



Maastricht Principles and addressing Land Grabbing: Which way for Uganda?



The Maastricht Principles constitute an international expert opinion, restating human rights law on Extraterritorial Obligations of States (ETOs).

Background

On 28 September 2011, at a gathering convened by Maastricht University and the International Commission of Jurists, a group of 40 international law experts from all regions of the world, including current and former members of international human rights treaty bodies, regional human rights bodies, as well as former and current Special Rapporteurs of the United Nations Human Rights Council adopted and issued the Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights (famously referred to as 'Maastricht Principles').¹

The Maastricht Principles constitute an international expert opinion, restating human rights law on Extraterritorial Obligations of States (ETOs). The Principles do not purport to establish new elements of human rights law. Rather, they clarify extraterritorial obligations of States on the basis of standing international law in respect of economic, social and cultural rights (ESCR).²

The Principles come as a response to the struggles of numerous communities around the world whose rights were and are still being adversely affected by the actions of foreign States and their reluctance to assume responsibility for these actions.

In Uganda, there are sufficient spheres of human activity in which the ETOs can be applied. The question to focus on is how ETOs can

apply to specific policy fields and sites of social struggles, and how can they be used for advocacy in the Ugandan context.

Some of the spheres that need ETOs applied may include: i. land and natural resource grabbing; ii. regulation of transnational corporations; iii. climate change and environmental degradation; iv. trade and investment among others; v. intergovernmental organisations; vi. development cooperation.³

Understanding the Policy Problem:

The citizens of Uganda, like many other citizens in developing countries continue to grapple with the challenges arising land grabbing with the advent of economic globalization. Individuals and communities face the continued deprivation and denial of access to essential lands, resources, goods and services by State and non-State actors alike. Countless individuals are subsequently unable to enjoy their economic, social and cultural rights, including the rights to work and decent working conditions, social security and care, an adequate standard of living, food, housing, water, sanitation, health, education and participation in cultural life.⁴ The situation is aggravated by: the lack of human rights regulation and accountability of transnational corporations (TNCs); the absence of human rights accountability of Intergovernmental Organizations (IGOs), in particular international financial institutions (IFIs); the ineffective application of human rights law to investment and trade laws, policies and disputes; and the lack of

implementation of duties to protect and fulfil ESCRs abroad, inter alia through the obligations of international cooperation and assistance.⁵ Many States still interpret their human rights obligations as being applicable only within their own borders. The International Court of Justice in the case of *Democratic Republic of the Congo v. Uganda*⁶ has confirmed that human rights law may extend extraterritorially in respect of core human rights instruments. States should have both territorial and extraterritorial obligations for the protection of human rights. For example there should exist an obligation on the State to ensure that a corporate actor domiciled within its jurisdiction does not finance projects leading to forced evictions or environmental degradation since the state has the legal and factual power to regulate the corporation's conduct. But also there should exist an obligation on the state to take separate and joint action to realize the respect of human rights by that corporation internationally.

Snapshot into the 44 Maastricht Principles

- **General principles on obligations of all States**

All obligations that arise here, territorial and extraterritorial, are contained in the sources of international human rights law, including the Charter of the United Nations; the Universal Declaration of Human Rights; the International Covenant on Economic, Social and Cultural Rights; and other universal and regional instruments.

States' extraterritorial obligations, just as human rights obligations in general, are threefold and include:

- **Obligations to respect human rights abroad**

⁵ Op cit.

⁶ *Armed Activities on the Territory of the Congo (DRC v. Uganda)*, 2005 I.C.J. 26 (19 Dec.).

¹ See https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23

² The Secretariat to the ETO Consortium, *Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights*, at pg.3 available at https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=23.

³ See ETO Consortium, *For human rights beyond borders: How to hold States accountable for extraterritorial violations Handbook*, at pg. 16 available at https://www.etoconsortium.org/nc/en/main-navigation/library/maastricht-principles/?tx_drblob_pi1%5BdownloadUid%5D=204

⁴ *Ibid*, at pg.5.

- Obligations to protect human rights abroad
- Obligations to fulfil human rights abroad

The Maastricht Principles are divided in seven sections with 44 Principles (ETOPs).

- **Section I: General Principles.** ETOPs 1 - 7 introduce the general principles that underpin States' ETOs, and in the light of which the Maastricht Principles should be interpreted. These principles are akin to the known basic principles of the Human Rights Framework.
- **Section II: Nature and Scope of ETOs.** ETOPs 8 - 18 define what ETOs are and in which situations they apply. They also describes the limits of ETOs. This section provides a clear picture on the jurisdictional mandates of the States in their individual capacity and / or in joint action through international cooperation. to realize human rights. The States' mandate within international organisations is also flagged. The mandate also covers a State acting through its organs, outside its national territory.
- **Section III: Obligations to respect.** ETOPs 19 - 22 explore the obligations States have to respect ESCRs of persons living outside their territories. This entails refraining from conduct that directly or indirectly undermines the enjoyment of ESCRs in other countries.
- **Section IV: Obligations to protect.** ETOPs 23 - 27 outline States' obligations to protect ESCRs in other countries. States are to take necessary administrative, legislative, investigative, adjudicatory and other measures to ensure that non-State actors including private individuals and organisations, and transnational corporations and other business enterprises which they are in a position to regulate, do not nul-

lify or impair the enjoyment of ESCRs.

