cooperate with one another to come to meaningful solutions to fill the gaps in protection at the national, regional and global levels. A World Court of Human Rights, which could have jurisdiction over both state and non-state actors would complement existing international and regional courts, and have the power to close the gaps in protection by deciding in a binding manner. Both proposals provide important contributions to preventing and protecting against business abuses, and hold the perpetrators to account.

After the presentations, a discussion followed with interesting questions raised on issues such as the efficacy of the principle of Erga Omnes, the right to development, the notion of the primacy of human rights, and the notion of solidarity and morality in relation to the pollution test mechanisms in the environment. All participants seemed to agree on the primacy of human rights, and that the international community needed to take urgent action to implement this fully – not only politically but legally, too. Human rights now provided a clear path ahead under UN and regional systems, and they provided mechanisms as well. Existing instruments and mechanisms have the ability to bring about change and to make a difference: what is needed now is extra commitment and extra action.

4.8 “THE HUMAN RIGHTS EFFECT OF STATES’ EXTRATERRITORIAL ACTS AND OMISSIONS – THEORETICAL ISSUES”

(Sigrun Skogly, Chair: Fons Coomans)

On theoretical issues, Sigrun Skogly noted that theoretical and conceptual issues are interwoven, so an overview will be given and gaps will be identified which should be filled. The aim is to highlight issues for debate.

- a. Issues covered by the Consortium include, terminology, legal foundations for ETOs, obligation, violations, jurisdiction, state responsibility and shared responsibility etc.
- b. ETOs, international obligations, transnational obligations, shared obligations, global obligations – these terms are sometimes used to refer to the same thing, which may cause problems. International obligations for example shows that economic social and cultural rights stem from the IESCR covenant, but it is confusing when used to describe diagonal relationship rather than horizontal relationships. It may also cause a conclusion to be inadvertently drawn that the civil and political rights covenant does not give rise to ETOs. ‘ETO’ is used by the UN, states and academia. It is therefore practical to use this terminology. The other terms are used to describe legal,

moral, political, or ethical obligations. What is important is that the term is used to describe diagonal relationships between state and citizens of other states.

- c. Legal foundations of ETOs are contained in the UN charter and the human rights covenants as well as individual covenants, also in customary law, judicial opinions and soft law and political declarations. It is important to emphasise the provisions of Article 1(3) of the UN charter, the rights of the child and the covenant protecting people living with disabilities. Also for example customary international law requires states to refrain from assisting states in violating a right or committing wrongful acts. Some relevant cases include the Palestinian wall case where it was confirmed that Israel had ETOs on the territory of Palestine. Soft law includes the millennium declaration and the right to development.
- d. Obligations included domestic and foreign states’ obligations, there is the necessity of due diligence observation, the tri partite classification of ETOs, shared obligations and achieving a distinction between bilateral and multilateral organisations. ETOs neither increase nor decrease the necessity for the home state to comply with human rights. It is important to explore if foreign states with available resources will always have ETOs and the position where a state with available resources fails in its obligations, what the obligations of foreign states will be. It is also important to underline the obligation to observe due diligence in extra-territorial acts. The concept of shared obligation where more than one state is involved is pertinent. In some cases not all the states involved would have ratified the relevant covenants. The activities of the World Bank and the IMF are also relevant.
- e. Violations: in respect to breach and non-enjoyment, it should be made clear if there is an actual breach or if it is a case of not having adequate resources.
- f. Jurisdiction: economic and social rights have a special impact on jurisdiction. There is need to apply special jurisdiction tests to ascertain if a state has jurisdiction. There is separation of jurisdiction and state responsibility and also a separation of the jurisdiction to act and the jurisdiction to adjudicate. It will be pertinent to explore the issues that have been brought up in cases of civil and political rights that have dealt with jurisdiction. States do have the jurisdiction to act internationally but these acts should not breach international human rights. The extent of control that a state has over individuals in another state is one of the terms referred to. The threshold is very high in what Mark Gibney stated of ‘absolute control.’ It is suggested

that jurisdiction over actors, decisions etc take pre-eminence. It is crucial to be clear about the difference in state responsibility and state jurisdiction. The important question is whether the state has committed a wrongful act. There is a distinction between a state's jurisdiction to act internationally and the jurisdiction of a court to hear a case.

- g. State responsibility: it may be difficult to ascertain the actor of a wrongful act where there are international institutional/structural impediments to the enjoyments of human rights. Reparation and compensation has to be determined on a case by case basis.
- h. Shared responsibility is rarely applied. One state may influence another state in breach of human rights or where states act together in bilateral or multilateral relationships. States may share obligations and may be required to pay damages (reactive approach). States may have shared responsibility and may thus be required to carry out due diligence. This can be seen as a proactive approach.
- i. The gaps to be filled are not limited to, but include the area of accountability and remedy structures. Without accountability and adequate remedy the victims of violations of ETOs will find that the protection of human rights is an illusion and irrelevant to their situation.

4.9 "THE HUMAN RIGHTS EFFECT OF STATES' EXTRATERRITORIAL ACTS AND OMISSIONS – EMPIRICAL ISSUES"

(Rolf Künemann, Chair: Fons Coomans)

Rolf Künemann noted that an exclusively territorial emphasis of human rights implies gaps in human rights implementation. The impetus of universality and international cooperation seems to have been lost since the end of the Second World War.

