

**Joint Parallel Report to the CESCR on 7th periodic report of Finland** submitted by the Friends of the Earth Finland, New Wind Association and Emmaus Aurinkotehdas. ATTAC Finland joined to sign 27.1.-21. Find more annex materials [here](#)

1. The CESCR 'list of issues' document's "issues of particular relevance" regarding Finland starts with whether and how Finland has fulfilled its obligations "to establish a clear regulatory framework for companies and [...] to ensure that companies operating in the State party or abroad exercise due diligence in human rights matters, and to prevent their activities from having a negative impact on the exercise of economic, social and cultural rights", also regarding how "judicial remedies in the State party are available for the victims of violations" by Finnish companies abroad. (1)

2. If state presents some "steps taken to establish a clear regulatory framework for companies" or "to ensure that companies [...] exercise due diligence in human rights matters" but if such steps do not in practice help to "prevent their activities from having a negative impact on the exercise of economic, social and cultural rights", so far adopted framework and measures to ensure due diligence may not have been duly and adequately human rights based. This has been unfortunately the case also with Finland during the reporting period - even though the current, less than 2 years old Finnish government at least tries now to build better framework to improve the respect for human rights. The government may need a lot of guidance and support from the CESCR to succeed to prevent negative impacts. (2)

### **A) How Finland's UNGP implementation Action Plan has neglected its ICESCR obligations already in a level of planning**

3. Finland adopted "a National Action Plan for the implementation of the UN Guiding Principles on Business and Human Rights" (UNGP) in 2014 under the 'Competitiveness' branch of its Ministry of Employment and the Economy, and assumed its plan "to build awareness of business and human rights". (3) But after 2014 Finnish business actors' negative impacts on human rights in global economy may not have reduced but in some respects rather accelerated.

4. "Government covering note" in Finland's national UNGP action plan assumed that even though "Finnish companies deal responsibly with human rights issues and support their implementation" still "the possibilities for a single company to identify human rights risks and rectify them are limited" and thus in Finland the UNGP was to be applied to companies' practices so that to get them to respect human rights "in accordance with the Government Programme, the administrative burden of companies will not be increased". (4) But as all how a firm may reduce its negative impact can be seen also to have some administrative character, thus all that prevents negative impacts can also be seen as an 'administrative burden'.

5. Finland made a "legislative report" "based on" the UNGP "to examine whether legislation corresponds with the aims of the UN principles and determine the necessity of initiatives taken to otherwise improve corporate operating practices" of due diligence, reporting and remedies and "to propose concrete recommendations" for needed improvements.(5) The report assumed that "human rights treaties set between the states legal obligations" for each state "to secure agreed rights to all people under their jurisdiction" "to protect them from [...] violations - also when done by private actors"(6) but states' ICESCR obligations on economic, social and cultural rights however do "not stop at their territorial borders" according to the CESCR as they are mainly "expressed without any restriction linked to territory or jurisdiction". (7)

6. ICESCR articles 1.2 and 2.1 also explicitly set international economic "cooperation as a means of fulfilling economic, social and cultural rights. It would be contradictory [...] to allow a State to remain passive where an actor domiciled [...] under its control or authority, harmed the rights of others in other States."(8) States are under the UN Charter and UDHR obliged to cooperation to achieve "universal respect for, and observance of, human rights [...] for all without distinction" securing that "everyone is entitled to a social and international order in which the rights [...] can be fully realized". (9)

7. So "extraterritorial obligations arise when a State party may influence situations located outside its territory, consistent with the [...] international law, by controlling the activities of corporations domiciled in its territory and/or under its jurisdiction, and thus may contribute to the effective enjoyment of economic, social and cultural rights outside its national territory". (10) Finland neglects thus its extraterritorial ICESCR obligations as far as its approach does not by its "regulatory framework for companies" or otherwise set adequate steps or conditions to "prevent their activities from having a negative impact on the exercise of economic, social and cultural rights" abroad (11) even when it recognises that:

8. "Finland is obliged to implement international conventions, including human rights conventions to which it is bound. National legislation should be in harmony with the obligations of international and regional human rights conventions, and [...] applied and interpreted favourably with regard to human rights." Thus even if "on an international level states implement human rights conventions differently" and "this affects international business activities and their regulation" (12), that can not take away Finland's extraterritorial ICESCR obligations regarding corporations' human rights impacts.

9. But Finland's ICESCR obligations in respect to the global business activity are relatively absent from states' national UNGP Action Plan which notes need for follow-up on business' human rights impacts in Human Rights Council and CRC but not regarding its ICESCR obligations and does not address its extraterritorial obligations in general level at all. (13)

10. Even Finland's wider background study for national UNGP action plan did not address extraterritorial obligations. Focusing on non-discrimination of women, children, vulnerable groups and labor rights in Finnish society, rights to

Finland's healthy environment, protection of privacy and prevention of human trafficking, corruption, arms trade, etc. (14), it did not address the impacts of corporations based or active in Finland on rights to adequate food, water, housing, health, work, culture or means of subsistence of the affected communities in Global South - and not even how rights given to global corporations affect negatively the realisation of economic, social and cultural human rights in Finland.

11. Assuming that "though there is no binding regulation on due diligence, it is a central concept in managing human rights risks related to international business" and that "a legally binding obligation is difficult to envisage" in terms "of defining the obligation"(15), Finland has since 2014 neglected its ICESCR obligations to act on corporate activities which it can influence to prevent them from violating human rights. This has also led the content of what is publicly meant and understood by 'human rights' to become distorted by corporations' advertising investments made in the name of 'due diligence'.

#### **B) How also Finland's current approach to develop a regulative framework continues to neglect its ICESCR obligations**

12. Now under the "Prime Minister Sanna Marin's Government (December 2019-), the Ministry of Economic Affairs and Employment will obtain a report on the businesses' due diligence obligation." (16) In 2020 Finland made a consultation based on a report "Judicial analysis on the Corporate Social Responsibility Act" that "considers due diligence responsibility to be set for corporations in national legislation concerning human rights and environment" and opportunities how "the impact of legislation can influence beyond the borders of a [...] state by regulating the mother company" to be "obliged to follow due diligence in its supply chain". So "the influence of the legislation could be extended beyond the borders". (17)

13. Finland seems thus now more open to consider its extraterritorial obligations based on this report and the ministry appointed now 9.12.2020 a working group to support the drafting of legislation by "a review on a new corporate social responsibility act [...] based on a due diligence obligation of businesses operating in Finland and abroad."(18) But even this report still neglected to consider those Finland's many ICESCR obligations in the context of business activities which CESCR General Comment 24 presented. It is positive that Finland starts to create national legislation on 'due diligence' but it can also become counter-productive in many ways if it continues to neglect or distort our ICESCR obligations.

14. Finland appears to have such fundamental misunderstanding on what state's human rights obligations in respect to the business activity are based, as if state's obligation would be just to get corporations to define how they can use the UNGP to benefit their business - ignoring that the UNGP is merely a tool to help states to fulfil their human rights treaty obligations to ensure that corporations respect and help to realise - not violate or affect negatively - human rights.

