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Ending corporate abuses: why Europe must support a UN Treaty

Towards a UN binding treaty on business and human rights

1. The problem - Rights for business, not for people

In March 2015, Bernardo Vásquez Sánchez was ambushed and murdered in Ocotlán, Mexico. During the attack, his brother Andrés and fellow activist Rosalinda Dionisio Sánchez were injured by gunshot wounds. Since 2008, Sánchez and his colleagues have been speaking out to defend their lands from a Mexican mining project run by the company 'Minera Cuzcatlán'. The catch? Minera Cuzcatlán is the local subsidiary to the Canadian mining multinational 'Fortuna Silver INC', currently worth \$893 million Canadian dollars on the Toronto Stock Exchange.

Similarly, over the past decade, the Niger Delta has experienced a series of destructive oil spills, mainly due to the extractive activities of companies such as Anglo-Dutch Shell. The repercussions on locals' livelihoods have been devastating. Creeks and shores in once thriving fishing communities remain decimated and the groundwater, air and soil are contaminated with toxic chemicals. Nearly ten years later, the companies responsible still fail to acknowledge their role and responsibility in the matter. But perhaps worst of all, in January 2017 a British court blocked a lawsuit brought against Anglo-Dutch Shell by the affected Nigerian communities, saying it must be filed in Nigeria.

None of these victims ever achieved redress for the injustices they suffered. Why justice has failed them and other communities whose lives are impacted by the activities of transnational companies, has become a topic of tense debate at an international level. For 4 years, through the steering of countries like Ecuador and South Africa, negotiations having been taking place at the UN to form a new treaty to give binding protection for communities impacted by such business activities. As Greens in Europe, home to some of the biggest multinational companies in the world, we've been following proceedings closely:

"In most countries of the world, big corporations are able to break the laws and get away with it: laws against child labour, pollution, work laws, land-grabbing, workers' rights... Big corporations, especially transnational corporations - that are registered in many different countries - are able to break the law and get away with it, because the justice systems of many countries simply can't cope with their transnational structure", says Greens/EFA MEP Max Andersson.

2. Solution? A UN Treaty on Business and Human Rights

Such abuses occur because of an undeniable asymmetry between transnational corporations (TNCs), States

and peoples. TNCs have been covering themselves with a solid armour of binding provisions in free trade and investment agreements that come with special sanctioning mechanisms should their investments be impacted by any changes in law. Investor-State Dispute Settlement (ISDS) mechanisms in such deals are exclusively accessible to foreign investors, and have been used to challenge any efforts to take action against their wrongdoing. At the same time, governments often become complicit in developing these deals as a means to attract investments and jobs.

Long supply chains also make it extremely difficult to establish responsibility and hold those in charge accountable. While TNCs enjoy favourable jurisdiction to fend off responsibility and shift it instead to their subsidiaries and suppliers, victims who look for redress in domestic or foreign courts face huge obstacles. States hosting powerful TNCs often do not take action over fear of losing foreign investment. At the international level there is no binding rules for corporations that would guarantee they respect human rights. This model of corporate impunity needs to end.

Enter stage left: the UN. Since 2014 an Open Ended Inter-governmental Working Group (OEIGWG) at the UN Human Rights Council has been looking into drafting a binding treaty aimed at allowing victims of human rights abuses to finally have access to justice, especially when these abuses are committed by multinational corporations. However, political will to see the treaty implemented has been varied, with some actors showing more ambition than others, and with strong differences in opinions among stakeholders.

Controversies have mainly centred on whether the envisaged treaty should be limited to TNCs and other business enterprises involved in transnational operations, or it should also cover domestic companies whose actions can be as detrimental. It is perhaps not surprising that the developed world, home to some of the most powerful global businesses, have been less receptive to the treaty as a whole. One of these actors is the EU.