- a. Duty-holders for a person's human rights is not only the state in where he or she is located: Let us imagine that the person to whom ETOs are owed is 'Eve'. The duty holder under Eve's human rights is not only the state within which she is located but also the community of states. All the states and actors have obligations to respect, protect and fulfil. The result is that there are no more gaps. The problem then is that states begin to interfere with each other when acting on positive human rights obligations. The solution is to develop clear and specific jurisdictional rules, when positive ETOs apply. It is important to exclude new gaps in the process of deriving such rules.
- b. Jurisdiction is primarily the "permission to carry out an act". Acts are required from states only in the positive obligations (protect, fulfil).

Respect-bound obligations tell states not to perform a certain act. States can always refrain from action, so issues of jurisdiction do not arise for respect-obligations.

He then moved to policy fields and considered questions coming up in the context of the cases studied.

- c. He distinguished two groups of policy fields: Extraterritorial business and extraterritorial social transfers
 - Extraterritorial business involves mainly protect- and respect-obligations
 - Extraterritorial social transfers involve mainly fulfil- and respect- obligations

He noted what is missing among the policy fields - for example finance, climate change, intellectual property, patenting, globalised eco-destruction etc.

- d. Extraterritorial business includes the fields of trade, investment and TNCs. Some questions that should be asked concerning trade include:
 - Are states bound to protect diagonally in exports to the markets on which vulnerable producers depend? What if Eve's state could protect her in this situation but does not?
 - How do you deal with policy space in meeting protect-obligations e.g. when they are threatened by 'wild trade agreements?'
 - When is there an ETO to open up markets for Eve's produce? What is the ETO of neighbouring states?
- e. Points for debate on investment:
 - We see a wave of resource capturing policies (enclosures) subject to a logic of maximizing returns to finance capita invested in such resource. This logic has no place for Eve's livelihood. Are states under protect-obligations to regulate their investors as to prevent destruction of Eve's livelihood (both nationally and internationally)?
 - Are there fulfil-ETOs to develop knowledge and making products available (e.g. drugs, agroecology) to Eve if this contradicts intellectual property privileges and private investment decisions along the lines of the logic mentioned?
 - ETO's have to be applied in the context of bilateral agreements, and international arbitration and the primacy of human rights over commercial law. On the primacy of human rights it should be noted that it will be difficult to convince Eve that her human rights are less important than trade or investment.
- f. For TNCs he raised the following issues:
 - Is there a protect-bound obligation on 'own'

TNCs? Yes.

- There has to be monitoring and due diligence to meet this obligation.
- Respect-obligations exist which require not to support abuses by TNCs and other third parties.
- There is also a duty to provide judicial remedies in the TNC's home state.
- Is there a home state ETO to protect against destructive acts of TNCs?
- Is there a duty to establish an international court for TNCs?

- g. Rolf then move to the area of extraterritorial social transfers, raising the following points.
- There is an obligation on the community of states to fulfil as soon as possible Eve's ESCR.
 - The priority is on the basic elements of the core content of the most deprived.
- h. The obligation is primarily on Eve's home state and limited by available national resources.
- How much is the "maximum of available resources" for her home state? How is this amount determined? By compiling the budget allocations to key programmes under the right in question and comparing the resulting percentage of the GDP to the respective percentage of OECD countries' allocated to the same right? He would prefer this to comparisons with the budget allocations in peer states.
 - Then the gap (if any) between the cost of key programs and the resources available needs to be determined, in order to make clear and justiciable whether the state is duty-bound to implement these programmes all by itself or not.
 - The community of states would have to step in to cover such a gap if it exists.
 - Does the community of states have to step in, if the state where Eve is located does not meet its obligation to the amount stipulated?
 - Do foreign states have to step in for each other, if a foreign state does not meet its obligation to the amount stipulated?
 - Which ETOs hold if a foreign state has to take a retrogressive step on its ET social transfers?

In conclusion ETOs are key because

- They are a tool to operationalise an international order in which human rights are implemented
- They address human rights violations emanating in a context of globalisation.
- They provide a means for human rights based international regulation.

- They overcome the often artificial compartmentalisation of the human rights issues and cases mentioned.
- They generate strength through unification of issues that are naturally related.
- They create a vision and unity for campaigning.

The floor was opened for comments and questions. Participants mentioned the Bankovic case from the European Court of Human Rights as an exceptional one, since ETOs have not been challenged by the UN bodies or the American Human Rights System, and the Consortium should not be limited to Europe, and not be too worried about such judgments. It was pointed out that the European cases show frequent inconsistency. On TNCs, more specifically, world courts have not been able to regulate the over 190 countries, and it may be difficult to regulate over 70 000 companies. With regard to the application of the maximum available resources, there is the concern on states' limitations due to external imposition, and whether this rule may be applied extraterritorially. It was affirmed that while debt restrictions should not deprive states of the realisation of MDGs, it is difficult to calculate what states' obligations are to other states. More work needs to be done on this topic, but it should be avoided mentioning numbers since the quality of the use of resources is sometimes more important than their quantity. Others said that both quantity and quality are important. Additionally, conceptual matters were referred to and the decision to use the respect, protect and fulfil classification was endorsed. It was underlined that the message has to be simplified.