15. As the UN Charter obliged states to advance "universal respect for and observance of human rights" and "a common understanding of these rights" to secure their full realization, also "every organ of society" has "to promote respect for these rights" "by progressive measures, national and international, to secure their universal" observance (19) so that "everyone is entitled to a social and international order in which the rights [...] can be fully realized". (20)

16. On responsibilities of "organs of society to promote and protect" human rights the UN General Assembly has declared that: - "Everyone who, as a result of his or her profession, can affect [...] human rights" "of others should respect those rights" and "comply with relevant national and international standards" (21) so that "no one shall participate [...] in violating human rights".(22) Also business "groups, institutions [...] have an important [...] responsibility in contributing" "to the promotion of the right of everyone to a social and international order in which the rights [...] can be fully realized". (23) - "Each State has a prime responsibility and duty to protect, promote and implement all human rights", "to create all conditions necessary" with legal guarantees also in the field of economic activity to ensure that all can "enjoy all those rights and freedoms in practice" (24) compliant to what UDHR, ICCPR and ICESCR have set "as basic elements of international efforts to promote universal respect for and observance of human rights"(25)

17. "Grounded in recognition of" the "business enterprises as specialized organs of society [...] required to comply with" "existing obligations to respect, protect and fulfil human rights" (26) UNGP was approved thus as as "the benchmarks against which other social actors assess the human rights impacts of business enterprise". (27 As "nothing in these Guiding Principles should be read as creating new international law obligations, or as limiting or undermining any legal obligations a State may have undertaken" on human rights, "the responsibility of business enterprises to respect human rights refers to internationally recognized human rights – understood, at a minimum, as those expressed in the International Bill of Human Rights " set by the UDHR as codified by ICCPR and ICESCR. (28)

18. **As the contents of human rights and obligations, which states and organs of society are responsible to respect and realise also in business activity are thus - also according to the UNGP - not expressed by the UNGP, therefore UNGP by itself can not make the business activity to respect human rights. UNGP is only a tool helping the business actors to respect all human rights which are expressed by the UDHR, ICCPR and ICESCR - which is possible only as far as business actors understand and respect the content of these human rights, which is not presented in UNGP.**

19. UNGP does not express or change the contents of human rights to be respected, protected or realised, but was approved as a tool to "assist in channelling the benefits of business towards contributing to the enjoyment of human rights" taking into account "that further efforts to bridge governance gaps at the national, regional and international

levels are necessary" (29) "without foreclosing any other long-term development, including further enhancement of standards" (30) guided by the UN bodies authorised to assess, monitor and guide the realisation of human rights.

20. As UNGP is to promote the respect for human rights provided by the ICESCR and ICCPR, it is not thus used properly if states and corporations do not become aware of the contents of these human rights so that they can duly address what those contents require from their business activity as assessed and guided by the UN bodies and mandate holders authorised to assess, monitor and guide the realisation of those treaties such as the CESCR by its General Comment 24.

21. Still when asked from the Finnish Foreign ministry's ownership and corporate management policy officers and from the Finnfund (Finland's development financing corporation) representatives who assumed their activity to comply with the UNGP, none of them replied in ministry's ownership management meeting in 15.11.2019 to be aware about what ICESCR obligations would require according to CESCR General Comment 24 from the state to ensure respect for human rights

22. It is a severe problem that as the Finnish authorities who are responsible to ensure the realisation of the economic, social and cultural human rights in respect to business activities as obliged by the ICESCR are not even aware what that would require under the UN monitoring system authorised to assess and guide what the ICESCR implementation requires. The result has been that Finland has continuously neglected many of its ICESCR obligations in respect to the corporate business activities and this has led to severe human rights violations, including also murders of the victims.

23. As far as states do not derive the framework for the use of UNGP from that how their human rights treaty obligations require them to determine socio-economic activities compliant to what respects and fulfils economic, social, cultural and other human rights equally for all also in respect to different cultures of economy, so far companies can use the UNGP in ways which impair the respect for and realisation of human rights and which can also increasingly distort the whole concept of what is publicly meant and understood as 'human rights' to become determined by business interests.

24. Thus a procedure which makes corporations and countries to use UNGP concepts to describe and monitor their business activities without being even aware of the contents of the human rights under the UDHR, ICCPR and ICESCR - which UNGP was set to get the corporations to respect - does not respect human rights but can misuse UNGP for other business purposes if it does not address how these rights are affected in terms of their treaty-defined contents.

### **C) Finland's approach enables companies to select human rights impacts monitored according to their business interests**

25. As "business enterprises can have an impact on virtually the entire spectrum of internationally recognized human rights, their responsibility to respect applies to all such rights" in terms of their due, treaty determined content and "Guiding Principles should be understood as a coherent whole" (31) to be used to protect, respect and remedy at least all rights codified by ICESCR and ICCPR as indivisible whole. Currently corporations use UNGP to select for their 'human rights' monitoring such issues, whose contents are not determined by the human rights treaties but by other interests.

26. As corporations invest huge amounts to bring to the public in the name of 'due diligence' under the title of 'human rights' such other contents and measures which do not originate from the human rights treaties but from other business driven interests, such increasing volume of 'alternative' public (mis)use of the concept 'human rights' to advertise one's selected business results tends to distort the public understanding of what is meant and understood by 'human rights.'

27. UNGP does not ask corporations to select what to respect as 'human rights' but requires corporations to respect all rights as determined by the ICESCR and ICCPR as an indivisible whole as corporations' "responsibility to respect applies to all such rights" which they have to realise equally for all (32) "assessing human rights impacts" on "all internationally recognized human rights" at least those under the ICESCR and ICCPR and allows only such focus that as "some human rights may be at greater risk than others in particular industries or contexts" they may thus "be the focus of heightened attention." But as risk may change, impacts on "all human rights should be the subject of periodic review." (33)

28. Corporations have "to prevent [...] adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts". (34) The corporations can not select their human rights impacts to be monitored according to their business interests but each firm has to identify, assess and monitor all "actual and potential human rights impacts" which it "may cause or contribute to, [...] or which may be directly linked to" it so that it can duly address and prevent all its "adverse human rights impacts". (35)

29. Each company has to monitor their impacts on the totality of these indivisible rights and thus to "identify [...] where the risk of adverse human rights impacts is most significant [...] and prioritize these for human rights due diligence" (36) so as "to cease or prevent its" activities with "adverse human rights impact".(37) Thus "the extent of its leverage in addressing the adverse impact" and that how far the "impact is directly linked to" it (38) reflect its responsibility so that as far as "the business enterprise has leverage to prevent [...] the adverse impact, it should exercise" its leverage. (39)

30. As companies have to assess, monitor and address all human rights impacts and "prioritize actions to address actual and potential adverse human rights impacts" on people "at heightened risk", to first prevent risks "that are most severe or where delayed response would make them irremediable" (40), still in practice Finland allows companies on the contrary

to select according to the commercial business interests what they would monitor and how - as Finland assumes that: "Basically, companies decide for themselves how to identify and prevent the risks associated with their operations" as "due diligence does not oblige the company to achieve any determined end result" or "set for the actor responsibility to have clarified all impacts of its activity but includes an element of relativity and appropriateness". (41)

**31.** Finland has thus in practice **allowed the corporations to prioritise in their assessment and monitoring such aspects of - or even such assumptions on - human rights with which they can most easily measure and show some positive impacts** - as if those were the rights on which their businesses would have most connection, leverage and impact. This has happened by the cost of majority of the economic, social and cultural human rights which are most adversely affected by corporations' business activity being left non-assessed, non-monitored, non-respected, widely undermined or neglected - as if corporations could make their negative human rights impacts their business secrets by their contracts.

**32.** Even where the overall impact of business activities to the totality of economic, social and cultural rights can be highly negative, still when corporation can cherry-pick which goals or targets it monitors as 'results' to be made public and which it leaves non-monitored and non-public, corporations can now easily select to monitor and make public only just those impacts of their business which they can show as some kind of positive 'results' and leave - without any due human rights impact assessment - non-monitored all the adverse impacts.