3. What's the EU's role - A long and winding road

Despite the European Commission and Member States proudly claiming to actively promote and defend human rights at home and abroad, the EU position on the treaty does not seem to echo this commitment. The EU has been reluctant to support the treaty negotiation process for years, initially refusing to participate in the debates regarding its' formation. It has claimed the main reason was Ecuador's proposal to limit the scope of the treaty to TNCs. It argued that this would put the numerous EU companies operating in third countries at a competitive disadvantage in relation to their local competitors. In the view of MEP Judith Sargentini, the truth is that the 28 EU governments have a very large number of TNCs in their midst, which could explain the evident lack of political will to tackle the issue.

"We Greens want to make sure that if you live on the Niger delta, for example, and your water is being poisoned by Royal Dutch Shell, you can get reparations in Europe. Of course, you will need to get compensation in Nigeria as well, but EU companies must also be held accountable" says Sargentini.

Yet, the European External Action Service (EEAS) has still not secured a mandate from EU governments to negotiate at the UN. This is despite the fact that the European Parliament clearly voted in support of the treaty in October this year and in previous resolutions. Meanwhile, the talks at the UN have moved into drafting language for a future text, without the EU's input.

In an attempt to prove that the EU can still boast about holding human rights as a priority, the EEAS cites the example of the new binding EU legislation that prevents conflict minerals entering the EU. Sargentini is quick to point out that it was the ambitious proposals coming from the European Parliament that eventually won out, against opposition by both the Commission and Member States. The same seems to be happening now.

The EU Council and the EEAS' failure to engage in constructive discussions at the UN, is in stark contrast to the speed at which they work to secure privileged treatment for corporations around the globe through EU trade policy. Time and time again they have showed no hesitation to form binding rules that protect the interests of transnational companies at the direct expense of others, such as on-going negotiations to form a Multinational Investment Court (MIC).

Unlike the image it likes to paint of itself, the defence of human rights and the persecution of human rights abuses does not seem to be among its top priorities. But it is not clear how long the EU can sustain this strategy with pressure mounting for them to change their position.

4. What do the Greens believe - Globalisation can work for all, if human rights are upheld and impunity condemned

Moreover, Finnish Greens/EFA MEP Heidi Hautala believes it is important, as the European Parliament, to make the EU Commission understand that “that if it does its own homework, it can be stronger internationally with these kinds of negotiations”. The EU is still lagging behind in implementing the UN guiding principles on business and human rights, despite the European Parliament calling many times on the EU to present a progressive action plan. “The EU must have binding legislation on due diligence for big companies, it must create avenues for corporate victims”, says Hautala, who is hopeful that dialogue between the European Parliament and other EU institutions can bring the impetus needed for these negotiations.

“As MEPs”, says Molly Scott Cato, “we have the chance to meet victims of transnational abuse all the time. I myself am in the Latin America delegation, where we have people whose lands have been poisoned because of mining operations, or cases where people were driven off their lands and shot: so we’re talking about death, poisoning and the loss of livelihood. We are here to defend those people.”

“We need a binding treaty that supports people across the world and regulates the world’s economy so that multinationals can’t carry on abusing human rights with impunity”, says Scott Cato. “However”, she adds, “we don’t have the political support we need in individual countries, so that’s what we need to build up: people lobbying their governments saying ‘enough with corporate impunity, we need a globalisation that works for everyone’”. Only this way can we put pressure on the EU Commission to get a mandate to negotiate a UN treaty that would finally see real justice for violations of human rights by TNCs.

WATCH:

- [Green MEPs in Geneva for the Treaty Negotiations - Facebook live \(Geneva, Switzerland, 15 October 2018\)](#);
- [Opening of session - 1st Meeting, 4th Session of United Nations Open-ended Intergovernmental Working Group on Transnational Corporations \(15 October 2018\) - with speech by UN Deputy High Commissioner for Human Rights, Kate Gilmore](#)

READ:

- [Opening Remarks by Ms. Kate Gilmore, United Nations Deputy High Commissioner for Human Rights \(15 November 2018, Palais des Nations, Geneva\);](#)

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Responsible MEPs



Max Andersson

Member



Heidi Hautala

EP Vice-President, Member



Judith Sargentini

Member



Molly Scott Cato

Vice-President

Contact person



Simon McKeagney

Team Leader - Communications Strategy



Pam Bartlett Quintanilla

Team leader - Outreach and campaigns

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