Session Thursday afternoon, Public Conference

4.10 WORKING GROUPS ON ETOS IN POLICY AREAS

In the afternoon session the following working groups convened for their deliberations:

Working Group on Trade and Investment
(Rapporteur: Carole Samdup, Chair: Christian Courtis)

Working Group on Transnational Cooperation
(Rapporteur: Elin Wrzoncki, Chair: Wouter Vandenhole)

Working Group on Bilateral assistance and international resources transfers
(Rapporteur: Ida-Eline Engh, Chair: Sisay Alemahu Yeshanew)

Working Group on Conceptual Issues
(Rapporteur: Claire Mahon, Chair Margot E.Salomon)

Working Group on Strategy
(Rapporteur Rolf Künnemann, Chair: Michael Windfuhr)

Whereas the first three groups had been prepared beforehand by the steering group with lead questions the groups on conceptual issues and strategy had been

formed upon demand from the plenary.

The groups met for several hours in the afternoon.

4.11 SPECIAL WORKSHOP ORGANISED BY THE FIAN INTERNATIONAL AND THE UK FOOD GROUP ON ETOS AND THE RIGHT TO FOOD OF AFRICAN PEASANTS.

(chair: Angela Mulenga)

Angela Mulenga said that after a long day with intense group work going on in the afternoon, she was pleased to see almost everybody participating in this extra-workshop in the late afternoon/early evening. She introduced the six panelists (including herself), four of them from Africa and two from Europe, and explained the program which in its first part would have a look at African peasants' right to food and then in its second part take an ETO perspective on the measures raised.

4.11.1 African peasants, who they are

Patrick Mulvany of the UK Food Group, recalled that small holder agriculture is of crucial importance for the African food system. He recalled that most food producing peasant farmers in Africa are women, and that many farms are headed by women as well. He explained the efforts of African small-scale food providers to organize themselves and introduced the concept of food sovereignty which is a rights-based concept. Patrick referred to the international conference of small-scale food providers in Nyéléni, Mali in 2007, where food sovereignty was spelled out in detail, based on the people's right to define their own food system and agricultural policies. He said it was crucial to recognize the importance of African peasants in the transition to a new and more productive African agriculture which is at the same time sustainable and feeding the hungry masses of the continent. For this matter it was necessary to strengthen rural African communities and in particular the role of peasant women who care for food production – often without having land rights or titles. He said the time had come to build strong peasant organisations empowered with human rights and supported by civil society and governments.

4.11.2 A story of related extraterritorial human rights violations

George Osei-Bimpeh recalled the experience of African peasants with colonialism. He recalled how the African agriculture was "structurally adjusted" to the needs of the colonial "mother land", referring to the head taxes or hut taxes which could only be obtained by producing for the colonizing countries. He mentioned how food production suffered in this context. George quoted statements of Cecil Rhodes and others involved in such policy making who openly stated their objectives for orienting African agriculture to their business interests. Some people in the audience were struck by the similarities

of policies in the 19th centuries and those applied today by the EU, the USA and the Bretton Woods institutions. George Osei then referred in particular to the structural adjustment policies of the 1990s and the impact they had on African small-holders with states cutting their support for peasant farming and concentrating the support on cash crops for other countries in order to obtain foreign currency.

4.11.3 New threats and their ETO component

Angela Mulenga referred to globalization, the food crisis and climate change as three interlinked challenges for African peasant farmers. All of them have to do with the impact of foreign actors in Africa. She expanded particularly on the Economic Partnership Agreements (EPAs) currently pushed as a European initiative trying to drastically reduce the policy space of African states to protect their markets and their vulnerable producers. EPAs go far beyond the market access pushed through by the OECD countries in the WTO agreements. The African Union has been resisting the pressure tactics of OECD countries within the WTO. For this matter the EU changed its strategy from the WTO to the sub-regional or bilateral levels to conclude EPAs with African countries. Angela mentioned how this is part of a policy paradigm that had also led to the food crisis and to climate change which both are linked to inappropriate farming and economic systems used and promoted by actors outside Africa.

4.11.4 Mechanisms of recourse available for African peasants and the substantive legal bases for such recourse.

Sisay Alemahu Yeshanew gave a short introduction to the different human rights instruments available for African peasant farmers and the remedy which they could provide. He explained in particular the African human rights system, the role of the African Commission on Human and People's Rights (Banjul) and the upcoming Human Rights Court in Arusha. The Commission has the mandate to receive inter-state complaints as well as "other communications" on which the individual complaints procedure of the Commission is established. Member states are required to submit periodic reports. Civil society can submit parallel reports. And there is also a complaints procedure but fairly restricted. The Court offers an interstate complaint procedure. Moreover cases can be submitted by the Commission and the African IGOs. Relevant CSOs with observer status to the Commission can submit cases to the court, when they concern states which have explicitly opened up for this possibility in a general declaration at the time of ratification or thereafter. He said that peasant farmers have difficulties in accessing the system. Even though court action is not the only important avenue, it should not be underestimated in its effects. Addressing breaches of ETOS is important for African peasant-farmers, but they are still far from it. Strengthening ETOS internationally would help.

4.11.5. “Donors”, CAADP (pillar 3) and African peasants’ right to food.

