



CENTER FOR ECONOMIC AND SOCIAL RIGHTS
SOCIAL JUSTICE THROUGH HUMAN RIGHTS

TWN
Third World Network

UNIVERSAL RIGHTS, DIFFERENTIATED RESPONSIBILITIES:

Safeguarding human rights beyond borders
to achieve the Sustainable Development Goals

HUMAN RIGHTS POLICY BRIEFING

April 2015

I. OVERCOMING THE EXTERNAL CONSTRAINTS TO SUSTAINABLE DEVELOPMENT

Imagine that in the course of one year a low-income country confronts the cumulative effects of financial crisis, economic and trade stagnation and widespread corporate tax avoidance which leads to record tax revenue shortfalls. In turn, the country's credit rating is downgraded, increasing borrowing costs and prompting international financial institutions to push cuts to social services. Meanwhile, bilateral investment arbitration suits brought by multinationals pressure the country to rescind regulatory measures intended to protect health and the environment. Extraordinary monetary policies enacted in industrialized countries trigger exchange rate volatility and affect interest rates. Climate change dampens agricultural outputs, inflating food prices, weakening terms of trade and driving rural people into urban centers seeking already underfunded public services and social protection. This is on top of decades of being unable to develop a diverse domestic economic base. Despite its best efforts, it is doubtful that this country would be able to achieve sustainable development when faced with this accumulation of constraints to its fiscal, policy and regulatory space, challenges which are rooted in international trade and financial rules and specific legal and policy choices of wealthy countries and multinational companies.

In an interconnected and interdependent world with vast disparities in power, capacity and means, states exert significant extraterritorial influence in a plethora of ways—be they through the cross-border spillover effects of national policy decisions, via their bilateral and multilateral tax, trade, investment and financial policies, through their capacity to regulate multinational corporations over whom they have jurisdiction, or as voting member states in international financial institutions. These all exert a profound influence on the capacity of other national governments to realize their human rights and development commitments.

In view of the glaring flaws in global governance which continue to pose structural constraints to national development efforts, industrialized governments have given numerous commitments in development forums over the last few decades to be productive partners in the “global partnership for development”, and to promote “policy coherence” and “mutual accountability.” This includes ensuring that the full array of their trade, investment, tax and other policies work in tandem rather than at cross-purposes. Yet, the rhetoric around policy coherence has outpaced its realization to date in the inter-governmental negotiations to adopt a new development agenda, containing the Sustainable Development Goals (SDGs), with the expiration of the Millennium Development Goals this year and in the Financing for Development (FfD) process.

This is in part because the **aspiration for coherency lacks a consensual normative framework to ground its application, implementation and monitoring.**

The principle of “common but differentiated responsibilities” (CBDR) provides one such framework for delineating responsibilities for sustainable development, and for delivering the post-2015 agenda. CBDR was first enshrined in the 1992 Rio Declaration, where developed countries acknowledged they bear particular responsibility “in the international pursuit of sustainable development in view of the pressures their societies place on the global environment and of the technologies and financial resources they command.”¹ The CBDR principle can help to underscore both the universality of the post-2015 agenda, as well as the need (on both principled and practical grounds) for differentiation of responsibilities for its realization. The *universality* of the post-2015 agenda should ensure that all states —rich and poor alike—commit to taking concrete and priority actions to meet all the goals. At the same time, this universality is not legitimate or effective without clear *differentiation* of responsibilities based on varying and diverse degrees of national capacity, resources, levels of development and effective influence. Based on this differentiation, developed countries have far greater *responsibility* to deliver actionable means of implementation across the relevant areas of financial resources, technology and capacity development. They also have a greater degree of responsibility for concrete reforms toward creating an enabling international environment for sustainable development, including through creating a more equitable ‘global partnership for development’ and by respecting and fostering national policy space. These differentiated responsibilities should be reflected and concretely captured when states are crafting targets, commitments and indicators regarding the means of implementation for the post-2015 agendas.

The human rights framework, meanwhile, provides a complementary lens through which to view the distinct but *concurrent* duties states have to cooperate with each other in the achievement of their sustainable development commitments. Human rights legal obligations of an extraterritorial nature provide a useful yardstick with which to evaluate policy coherence and help to delineate common but differentiated obligations across sustainable development in all of its dimensions. It is these extraterritorial obligations (ETOs), and their transformational significance for the mutual accountability and efficacy of the post-2015 development agenda and its sustainable development goals, which form the heart of this policy brief.

II. HUMAN RIGHTS OBLIGATIONS OF STATES BEYOND THEIR BORDERS

Under international law, states are the central and primary duty bearer for upholding human rights within their territory. Nevertheless, no state is an island in today's globalized reality. One country's actions—be they domestic tax or financial regulation policies, bilateral investment treaties, or influence in the decisions of international and regional institutions—can have immediate cross-border impacts and shape the ability of other countries to meet human rights and sustainable development commitments. The relevance and application of international human rights obligations, in this sense, do not cease at territorial borders. Indeed, states' human rights obligations are as interconnected as their economies are.

