

The UK government must support the UN Binding Treaty on Business and Human Rights process to put primacy of rights over corporate profits

Briefing Paper of the UK Working Group on the Binding UN Treaty on TNCs

May 2019

Why do we need a binding instrument on business and human rights?

Businesses shape many aspects of our lives today. The private sector can create quality jobs, provide products and services and generate tax revenues. But some business models cause harm, directly or indirectly, to people and the planet. Complex corporate structures mean that in practice it can be very difficult for States and citizens to hold private sector actors to account.¹ National governments are struggling to regulate or do not have the political will to do so, especially when the harmful impacts stretch across borders, for instance exploitation and slavery in global supply chains, toxic emissions, environmental pollution impacting climate change, threats to privacy and misuse of personal data or tax avoidance, corruption, and preventing the renationalisation of failed privatised public services.

Transnational companies (TNCs) in particular wield significant economic and political power. Current global trade, investment and financial regimes are based on powerful legal rules and norms that protect corporate interests. There are now 3,400 trade and investment binding treaties and agreements that protect transnational investments², including through secret courts³ which allow TNCs to sue governments without regard to their impact on people and planet. All these practices have led to violations of human rights and are continuing to prevent countries, especially in the global south, to realise their development aspirations and meet human rights obligation.

Background: The UN Treaty Process to date

After decades of discussions within the United Nations, recognition is growing that we need more effective measures to regulate the influence that global companies have in our world. The Human Rights Council adopted the ***Resolution 26/9 on the elaboration of an International legally binding instrument on transnational corporations (TNCs) and other business enterprises with respect to human rights***⁴ in June 2014. This established an open-ended intergovernmental working group (OEIGWG), with the mandate to elaborate such instrument.

This was a historic achievement. Such a legally binding instrument is essential to end corporate impunity and make transnational corporation accountable. Social movements, trade unions, women's rights organisations and NGOs are hoping it will address the systemic power of transnational corporations, which has reached unprecedented levels and impacts daily on the lives of affected communities. The future Treaty can meaningfully and effectively challenge and address the asymmetries of power between States and TNCs on the one hand, and between affected communities, individuals and TNCs in terms of access to justice on the other hand. Crafting an effective treaty requires governments across the board, including the UK government, to participate and be supportive of such a treaty.

¹ Marx, Bright, Wouters, Pineau, Lein, Schiebe, Wagner and Wauters, 'Access to legal remedies for victims of corporate human rights abuses in third countries', Policy Department for External Relations, European Parliament, Feb 2019

² UNCTAD, 2017

³ These secret private arbitration centres on which trade lawyers sit, implement the Investor-State-Disputes-Settlement agreements for each trade agreement

⁴ <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G14/082/52/PDF/G1408252.pdf?OpenElement>

After two annual Sessions (2015 and 2016), wherein parties discussed the elements that must be included in the treaty, the Chairperson-Rapporteur (Ecuador) of the OEIGWG presented the ***Elements for the Draft Legally Binding Instrument***⁵ for substantive negotiations at the start of the Third Session in October 2017. On 20th July 2018, the Presidency of the OEIGWG published the ***Zero Draft of the UN Binding Treaty***⁶, which was discussed at the occasion of the Fourth Session of OEIGWG in October 2018. Draft 1 is due in June 2019 and will be discussed in the Fifth Session in October 2019.

Our Appeal to Members of the UK Parliament

Both the Office of the High Commission on Human Rights as well as the European Union Parliament, which in the last 4 years has passed 10 resolutions in support of the binding treaty, have given strong backing to the treaty process. Over 400 civil society organisations, including environmental and development NGOs, faith groups, women’s right organisations, trade unions and people’s movements, as well as parliamentarians participated in the 4th Intergovernmental Working Group in Geneva discussing the zero draft in 2018. Across Europe, more than half a million citizens have called for the Treaty and an end to corporate courts.

The future Treaty needs to guarantee specific protection of individual persons’ and peoples’ human rights, especially in the Global South. To this end we, supporters of the treaty process, are appealing to all governments to ensure that the negotiations will continue and successfully produce a final document that will fulfil the above-mentioned aspirations.

Towards this end we urge UK MPs to:

1. Encourage the UK government to engage positively, attend the Fifth Session of the OEIGWG in October 2019, and ensure that the current process will continue until a final binding instrument is passed;
2. Educate the public about the power of TNCs in globalisation and the need to develop appropriate checks and balances by organising a national consultation on the UN Binding Treaty process with the participation of civil society organisations in the UK (trade unions, environmental and climate justice groups, women’s rights organisations, affected communities and other groups public interest groups);
3. Hold a Westminster Hall debate on the merits of a universally binding instrument on business and human rights;
4. Become members of the Global Interparliamentary Network that supports the UN binding treaty process by signing the declaration on www.bindingtreaty.org;
5. Create legislation at a UK and EU level for a corporate duty of due diligence requiring businesses to address the risks that their operations and supply chains pose to people and the environment globally.



⁵ https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/LegallyBindingInstrumentTNCs_OBEs.pdf

⁶ <https://www.ohchr.org/Documents/HRBodies/HRCouncil/WGTransCorp/Session3/DraftLBI.pdf>