Magnus Killander and Rolf Künnemann both gave short talks on the Comprehensive African Agricultural Development Programme (CAADP) which was launched as an initiative by the African Union in Maputo, Mozambique, in 2003, together with a pledge to increase budgetary means for agriculture to 10% of the national budgets – a pledge which so far has been implemented only by 10% of the countries. The drafting of CAADP was facilitated by the FAO. The programme has a relatively technocratic orientation encouraging countries to present bankable investment projects. CAADP consists of four pillars: (1) Land and water management; (2) rural infrastructure and trade-related capacities for market access; (3) increasing food supply and reducing hunger; (4) agricultural research, technology dissemination and adoption. Agribusiness plays a major role in policy advice, research and dissemination. CAADP is a framework to be adapted by African countries. So far only Rwanda has signed a CAADP compact (in 2008). Even though the re-shaping of CAADP may be decisive for the future of African peasants, African farmers’ organisations have not appropriately participated in the formulation of the pillars. Magnus talked about such questions of ownership. Rolf felt that the African peasant farmers were virtually absent also from the agricultural policy paradigm promoted by CAADP even though pillar 3 refers to the right to food. Given the important role of the FAO, of agribusiness and of foreign governments in linking investment / aid to certain policies they felt that this policy field needs an analysis in terms of ETOs.

Friday, September 11, 2009

Session Friday morning, Public Conference

4.12. PLENARY WITH REPORTS OF THE WORKING GROUPS – DISCUSSION

(Chair: Mark Gibney)

Mark Gibney welcomed all to the session and clarified its objective. It was designed to encourage intensive discussion on the Working Groups’ fact-findings and progress reports on their earlier discussions in policy areas relating to ETOs such as the issues of ‘Trade and Investment’, ‘Transnational Corporations’, and ‘Bilateral Assistance and International Resource Transfers’.

4.12.1 Trade and Investment (Rapporteur: Carole Samdup)

Carole Samdup presented the findings on issues that had arisen in discussion on ‘Trade and Investment’, such as the legality of trade and investment treaties, their constitutional status at national level, and the ill-intentioned negotiations between nations of very different economic structures. Under the deregulation intended by the corporations and governments of the global North, financially weak governments in the global South stand to risk both policy space for protecting their farmers and infant industries and also government revenues from taxes. This will impact on the resources available for fulfilling enjoyment of ESCR in their countries. It should be investigated whether such measures of the global North do not breach their obligation of non-retrogression. Moreover the human rights of Southern constituencies to political participation are often violated in these contexts – with violations directly or indirectly instigated by Northern negotiators.

Effective integration of human rights into WTO operations with limits and solutions should be studied. The same holds for bilateral investment treaties (BITs). There are model BITs available, which could be rights based and action should be taken in this direction. The discussion also dealt with social clauses and human rights impact assessments.

In the case studies the protect-obligations deserve particular attention. How could a case be used to determine such policy gaps? Some examples of good practice were also mentioned.

The group recommended that obligations should not overreach, criteria should be found how to present cases, and decisions should be taken which cases to keep. Those cases should then be updated. A regional group meeting and studying details of cases in a particular country or region could help to identify the problems and could be helpful in producing the desired solutions. There should be some outreach to the food sovereignty movement and some public info campaigns.

4.12.2 Transnational Corporations (Rapporteur: Elin Wrzoncki)

The key human rights issue with regard to the activities of transnational corporations relates to the accountability gap when transnational corporations are involved in human rights abuses: the territorial state where the violation takes place is often unable or unwilling to take up human rights claims, and transnational corporations cannot directly be brought to account under international law.

It was discussed whether the Consortium should look into the responsibilities of TNCs per se, and no consensus was reached among the members as to whether non-state actors hold human rights obligations or should hold such obligations. The way forward for the Consortium is probably to leave out this question and to focus on states' extraterritorial obligations when it comes to human rights abuses involving TNCs. The obligations of States with regard to human rights abuses involving TNCs, which are incorporated in their jurisdictions, are not necessarily to be considered as strictly extra-territorial. However States would have to take measures that have extra-territorial implications to discharge their human rights obligation to protect from harm by non-state actors.

Discussing whether there is an obligation to protect extra-territorially or if it is only a permitted possibility, the Working Group considered that the Maastricht Principles should not necessarily reflect the state of international law as it is, but look forward and establish principles for behaviour by states for enhanced enjoyment of ESCR. The obligation to protect human rights should be exercised through monitoring, regulation and adjudication of TNCs. On the topic of remedy mechanisms, it was noted that most of the remedy mechanisms discussed were seeking to hold corporations accountable for human rights abuses and not the State for its failure of the duty to protect, although this should be envisaged. The best forum for remedy mechanisms is currently the universal system of human rights: special rapporteurs and treaty-bodies, given the inadequacy of domestic laws and the incapacity of regional systems to address states outside their region (regional mechanisms of the "home states" should be explored).

To sum up, it was agreed that the Maastricht Principles should contain the obligation to respect, so that states will not support business entities engaging in human rights abuses. The obligation to protect against human rights abuses involving business within their jurisdiction should also be included, in addition to regulatory and administrative measures to provide effective remedies for the victims. The establishment of a World Court of Human Rights in order to provide an effective remedy should be further advanced. extraterritorial state's obligation to protect is complementary and simultaneous to the territorial state obligation to protect.

For wider strategies, these principles have to be tested with experts of other fields, including corporate lawyers,

on how to overcome the corporate veil problem, the issue of jurisdiction and of forum non conveniens. ETO Consortium members also need to explore the possibility and desirability of imposing direct human rights obligations on TNCs, and exploit regional and international human rights systems. Finally, on the issue of cases, these must be followed up, maintaining the link to the groups affected by human rights abuses.