International human rights law implies duties on states to respect, protect and support the fulfillment of all human rights, including economic, social and cultural rights, outside of the country's territory. These duties are anchored in the UN Charter,² the Universal Declaration of Human Rights,³ the International Covenant on Economic, Social and Cultural Rights,⁴ and various other international human rights treaties.⁵ They have been elucidated further in jurisprudence from regional and international bodies.⁶ The adoption of various "soft law" instruments addressing human rights obligations of international cooperation and assistance evidences significant consensus among the international community concerning extraterritorial duties. Most notably, the Declaration on the Right to Development directly addresses international systemic issues and the creation of an international enabling environment, which includes trade, debt, technology and reform of the international financial system and global economic governance.⁷ Expert bodies and legal scholars have provided authoritative interpretation of extraterritorial human rights duties. In particular, this briefing draws on the *Maastricht Principles on Extraterritorial Obligations of States in the area of Economic, Social and Cultural Rights*, which provide the most comprehensive articulation of these duties, as distilled from the various sources noted above.⁸

These extraterritorial human rights obligations consist of three dimensions: the duties to respect, to protect and to support the fulfillment of human rights beyond borders. The cornerstone human rights principles of transparency, participation, accountability and effective remedy for harm are equally relevant to state conduct beyond borders. This briefing presents an overview of these principles and dimensions alongside some case studies before going on to present the policy implications for post-2015.

A. THE DUTY TO RESPECT HUMAN RIGHTS BEYOND BORDERS

States have the duty to avoid causing foreseeable human rights harm in other countries. States have an unambiguous baseline legal obligation, in other words, to respect and not undermine human rights beyond their borders.⁹ Some governments' encouragement and active protection of tax evaders by guaranteeing financial secrecy on their territory, for example, deprives many other countries of tax revenues and therefore can undermine their ability to mobilize the maximum available resources for the progressive realization of economic and social rights.

ETOs in practice – Spillover impact assessments of tax policies and practices

Cross-border corporate tax abuse costs taxpayers in all countries dearly, but especially in developing countries where corporate taxes represent a greater proportion of domestic revenue and where domestic industries are not diversified or of scale. In light of this, the IMF, OECD, UN and the World Bank called on G-20 countries in 2011 to "undertake 'spillover analyses' of any proposed changes to their tax systems that may have a significant impact on the fiscal circumstances of developing countries...[including] remedial measures to be incorporated.... Ideally, a 'baseline analysis' along these lines would be undertaken immediately."¹⁰ The **Netherlands Ministry of Foreign Affairs** went on to commission an independent study to assess the spillover effects of Dutch corporate tax policy and Dutch tax treaties on developing countries, in particular in facilitating tax avoidance strategies by multinationals. Not only did this study develop a robust methodology to assess the revenue effects of Dutch corporate tax practices, but it also appraised the distributive and governance impacts in poor countries. The evaluation concluded that the impacts of Dutch corporate tax practices for some developing countries are negative and material.¹¹ The **Republic of Ireland** is now in the process of conducting a similar analysis of the effects of its corporate tax practices. ***While these methodologies could be improved in various ways, they illustrate that such extraterritorial impact assessments of complex areas such as tax policy are feasible, and should be an essential part of ensuring policy coherence in the sustainable development era.***

Similarly, distorting agricultural subsidies in the US and the EU have over the years put developing country agricultural commodities and producers at a disadvantage, with harmful consequences to livelihoods and domestic economies due to the artificially lower prices for commodities that developed countries export, and often saturate, developing country markets with. Similarly, distorting agricultural subsidies in the US and the EU have over the years put

ETOs in practice – Human rights impact assessments of trade and investment agreements

Specific methodologies have been recently developed to monitor the human rights and sustainability impacts of trade and investment agreements, such as the **UN Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements**.¹² In **Costa Rica**, a human rights impact assessment process led by the national human rights commission sought to assess, *ex ante*, the foreseeable impacts of the United States–Central American Free Trade Agreement’s intellectual property protections on the human right to health. The assessment concluded that the agreement was likely to strengthen the position of innovator pharmaceutical companies by extending market exclusivity periods and allowing companies to increase the prices of pharmaceuticals, to the detriment of human rights.¹³ In line with **European Union** member states’ legal obligation to consider “the objectives of development cooperation in the policies that it implements which are likely to affect developing countries,”¹⁴ the **European Commission’s Trade and Sustainability Impact Assessments** (TSIAs) also independently evaluate the economic, social, environmental and human rights implications of trade negotiations before they are completed. These TSIAs have been carried out in the context of the EU’s trade negotiations with Chile, South Korea, India, Morocco, Egypt and currently with the US Transatlantic Trade and Investment Partnership.¹⁵

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A state may not be liable for all the unknowable, remote consequences of its actions, but state responsibility may be triggered when its policies or practices result in harmful human rights impacts which it knows or should have known about. Therefore, ***ex ante* and *ex post facto* human rights impact assessments (HRIAs) are essential tools to foresee the extent to which a country’s laws, politics and practices risk resulting in human rights harm to another country’s people.**

B. DUTY TO PROTECT HUMAN RIGHTS BEYOND BORDERS

Complementary to the duty to respect human rights abroad, **all states have an obligation under international law to protect human rights beyond their borders, which includes guaranteeing that business entities they are in a position to regulate – for example, businesses headquartered in their territory – respect human rights throughout their operations**, both in their own and in other countries.¹⁶ Governments must also take necessary