**33.** Companies like the 'Finnish' transnational forestry corporation UPM tend to select from indivisible human rights what they could show as "validating the most salient issues at a local operational level". If UPM is authorised to select which its impacts on which rights could appear as 'most salient' for how "our decisions shall be made with UPM's best interests in mind" protecting "UPM's assets and information", "financial success, stability, future outlook and growth" as "fundamental [...] for most stakeholders" (42), can not then such UPM's 'best interest' select and demonstrate its own business as if it were 'most salient' fulfillment of human rights? This may guide UPM to leave as non-assessed or non-demonstrated such aspects of its activity which are not 'most salient' and not in UPM's 'best interest' to be measured or demonstrated.

**34.** UPM has thus selected certain ways of assessing "environmental pollution, occupational health and safety (OHS), working conditions, protection of children, and forced labour to be the salient human rights issues within our sphere of influence". (43) But these issues and the ways how UPM assesses them neglect assessment of severe human rights impacts of its activity presented in our Annex on UPM Uruguay investment. (44)

**35.** Similarly Finnfund, a corporation established to channel Finland's public development financing into hands of private corporations in which Finland has specific interest in poor countries, contracted an assessment of the Socio-economic Impact of Lake Turkana Wind Power (LTWP) project - against which the affected local indigenous communities had made a legal complaint on how their rights had been violated by the capture of their traditional land. Taking their lands away from these indigenous communities, LTWP wrote in 2012 that "for the purposes of" its "indigenous peoples policy", "the concept of Indigenous Peoples has been narrowed down to a special hunter-gatherer community" excluding indigenous pastoralists and so LTWP has no need to respect other communities' indigenous peoples' rights on their traditional land. (45)

**36.** Thus also in 2020 LTWP project's socio-economic impact on indigenous communities - whose traditional lands LTWP took without their free prior and informed consent - was assessed without assessing at all the project's impact on their rights as indigenous peoples to their traditional lands. Thus to confirm to ignore and neglect affected communities' rights as indigenous peoples to their traditional lands, Finnfund contracted LTWP assessment from NIRAS who advertises an impact assessment methodology on how to "select SDG's and targets".(46) (which also were to be indivisible, not selected)

**37.** By selecting to be monitored only targets which do not include observance of indigenous rights, such assessment of how they were affected could take capture of their lands as granted without a need to address at all "indigenous"rights/ peoples in assessing socio-economic impacts on different indigenous peoples - except in one paragraph where it wrote: "There are also claims that the company did not recognise the three communities; Rendille, Turkana and Samburu as indigenous. The matter is currently in court and [...] We did not explore the matter" "despite the impacts that it may have on the community including violation of indigenous and customary land rights." "Community has taken the matter to court in order to" get it "determined that the land was wrongfully allocated to the company; get back the 110,000 acres of land, [...] not being used by the LTWP project, and; receive compensation for the 40,000 acres of land [...] used by the LTWP."(47)

**38.** While it selected to address impacts on employment, "food security", water, "health", "education", related livelihoods or security, still it does not assess impacts to them duly as impacts on human rights equal for all - even when addressing them as "non-monetary dimensions of wellbeing" -, but addresses them only in terms of impacts on LTWP employees and their families in terms how they have in these respects benefited from project incomes and provisions. (48) In 2018 Finnfund said that impacts to be monitored in projects were to be selected to be "assessed by examining the significance of the project to the company receiving the funding" or to its "closest stakeholders" as "groups that benefit the most".(49) That can not be the way how projects' impacts on indivisible and universal human rights can be assessed and monitored.

**39.** Corporations continue to select to 'assess' and 'monitor' many other impacts as if being positive human rights impacts - for example how many people they employ - which they then present as if number of 'jobs created' within a corporation

were human rights impact - without even trying to assess and monitor how many people lost their work in other (often more employing) forms of employment due to the competition which the concerned corporation caused or due to that how corporation's investment forced people away from lands or forests from which they had got their livelihood. So often an opportunity of work or livelihood taken/transferred away from elsewhere to boost them in a corporation is wrongly reported as if being jobs or livelihoods created or provided by the corporation which rather captures them away from elsewhere.

#### **D) Finland's public development finance taken for private corporations neglects the rights of the poor and vulnerable**

40. Finnfund sees its corporate responsibility to be such that "responsible business practices add value to the investment and contribute to creating positive impacts." (50) It invests and gives loans to poor countries to private corporations thus with "profitability, and Finland's interests" as such 'ultimate responsibility' and "key criteria" for positive impact that "businesses will ultimately be responsible for funding investments that are commercially viable". (51)

41. Finnfund's financing activity and assessing and managing of its human rights impacts in poor countries are determined by a law to serve the Finnish interests in poor developing countries so that it "shall finance companies, in which a Finnish interest is involved, to be established and operating in developing countries" like the Finnfund Act says. (52) Finnfund thus assumes that in poor countries it would be "our responsibility to ensure that our own activities and the projects we fund are profitable" in business terms - assuming that "benefits of our financing [...] in developing countries spread via companies and their immediate stakeholders" while aimed bringing the money from the poor countries back to Finland. (53)

42. How could it be responsible or even justified in the name of poor countries' development, to use public development funds for financing corporations that serve Finnish interest to compete against those which do not have such Finnish interest? Impacts on human rights and development in poor countries can not have as their measure or criterion the extent to which the finance may benefit some companies' Finnish business interests - particularly as "Finnfund's mandate is to finance companies in challenging environments where [...] the state is often not able to ensure realisation of human rights". (54)

43. When 'development finance' for poor countries is directed to such corporations who need only to select and monitor few 'results' on which they can most easily show something good-looking being achieved, that enables corporations to use such funds to transfer poor countries' land, forest, water or other resources by which poor people have lived - away from the uses which have realised their economic, social and cultural human rights whose realisation the project does not monitor - to become commercially controlled by those who have money to boost achievement of few monitored 'results'. Such 'development finance' to corporations tends to take lands, forests, waters and other resources away from poor people's hands under commercial control depriving the poor of their own means of subsistence which have realised their human rights.

44. Human rights are not equally respected or realised as indivisible whole if few selected 'results' are boosted by taking resources away from such poor people's realisation of their economic, social and cultural rights the impacts on which are left non-monitored. Such 'Results Based Management', where one can beforehand select to monitor the impacts of business only to some few 'results' or rights by the cost of leaving impacts to many human rights non-monitored and non-addressed, does not follow Human Rights Based Approach but leads states to neglect human rights obligations.

45. It leaves more and more vulnerable the rights of the poorest people who have lived most directly by the customary sustainable local use of land, forest and water, if these are taken under the commercial control which serves the demand and purchasing power of people who have best money to consume such sources of life for other purposes. UNGP requires on the contrary to "pay special attention to any particular human rights impacts on" such vulnerable people who "may be at heightened risk" and "seek to understand the concerns of potentially affected stakeholders by consulting them directly". (55)

#### **E) Indigenous/ local communities' lands taken for corporations by Finnish development finance has led to violations**

46. Finland has financed corporations and projects, which indigenous communities opposed for violating their human rights by forcibly taking their traditional lands away for business interests without their consent, for burning their homes or destroying their crops and for harassment and murders of their indigenous human rights defenders. Still after such violations were publicly known, Finland continued to finance the activity and capacity of such violating activity, like Agua Zarca or DESA corporation in Honduras or Kenya Forest Service (KFS), a corporate body established by a law in Kenya.