4.12.3 Bilateral assistance and international resource transfers (Rapporteur: Ida-Eline Engh)

The Working Group identified four key issues in the current debate related to bilateral and international assistance: maximum available resources, participation, transparency and conditionality. These issues were unfolded into several other concerns and challenges. On the topic of maximum available resources the uncertainty in distinguishing the unwillingness from the lack of capacity to use these resources, how the money is spent and who decides it, and who decides when there is a violation. Participants also noted that often there is availability of funds, but these are not used. The need for public participation to make sure that interests of different stakeholders are taken into account was also underlined. This is defied by the difficulty of including grassroots and civil society at the high policy level, in view of the fact that they are only included in the process after agreements are launched, and often lack information during the process. With regard to transparency, the principles of partnership and country ownership, as well as do no harm, have to be considered. Furthermore, other concerns in terms of implementation of agreements, eradication of corruption, and obligations of donor states to supervise internal activities arose.

The assessment of these concerns indicated that states give funds for various reasons, choosing what to fund and what not to fund, so it is not easy to prescribe how funds are being used. Extraterritorial obligation to respect in the field of assistance need to be monitored even in those cases where state agencies or departments have a human rights based approach, which does not necessarily mean following human rights standards and having the explicit and implicit human rights obligations clear.

The Working Group affirmed that fulfil-bound obligations are difficult to be enforced even at national level and there was some scepticism as to fulfil-ETOs. The existence of internationally legally binding obligations is not clear for all, and some states might immediately close doors in face of such conclusions and not ratify the Optional Protocol. A strong position here could make it difficult for countries to provide assistance, discourage them to do it, as it has been seen in the experience of UN norms. Donors have committed themselves through the Paris Declaration and the Accra Agenda for Action, but these are not legally binding. How can the existing remedies be improved? When there are private enterprises involved in the process, it is less clear how to guarantee that a

project effectively addresses the national problem. It was also noted that remedies are sometimes easier to deal with at administrative level than at court level.

It was suggested to the plenary that more discussion was needed on the primacy of human rights, the role of courts and their jurisdiction, the role of collective organizations such as IGOs, NGOs, and civil society, and the shared responsibilities of communities.

4.12.4 Working Group on Conceptual Issues (Rapporteur: Claire Mahon)

The Working Group identified three priority issues for discussion: 1) if the reference to law will be made to existing law as it is or as should be; 2) the terminology concerning ESCR and CPR; 3) jurisdiction.

The debate on which law should be referred to initiate first emphasised the need to use terminology to which others are familiar, in order to be progressive but also keeping a wider audience. It was argued that the Maastricht Principles should present a progressive approach, with the aim of codifying progressive interpretation for its adoption over time. This should be strategically expressed in the final document, which means to be more connected to existing laws in certain parts, where there is the need to attract political support, and indicating the gaps in others. Since different articles will carry different weight legally, it does not have to be uniform throughout the document. The reference to existing instruments is necessary. The recommendations to plenary were:

- The document should be forward looking and progressive, with the parameters that:
 - i. it has to be something people can buy-into;
 - ii. be able to substantiate our claims with credible authorities and references.
- Not all aspects of the document need to be the same, some will be stronger and others will identify gaps in law.
- In addition to a discussion about the law there has to be a practical element – it remains to be decided where that best fits in (in a commentary or within the document itself).

On the topic of ESCR and CPR, it was argued that there should be no differentiation among the two sets of rights. There should be division, however, when talking about international assistance and cooperation (IAC), in order to clarify this additional aspect of the ICESCR without affirming ESCR and CPR are totally different and demand different ways of interpreting respect, protect, fulfil etc. The discussion resulted in the following recommendations:

- There should be use of both terms in the document, to reflect the similarities between the approaches taken

in CPR and ESCR, with separate provisions for International Assistance and Cooperation, considering its unique language to ESCR and it is conceptual difference. The IAC aspects will be forward-looking, they will be the progressive element of the document.

- Regarding the respect and protect bound obligations, they should be treated as distinct and there should not be any distinction between an ESCR analysis and a CPRs analysis.

The topic of IAC required further clarifications on whether it is a branch of extraterritoriality or vice-versa. Three different positions were defended, and should be considered by the Consortium Steering Committee, ETO are a subset of IAC, IAC is a subset of ETO, both ETO and IAC exist but not as subsets of each other. In order to clarify confusion on the terminology, it was recommended to the plenary the drafting of a short paper on IAC and how the term relates to extraterritoriality. Sylvain volunteered to make an attempt to work on the paper. The need to distinguish between assistance and cooperation was also noted, since the term assistance has been dropped in some legal instruments.

With regard to jurisdiction, it was affirmed that while there seems to be agreement on what jurisdiction means – legal authority to act – the effects it may have seems ill placed. Jurisdiction is the currency of language used in international law when talking about extra/territoriality. To assess state responsibility you always need to link back to jurisdiction, so it is a necessary reference. To look at jurisdiction based on some jurisprudence might help to build some progressive parameters, draw links to ESCR where possible. In conclusion three recommendations were proposed to the plenary:

- The need to address jurisdiction as it is understood, largely with regard to CPR, focusing on its most progressive jurisprudential elements. But that should be considered a minimum threshold in so far as it is linked to ESCR.
- Subsequent principles would look at the more expansive or progressive or forward looking interpretation of jurisdiction as it applies to ESCR. It may or may not move away from the wording of jurisdiction, to consider other terms such as ‘the ability of states to influence’, at which point we will highlight there is no jurisdictional clause in the Covenant (i.e. the distinctive elements). A strong proposal has been made to label this section on jurisdiction as ‘scope of application’ of ESCR (to avoid using the term jurisdiction as the overarching language for this section).

