



RULES FOR BUSINESS RIGHTS FOR PEOPLE

ASIA DEMANDS BINDING RULES ON BUSINESS

October 2018



'stop robbing peoples' land: protest in Sri Lanka
 @Janaka Withanage/CEJ

BUILDING A STRONG AND BINDING TREATY

Traditionally, international human rights law focuses on the role and responsibilities of states. Human rights abuses arising from the cross-border activities of corporations is the largest gap in international law. In our globalised world, companies operate between different national jurisdictions and often escape accountability.

Transnational corporations (TNCs) and other companies are often implicated in human rights abuses across Asia. A destructive coal mine in Bangladesh threatens to destroy one of the world's largest mangrove ecosystems. Hundreds of people risk being displaced from a mega-sugar plantation in Sri Lanka. Yet many of these crimes go on unpunished, due to corruption in local legal systems and the fact that many corporations are richer and more powerful than the states that seek to regulate them.

In 2014, a people's victory was celebrated at the United Nations Human Rights Council: Resolution 26/9 was adopted, establishing a new Intergovernmental Working Group (IGWG)¹, which has a mandate to elaborate an international legally binding instrument to regulate TNCs and other business enterprises with respect to human rights.

During the fourth session of the IGWG this year, in Geneva in October, negotiations will address the 'Zero Draft'². They must also consider the 2017 'Elements Paper'³ and the results of the three previous sessions of the IGWG⁴.

Friends of the Earth Asia Pacific welcomes the release of the Zero Draft by the IGWG Chairmanship as an important step forward in the negotiations, which now require stronger engagement by all States, until the IGWG's mandate is accomplished.

This booklet highlights examples of corporate crimes across Asia, and the importance of this new legally binding international instrument, which is needed to help fill a glaring gap in international law, that allows TNCs and other companies and their investors and financiers to act with impunity. It will also provide urgently needed justice for millions of affected peoples (FoEI style). States must commit themselves to this process, and act proactively to establish a Binding Treaty that protects the interests of the world's peoples.



VOTING CHART

Summary of Asian countries' positions with respect to the UN Binding Treaty on Transnational Corporations and other business enterprises with respect to human rights

Country	Voted for UN Binding treaty in 2014 ^{5,6}	Presence at IGWG binding treaty sessions	UNHRC mandate until ⁷	Engagement with civil society on UN Binding Treaty
AUSTRALIA	Not a member at the time	2016	2020	NO
BANGLADESH	Not a member at the time	2015 / 2016 / 2017	2017	NO
INDONESIA	YES	2015 / 2016 / 2017	2017	Proactive: meetings with foreign ministry, human rights commission and ambassador.
MALAYSIA	Not a member at the time	2015 / 2016	-	Limited. Meeting planned with Minister of Foreign Affairs.
PHILIPPINES	YES	2015 / 2017	2018	Limited. CSO consultation initiated by the Commission on Human Rights (CHR).
RUSSIA	YES	2015 / 2016 / 2017	-	NO
SOUTH KOREA	NO	2015 / 2016 / 2017	2018	LIMITED
SRI LANKA	Not a member at the time	2015 / 2016 / 2017	-	NO



BANGLADESH: DIRTY COAL THREATENS WORLD HERITAGE MANGROVES

BELA/Friends of the Earth Bangladesh is part of the people's movement to save the Sundarbans, and demands that international finance be held accountable for environment and human rights violations, through the UN Binding Treaty.

The World Heritage Sundarbans mangrove forest—which supports the livelihoods of 6 million people in Bangladesh and India⁸, and is home to endangered Royal Bengal Tigers, Ganges and Irawadi dolphins, estuarine crocodiles and the critically endangered endemic terrapin⁹—is threatened by the Rampal coal power plant.

The 1,320 MW 'Maitree Super Thermal Power Project' in Rampal, Bangladesh, is a joint venture of India's National Thermal Power Corporation and the Bangladesh Power Development Board, and is mostly financed by the Exim Bank of India¹⁰.

The 139,700 ha Sundarbans is one of the largest mangrove forests in the world, with a unique and irreplaceable habitat and exceptional biodiversity both on land and in the water¹¹. Millions of people depend on it for timber, pulpwood, fish, thatching materials and honey. Mangrove forests are also a vital protection against climate change¹², and the Sundarbans acts as a natural barrier to the floods, cyclones, tidal bores and salinity ingressions expected because of global warming.

The World Heritage Centre is concerned about the impact that the Rampal power plant will have on the Sundarbans, in terms of air and water pollution, and increased shipping and dredging.