47. After receiving the Finnish funding, both corporations continued to harass the indigenous people in ways which resulted to murders of the members of indigenous Lenca (in Honduras) and Sengwer (in Kenya) communities. Such finance was even presented as if it were human rights based development finance - even though it financed actors by whom the lands, territories and resources which indigenous communities had traditionally used were taken without their free informed consent and due consultation, violating their rights and resulting to continuous harassment and murders.

48. "A State party would be in breach of its obligations under the Covenant where the violation reveals a failure by the State to take reasonable measures that could have prevented the occurrence of the event. The responsibility of the State can be engaged in such circumstances even if other causes have also contributed to the occurrence of the violation, and even if the State had not foreseen that a violation would occur, provided such a violation was reasonably foreseeable".(56) This was the case in both of these incidents, with Agua Zarca in Honduras and KFS in Kenya because:

- [We warned Finland about the violations by the Kenya Forest Service](#) (KFS) already earlier when KFS came with heavy weapons to forcibly evict indigenous Sengwer people by burning hundreds of their houses.(57) Finland facilitated some consultations in respect to the conflict in 2014, which was a good step but after the government changed in Finland, Finland continued to finance the KFS in other project with the EU and KFS continued violate rights of Sengwer with its capacity of forest sector governance built and financed by Finland and corporatised according to the Finnish models and experience on forest sector corporatisation. Thus violations continued and resulted to murder.

- The capture of lands and waters which indigenous Lenca communities had traditionally used in Honduras was carried out by a private corporation DESA, whom Finnfund started to finance in order to build Agua Zarca hydropower plant - even after Finnfund had got to know that indigenous Lenca people who opposed the project capturing such lands had been harassed and one of Lenca community members, Tomas Garcia, had been murdered for opposing the project.

**49. So even though it was known and documented that these corporate actors captured from indigenous community by violent force and harassment the lands, waters or forests, which the community had traditionally used, still Finland's public development finance continued to flow to such corporations. Such finance increases the interests of the actors connected to such corporations to continue to profit by further violent capture of the indigenous ancestral lands and continued finance contributed to their interests becoming raised high enough to start to kill the indigenous people who opposed such financed corporate capture of the ancestral lands and waters to defend their rights.**

**50.** Thus in Kenya, an indigenous Sengwer man Robert Kirotych who opposed the forced evictions was shot dead and a fellow community member wounded by the guards of the Kenya Forest Service (58) which Finland and the EU financed and which says it conducts its "daily business on the basis of accountability and transparency" with "customer focus". (59)

**51.** Also in Honduras indigenous Lenca woman Berta Cáceres was shot dead after she solidly opposed Finnfund financed DESA's Agua Zarca project. Such availability of finance to take sacred river and ancestral land from Lenca community without its consent, encourages those who could benefit from that to try to force the community to accept the project. Without such finance for the project such murder of project's main opponent could not have appeared so profitable for those who had interests linked to the project. Thus Berta Cáceres got death-threats from people connected to DESA before she was murdered and those arrested as suspects of the murder include people linked to DESA.

**52.** As corporations' efforts to take sacred ancestral lands or waters away from indigenous community without its consent to make business profits with "Finnish interest" are financed by Finnish 'development finance' as justified by law, the Finnfund Act, those who could profit from such land grab got motivated to harass, threaten and finally to murder project's indigenous opponents who defend their sustainable life and environment. When such projects are officially announced as human rights based, UNGP-complying due diligence development finance for indigenous communities to mitigate climate change, etc. that maintains human rights violations advertised as 'due diligence'.

**53.** "States parties and businesses should respect the principle of free, prior and informed consent of indigenous peoples in relation to all matters that could affect their rights, including their lands, territories and resources that they have traditionally owned, occupied or otherwise used or acquired." "The obligation to respect economic, social and cultural rights is violated when States parties prioritize the interests of business entities over Covenant rights without adequate justification, or when they pursue policies that negatively affect such rights. This may occur for instance when forced evictions are ordered in the context of investment projects. Indigenous peoples' cultural values and rights associated with their ancestral lands are particularly at risk" (60) and have to be respected and secured.

**54.** Such rights has been repeatedly violated by ways how Finnish development finance has been directed to corporations' projects which capture traditional indigenous lands, waters and forests under commercial control to make profit out of them. Such financing violates not only indigenous peoples' rights but also the HRC Guiding Principles on Extreme Poverty and Human Rights which notes that in development financing "States have an obligation [...] avoiding conduct that would create a foreseeable risk of impairing the enjoyment of human rights by persons living in poverty beyond their borders, and conducting assessments of the extraterritorial impacts of laws, policies and practices" in this respect. (61)

**55.** In case of companies like Finnfund, [Finland's responsibility to control the impacts of Finnfund financing is particularly clear and direct as Finnfund is mostly financed by the Finnish government and is "acting on that State party's instructions \[...\] under its control or direction".](#) (62) It is a severe problem if Finland allows corporations to advertise as human rights 'due diligence' (under the UNGP, IFC PS, UN Global Compact, etc.) such activities which Finnfund and others have carried out in respect to lands of indigenous communities in Honduras, Guatemala, Kenya, etc. and have led to violations.

**56.** [Without the security which Finnfund got by applying UNGP, IFC Performance Standards and other voluntary 'due diligence' - security not for rights of indigenous communities but for itself - it may not have started to invest with such risks.](#) Instead of being used as a tool to build due human rights impact monitoring capacity in their economic activities, corporations and states tend to use UNGP and 'due diligence' in general rather as a tool of such advertising competition, which is used to protect their business interests and hide and/or justify the ways how their business activities can profit by violating human rights or profit with increasing security by the cost of weakening their implementation.

**57.** So far Finland has no measures by which to prevent this kind of continuing misuse of 'due diligence' for the security and benefits which corporations get for extracting profits from the poor communities - even though Finland knows how "due diligence can bring benefit for the corporations also in respect to its brand/reputation, financing, market value, customers' confidence and improved risk-management" as the corporation gets a "possibility to appeal to its due diligence for example if compensation claims for the caused damages are made against it". (63)

**58.** Finland does not have a framework by which it could also in respect to the transnational corporations established in Finland secure that both the home and host states can "take necessary steps, to the maximum of their available resources, to facilitate and promote the enjoyment of " economic, social and cultural rights in respect to how "this obligation [...] requires directing the efforts of business entities towards the fulfilment of" these rights also "to ensure that they (companies) do not undermine the efforts of the States in which they operate to fully realize" these rights. (64)

#### **F) How UPM subordinates human rights under its business profits in Uruguay in the name of 'due diligence'**

**59.** As Finland shall "by controlling the activities of corporations domiciled in its territory and/or under its jurisdiction [...] contribute to the effective enjoyment of economic, social and cultural rights outside its national territory" so that the corporations can "not obstruct another State from complying with its obligations under the Covenant" (65), how does Finland ensure it fulfils its ICESCR obligations for example in respect to the UPM, a global forestry TNC ?

UPM has its origin and strong presence in Finland and claims to practice 'due diligence' under the UNGP "respecting and protecting human rights across our businesses" (66) and had in 2017 "conducted a human rights self-assessment" of its activity globally and made an agreement with Uruguay on world's biggest pulp production investment.

**60.** UPM-Uruguay mega investment raises severe problems also regarding the responsibility of Finland to secure and monitor that it respects economic, social and cultural rights in compliance with its ICESCR obligations (67) - even though UPM says it assesses its impacts and risks in respect to human rights and communicates them also externally (68) and that "we also share the ever growing concern of our stakeholders".(69)

**61.** Uruguay has agreed to invest 4 billion euros - over 7 % of its annual GDP - to such railway, infrastructure, education, etc. which are structured to serve wide scale UPM pulp production and which will not be duly productive or beneficial if another 2,4 billion euros are not invested by the UPM, to build in Uruguay such world's biggest pulp factory, whose productivity Uruguay's 4 billion euros investment is intended to serve.