After the working groups reported, the debate evolved largely around the future drafting of the Principles and in particular the related conceptual issues raised by the last working group report. The importance of using all three

obligations to respect, protect and fulfil was emphasised. It was seen as necessary to give a special focus on the obligation to fulfil. Another concern was the relationship among CPR and ESCR. Indivisibility of both sets of rights was emphasised and it was clear that this should not be jeopardized by the ETO Principles. Strong points in the ICESCR such as reference to IAC should be used without however indicating that IAC is not an obligation in the implementation of CPR just because it does not show in the ICCPR. One participant considered this an opportunity to advance ESCR, and the principles document should go beyond the existing thinking in terms of CPR and ESCR.

4.13. “ETO PRINCIPLES IN ACTION. THE WAY FORWARD.”

(Michael Windfuhr, Chair: Mark Gibney)

Michael Windfuhr had combined his prepared presentation with the report of the working group on strategy for and beyond Maastricht. He identified six issues that were discussed in the Working Group:

- a. The strategy group came to the conclusion that special outreach and mobilization will be necessary to succeed in mainstreaming ETOs. It constituted itself as a permanent working group to come up with strategic suggestions on the ETO Consortium's on its role in mainstreaming and applying ETOs. One of its suggestions towards the ETO Consortium is to prepare the launch of a mainstreaming campaign in 2011.
- b. Outreach and mobilization: various themes and audiences are required in the outreach effort. There is the need for civil society mainstreaming to seek support and widen the Consortium to international law committees, international bar associations, trade unions and the like. UN mainstreaming should be done as well to include UN bodies. The campaign effort should have good outreach documents, publications and set up a website. It is desirable to develop a statement or a declaration to promote the Maastricht text. It would be helpful to have a good international conference in 2011. It will be good to reach out to countries in the north and in the south in the process towards Maastricht. The documents needed should be representative of the Consortium. There should be a commentary to explain the background and a resumé of case work. After Maastricht efforts should be made to encourage the committee on ESCR to draft a general comment. To bring critics alongside it will be helpful to involve prospective opponents in the process or people who could work as 'devils advocates'. It will also help in this regard to develop a booklet discussing the standard questions against ETOs.
- c. Maastricht principles and methodology consideration: drafting should start as soon as

possible. The proposed timeline for a full and final draft is somewhere between 2010 and 2014. The process of drafting should initially involve a small drafting group of about 2-5 people who would produce a rough draft in May or April 2010. There should be 15-25 experts who should be identified as soon as possible in different pertinent areas, who will help in the drafting. The experts should reflect the north-south divide as well as gender and expertise diversity. These experts need to be invited as soon as possible to get them on board quickly. The text of the draft should be simple and striking, yet not too legalistic (state department lawyer language). The text should address open issues but not try to solve every problem. The opinion or support of good experts is needed for legitimacy. The text should be reasonable and expert legal opinion.

- d. What to do with the cases: it would be good to add best practice cases. The cases selection should be edited to improve the format. It is not necessary to exclude cases with problems (such as unconvincing causation), these will serve to show the problems with ETOs. Additional cases are necessary to cover missing policy areas and other aspects of Maastricht. The cases may be used in a book or in the supporting commentary. It should be noted that the reader is a conference document and cannot be used outside the conference.
- e. Parallel reports on the Committee on Economic Social and Cultural Rights and ETOs: these should be monitored and taken note of, as they ensure consistency in the language e.g. Germany's NGOs and those in the Russian Federation work on ETOs. Contact with such groups should be instituted and maintained.
- f. Relationship to the Optional Protocol: The Consortium should carefully avoid relating ETO cases to the Optional Protocol. Instead participating organisations should concentrate on bringing territorial cases once the protocol is in force. Members of the Consortium should also resist temptation to speculate on interpretation of the jurisdictional clause of the Optional Protocol. Instead it may be necessary to wait and see how the jurisdictional clause is implemented, and do separate work on jurisdiction without reference to the OP.
- g. Resources: the strategy working group shall develop a strategy paper on the basis of its deliberations to be sent around for discussion and consensus among the members of the working group and the Consortium. The drafting group should be set up soon. A fundraising group should be set up as well to seek financial backing.

In the discussion that followed Michael Windfuhr's presentation, several concerns were raised. Firstly, on the challenge to outreach grassroots elements of communities, in face of the 'colonisation' of civil society space by NGOs. Cases and campaign should keep in touch with the communities to avoid bad consequences and to keep up to date with events in those cases, also because their consent has to be sought before publication. Furthermore, involving social movements is envisaged in the calendar of events. It should be noted that the strategy working group dealt with tactics, cases that may bring a wider audience may be controversial ones. This may influence their exclusion from the campaign program. It may be necessary to look for additional cases because they bring in a broader audience and may be more timely i.e. relevant to current issues. Another concern was that both information and conference are in English, while some people/organisations cannot participate due to the language barrier. This is a limitation imposed by resources.