ETOs in practice – Holding business enterprises to account extraterritorially

Business activity provides important opportunities to realize human rights and sustainable development. At the same time, if left unchecked, businesses can undermine the full gamut of human rights and sustainable development commitments.¹⁷ Since the 1970s, various international efforts have been made to regulate the behavior of multinational companies in line with human rights. Most recently, member states welcomed the UN Guiding Principles on Business and Human Rights, which reaffirms that governments have a legal duty to protect all human rights from business-related abuses, that companies have a responsibility to respect all human rights throughout their operations, and that all efforts should be made to improve access to remedy for victims of business-related abuses. Many states are now implementing these principles domestically in a variety of ways, as well as seeking to provide an extra layer of legal accountability for business-related human rights abuses through an international instrument on transnational corporations.¹⁸ Despite the consensus behind the UN Guiding Principles on Business and Human Rights, and its highly-relevant operational criteria, member states have yet to explicitly integrate these standards into the post-2015 and FfD inter-governmental negotiations.

steps to prevent, investigate, punish and redress business-related human rights abuses. Business enterprises have the attendant responsibility to carry out human rights due diligence by conducting independent assessments of current and potential human rights impacts of their operations.¹⁹

C. DUTY TO SUPPORT THE FULFILLMENT OF HUMAN RIGHTS

Finally, **commensurate with capacity and resources, states have a duty to contribute to the fulfillment of economic, social, and cultural rights extraterritorially.** All governments have a duty to support the fulfillment of economic, social, and cultural rights, in other words,

in accordance with the duty of international cooperation and assistance.²⁰ All states that are in a position to do so must provide international assistance to other states that seek it in order to fulfill economic, social and cultural rights. Beyond aid alone, governments have duties to cooperate in the mobilization of resources for the universal fulfillment of economic, social and cultural rights.²¹ States also have a positive obligation to create an international enabling environment for fulfilling economic and social rights, particularly in the context of trade, investment, taxation, finance, and environmental protection policies and agreements.²² Recognizing that the exercise of extraterritorial jurisdiction must respect the sovereignty of other territorially competent states, the Maastricht ETO Principles affirm that a state's obligation to respect, protect and fulfil economic, social and cultural rights extraterritorially does not authorize it to act in violation of the UN Charter and general international law.²³ The Commentary on the ETO Principles addresses the question of sovereignty in the context of fulfilling multilateral development commitments, stating that "the realization of the MDGs [Millennium Development Goals] is of interest

ETOs in practice – Recognizing the co-responsibilities of debtor and creditors

In 2006, Norway took an unprecedented step in recognizing its responsibility for the adverse human rights impact of its debt policies abroad, accepting its co-responsibility as creditor and unilaterally cancelling the sovereign debts of Ecuador, Egypt, Jamaica, Peru and Sierra Leone.²⁴ In a related development, the **UN Guiding Principles on Foreign Debt and Human Rights** help to identify the shared responsibilities of creditors and borrowers, provide criteria by which governments, international organizations and the private sector can objectively identify and assess the shared responsibilities of creditors and borrowers, and effectively apply human rights standards to their lending and borrowing decisions.²⁵ These Guiding Principles may be seen as part of the drive towards the creation of an international debt workout mechanism (see below), which could function on the basis of human rights principles, including the principle of shared responsibilities of creditor and debtor nations.

to all states. Therefore, extraterritorial jurisdiction seeking to promote human rights, or the achievement of the MDGs, is not a case where one state seeks to impose its values on another state, as in other cases of extraterritorial jurisdiction... [I]n such a case, a more flexible understanding of the limits on prescriptive extraterritorial jurisdiction may be justified."²⁶

D. TRANSPARENCY, PARTICIPATION AND ACCOUNTABILITY

Transparency, participation, accountability and effective remedy for harm are fundamental human rights principles, which oblige the parties responsible for potential human rights infringements—be they the territorially

competent state, other states, international institutions or private parties in either—to openly engage with affected communities, to ensure their free, active and meaningful say over policies which affect them, and to take corrective measures when their behavior risks harming human rights.²⁷ Meanwhile, human rights cannot exist without remedies. States therefore must guarantee effective remedy when harms arise.²⁸ When the responsible parties are not situated in the territory where the alleged harm occurs, an onus is placed on the state where the responsible parties are located to cooperate to provide effective remedies.²⁹ These remedies need not always be judicial, but should have an adequately dissuasive effect to put an end to current adverse impacts, and to prevent any future harm.³⁰

ETOs in practice – Indicators for monitoring the right to development

The United Nations High-Level Task Force on the Implementation of the Right to Development recently developed a practical and comprehensive set of operational criteria and illustrative quantitative indicators³¹ to help policymakers and development practitioners **measure and assess whether government conduct is contributing to—or contravening—their domestic and extraterritorial (“internal, external and collective”) responsibilities under the 1986 United Nations Declaration on the Right to Development.** These proposed indicators, explicitly based on human rights principles, seek to provide the foundation for a multidimensional monitoring system which can effectively make all member states more responsible, answerable and ultimately accountable for the consequences their conduct has on the achievement of sustainable development and on the human rights of individuals and communities affected, whether within or beyond their borders. In so doing, they provide an important foundation for monitoring states' extraterritorial human rights obligations in the international international development context.