**62.** Uruguay and UPM agreed in this their common investment that Uruguay should first build the railway, the port terminal and infrastructure works, as well as introduce changes in education, laws and working conditions of the country to serve the businesses of UPM and only if UPM considered that they were suitable would decide to make its investment. UPM will have thus an enormous leverage to demand more and more from Uruguay to serve just UPM's business interests because the 4 billion euros which Uruguay invested in advance to serve such UPM pulp production it, will remain widely wasted if the UPM does not invest its 2,4 billion euros to the pulp production.

**63.** Uruguay's Human Rights Institute has determined that the cumulative impacts which this project will have on human rights and environment have not been duly assessed with participation of the affected people and are not duly known for the people of Uruguay. Human rights are endangered by a project agreement where a nation invests an amount over 7 % of its annual GDP to a project which may not become realised at all if a private corporation may not see Uruguay's efforts as sufficient. The project can not thus verify that it has adequately secured that the impacts of such investment would not weaken the realisation of economic, social and cultural human rights.

**64.** It is not possible to verify adequately the impacts of a project, where the fate of huge extent of Uruguay's resources - lands, water, ecosystems, biodiversity, infrastructure, conditions of environment, labor and education, etc. - have been agreed to depend on what the UPM happens to decide to be adequately profitable for its business.

**65.** The UPM-Uruguay investment will affect the quality and ecological circulation of water and conditions of access to it, the conditions of land use, biodiversity, ecosystems, work, housing and transports in the area in ways that neglect human rights obligations and threaten to violate human rights to adequate standards of living, regarding the rights to food, water and housing, and human rights to health, safe and clean environment, culture, work and education, depriving people of their locally self-determined means of subsistence.

**66.** As the conditions set by the UPM's activities and decisions can endanger the economic, social and cultural human rights in Uruguay in many ways and as the UPM acts widely under the jurisdiction of Finland, thus Finland is also responsible for the impacts as far as it can by its laws, governance and policies influence the conditions of UPM's activities and decisions of how UPM is doing its business.

**67.** Finland is responsible under the ICESCR to act to ensure in cooperation with Uruguay that the conditions which the UPM, its investment agreement, activities and decisions create in Uruguay shall not negatively affect the realisation of

human rights in the following respects - in which respects Finland currently neglects its extraterritorial obligations as Finland has not acted adequately to ensure that:

**(i) Land and water to be used primarily to secure human rights by people's self-determined means of subsistence**

The conditions which the UPM investment creates or requires to Uruguay shall not be allowed to retrogressively or negatively affect economic, social and cultural rights of those, whose life the project will crucially affect and who have not even been informed about such project's negative impacts on their human rights in advance and have not thus been able to democratically participate to assess and influence those impacts to get their human rights protected.

**(ii) Adequate standards of living in respect to right to food, water and housing have to be secured**

Uruguay and Finland must ensure people's human rights to adequate and secured food, water, housing and decent living conditions to be realised with sources of people's access to them remaining in people's hands without retrogradation, not taken away under commercial control for other purposes of UPM or other business interests.

**(iii) Rights to health and to healthy environmental and occupational conditions**

UPM project, Uruguay and Finland have to ensure by competent independent monitoring and transparent public verification that actors which they can influence do not agree or act in ways which reduce people's access to clean and safe environment, water, air or work or living conditions and retrograde the realisation of human rights to these by pollution or over-consumption of water or land for such other purposes which do not secure these rights.

**(iv) UPM investment's impacts on biodiversity by which people realise their human rights**

UPM project has to be ensured not to affect, degrade or displace local pampas and river biodiversity regeneration by which people have realised their human rights to food, health, livelihood, living conditions and environment as adapted to live by that biodiversity regeneration. The project has to respect those rights and Uruguay and Finland have to protect those rights and promote their sustainable realisation.

**(v) UPM project's impacts on cultural equality, rights to culture, work, traditional occupations and education**

UPM project has to be reviewed to respect people's equal rights to their cultures of economy, work, livelihood and education in the area compliant to how these cultures of life's sustenance and heritage are sustainable as adapted to living by the regeneration of area's biodiverse environment without displacing it. Uruguay and Finland have to ensure this equality to be realised not only within the project but also in project's impacts to life/work outside of it.

In respect to Uruguay's legal system of protection of fundamental labor rights, collective bargaining, freedom of association and protection of workers, the UPM investment agreement tries to enforce laws for how occupations can be regulated to be determined by direct and indirect forms of pressure and capture in favor of its interests undermining human rights and state's competence to regulate as needed. UPM gains by the agreement also conflict prevention and dispute resolution to be tailored to UPM's needs, harnessing the protection of its investment by several mechanisms introduced to the national courts but also the right to bring cases to international arbitration established in Uruguay-Finland investment promotion and protection treaty. In a world where public policy and the regulatory power of States is increasingly cornered by the TNC interests, such tailored contract ratifies the supremacy of transnational capital over sustainability of life.

**68.** Regarding all these 5 dimensions above (i-v) of how the project can affect economic, social and cultural human rights - which are presented more in detail in the [annex](#) also [here](#) - Finland is as a home country of the UPM responsible together with Uruguay to ensure the respect for these human rights and their adequate protection so that the UPM business activities in Uruguay can not negatively affect but promote the realisation of these rights.

**69.** People of Uruguay who are affected need to get duly informed about the impacts on their rights and environment as assessed and verified by competent independent third party holders of human rights and environmental competence in respect to the Uruguay's, Finland's and UPM's respective human rights and environmental obligations and commitments on responsibilities of business actors under State Parties' jurisdiction or influence.

**70.** While UPM has done many assessments, they have not been assessments of the overall human rights impacts and diverse affected communities have not been able to participate. The UN organs and rapporteurs have noted that states can not externalise their responsibilities to private business actors who have themselves business interests in concerned investments or projects - as states to assess the impacts on human rights and environment but states are responsible to assess, monitor and verify the impacts and act to secure human rights and environmental integrity.

**71.** Finland has also to help to ensure that on project's impacts on economic, social and cultural human rights and related also to water, biodiversity and other environment such independent and impartial review commission or entity must be set up - which respective UN organs can nominate or approve as competent to assess the planned UPM project impacts to economic, social and cultural human rights and to the environment, particularly to biodiversity and water.

**72.** Finland should contribute to cover together with Uruguay the costs of such UN guided assessment commission and

to respect its findings in terms of their obligations as state parties of the UN to provide transparently all information requested by the commission regarding the planned project.

**73.** The way how states have to act also by legislation and international economic cooperation "to the maximum of their available resources" for "achieving progressively the full realization of" economic, social and cultural rights also "requires directing the efforts of business entities towards the fulfilment of" these rights (70) in ways which "contribute to creating an international environment that enables the fulfilment of the Covenant rights" and by which states cooperate "to help fulfil the economic, social and cultural rights of persons outside of their national territories". (71)

#### **G) Finland must correct the conditions of corporate activity: Human rights impacts can not be business secrets**

**74.** Finland has neglected its above referred and many other ICESCR obligations to adequately direct the corporations under its jurisdiction to prevent them from affecting negatively on many ESC human rights - even though Finland, UPM, Finnfund and other Finnish firms have bought UNGP training from the Shift who advertises it "closely accompanied Professor Ruggie" to develop the UNGPs and has Ruggie now on its board. Shift works "with companies on solutions that will succeed in the day-to-day of their business" to "hard wire respect for human rights into how business gets done", "to translate the UNGPs into reality-changing practice" and "build a new paradigm for doing business".(72) While Finland, UPM and Finnfund have got Shift human rights business training, their violating practices have not much changed but are advertised as trained by "the leading center of expertise on" UNGPs, the Shift (73) who trained also Coca-Cola, De Beers, H&M, Hitachi, Unilever, Total, PepsiCo, etc. In addition to advertisements Finnish business has adopted from Shift at least the name and logo style. (74)

**75.** UNGPs or due diligence could be tools for companies to respect human rights and promote their realisation in economic activity. But to reduce the gap between business and human rights they are now used more to change 'human rights' to comply with business than to change business to respect human rights. Ways how Finland and other states have allowed and even directed the UNGPs to be used without due adherence to the ICESCR obligations, have given birth to an industry to produce, introduce and advertise in the name of 'due diligence' such new meanings for human rights which distort 'human rights' to mean in public increasingly such results of business which firms can select as most beneficial for them to be monitored.