2016: The World Heritage Centre recommends Rampal coal power plant be relocated, or potentially added to the List of World Heritage in Danger¹³.

2018: Construction of the Rampal power plant is underway—and it is still in the Sundarbans.

People protesting against Rampal have faced severe repression, including arbitrary arrest and violent attacks.



MALAYSIA: GLOBAL SUPPLY CHAINS DRIVING LAND RIGHTS VIOLATIONS

The Orang Asli indigenous community, of the Temiar tribe in Ulu Kelantan, Malaysia, is staunchly defending its customary lands from logging, plantation and mining. Community members set up road blockades in the Gua Musang District on numerous occasions in 2018, and succeeded in stopping logging operations several times. But the companies are becoming more aggressive, bringing weapons, intimidating protestors and destroying the blockades¹⁴. Each time the blockades are brought down, the community erects them again.

The Orang Asli community is not alone. Communities across Malaysia are facing human rights abuses and loss of livelihoods, as their customary lands and foraging areas are destroyed for the profits of a few, through the actions of national companies and global supply chains relentlessly chasing profits. Malaysia currently supplies 44% of global palm oil exports¹⁵, and in 2016 timber exports¹⁶ were worth more than US\$ 5.3 billion¹⁷. Violations include encroachments onto traditional lands, evictions and relocation to other less suitable areas¹⁸.

"Our demands are simple: recognise the land...as ancestry status; ban all forms of logging, land clearing and mining in such lands, and help us rehabilitate the land. The jungle is our home. It is our world. Destroying the jungle will destroy our way of life."

Mustafa Along, Kelantan Orang Asli Villages Network chairman

SAM/Friends of the Earth Malaysia supports communities defending their ancestral lands, and insists that the UN Binding Treaty ensures companies are accountable for human and environmental rights violations anywhere in their supply chain.

The Global Campaign to Dismantle Corporate Power is building UN Treaty proposals from the bottom up
@Victor Barro/FoEI



Khalisah Khalid from WALHI/FoE Indonesia at IGWG 3rd session 2017
@Victor Barro/FoEI



TIME FOR A TREATY

After decades of struggle from communities across the world, the idea of corporations being held legally responsible for their crimes no matter where they may occur can finally become a reality.

On the Road to Chance to end corporate impunity

<p>1972</p> <p>Salvador Allende calls for an international instrument to control TNCs</p>	<p>1974</p> <p>UN Centre on Transnational Corporations (CTC) established</p>	<p>1974/1988</p> <p>Substantive UN negotiations on the Code of Conduct for TNCs; essentially ended in 1984</p>	<p>2003</p> <p>Sub-commission of UNHRC presents Norms for Business on Human Rights, rejected in 2003</p>	<p>2014</p> <p>UNHRC adopted Treaty Resolution 26/9 that establishes the IGWG on TNCs on respect to Human Rights</p>	<p>2015/2017</p> <p>First 3 sessions of IGWG, negotiations start on 2017 based on Elements Paper</p>	<p>2018</p> <p>UN Treaty Zero Draft on the table for IGWG 4th session</p>	<p>JUSTICE FOR ALL</p>
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Binding treaty

The new Human Rights Treaty has the support of more than 800 organisations, the UN Human Rights Council, the Vatican and many diverse governments including South Africa, Indonesia, India, China and Ecuador. A record breaking 101 states participated in the launch of negotiations, at the 3rd session of the Intergovernmental Working Group in October 2017, together with more than 200 civil society representatives. States strongly supporting the treaty now also include Algeria, Azerbaijan, Bolivia, Namibia, Mozambique and Palestine.

Decades of neoliberalism has reduced the responsibility of TNCs to UN voluntary pacts

<p>1973</p> <p>Coup D'Etat in Chile implemented first neoliberal experiment in Latin America</p>	<p>1992</p> <p>CTC downgraded into a unit of UNCTAD; business gained status of CSOs at Rio 92 WSSD</p>	<p>1994</p> <p>Radical changes to CTC mandate; no longer undertakes valuable studies on TNCs</p>	<p>2000</p> <p>Global Compact and Millennium Development Goals promoted by UN with business support</p>	<p>2003</p> <p>Equator voluntary Principles for financial institutions</p>	<p>2005</p> <p>UN Sec. General nominates John Ruggie on 'human rights and TNCs and other business' issue</p>	<p>2011</p> <p>UN Guiding Principles on Business and Human Rights adopted by UNHRC</p>	<p>2017</p> <p>UN Sec. General proposes UN reform that accepts Global Compact's Principles standard for private sector partnerships and its leadership to improve governance at the global level</p>
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Techa River: area contaminated by Mayak plant in Chelyabinsk region, Russia
@RSEU/FoE Russia