ETOs in practice – Development cooperation grievance mechanisms

"Human rights provide us with legally binding standards to which we, in common with our partner countries, have committed ourselves inside and outside our borders. *We have jointly ratified international human rights treaties and so it is our joint responsibility to work for the respect, protection and fulfilment of human rights. By meeting our obligations, we want to help our partners specifically and effectively to meet theirs.*" This statement in Germany's **2008 Development Policy Action Plan on Human Rights**, positioned the country to align its development policies with human rights beyond its borders. The German government has conducted independent human rights impact assessments of its development aid policies, and begun to more proactively integrate their results into the design of its development policies. What's more, the country is now considering the establishment of a human rights complaints mechanism for communities affected by German development cooperation in partner countries.³²

III. POST-2015 POLICY IMPLICATIONS: TEN WAYS TO ALIGN SUSTAINABLE DEVELOPMENT COMMITMENTS WITH EXISTING EXTRATERRITORIAL HUMAN RIGHTS OBLIGATIONS

The human rights framework, with its multilayered emphasis on both domestic and extraterritorial human rights obligations to respect, protect and fulfil human rights, can provide a clear set of common standards to assess whether governments are upholding their respective but concurrent obligations relating to sustainable development, especially the particular and differentiated responsibilities of developed countries regarding financing and means of implementation. This in turn has specific policy implications for the ongoing post-2015 and FfD negotiations.

Respecting human rights beyond borders in sustainable development

1. Conduct sustainable development impact assessments. As a foundational first step to ensure policy coherence and uphold their legal duties to respect human rights extraterritorially, member states should agree to conduct integrated sustainable development impact assessments across tax, trade and investment policies and agreements, using human rights obligations as a yardstick. *Ex ante* assessments could be independently conducted in 2016 to establish a policy coherence baseline, then periodically reassessed. Public participation should be ensured and affected communities involved in defining and reviewing risks and potential extraterritorial impacts. The scope of these impact assessments should include member states' domestic policies, bilateral agreements, as well as multilateral agreements and conduct within international institutions, especially international financial institutions (IFIs) given their significant influence upon sustainable development. These impact assessments should trigger policy action by including explicit recommendations for remedies and redress of any negative spillovers to feed into the post-2015 and FfD monitoring and review process.³³

Protecting human rights beyond borders in sustainable development

2. Ensure mandatory reporting by large businesses. Reflecting the duty to protect human rights through the proper oversight and regulation of business and private financial actors, governments should commit to mandating clear and specific integrated human rights and sustainable development reporting guidelines for large companies they are in a position to regulate.³⁴ This would include due diligence requirements on the human rights impacts of their tax and financial arrange-

ments, as well as their track record in human rights and environmental impacts to date.

3. Establish and enforce *ex ante* eligibility criteria for private sector partnerships. Certain member states as well as the UN Secretariat have placed a high priority on scaling up partnerships with the private sector in the context of the post-2015 development agenda. Yet, the governance of UN partnerships with business must be rooted in the international human rights framework, including the duty to protect human rights extraterritorially, and in existing obligations across all three dimensions of sustainable development (economic, social, environmental). Without clear lines of accountability, there is an imminent risk that the development agenda over the next 15 years will be unduly shaped by private sector financing, activities and priorities. To lessen some of these risks, member states should establish clear *ex ante* criteria to prevent those private actors whose activities are currently, or potentially, antithetical to the UN Charter, international human rights law, and the SDGs, from joining UN partnerships.³⁵ Such criteria should examine, *inter alia*, whether the specific private actor has or is currently abusing human rights or the environment, including in their cross-border activities; and whether the actor is fully transparent in its financial reporting and is respecting existing tax responsibilities in all countries in which it operates. UN member states should be at the helm of formulating this framework (with participation from civil society), including the criteria, and the oversight and monitoring process based on due diligence reporting and independent third-party evaluations. Such a framework and the mandate for global-level monitoring of partnerships with the private sector in the name of sustainable development could, for example, be situated within a UN body.

4. Regulate financial markets more effectively. The 2007-8 global financial crisis revealed the far-reaching degree to which financial deregulation in the industrialized countries at the heart of the global economy can trigger financial instability and protracted economic crises in developing countries. There is a growing recognition that international financial markets are inherently unstable in the absence of multilateral arrangements to exert discipline over markets and policies in systemically important countries which have a disproportionate influence on global conditions.³⁶ A stable, accountable and regulated financial sector, in other words, is indispensable for an enabling international environment conducive to

sustainable development, human rights and the right to development. In line with their duty to protect human rights extraterritorially in pursuit of common sustainable development commitments, governments should seize on the post-2015 moment by ensuring adequate regulation of international financial markets to prevent and mitigate future financial crises and ensure public financial resources are protected when they do occur. While all countries have responsibilities to activate regulatory measures and oversight in order to ensure global financial stability, systemically important countries in the European Union, the United States, Japan, Hong Kong and several other states have special duties to prevent another global financial crisis.