**76.** Having widely similar approach as the UPM, under which "in order to effectively implement The Guiding Principles, let's simplify the language and terminology first" (75), the corporations invest in practice to shift what is publicly meant by 'human rights' to adjust it to mean something more beneficial for such their business purposes - which comply neither with many ESC human rights nor with the indivisible whole of human rights agreed in the UN treaties. But also UNGPs require that "while processes for assessing human rights impacts can be incorporated within [...] environmental and social impact assessments, they should include all internationally recognized human rights as a reference point, since enterprises may [...] impact virtually any of these rights". (76) Thus Finland has to require the impacts on all ESC rights to be duly assessed and monitored compliant to their ICESCR-determined meaning, as otherwise human rights impacts remain business secrets.

**77.** Human rights impacts shall not remain non-monitored business secrets as they are now. Early 2016 Finnfund made public that Agua Zarca hydropower project in Honduras was duly assessed and monitored in accordance with the UNGPs, IFC standards, UN Global Compact, etc. and was found having very positive impacts on local indigenous communities.

**78.** As Finnfund claimed thus in 2016 in its webpage to have "at its disposal all information relevant to the possible human rights impact" of its financed projects (77) then in early March 2016 however Berta Cáceres got murdered after having led as an indigenous Lenca people's woman activist her Lenca community's opposition against that how Agua Zarca project violated Lenca people's rights on their ancestral lands.

**79.** Finnfund was then asked immediately after Berta's murder to show its human rights impact assessment of Agua Zarca and its acquisitions of lands which Lencas had traditionally used as Finnfund had claimed to have "at its disposal all information relevant to the possible human rights impact" of projects which it finances. But Finnfund's Director on Impact and Communications in 2016, replied that Finnfund's assessment on Agua Zarca human rights impacts and acquisitions of Lencas' traditionally used areas can not be made public because it belongs to confidential business documents available just for their business partners, like DESA in case of Agua Zarca.

**80.** As project's earlier indigenous opponent, Tomas Garcia, had already been murdered in protest against the project less than 3 years earlier - just before Finnfund started to finance the project -, still Finnfund said that due to its impact assessment it has 'all information relevant to the possible human rights impact' and there are no relevant human rights risks to finance the project. As then soon Berta, the next leader of indigenous protest against Finnfund-financed project got also murdered, Finnfund said such its human rights impact assessments remain business secrets under its due diligence.

**81.** Finnfund said first that Berta was murdered perhaps by a jealous lover and the murder was not related to the project or to the DESA corporation whom Finnfund financed to run the project. Even the responsible minister told the Finnish parliament that: "The project has been prepared carefully and the social and environmental questions have been deeply considered" so that the "needed lands have been bought by voluntary sales where the rights of sellers to sell have been carefully reviewed. The surrounding local communities and indigenous peoples have been informed and consulted.

Project's environmental and social impacts have been assessed and recognised being very small impacts". (78)

82. A month later in news interview the same minister however said "I consider it very important [...] to clarify once more the backgrounds of the project" and when journalist asked "So is it possible that the money of Finnish tax-payers have been transferred to the pocket of Central-American oligarch ?", the minister replied: "That we are just trying to clarify. It is impossible for me to take a stand on this kind of speculation". (79) That was after Lenca delegation's visit to Finland. Soon in Honduras people got arrested for Berta's murder, including Sergio Rodríguez Orellana - DESA officer responsible for Agua Zarca project community and socio-environmental affairs - and also another earlier DESA officer responsible for Agua Zarca security. Both have now been sentenced to prison for Berta's murder.

83. And it has been found also that the lands for Agua Zarca had been acquired against the free, prior and informed consent of a Lenca community and project's environmental license had been acquired by fraud by DESA's director, who led Agua Zarca and is now also investigated on Berta's murder. See more detailed presentation of the Agua Zarca project's human rights violations to be soon available in this [weblink](#).

84. Are assessed human rights impacts on Lencas such Finnfund's business secrets which can lead to such UNGP /'due diligence'-competent murders of financed project's opponents in respect to which Finnfund had "at its disposal all information relevant to the possible human rights impact" between 2 murders, but without need for Finnfund to make public that all relevant information which it has on project's impacts including the murders ? And at the same time in 2016 Finnfund continued all the time declare that it followed UN Global Compact and UNGPs under which however: - "business should communicate externally on its adverse human rights impacts and responses" and "to potentially affected indigenous peoples how the business is addressing a human rights risk" with "effective monitoring and reliable reporting on the impacts [...] on indigenous rights [...] to enable a business to fulfil its responsibility". (80) -"In order to account for how they address their human rights impacts, business enterprises should be prepared to communicate this externally, particularly when concerns are raised by or on behalf of affected stakeholders" (81)

85. Thus, while many EU states tend to say that to urgently prevent violations like the murder of Berta Caceres, all must focus just to apply the UNGP due diligence as soon as possible - not negotiate a binding UN treaty on TNCs - in reality on the contrary, Berta was murdered under the UNGP due diligence applied by the FMO and Finnfund - allowing the murder to take place without any real sanctions to FMO or Finnfund who were protected more than the victims by the UNGP.

#### **H) Investment agreements have to guarantee the leverage and competence to prevent negative human rights impacts**

86. As under Finland's current requirements it suffices for UNGP, IFC standards or other due diligence commitments that corporations just declare that they have assessed human rights impacts and monitor them (or have even "all information relevant to the possible human rights impact") without a need to make public the assessed human rights impacts, then: Corporations can thus by confidential business contracts easily agree to externalise the responsibility on all such business activity which has adverse human rights impacts to be outside their leverage/ influence even if they profit from the impacts.

87. But UNGP requires on the contrary corporations to take into account "that human rights risks can be increased or mitigated already at the stage of structuring contracts or other agreements" as corporations can be "complicit" and "benefit from an abuse" if they do not act to stop abuse. They have also in respect to their benefits "address all their adverse human rights impacts". (82) So far crucial impacts to most economic, social and cultural rights have remained widely without being duly assessed, monitored or addressed so as to ensure human rights to become respected or realised.

88. Company with business interests shall not be allowed to 'select' its activity's impacts by agreeing in non-public contracts how it would not be 'connected' to some negative human rights impacts or not have 'leverage' over them - as if that would make it to be not accountable for violations from which it benefits if it agrees someone else to be accountable to do them.

**89. As far as Finnfund or other funders can finance projects without obligation to guarantee in their financing contracts adequate leverage and monitoring to be able to prevent negative human rights impacts and to secure compensation from them, such lack of due financing contract is itself a crucial connection to the negative impacts of such finance.**

90. Similarly to Agua Zarca, Finnfund joined IFC to finance another hydropower project also in Santa Cruz Barillas in Guatemala in an indigenous Q'anjob'al Maya community's traditional lands, after a member of the Maya community had been murdered in context of community's protest against the dam construction in their lands which had been acquired from the Maya community without due consultation and free, prior and informed consent of Mayas.