- **Section V: Obligations to fulfil.** ETOPs 28 - 35 elaborate the obligations States have to fulfil ESCRs rights in other countries. States are called upon to take deliberate, concrete and targeted steps, separately, and jointly through international cooperation, to create an international enabling environment to cooperate, assist and seek assistance conducive to the universal fulfilment of ESCRs, including in matters relating to bilateral and multilateral trade, investment, taxation, finance, environmental protection, and development cooperation.
- **Section VI: Accountability and Remedies.** ETOPs 36 - 41 deal with States' obligations to put effective accountability mechanisms into place and ensure access to remedies for extraterritorial violations of ESCRs. States are obligated to ensure the enjoyment of the right to a prompt, accessible and effective remedy before an independent authority, including, where necessary, recourse to a judicial authority, for violations of ESCRs. The remedy must be capable of leading to a prompt, thorough and impartial investigation; cessation of the violation if it is ongoing; and adequate reparation, including, as necessary, restitution, compensation, satisfaction, rehabilitation and guarantees of non-repetition.

Emerging Policy Issues and Recommendations to address land and natural resources grabbing

It is long overdue for States, inter-governmental organisations and civil society including social movements, to apply the Maastricht Principles as an integral part of any human rights analysis and policy making to ensure universal protection of human rights.

In respect to land and natural resource grabbing, the scale, depth and pace of the current wave of land and resource grabbing pose major threats for the present and future enjoyment of citizens. If not reversed, the current developments will deprive a significant part of the Uganda's rural population of their access to and control over natural resources and will destroy the peasantry, fishing, pastoralist and forest dweller communities that still are the backbone of local food producing systems.⁷ As a response, broader efforts must be taken to enforce human rights-based land and food governance frameworks that prioritise marginalised rural groups, especially small-scale food producers, by protecting, improving and, where necessary, restoring their access to, use of and control over land and related natural resources.⁸

Land and natural resource grabbing involves many different actors such as local elites, companies (from local to transnational corporations), individual investors, governments, local authorities, (development) banks, international institutions, development agencies, etc. A web of global actors behind most largescale agricultural projects and land deals include banks, pension funds, hedge funds or investment firms and companies that are funding the projects but are often not very visible, and the companies that are buying the produce.⁹ As a response efforts must be made to understand the investment web behind land grabs. Identifying some of the most important actors can open additional avenues for advocacy and allows identification of the most strategic and promising entry points for effectively claiming and asserting people's human rights. Identifying some of the most important actors can open additional avenues for advocacy and allows identification of the most strategic and promising entry

7 Ibid, at pg. 65.

8 Ibid.

9 Ibid, at pg. 65.

points for effectively claiming and asserting people's human rights.¹⁰

For advocacy based on ETOs it is important to understand the multiple avenues through which foreign States are connected to land and natural resource grabs. Important linkages include: foreign states as 'home States' of private companies and financial entities involved in land grabbing; Direct involvement like land deals by public institutions or sovereign wealth funds; involvement via participation in or support to public-private partnerships (PPPs); Promotion or facilitation of land grabbing through domestic and foreign policies like development policies that support large-scale commercial agriculture, or trade policies that provide incentives for large-scale production of certain cash crops; Foreign States' participation in international organisations, including financial institutions such as the World Bank, whose lending practices are contributing to land grabbing and land conflicts.¹¹

Obligation to respect: States must take measures to prevent their domestic and foreign policies and actions from contributing to land grabbing and interfering with people's human rights. This refers both to activities that directly impair the rights of people abroad and those that interfere indirectly.¹²

Regulation of transnational corporations or private investors: This obligation applies when a corporation has its center of activity, is registered or domiciled, or has its main place of business or substantial business activities, in the State concerned. Effective regulation of the extraterritorial activities of companies, and international cooperation to this effect, is crucial for addressing land grabbing. States should moreover use their influence, for example through their public procurement system, to protect human rights abroad.¹³

Accountability and access to remedies: Experience has shown that

moral-duty-based and non-judicial grievance mechanisms are insufficient for addressing corporate human rights abuses, and that companies often use them strategically to prevent victims from taking legal action. State-based judicial remedies are therefore crucial. The human

rights obligations of States require them to ensure victims of human rights violations and abuses, whether by State actors or companies, have access to effective judicial and nonjudicial remedies. They must cooperate to this effect with other States concerned.¹⁴

Obligations in the context of international organisations: States continue to be bound by their international human rights obligations when they act through or transfer competencies to international organisations. They must use their influence within these organisations to ensure that they act in compliance with and do not harm human rights.¹⁵

States' extraterritorial obligations, just as human rights obligations in general, are threefold and include:

- Obligations to respect human rights abroad: States must ensure that their policies and actions do not harm the enjoyment of human rights in other countries.
- Obligations to protect human rights abroad: States must put into place mechanisms to ensure that private actors they are in a position to regulate, including individuals and organisations, and transnational corporations and other business enterprises, do not impair the enjoyment of human rights in other countries, and that they can be held accountable when they do.
- Obligations to fulfil human rights abroad: States must cooperate with each other and contribute to the creation of an international environment that is conducive to the universal fulfilment of human rights.

¹² *Ibid.*, at pg. 67. Relevant ETOs: ETOp 13: Obligation to avoid causing harm; ETOp 14: Impact assessment and prevention; ETOp 20: Direct interference; ETOp 21: Indirect interference.

¹³ *Ibid.* Relevant TOPs: ETOp 24: Obligation to regulate; ETOp 25: Bases for protection; ETOp 26: Position to influence; ETOp 27: Obligation to cooperate.

¹⁴ *Ibid.*, at pg. 68. Relevant ETOs: ETOp 37: General obligation to provide effective remedies; ETOp 38: Effective remedies and reparation

¹⁵ *Ibid.* Relevant ETOp: ETOp 15: Obligations of States as members of international organisations

¹⁰ *Ibid.*

¹¹ *Ibid.*, at pg. 66.