Supporting fulfilment of human rights beyond borders in sustainable development

- 5. Fulfil ODA commitments.** Addressing the 'delivery gap' of official development assistance (ODA) remains a crucial task. The FfD process can clarify the unique and additional role for ODA in relation to other domestic and international flows to fulfill its overall mission in fighting poverty, marginalization and inequality, especially in the least-developed countries (LDCs) which need to see increases in the share they receive. In line with their duty to support fulfilment of human rights extraterritorially, member states should implement standing official development aid commitments (including the accumulation of committed but undelivered funds), prioritizing the most disadvantaged, and increasing the transparency, quality, effectiveness and accountability of development assistance.
- 6. Diversify public financing measures.** While the SDG commitment to innovative financing remains vague, the current negotiations for the third Financing for Development conference in Addis Ababa in July 2015 offer some prospects for expanding new and effective public financing measures. Human rights-oriented public financing mechanisms can play a significant role in providing more sufficient, equitable and accountable resources for sustainable development.³⁷ In accordance with the human rights duty of international cooperation and assistance, and states' obligation to support fulfilment of human rights extraterritorially, governments should agree to a range of new public financing instruments to enable the maximum available resources to be generated for the realization of human rights and development commitments. Such measures include full recovery of stolen assets by developing countries; taxing illicit financial flows; ceasing harmful corporate income tax expenditures (holidays, exemptions, etc.); progressively redirecting fossil fuel subsidies to climate finance and sustainable development, and ensuring a universal social protection floor. These measures also include implementing a financial transaction tax in all major financial sectors and directing the revenue to sustainable development financing, and devoting proceeds to climate change mitigation and adaptation in countries most affected; implementing a 'Sustainable Development Solidarity' progressive capital tax; and investing 10% of total military expenditure into sustainable development. Finally, states should also deliver regular and new allocations of Special Drawing Rights; and develop a Global Fund for Social Protection.³⁸
- 7. Establish a debt workout mechanism.** The lack of a fair, equitable and effective international debt resolution mechanism – arguably one of the most critical absences in the international financial architecture – results in chronic financial instability and debt crises in both developing and some developed countries. External debt build-up has accelerated since the crisis in 2008, reaching \$4.5 trillion in developing countries as a whole between 2010-2011. This is largely a result of private sector borrowing, the bulk of which is in foreign currency, and currently accounts for a higher proportion of external debt than the public sector in both international bank loans and security issues.³⁹ While the SDGs include commitments to facilitating long-term debt sustainability (target 17.4), the FfD negotiations should bring this to its urgent and long-awaited conclusion by supporting the new UN-led process to establish a multilateral legal framework for sovereign debt restructuring processes. This multilateral legal framework would be neutral and independent, and designed to resolve disputes concerning the restructuring of sovereign debt in accordance with the obligation of states to respect, protect and support fulfilment of human rights, both in their territories and extraterritorially. Such a mechanism must be comprehensive and binding for all creditors, public and private, bilateral and multilateral, and must contemplate an immediate stay of all payments as of the initiation of proceedings.⁴⁰

Ensuring transparency, participation and accountability for extraterritorial impacts on human rights and sustainable development

8. Monitoring extraterritorial impacts as part of post-2015 and FfD review processes. The mechanisms and processes tasked with monitoring and reviewing the implementation of the post-2015 and Financing for Development commitments should be given a clear mandate (and adequate capacity, expertise and resources) to examine the trans-boundary consequences for sustainable development and human rights of states' policies and practices, in particular in the areas of tax, trade, aid, investment, finance and the environment. The future SDG global review mechanism,⁴¹ and any international mechanism adopted to follow-up and review the FfD commitments, could play an important role, taking a global view of the ways in which cross-border spillovers are affecting sustainable development, human rights and the state of the 'global partnership'. These bodies should also review the contribution and policy coherence of individual member states (in particular those countries with special financing responsibilities and higher potential for extraterritorial impacts). These examinations should analyze progress, highlight critical implementation gaps, and develop concrete recommendations for corrective action or improvement needed from all development actors, including states, the private sector and international financial institutions. These bodies could also provide an essential forum to allow communities affected by extraterritorial impacts to air their grievances, and to hold public or private duty-bearers answerable and accountable for cross-border abuses of human rights and sustainable development. For the post-2015 monitoring and accountability architecture at national and regional levels, the impacts of transnational actors should also be a core component of the reviews; for example national review bodies could examine the contribution of relevant actors such as transnational corporations or donor countries to sustainable development at country level.

- 9. Promote equitable and meaningful participation in the global partnership for sustainable development.** Governments should promote universal participation and developing country decision-making over the international processes that affect their sustainable development progress and the human rights of their people. For example, full and equitable partnership should be placed at the heart of the process to change global tax norms by deciding to upgrade the Committee of Experts on International Cooperation in Tax Matters into an intergovernmental organ, providing needed political and financial support and ensuring civil society access. Democratic global economic governance within international financial institutions should be the norm, starting by increasing the voice and vote of all developing countries at the IMF and the World Bank. Lastly, civil society and local communities should also have an active voice and should be able to participate freely, safely and meaningfully in decisions which affect their lives related to post-2015 and FfD partnerships, national implementation and monitoring, including when decisions are made by governments other than their own.
- 10. Ensure transparent global governance.** Transparency regarding states' extraterritorial impacts on sustainable development is not only a human rights imperative, but an essential prerequisite to informed policy-making and to mutual accountability over a universal agenda. Governments should ensure that the negotiations of their bilateral and multilateral agreements are held to the highest standards of transparency and open governance. For example, recognizing the importance of taxation for accountably financing sustainable development, governments should support the implementation of international tax transparency, including full, publicly accessible country-by-country financial reporting by multinational companies, and a publicly accessible register of the owners of companies and trusts. Likewise, governments should implement the automatic exchange of information on tax matters in a way that recognizes capacity constraints, supports participation of developing countries, and ensures effective sanctions for lack of compliance in an automatic information exchange regime. Public release of Bank of International Settlements (BIS) disaggregated data on offshore assets (including hard assets), broken down by country, is also essential.⁴²