Community faced for its resistance a long violent oppression which continued still when Finnfund joined to fund the project. World Bank/ IFC Compliance Advisor Ombudsman (CAO) examined a complaint defending Mayas against violations of human rights and IFC's own Performance Standards and found that the project had caused violation. As not even IFC can duly implement its own IFC Performance Standards, how then Finnfund or others could do that better? See an annex on the violation of the rights of Maya community in Santa Cruz Barillas to come soon in the [weblink](#).

91. In Guatemala and Honduras Finnfund violated indigenous communities' rights to their traditional "diverse and specific

forms and modalities of control, ownership, use and enjoyment of their territories", their "distinct forms of economic subsistence" and "cultural survival" (83) which it were to respect insofar as their "material, cultural or spiritual link with these territories is still in existence" as prioritized rights also "in cases of conflict with third party property rights" (84) "independently of States' abilities and/or willingness to fulfil their own human rights obligations", "over and above compliance with national laws", "even in the absence of recognition of the right in States' domestic legal systems". (85)

**92.** As the violations in Guatemala would not have happened if the IFC would not have financed the capture of Mayas' traditional land without their free, prior and informed consent, such finance is linked to the violations. The leverage to decide project's finance is a leverage to influence violations, which the project may cause. Human rights due diligence is neglected if it is approved as sufficient for a project to "address many relevant human rights issues" as some "elements related to human rights dimensions" (86), while making profit by neglecting or violating many other human rights.

**93.** If Finland, Finnfund or IFC say now that they did not have 'leverage' to ensure that the corporation or project which they financed would not capture away the indigenous ancestral lands from Lencas, Mayas, Sengwer, Samburu or others without their consent, also then they violated their responsibility to agree only financing that respects indigenous rights: Nothing could have forced Finland, Finnfund or IFC to agree project contracts without due 'leverage' to ensure indigenous communities' internationally recognised rights to be respected in taking their traditional lands or waters.

**94.** Having full leverage over what it approves in its contracts, Finnfund also "advises companies on how to manage their impact on the environment and society" (87) and has thus a full possibility, connection and duty to secure that the company will not be financed if its activities negatively affect human rights. If Finnfund duly commits to evaluate the "harm to people from potential adverse human rights impacts" and "prioritize the management of the most severe human rights impacts" (88) to be prevented, it has to prioritise to not agree to finance projects where it is not allowed to ensure that its financing does not violate or negatively affect human rights. But Finnfund, Finland and IFC have not corrected the structures of financing which maintain the violations - as was shown also by how indigenous rights neglected by Finnfund's LTWP assessment in 2020 (page 4 above) and by Finland's and IFC's on-going investment in LTWP type projects in Africa.

**95.** Finnfund says "we recognize that our ability to manage these human rights impacts in practice may vary depending on the leverage we have".(89) But Finnfund does not need to agree to finance projects where it does not have leverage even to ensure that its financing does not negatively affect human rights. If it would duly respect human rights in its financing Finnfund would not need to emphasize that its "human rights statement should not be interpreted as creating legal responsibilities" for its aims to "only invest in privately owned business" "always on market terms.". (90)

**96.** Agreements on investment or projects can thus violate human rights. As a home state of an investment Finland has a responsibility to assess and address the human rights impacts of the investment, trade and multilateral investment agreements to ensure that the rights they give to corporations can not violate human rights or impair their realisation.

#### **I) Finland neglects via the EU competence its duty to assess and address human rights impacts of the CETA / TNCs**

**97.** In negotiation and ratification of the Comprehensive Economic and Trade Agreement (CETA) of Canada, EU and its memberstates Finland did not to ensure that CETA's binding decisions will respect our ICESCR obligations as it requires. Finland clearly neglected these its obligations in the proceedings by which it negotiated CETA and proposed it to become treated and approved by the parliament - as it did not even assess the human rights impacts while it took decisions which exposed and endangered the Covenant rights to violations and retrogression and its own ability and resources to duly protect and fulfil the ESC human rights.. CESCR has noted on what would be required in such negotiations that:

**98.** As "states parties cannot derogate from the obligations under the Covenant in trade and investment treaties that they may conclude" such conclusion needs "therefore be preceded by human rights impact assessments" by which the states "identify any potential conflict between their obligations under the Covenant and under trade or investment treaties, and refrain from entering into such treaties where such conflicts are found to exist". (91) But Finland did not accordingly assess CETA's impacts on its ability to secure and fulfil human rights compliant to its obligations.

**99.** UN High Commissioner for Human Rights has noted that state has "to examine international agreements, such as trade and investment agreements, and their impact on all human rights, including economic and social rights" to observe "extra-territorial obligations and [...] progressive realization".(92) States must "detail how they will uphold their human rights obligations if they ratify" treaties like CETA.(93) By "human rights impact assessments of trade and investment agreements [...] prepared prior to the conclusion of the agreements and in time to influence" the negotiation outcomes state must take "every effort to ensure" they "do not have a negative impact on" human rights (94) and "demonstrate that every effort has been made to use all resources" it has "as a matter of priority" "to ensure the widest possible enjoyment" of ESC rights.(95)

**100.** As human rights are violated if CETA's "investment court system judgments deprive Governments of funds essential to meet their health, housing and education obligations" (96), states are to "refrain from concluding agreements that would affect their public budgets [...] in a way that would impede the full realization of human rights". (97) As billion euro scale public tax assets which protected human rights can be bindingly judged to become transnational investors' private

property for other purposes without duly addressing human rights, this violates human rights and prevents their realisation.

**101.** States need thus also "to ensure that mechanisms for the settlement of investor-State disputes take human rights into account in the interpretation of investment treaties or of investment chapters in trade agreements". (98) But Finland has not ensured human rights to be accordingly respected in CETA 'Investment Court System' and said in 2017 that human rights impacts assessment in respect to health and social services is not needed as the measures to protect and fulfil human rights can be implemented only "compliant to the orders given on treatment of investments" by CETA investment court (99) that is authorised however to protect and fulfil added rights for transnational corporations (TNC) rather than human rights.

**102.** Finland has to order on CETA's human rights impacts such independent assessment whose validity is acceptable to the CESCR and other UN human rights system to be competent and to fully comply with Finland's human rights obligations and commitments. It has to examine the human rights impacts of the CETA provisions and of its investment disputes tribunal system including also cumulative impacts which CETA, other investment treaties and investment court or arbitration systems will cause when combined with other changes of legislation, such as the provisions on EU-Canada strategic partnership agreement and Finland's plans on new laws on social and health services.

**103.** Finland has to guarantee by its legislation and its international negotiations such conditions - including possible cancellation or correcting amendments of any provisions of trade and investment agreements or planned Multilateral Investment Court - which guarantee progressive realisation of ESC and all human rights to remain fully respected and protected under any trade or investment provisions or consequent investor-state arbitration/ investment court orders. And while States parties are to ensure that "the judiciary and law enforcement agencies, are bound by the obligations under the Covenant" and that "judges and lawyers, are well informed of the obligations under the Covenant linked to business activities", Finland has to be able to demonstrate how it can ensure that also judges of CETA Investment Court System and other investor-State dispute settlement tribunals remain "bound by the obligations under the Covenant". (100)

**104.** Finland has to demonstrate how it has ensured that investor-state arbitration and CETA type investment courts would "deny protection to foreign investors [...] that have engaged in conduct leading to a violation of Covenant rights" - as needed to secure human rights. CETA investment court can bindingly order Finland to pay huge compensations to TNCs for "the use of administrative sanctions to discourage conduct by business entities that leads, or may lead, to violations of the rights under the Covenant" (101) even where such administrative measures are needed to fulfil our ICESCR obligations. TNCs can i.e. sue states to pay them billions as compensations for the profits loss caused by COVID-19 counter-measures.