The use of the optional protocol in relation to the cases was questioned, and it was affirmed that it has to be done in a clever way. Jurisdiction and the Optional Protocol may be left out in some cases, especially if it is not going to be helpful. Additionally, the Optional Protocol does not imply that there are no obligations on jurisdictional requirements, to leave it out in some circumstances may ensure that states do not feel threatened, Its use will depend on the audience to be addressed. It was suggested that the Consortium should join efforts with the work of the Coalition for an Optional Protocol to the ICESCR. It was, however, repeated that one of the duties of the Consortium is to restrain any enthusiasm in the use of the Optional Protocol on ETOs in the foreseeable future and encourage the use of alternative mechanisms like parallel reporting and universal periodic review for ETOs instead.

With regard to the drafting of the Maastricht Principles, this will largely be done before Maastricht with input from mainstream international law experts. There will be communication between the Maastricht expert group, the drafting group and the Consortium. The Maastricht ETO Principles are a body of legal expert opinion. Therefore legal experts are needed to ensure the standards required. There could be an interface meeting between the legal experts and the Consortium. It was suggested that one person in the drafting group could be responsible for the commentary while the drafting is going on.

The need for a strong south/south case was also underlined, and sub-regional meetings to discuss the draft should be held to ensure that it is aired to non-english speakers. It may also be helpful if the final expert group is bilingual, so it is necessary to identify who will work on the language consistency.

At the end of the public conference, Sigrun Skogly gave a vote of thanks to the people who contributed to the preparation of this conference. She mentioned

FIAN International, in particular Rolf Künnemann, who had been a close collaborator to her team all the time. She also mentioned Emilie Secker who did most of the logistics work, and Ana Maria Suarez-Franco who had come over from FIAN International's Secretariat ten days ahead of the conference to provide additional assistance. She thanked the Office of the High Commissioner for participating, and thanked all those who had travelled from far and wide. Special gratitude was expressed to the sponsoring organisations.

End of public conference

4.14. CONSORTIUM MEETING. SUMMARY OF DISCUSSIONS, AND PLANS TOWARDS MAASTRICHT 2010

Chair: Fons Coomans

For the last session, which was again an internal consortium session after the end of the public conference, Fons agreed with the participants to work along a nine point agenda which then provided the framework for the Consortium meeting:

4.14.1 Drafting Group

Fons resumed his feeling to go ahead with the Maastricht Conference, in spite of the remaining open questions. This would imply to start drafting at an early stage and have a look at the state of drafting and quality of draft at the end of April 2010. At that point the chances to come up with a good result in Maastricht in December 2010 would be reassessed – and the conference postponed if necessary.

4.14.2. Finance Group

Considerable efforts have to be undertaken to finance the activities towards Maastricht – and in particular for the mainstreaming campaign after Maastricht. For this matter a finance group was formed for fund raising.

4.14.3. Paper Writing Groups

The Consortium identified a need to help clarify some issues by commissioning papers to “paper writing groups”, namely on Remedies, Terminology/glossary; IHL and ESCR Humanitarian Law; ETO and IAC, TNCs and the Obligation to protect.

Deadlines for the papers would be the end of the year, except for the paper on remedies (end of January 2010).

4.14.5. Revitalising the case WG

Case work should be continued. A case working group was set up.

4.14.6. Strategy working group

A working group on strategy was established. A two-page “Purpose paper” for the Consortium should be written (by the steering group) which would help getting the word out. It was recalled that the Strategy Group was mandated to come up with a paper on Consortium strategy in general, and that outreach was part of strategy and that the strategy group contained an outreach subgroup.

4.14.7. Regional consortia/meetings

The idea of regional consortia meetings was discussed. The presence from Asia should be improved. The comparatively strong African presence was welcomed and regional ETO-networking could perhaps be established .starting from the participants. The presence from the Americas, in particular Latin America needs improvement. A regional ETO event in the Americas was envisaged.

4.14.8. Parallel reporting

The upcoming parallel report on Germany was mentioned, which would exclusively focus on ETOs.

4.14.9. Evaluation

A round of evaluation showed that participants in general were very satisfied with the conference and in fact enthusiastic with the topic.

It was mentioned that there had been little communication in the ETO-Consortium between the conferences so that people who were not in the steering group or in one of the two working groups missed half the picture. Moreover more time for discussion of the Reader would have been necessary. The conference failed to discuss the rich content of the Reader and the comments made in the Reader. Another comment was concerned with the fact that case-work of Consortium members was largely voluntary work and that this meant that case-work did not develop as well as it could and should have. The early sending of the Reader was welcomed. The time for working groups and the discussion of there results was seen as too short, by one comment, and it was suggested that the results of the working groups should have been discussed immediately after the group report. It was suggested that a clear calendar of the ETO-Consortium be developed and communicated which would also include the deadlines.

After the evaluation Fons closed the meeting.