ENDNOTES

- 1 Report of the United Nations Conference on Environment and Development (Rio de Janeiro, 3-14 June 1992), A/CONF.151/26 (The Rio Declaration), Principle 7 After this first enunciation of CBDR as an international legal concept in the Rio Declaration, it was further referenced and elaborated in the UN Framework Convention on Climate Change (UNFCCC) and the Kyoto Protocol.
- 2 Specifically, Article 55 states that "With a view to the creation of conditions of stability and well-being ... the United Nations shall promote: ... (3) Universal respect for, and observance of, human rights and fundamental

freedoms for all without distinction as to race, sex, language, or religion," as well as, "higher standards of living, full employment, and conditions of economic and social progress and development; solutions of international economic, social, health, and related problems, and international cultural and educational cooperation...". Article 56 further states that "All Members pledge themselves to take joint and separate action in co-operation with the Organization for the achievement of the purposes set forth in Article 55"; United Nations, Charter of the United Nations (24 October 1945), UN Doc. 1 UNTS XVI.

3 Article 28 stipulates that "Everyone is entitled to a social and international order in which the rights and freedoms in this Declaration can be

fully realized." UN General Assembly, Universal Declaration of Human Rights (10 December 1948), UN Doc. 217 A (III).

- 4 Specifically, Article 2(1) states that "Each State Party to the present Covenant undertakes to take steps, individually *and through international assistance and co-operation*, especially economic and technical, to the maximum of its available resources, with a view to achieving progressively the full realization of the rights recognized in the present Covenant by all appropriate means" (emphasis added), UN General Assembly, International Covenant on Economic, Social and Cultural Rights (16 December 1966) UNTS Vol. 993.

