Controlling Corporations
The case for a UN Treaty on Transnational Corporations and Human Rights
September 2016

The problem of corporate power

There are over 40,000 Transnational Corporations, or TNCs, in the world. In recent decades many of these TNCs have grown so big that they are now wealthier than entire countries. Of the 100 wealthiest governments and corporations in the world today, 69 are corporations while only 31 are governments.1 While these corporations are involved in very different sectors of the economy, and take different decisions on how to operate and present themselves, they do have one thing in common: the obligation to put profit generation above everything else.

The power of corporations is so great within our political economy that they have been able to systematically undermine democratic systems and the public sector. Attracting corporate investment has become the number one task of governments. The threat of ‘losing corporate investment’ or big business ‘upping sticks and moving somewhere else’ ties the hands of any government that wants to introduce higher taxation, greater worker protection or control of finance.

Indeed, the global economy has been designed around the interests of corporations – freeing up money to go where it wants, when it wants, while simultaneously making it extremely difficult for governments to make sure that investment is working in the public interest. The governing institutions of the global economy, like the World Trade Organisation and the International Monetary Fund, have been heavily influenced by this corporate agenda, and the policies and operations of these institutions have accorded more importance to the ‘rights’ of big business than the rights and needs of people and the environment. Corporations have even undermined the belief that there is any other way to organise society.

The problem of unaccountable corporations is reinforced by the fact that law and law enforcement is still predominantly nationally based, while TNCs operate across borders. While corporations are able to access special forms of ‘justice’ like investor courts, entirely void of any democratic accountability, no such international mechanism exists for people who fall victim to corporate abuse. Almost all attempts to hold
corporations to account at an international level are voluntary, and, therefore, unenforceable.

**What can be done about corporate power**

Rolling back the power of corporations will not be easy – it is a long-term campaign. But it is also something we can’t ignore, if we’re to solve the problems facing us. It will inevitably involve changing the structures that allow corporations to wield such power, as well as redressing the abuses that corporations commit, with impunity, within the existing system.

Part of this work means developing alternative ways to produce and distribute the goods and services we need – undermining the notion that only massive corporations can make the economy ‘work’. Food sovereignty and energy democracy are just two examples of how it is possible to build an economy without corporations. But as long as corporations do play a role in our economy, we need to find ways to control their activity and prevent abuses. This is where international law could play an essential role.

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**Corporate Crimes case studies**

There are thousands of cases across the world in which TNCs are alleged to be involved in violations of human rights. Examples of genuine cases that could be considered under the UN treaty include:

**Trafigura** is a multinational oil trading company with headquarters in London that was involved in the illegal dumping of toxic waste in Côte d’Ivoire in 2006. The results were devastating for the local community with at least 15 fatalities and over 100,000 people needing medical attention. For ten years legal action has been sought against Trafigura, Amnesty International even collected 5,000 pages of evidence to present to the British authorities demonstrating Trafigura’s role in the illegal dumping. After a decade, and despite repeated attempts in national courts, there has been no real justice for the victims.

**Vodafone Group** is a telecommunications company that has been accused of limiting Egyptian people’s right to freedom of expression and assembly. During the 2011 Egyptian uprising against Hosni Mubarak’s authoritarian government, where tens of thousands of protestors relied heavily on text messages and social media to organise demonstrations, Vodafone worked with the government to shut down their services, leaving people without access to vital mobile communication. The consequences went beyond limiting people’s ability to organise politically, but also left people unable to access emergency healthcare. As a result the Egyptian Centre for Housing Rights filed an unsuccessful lawsuit seeking compensation for the damages they suffered due to the shutdown of communications.

**BHP Billiton** is an Anglo-Australian mining, metals and petroleum company whose IndoMet coal project in Borneo, Indonesia, has been at the heart of a decade long land grab process, whereby land has been taken from local people, to clear the way for a mining project. Many residents also reported that their water supply has been severely affected by the project, leaving them with inadequate access. Locals are currently attempting to gain legal recognition of their ownership of their land.

**GCM Resources** is a British mining company established to explore and mine the Phulbari Coal Project in Bangladesh. In 2006 three people died and many more were injured when paramilitaries fired on peaceful protests against the mine. The protestors had deep concerns about the planned 50 square kilometre open-pit coal mine, which threatens to displace thousands of people and destroy some of Bangladesh’s most fertile agricultural land. According to seven UN human rights experts the project threatened many rights of the local community, including access to water, food, and adequate housing. In 2012, two NGOs brought a complaint to the UK representative on corporate abuses. After a two-year inquiry, the UK NCP found GCM Resources to be in partial breach of the Guidelines but ignored the potential future impacts of the project.

**G4S** is a multinational security company which has been providing, through its Israeli subsidiary, security services and equipment to Israeli checkpoints in the Occupied Palestinian Territories and to prisons, allegedly abusing Palestinians. Complaints made by Lawyers for Palestinian Human Rights insist that the company have contributed to human rights abuses including facilitating the detention of children in Israeli prisons.
A long history of controlling corporate power

The battle to restrain corporate power has been a long one, with real successes along the way. One of the world’s biggest ever TNCs – The East India Company – exploited and ran India on behalf of the British government in the eighteenth century, before public pressure saw the company disbanded.

In the twentieth century, there were numerous successful attempts to restrain corporate behavior from anti-monopoly laws and the break-up of the banks in the US, to the creation of democratically controlled industries and cooperatives in Latin America, to the production of generic medicines to treat serious illnesses in India.

