

Extraterritorial Obligations of Importing States in the Area of Economic, Social and Cultural Rights

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Abstract

In this thesis I address, from a normative point of view, the question if Germany has extraterritorial obligations (ETOs) as the importer of Colombian coal for violations of economic, social and cultural rights (ESCR) occurring in the context of coal mining by transnational corporations (TNCs).

Although Colombia is the first to enforce these rights, Germany and States which can regulate the TNCs also have obligations. The German State carries ETOs to protect and fulfil ESCR in Colombia. It must provide for transparency in its energy sector, regulate the German importing companies, cooperate with Colombia and the TNCs' home States in view of a regulation of these corporations and a multilateral trading system conducive to human rights. The Maastricht Principles on ETOs in the Area of ESCR proved to be a useful tool to identify ETOs and give propositions for compliance. Since the home States of the TNCs and the German State were found to breach several of these ETOs, they have violated the human rights of the affected communities in Colombia. Currently, only non-judicial remedies can address Germany's ETOs.

Generally, opinions diverge on whether or not conclusions on ETOs of importing States can be drawn from this case.

Overall, it became clear that the existing accountability gap of ESCR can only be closed under the following conditions: an extraterritorial application of human rights law is accepted, the primacy of human rights law over economic law recognised, and enforcement mechanisms for territorial and extraterritorial human rights obligations – especially as regards ESCR – are strengthened through judicial and non-judicial mechanisms.

List of Abbreviations

AACIWASUG	Asociación de Autoridades y Cabildos Indígenas Wayúu del Sur de la Guajira
AG	Aktiengesellschaft
AUC	Autodefensas Unidas de Colombia
CAJAR	Colectivo de Abogados José Alvear Restrepo
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
CESCR	Committee on Economic, Social and Cultural Rights
C.N.O.A.	Conferencia Nacional de Organizaciones Afrocolombianas
CPR	civil and political rights
CRC	Convention on the Rights of the Child
DRIPS	Declaration on the Rights of Indigenous Peoples
EnBW	Energie Baden-Württemberg
ESCR	economic, social and cultural rights
ETOs	extraterritorial obligations
EU	European Union
FAO	Food and Agriculture Organisation
FARC	Fuerzas Armadas Revolucionarias de Colombia
FIAN	Food First Information and Action Network
FDI	Foreign Direct Investment

GMbH	Gesellschaft mit beschränkter Haftung
ICC	International Criminal Court
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on ESCR
ICJ	International Court of Justice
ILO	International Labour Organisation
MP	Maastricht Principle
MPs	Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights
NGO	non-governmental organisation
NGOs	non-governmental organisations
OECD	Organisation for Economic Co-operation and Development
ONIC	Organización Nacional Indígena de Colombia
OP-CRC	Optional Protocol to the Convention on the Rights of the Child
OP-ICESCR	Optional Protocol to the ICESCR
Ruggie Principles	Guiding Principles of the United Nations Framework for Business and Human Rights
SE	Societas Europea
TNCs	transnational corporations
UK	United Kingdom

UDHR	Universal Declaration of Human Rights
UN	United Nations
US	United States
USA	United States of America
USD	United States Dollar
WHO	World Health Organization
WTO	World Trade Organization

Table of contents

ABSTRACT	4
LIST OF ABBREVIATIONS	5
1 INTRODUCTION	9
1.1 PRESENTATION OF THE SUBJECT	9
1.2 RELEVANCE OF THE TOPIC	12
1.3 METHODOLOGY	13
2 CONCEPTUAL FRAMEWORK	15
2.1 THE RELATIONSHIP BETWEEN INTERNATIONAL ECONOMIC AND INTERNATIONAL HUMAN RIGHTS LAW	15
2.1.1 <i>Theoretical positions</i>	15
2.1.2 <i>The relation in practice</i>	17
2.2 EXTRATERRITORIALITY IN THE AREA OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS	20
2.2.1 <i>A normative approach</i>	21
2.2.2 <i>Legal sources for the extraterritorial application of economic, social and cultural rights</i>	23
2.2.3 <i>The Maastricht Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights</i>	28
2.2.4 <i>Remedies and accountability</i>	31
2.3 EXTRATERRITORIAL OBLIGATIONS IN TRADE AND INVESTMENT	36
3 COLOMBIAN COAL FOR ENERGY PRODUCTION IN GERMANY	39
3.1 COAL MINING IN COLOMBIA	39
3.1.1 <i>The mining policy of the Colombian State: boosting or hindering development?</i>	39
3.1.2 <i>The role of the Colombian conflict</i>	44
3.1.3 <i>The role of transnational mining companies</i>	46
3.1.4 <i>Coal mining conflicting with human rights: illustrative cases</i>	50
3.2 COAL IMPORTS BY GERMANY	55
3.2.1 <i>Energy production and coal imports</i>	55
3.2.2 <i>The role of German energy producers</i>	57
3.2.3 <i>Trading coal: the policy of the German State</i>	62
4 ANALYSIS OF LEGAL OBLIGATIONS	64
4.1 TERRITORIAL OBLIGATIONS	64
4.1.1 <i>The State of Colombia</i>	64
4.1.2 <i>Territorial remedies and accountability mechanisms</i>	67
4.2 EXTRATERRITORIAL OBLIGATIONS	69
4.2.1 <i>Home States of the transnational mining companies</i>	69
4.2.2 <i>The State of Germany</i>	72
4.2.3 <i>Analysis of human rights violations</i>	84
4.2.4 <i>Extraterritorial remedies and accountability mechanisms</i>	86
5 CONCLUSION	91
BIBLIOGRAPHY	97