- 5 The duty of international cooperation and assistance in the full realization of economic, social and cultural rights is included in Article 32 of the Convention on the Rights of Persons with Disabilities (2006) and Articles 4, 24(4) and 28(3) of the Convention on the Rights of the Child (1989), as well as in Articles 2 (1) and 11 (1) of the International Covenant on Economic, Social and Cultural Rights
- 6 See, e.g. Human Rights Committee, *Munaf v. Romania*, Communication No. 1539/2006 (30 July 2009), at para. 14.2, U.N. Doc. CCPR/C/96/D/1539/2006; European Court of Human Rights, *Al-Skeini and Others v. the United Kingdom*, Appl. No. 55721/07, at para. 133; Inter-American Commission on Human Rights, *Saldano v Argentina*, Report No. 38/99, Inter-Am. C.H.R., OEA/Ser.L/V/II.95 Doc. 7 rev. at para. 17. The General Assembly has affirmed that “all States should make all efforts to ensure that their international policies of a political and economic nature, including international trade agreements, do not have a negative impact on the right to food in other countries”, General Assembly, “The Right to Food”, Resolution 59/202 (31 March 2005), at paras. 20, 32, UN Doc. A/RES/59/202.
- 7 This Declaration places an emphasis on requiring the donor community to honor its international commitments especially those related to financial resources, technology transfer and capacity; to match the level of new financial, technology and capacity-building resources to the level of responsibilities; as well as to refrain from placing additional restrictions or burdens on the poorest developing countries. General Assembly, “Declaration on the Right to Development”, Resolution 41/128 (4 December 1986), UN Doc. A/RES/41/128.
- 8 ETO Consortium (2012), “Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights” [herein ETO Principles]. See also, De Schutter et al (2012) “Commentary to the Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights”, *Human Rights Quarterly* 34, 1084–1169.
- 9 ETO Principle 13, “States must desist from acts and omissions that create a real risk of nullifying or impairing the enjoyment of economic, social and cultural rights extraterritorially. The responsibility of States is engaged where such nullification or impairment is a foreseeable result of their conduct. Uncertainty about potential impacts does not constitute justification for such conduct.” This principle is supported by the International Commission of Jurists’ (ICJ) Advisory Opinion, “Legality of the Threat or Use of Nuclear Weapons”, Advisory Opinion, 1996 I.C.J. 226, para. 29 (8 July) which restated “the general obligation of States to ensure that activities within their jurisdiction and control respect the environment of other States or of areas beyond national control.”
- 10 IMF, OECD, UN, World Bank, (2011), “Supporting the Development of More Effective Tax Systems: A Report to the G20 Development Working Group”. See, <http://www.oecd.org/ctp/48993634.pdf>
- 11 Ministry of Foreign Affairs of the Netherlands (2013), “Evaluation Issues in Financing for Development”.
- 12 UN Special Rapporteur on the Right to Food, (2011), “Guiding Principles on Human Rights Impact Assessments of Trade and Investment Agreements: Report presented at the 19th Session of the United Nations Human Rights Council”, UN Doc. A/HRC/19/59/Add.5 at: <http://www.srfood.org/en/guiding-principles-on-human-rights-impact-assessments-of-trade-and-investment-agreements>
- 13 See, e.g. Defensoría de los Habitantes de la República (2009), “Consideraciones sobre la salud pública y bioética en materia de propiedad intelectual y medicamentos en el Proyecto de Ley de Tratado de Libre Comercio República Dominicana–Centroamérica–Estados Unidos”
- 14 European Union, (2007), The Treaty of Lisbon, Article 208(1). See, <http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=OJ:C:2007:306:TOC>
- 15 European Commission, “Sustainability Impact Assessments” (webpage). See, <http://ec.europa.eu/trade/policy/policy-making/analysis/sustainability-impact-assessments/>
- 16 ETO Principle 24 states “All States must take necessary measures to ensure that non-State actors which they are in a position to regulate, as set out in Principle 25, such as private individuals and organizations, and transnational corporations and other business enterprises, do not nullify or impair the enjoyment of economic, social and cultural rights.” Principle 27 further states “All States must cooperate to ensure that non-State actors do not impair the enjoyment of the economic, social and cultural rights of any persons. This obligation includes measures to prevent human rights abuses by non-State actors, to hold them to account for any such abuses, and to ensure an effective remedy for those affected.” See also, OHCHR, “UN Guiding Principles on Business and Human Rights”, (2011). Principle 1 affirms: “States must protect against human rights abuse within their territory and/or jurisdiction by third parties, including business enterprises. This requires taking appropriate steps to prevent, investigate, punish and redress such abuse through effective policies, legislation, regulations and adjudication” (emphasis added). For a discussion of relevant regional and international jurisprudence on this principle, see De Schutter et al, op cit fn 8 at 1134–1145.
- 17 Third World Network (TWN) (2014), “Multi-Stakeholder Partnerships, Corporate Accountability and Public-Private Partnerships in the Context of the 3rd International Financing For Development Conference”.
- 18 United Nations Human Rights Council, (2014), Resolution A/HRC/26/L.22, “Elaboration of an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights.” Available at: <http://business-humanrights.org/en/binding-treaty/un-human-rights-council-sessions>.
- 19 See Principle 17, Special Representative of the Secretary General on the issue of human rights and transnational corporations and other business enterprises, John Ruggie, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect and Remedy’ Framework”, (21 March 2011), UN Doc. A/HRC/17/31. Available at: http://www.ohchr.org/Documents/Issues/Business/A-HRC-17-31_AEV.pdf
- 20 On the provisions of international human rights treaties relating to the duty of international cooperation and assistance, see, for example, United Nations Committee on Economic, Social and Cultural Rights, (1991), “General Comment No. 3: The Nature of States Parties Obligations” at para. 14; United Nations Committee on the Rights of the Child, (2003), “General Comment No. 5: General Measures of Implementation of the Convention on the Rights of the Child”, at para. 5. Both these documents are available at: <http://www.ohchr.org/EN/HRBodies/Pages/HumanRightsBodies.aspx>
- 21 ETO Principle 31 states that “...Each State must separately and, where necessary, jointly contribute to the fulfilment of economic, social and cultural rights extraterritorially, commensurate with, inter alia, its economic, technical and technological capacities, available resources, and influence in international decision-making processes. States must cooperate to mobilize the maximum of available resources for the universal fulfilment of economic, social and cultural rights.”
- 22 ETO Principle 29 states that “States must take deliberate, concrete and targeted steps, separately, and jointly through international cooperation, to create an international enabling environment conducive to the universal fulfilment of economic, social and cultural rights, including in matters relating to bilateral and multilateral trade, investment, taxation, finance, environmental protection, and development cooperation.”
- 23 ETO Principle 10.
- 24 CESR, OHCHR, “Who Will be Accountable? Human Rights and the Post-2015 Development Agenda”, p48. Available at: <http://cesr.org/article.php?id=1482>
- 25 UN Independent Expert on Foreign Debt and Human Rights, (2011), “Report of the Independent Expert on the effects of foreign debt and other related international financial obligations of States on the full enjoyment of all human rights, particularly economic, social and cultural rights”. Available at: <http://www.ohchr.org/en/Issues/Development/IEDebt/Pages/GuidingPrinciples.aspx>
- 26 See De Schutter et al, op cit fn 8, at p.1142.