**105.** Finland has to demonstrate how it will - also in respect to the trade and investment treaty provisions or corporate activities - "ensure that they do not obstruct another State from complying with its obligations under the Covenant." (102) Taking measures such as "lowering the rates of corporate tax solely with a view to attracting investors encourages a race to the bottom that ultimately undermines the ability of all States to mobilize resources domestically to realize Covenant rights" and "is inconsistent with" states' ICESCR obligations. Conditions where society provides protections for TNCs with less taxes or requirements "may affect the ability of States where economic activities are taking place to meet their obligation to mobilize the maximum available resources for the implementation of economic, social and cultural rights". (103)

**106.** Finland neglected its ICESCR obligations also in its reply to our [complaint](#) (104) as the Director of Finland's Unit for Human Rights Courts and Conventions, Krista Oinonen, replied on behalf of the government of Finland that Finland can not ensure commercial agreements like CETA to comply with Finland's human rights obligations, because of the EU competence : "When the Union has exclusive competence in a specific area, only the Union may legislate and adopt legally binding acts in this area" and "the EU has express exclusive competence in common commercial policy" (105) and even where the competence is shared "the Member States shall exercise their competence to the extent that the Union has not exercised its competence." (106) "The Union has exclusive competence over all parts of the CETA Agreement except for those concerning investment other than direct foreign investment (so-called portfolio or indirect investment) and those concerning the procedure for settling disputes between investors and States." (107) "Therefore, an individual Member State has a very limited opportunity and obligation to assess the CETA provisions from the perspective of realising the rights protected by" human rights conventions such as the European Social Charter or ICESCR. (108)

**107.** Does the Finnish government assume that when it confers a competence upon the EU in a policy area, for example in Common Commercial Policy, then in that policy area Finland's human rights obligations under the international human rights treaties which the EU has not approved (like European Social Charter or ICESCR) would have somehow fade away? Even though these are obligations agreed also with many states parties that are not even any EU member states ?

It is not possible for a state to 'limit' its human rights obligations by conferring its competence upon someone else on certain matters without guaranteeing that its human rights obligations on those matters will be respected. It is not legal under the human rights treaties, under the Vienna Convention on the Law of Treaties or under the EU treaty. (109) EU-membership in no way mandates Finland to confer upon the EU powers to approve laws which would be binding in Finland's territory without respecting fully the ICESCR human rights obligations Finland has agreed with other states.

**108.** When conferring any competence Finland remains fully responsible to guarantee that the obligations which it has adopted under the human rights treaties like ICESCR shall be fully respected in territory of Finland under the

competences it has conferred - also in case of the EU competences, like the EU Treaty also confirms:

"Rights and obligations arising from agreements concluded" by current EU members "before the date of their accession" to the EU with the non-EU states parties - such as the rights and obligations agreed under the ICESCR - "shall not be affected by the provisions of the Treaties" of the EU. (110) Finland assumed thus wrongly that the EU's commercial competence would leave Finland with "a **very limited [...] obligation to assess the CETA"-caused human rights impacts.** (111)

**109. The obligations of the UN human rights treaties which Finland has agreed with many non-EU member states can not thus depend on what competences Finland would have later conferred to the EU.** If Finland has complied with its ICESCR obligations it has secured that the competence it has conferred to the EU can be used by the EU only in a manner which fully respects Finland's human rights obligations in decisions which bind Finland and other EU member states.

**110. Under the ICESCR also the EU "Member States remain responsible for the implementation of their human rights obligations [...] in respect of those powers delegated to the EU" so that "while these obligations do not directly bind the EU, if the Member States fail to give them effect in the EU's internal legal order, they will remain responsible for breaches committed by the EU"** (112) - as may be the case also with Finland as shown in paragraphs 106-109 above.

**111.** As far as such breaches have taken place also in case of CETA, the EU "Member State or States concerned shall take all appropriate steps to eliminate the incompatibilities established. Member States shall, where necessary, assist each other to this end". (113) As it is not in the power of the EU memberstates for the purposes of EU's internal needs to change the agreements made with non-EU states, such as the ICESCR, the EU memberstates need either to amend the EU law or to otherwise ensure that the EU can "succeed to the obligations of its Member States under pre-existing treaties to the extent that it has been delegated powers necessary for their implementation by the Member States". (114)

**112. Finnish Government's reply that it would have "a very limited [...] obligation to assess the CETA provisions from the perspective of realising the rights protected by" the human rights treaties which "the European Union has not acceded" (115) makes thus even more clear that Finland continues to neglect its human rights obligations also by this how it subordinates its ICESCR human rights obligations under the commercial competences it conferred to the EU.** This Government's reply to the complaint on its treatment of CETA shows it does not even try to guarantee duly that both the exclusive and shared competences it has conferred to the EU shall be consistent with our human rights obligations which it has agreed earlier with other states. Thus the approach how Finland views and administers the relation of its human rights obligations to the fields of international trade and investment neglects due compliance with its human rights obligations. The problematic way how Finland allows EU's commercial competences affect Finland's UN human rights treaty obligations and also procedures of 'due diligence' are further addressed in our website.

**113.** As also in case of "any obligations arising out of international economic co-operation", all what they may be applied to require, has to be in any case in such a way freely "based upon the principle of mutual benefit" of peoples that:

- it shall not be "impairing the inherent right of all peoples to enjoy and utilize fully and freely their natural wealth and resources" and that "In no case may a people be deprived of its own means of subsistence"

- each state shall act also in terms of any international economic co-operation "to the maximum of its available resources" for "achieving progressively the full realization of the" ESC rights "by all appropriate means, including" legislation. (116)

As states are thus obliged to treat international economic cooperation and legislation on it as a means for progressively realising economic, social and cultural rights equally for all they can not legally confer to the EU exclusive commercial competences to act in global economy on their behalf without transferring to the EU the corresponding human rights obligations with which ICESCR binds them to comply also by any activity in international economic cooperation.

**114.** As the EU memberstates have not yet however duly demonstrated how the way how they have conferred to the EU the competences to act in global economy would comply with their UN human rights (pre-EU) obligations - including in case of Finland and most of other EU states also the ICESCR obligations - and as they have not conferred to the EU even such due human rights competence that the EU could have approved the UN human rights obligations to bind its action (except CRPD), Finland and other EU members continue to neglect and circumvent their ICESCR obligations via the EU. Also UNGP is increasingly misused by the EU to justify how TNCs do not need even to familiarise with the contents of human rights or with what they require. Corporations can instead say that they have adopted such 'due diligence' follow-up under which they can advertise how they follow UN principles on business and human rights even without knowing the contents of most of the human rights under the UN treaties whose realisation the UNGP was to advance.

**115.** Crucial impact of current UNGP abuse is how that what is publicly meant and understood by the 'human rights' gets distorted by huge amounts TNCs invest to advertise 'human rights' to mean what is most beneficial for their business.

25.1.2021 Finland

Friends of the Earth Finland, New Wind Association and Emmaus Aurinkotehdas ry. Attac Finland joined to sign 27.1.-21  
contact: newwindassociation1@gmail.com Find more materials of our report [here](#)

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