5 List of Participants

First name	Surname	Email	Affiliation
Meghna	Abraham	meghna.abraham@amnesty.org	Amnesty
Katia	Aeby	kaeby@3dthree.org	3D
Valentin	Aichele	aichele@institut-fuer-menschenrechte.de	German Institute for Human Rights
Sisay	Alemahu Yeshanew	salemahu@abo.fi	Abo Akademi University
Gyan	Basnet	g.basnet@lancaster.ac.uk	Law School, Lancaster University
Sylvain	Beauchamp	sbeauchamp@dd-rd.ca	Rights and Democracy
Stephanie	Bijlmakers	s.bijlmakers@alumni.maastrichtuniversity.nl	Maastricht University
Titus	Bolten	t.bolten@amnesty.nl	Amnesty International, Dutch section
Diana	Burghardt	diana.burghardt@inef.uni-due.de	Institute for Development and Peace- Uni. Duisburg
Mara	Bustelo	mbustelo@ohchr.org	OHCHR
Iain	Byrne	ibyrne@interights.org	Interights
Lilian	Chenwi	lchenwi@uwc.ac.za	Community Law Centre, University of the Western Cape
Fons	Coomans	fons.coomans@maastrichtuniversity.nl	Centre for Human Rights, Faculty of Law, Maastricht University
Karen	Costa	karen.olivieradacosta@graduateinstitute.ch	Graduate Institute
Christian	Courtis	CCourtis@ohchr.org	OHCHR
Theresa	DiPerna	tdiper@essex.ac.uk	University of Essex
Emmanuel	Duruigbo	emmaduruigbo@yahoo.com	Consulting Centre for Constitutional Rights and Justice, Nigeria
Ida-Eline	Engh	ida-eline.engh@plan-norge.no	Plan Norway
Maria Jose	Eva	mariajoseeva@gmail.com	Center for Economic and Social Rights
Geraldine	Galvaing	geraldine@ukfg.org.uk	UK Food Group
Mark	Gibney	mgibney@unca.edu	University of Asheville, North Carolina

Alison	Graham	alison_graham2000@yahoo.co.uk	
Ute	Hausmann	u.hausmann@fian.de	FIAN Germany
Burghard	Ilge	bi@bothends.org	Both ENDS
Foluke	Ipinyomi	f.ipinyomi@lancaster.ac.uk	Law School, Lancaster University
Jennie	Jonsen	jennie.jonsen@fian.se	FIAN Sweden
Sarah	Joseph	sarah.joseph@law.monash.edu.au	Lauterpacht Centre for International Law, Cambridge
Andrea	Kämpf	kaempf@institut-fuer-menschenrechte.de	German Institute for Human Rights (NHRI)
Cronelike	Keizer	keizer@equalinrights.org	Equalinrights
Magnus	Killander	magnus.killander@up.ac.za	Centre for Human Rights, University of Pretoria
Miloon	Kothari	miloon.kothari@gmail.com	HIC-HLRN
Rolf	Künnemann	kuennemann@fian.org	FIAN International
Nicolas	Lusiani	nlusiani@escr-net.org	ESCR-Net
Claire	Mahon	claire.mahon@graduateinstitute.ch	Geneva Academy of International Humanitarian Law and Human Rights
Christopher	Mbazira	bazzira@law.mak.ac.ug	Faculty of Law, Makerere University
Angela	Mulenga	mwape7777@yahoo.co.uk	RAPDA Board member - South Africa
Patrick	Mulvany	patrickmulvany@clara.co.uk	UK Food Group
Marcos	Orellana	morellnan@ciel.org	Centre for Environmental Law
George	Osei-Bimpeh	bimpeh@googlemail.com	SEND Foundation - Ghana
Clive	Robinson	cliverobinson100@btinternet.com	UK Food Group
Cesar	Rodriguez	cerogara@gmail.com	Centro de Estudios de Derecho, Justicia y Sociedad
Georgiana	Rosa	giorgiana.rosa@amnesty.org	Amnesty
Raymond	Salas	monsalas@yahoo.com	SALIGAN

Margot	Salomon	m.e.salomon@lse.ac.uk	LSE
Carole	Samdup	csamdud@dd-rd.ca	Rights and Democracy
Salvador	Sarmiento	sarmiento@rfkcenter.org	Robert F. Kennedy Center for Justice & Human Rights
Joseph	Schechla	jschechla@hlrn.org	HIC-HLRN
Emilie	Secker	e.e.secker@lancaster.ac.uk	Lancaster University
Ian	Seiderman	ian.seiderman@icj.org	ICJ
Magdalena	Sepulveda	sepulveda@ichrp.org]	UN
Julia	Sievers	julia.sievers@gmx.net	GTZ
Sigrun	Skogly	s.skogly@lancaster.ac.uk	Lancaster University
Juana	Sotomayor	jsotomayor@ohchr.org	OHCHR
Ana-Maria	Suarez Franco	Suarez-Franco@fian.org	FIAN International
James	Summers	j.summers@lancaster.ac.uk	Lancaster University
Tuktu	Tugyan	t.tugyan@gmail.com	University of Leicester
Wouter	Vandenhole	wouter.vandenhole@ua.ac.be	University of Antwerp
Pim	Verhallen	pim.verhallen@icco.nl	ICCO
Michael	Windfuhr	m.windfuhr@diakonie-human-rights.org	Brot Fuer Die Welt
Inga	Winkler	winkler@institut-fuer-menschenrechte.de	German Institute for Human Rights
Elin	Wrzoncki	ewrzoncki@fidh.org	FIDH
Shasimo	Zinzombe	s.zinsombe@erasmusmc.nl	Institute of Health Policy and Management, Erasmus University, Rotterdam



FIAN INTERNATIONAL

Willy-Brandt-Platz 5
69115 Heidelberg, Germany
Tel.: +49-6221-6530030
Fax: +49-6221-830545
E-mail: contact@fian.org
<http://www.fian.org>