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From the 1970s, starting with a push by ‘third world’ countries of the non-aligned movement, there have been attempts to create a UN treaty to control corporations at an international level. These attempts have been fought off by corporations themselves, in alliance with US and European governments, who have detracted from binding laws by proposing voluntary mechanisms to deal with corporate power, like the UN Guiding Principles on Business and Human Rights.

The UN treaty on Transnational Corporations

But in 2013, we were given another chance. Ecuador delivered a statement on behalf of 85 member states, largely from the global south, to the UN, calling for international laws to regulate the activities of TNCs. Such a legal system would provide protection for the victims of human rights abuses committed by TNCs, and place a binding obligation on all governments to hold their corporations to account for their impacts on people and the planet.

In June 2014 the UN Human Rights Council (UNHRC) passed resolution 26/09 which established the need for “an international legally binding instrument to regulate, in international human rights law, the activities of transnational corporations (TNCs) and other business enterprises”. A working group was set up to work out what such a law or treaty would look like. The working group, led by Ecuador, first met in July 2015, and then again in October 2016. This UN treaty could be a once in a lifetime chance to achieve serious binding controls over corporations.

Who supports the UN treaty?

The resolution was passed by majority vote with 20 countries, mainly from the global South, supporting the proposal, from Algeria and Burkina Faso in Africa, Pakistan and Indonesia in Asia to Cuba and Venezuela in South America. In addition, four of the five major ‘emerging’ economies also supported the resolution - Russia, India, China and South Africa. Unfortunately, the countries who opposed the resolution were those who are home to many of the world’s largest TNCs, including the USA, UK and most European countries. In particular, the UK and US have consistently vetoed and opposed the development of international law aimed at controlling big corporations. We urgently need a campaign to challenge this position.

In addition, there is a broad and global group of civil society organisations known as the Treaty Alliance, who are backing the UN Treaty and trying to ensure the scope of the treaty is meaningful and effective.
Controlling corporations through a UN treaty

The UN treaty has massive potential because it would withdraw the privileges that corporations have gained over recent decades and force them to comply with international human rights law, international labour law and international environmental standards. It would oblige governments to take the power of corporations seriously, and hold them to account for the power they wield. This would standardise how different governments relate to TNCs, which means that rather than allowing TNCs to play countries off against one another in a race to the bottom, it would force minimum standards.

This would represent a very radical change, which will have a meaningful effect on people’s lives. The scope of the treaty could include wide ranging rights including civil, political, economic, social and cultural rights. A treaty could effectively stop TNCs from all sorts of harmful activities, for example:

- Displacing communities or wrecking the environment through mining operations
- Limiting people’s access to water when they privatise services and raise prices beyond the means of the poorest
- Employing workers in an environment, which threatens their health or paying them too little to live a dignified life
- Collaborating with states to censor the internet, crack down on protests or introduce security measures, which prohibit free speech or privacy standards
- Using intellectual property laws to put life-saving medicines out of the reach of ordinary people

What would a UN treaty look like?

A treaty will only achieve its aim if it is really ambitious. That’s why Global Justice Now is working as part of an international coalition of campaigners, who are trying to push governments to conclude a far-reaching treaty. Any treaty agreed should include the following provisions:

a) The treaty must introduce enforceable laws that make corporations (and their financiers) and their subsidiaries, subcontractors and wider supply chain, accountable for violations of human rights.

b) The treaty must demand states regulate TNCs, to make sure that those operating or headquartered in their country abide by all human rights standards, including international human rights law, labour laws and environmental standards.

c) The treaty must reaffirm the superiority of human rights over trade deals and investment treaties. This means that trade and investment agreements would have to include a binding human rights superiority clause.

d) The treaty must establish the legal responsibility of TNCs, which must also include the personal legal responsibility of company managers, executives and boards of directors.

e) The treaty must establish international bodies to monitor the compliance of corporations to the treaty and undertake investigations of wrongdoing on the part of corporations. It also needs to establish an international tribunal, open to citizens and communities, who have had their human rights negatively affected by TNCs, so that their access to justice won’t be obstructed by the fact they live in a different country, to the one in which the corporation is headquartered.

f) The treaty must contain provisions requiring states to respect, protect and facilitate the work of human rights defenders and whistle-blowers.

g) The negotiations must be protected from corporate influence, TNCs cannot be allowed to write their own rules.

h) The treaty must allow individuals, who have a claim against a corporation, access to justice, not only in their home state, but in all states which have jurisdiction over the concerned company.

The People’s Tribunal movement

In the absence of any international legal mechanism to hold TNCs to account, a number of symbolic ‘people’s tribunals’ have taken place. This is where civil society groups come together to show the possible ways in which corporations could be held accountable.

One example is the Permanent People’s Tribunal (PPT) based in Rome which hears from people who have a case against a corporation, which has violated their rights, but are unable to seek justice through national legal systems. The PPT has heard some 40 cases since the 70s and uses existing international law, in order to consider the cases – all of which are heard by judicial professionals. Although the rulings are obviously non-binding and largely symbolic, they do serve as a useful platform in which witnesses can be
Take action

You can sign our petition urging the UK government to support the UN Treaty on Transnational Corporations in relation to Human Rights Abuses here:

globaljustice.org.uk/UNTreaty

Global Justice Now campaigns for a world where resources are controlled by the many, not the few. With thousands of members around the UK, we work in solidarity with global social movements to fight inequality and injustice.

Global Justice Now, 66 Offley Road, London SW9 0LS
t: 020 7820 4900  e: offleyroad@globaljustice.org.uk  w: globaljustice.org.uk