- 27 The Vienna Declaration and Programme of Action affirmed that all governments, as well as competent agencies and institutions, should engage in human rights cooperation based on transparency, UN General Assembly, "Vienna Declaration and Programme of Action", (12 July 1993), at art. II, para 74, UN Doc. A/CONF.157/23. The right of access to information, which underpins the principle of transparency, is recognized in the jurisprudence of various regional and international bodies. See e.g. Human Rights Committee, "General Comment No. 34: Article 19: Freedoms of Opinion and Expression" (12 September 2011) at paras. 18–19, U.N. Doc. CCPR/C/GC/34. With regard to participation, ETO Principle 14 states that "States must conduct prior assessment, with public participation, of the risks and potential extraterritorial impacts of their laws, policies and practices on the enjoyment of economic, social and cultural rights. The results of the assessment must be made public. The Committee on Economic, Social and Cultural Rights has also affirmed that "the international human rights normative framework includes the right of those affected by key decisions to participate in the relevant decision-making processes", see "Statement on Poverty and the International Covenant on Economic, Social and Cultural Rights", at para. 12, U.N. Doc E/C.12/2001/10.
- 28 The right to an effective remedy is contained in most international treaties and a number of non-binding instruments. See, De Schutter et al, op cit fn 1, at p.1161. See also UN General Assembly, "Basic Principles and Guidelines on the Right to a Remedy and Reparation for Victims of Gross Violations of International Human Rights Law and Serious Violations of International Humanitarian Law", Resolution 60/147 (21 March 2006), UN Doc. A/RES/60/147
- 29 ETO Principle 37.
- 30 ETO Principle 40. See, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/RemedyAndReparation.aspx>
- 31 UN Human Rights Council, (2010), "Report of the high-level task force on the implementation of the right to development on its sixth session", A/HRC/15/WG.2/TF/2/Add.2 Available at: <http://www2.ohchr.org/english/issues/development/right/docs/A-HRC-15-WG2-TF-2-Add2.doc; E/CN.4/2005/WG.18/TF/CRP.2; A/HRC/15/WG.2/TF/2/Add.1>
- 32 German Institute for Human Rights (2015), "Human Rights Require Accountability: Why German development cooperation needs a human rights complaints mechanism", Policy Paper No. 28.
- 33 See Amnesty International, Center for Economic and Social Rights, Center for Reproductive Rights, Human Rights Watch (2015), "Accountability For The Post-2015 Agenda: A Proposal For A Robust Global Review Mechanism". Available at: http://cesr.org/downloads/post-2015_accountability_proposal.pdf
- 34 The UN Secretary General in his Post-2015 Synthesis Reports suggested that all countries adopt policies requiring companies to undertake mandatory economic, environmental, social and governance reporting. See UN Secretary General, (2014), "A Road to Dignity by 2030: Synthesis Report of the Secretary-General On the Post-2015 Agenda", at para. 104, UN Doc. A/69/700. Available at: http://www.un.org/disabilities/documents/reports/SG_Synthesis_Report_Road_to_Dignity_by_2030.pdf
- 35 The Righting Finance Initiative, (2014), "Co-Creating New Partnerships for Financing Sustainable Development". Available at: <http://www.rightingfinance.org/wp-content/uploads/2014/04/Read-full-statement.pdf>
- 36 Yılmaz Akyüz, 2015, "Crisis Resolution and International Debt Workout Mechanisms", South Centre blog article. Available at: blog.southcentre.int/2015/03/crisis-resolution-and-international-debt-workout-mechanisms/
- 37 See Center for Economic and Social Rights and Christian Aid (2014), "A Post-2015 Fiscal Revolution: Human Rights Policy Brief". Available at: <http://www.cesr.org/downloads/fiscal.revolution.pdf>
- 38 United Nations Special Rapporteur on the Right to Food, Olivier de Schutter, United Nations Special Rapporteur on Extreme Poverty and Human Rights, Magdalena Sepúlveda, (2012), "Underwriting the Poor: A Global Fund for Social Protection". Available at: http://www.ohchr.org/Documents/Issues/Food/20121009_GFSP_en.pdf.
- 39 Op cit, fn 36, Yılmaz Akyüz,
- 40 Third World Network, (2014), "Historic UN General Assembly vote on a multilateral sovereign debt mechanism", Available at: www.twn.my/title2/finance/2014/fi140902.htm.
- 41 Op cit, fn 37, CESR, et al.
- 42 For more on the reforms needed to ensure accountable fiscal governance from the perspective of governments' domestic and extraterritorial human rights obligations, see CESR and Christian Aid, op. cit, fn. 43

ABOUT CESR

The Center for Economic and Social Rights (CESR) was established in 1993 with the mission to work for the recognition and enforcement of economic, social and cultural rights as a powerful tool for promoting social justice and human dignity. CESR exposes violations through an interdisciplinary combination of legal and socio-economic analysis. CESR advocates for changes to economic and social policy at the international, national and local levels so as to ensure these comply with international human rights standards.

162 Montague Street (3rd Floor)
Brooklyn, NY, 11201,
USA
Tel: +1 718 715 3342
info@cesr.org
www.cesr.org

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ABOUT THIRD WORLD NETWORK

Third World Network (TWN) is an independent non-profit international network of organisations and individuals involved in issues relating to development, developing countries and North-South affairs, particularly in international negotiations and multilateral institutions. Its mission is to bring about a greater articulation of the needs and rights of peoples in the South, a fair distribution of world resources, and forms of development which are ecologically sustainable and fulfill human needs. TWN's objectives are to deepen the understanding of the development dilemmas and challenges facing developing countries and to contribute to policy changes in pursuit of just, equitable and ecologically sustainable development.

131 Jalan Macalister
10400 Penang
Malaysia
Tel: 60-4-2266728/2266159
twnet@pojaring.my
www.thirdworldnetwork.net

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