Р.ТЕЧА

RUSSIA: ROSATOM, TRANSNATIONAL NUCLEAR NIGHTMARE

Rosatom is a Russian state-owned transnational corporation which builds and operates nuclear power plants in Russia and globally¹⁹. The state-run nuclear industry in Russia has a long history of nuclear crisis, including the Kyshtym disaster in 1957 and Chernobyl in 1986²⁰. Yet Rosatom aims to build dozens of nuclear reactors in Russia, export its deadly nuclear technologies to other countries, and reimport their hazardous nuclear waste (which remains a threat for tens of thousands of years)²¹.

The Rooppur Nuclear Power Plant under construction in Bangladesh is an example²². Serious concerns have been raised about lack of public consultation and safety in relation to Bangladesh's first nuclear power plant²³, and Bangladesh is particularly prone to natural disasters such as floods, cyclones, earthquakes and drought which can trigger nuclear accidents²⁴. The return of nuclear waste to Russia²⁵ also poses a significant threat to people living along transport routes and in Russia.

“Local people continue to endure the never-ending tragedy of Kyshtym. Rosatom’s nuclear deals with foreign countries like Bangladesh will bring even more dangerous waste back to the homes of local people and increase the nuclear threat.”
Vitaly Servetnik, Russian Social-Ecological Union (RSEU)/ Friends of the Earth Russia

Russia’s Foreign Agents law is being used to target and close down NGOs, and criticising the activities of Rosatom is dangerous²⁶. Nadezhda Kutepova, one of the most critical voices challenging Rosatom, has had to flee the country²⁷.

Thus RSEU/Friends of the Earth Russia is calling for specific provisions to be included in the UN Binding Treaty, ensuring legal protection for those who defend peoples’ rights and nature from corporate interests.

People in Dehigama, Rideemaliyadda resisting landgrabbing
@Janaka Withanage/CEJ

SRI LANKA: A BITTER SUGAR LAND GRAB

A large-scale US\$152 million public-private sugarcane project is being proposed in Dehigama-Rideemaliyadda, Sri Lanka²⁸. The Sri Lankan government, via the Mahaweli Authority, has already taken steps to lease over 18,000 ha to the company for 99 years, and has made several attempts to grab these lands using the police. But local communities are resisting.

The local communities are not prepared to lose their rights to farmlands, forests and water. The project will negatively impact the water table and biodiversity, igniting human-elephant conflict as the elephants’ remaining forest habitat is cleared²⁹. The proposal does not comply with Sri Lanka’s basic laws, and is a threat to human rights, and the environmental, economic and socio-cultural rights of local communities.

Furthermore, a Singaporean holding company, Gazelle Ventures, would own 88% of the implementing company, Bibile Sugar Industries. Just 1% would go the farming community—should it agree to the project³⁰.

Mr Wasantha cultivates various vegetables on his dryland farm once a season. Under the sugar project he will lose his right to grow multiple crops, and be forced into a two-year sugarcane cycle, or risk losing his land. Habitat-less elephants seeking sugar cane could become a dangerous problem³¹.

CEJ/Friends of the Earth Sri Lanka is working with local communities to educate about human rights, and provide legal support, including by bringing complaints to the national Human Rights Commission in Sri Lanka. But it is often impossible to win local community cases because of corruption. It is therefore vital that the UN Binding Treaty includes an international grievance mechanism ensuring justice for affected people.

Dumping location of nuclear waste near AL Dahreya town, south of West Bank
© PENGON/FoE Palestine

PALESTINE: SICK OF ISRAEL'S NUCLEAR FALLOUT

Research by PENGON/Friends of the Earth Palestine, summarising several studies, shows that radiation leaking from Israel's secretive nuclear reactor near Dimona, the Shimon Peres Negev Nuclear Research Center operated by the Israel Atomic Energy Commission,^{32,33} and the suspected dumping of Israel's nuclear waste in Palestine³⁴, are having a debilitating impact on the health and environment of people living in the Hebron Governorate in the southern part of the West Bank³⁵.

An increased concentration of radioactive elements has been found in soil, drinking water, plant and air samples. There are high levels of cancer-causing Caesium-137, a radioactive isotope that is not found naturally, but caused by nuclear activity. Any amount of Caesium-137 in the environment is considered dangerous³⁶.

*"The southern West Bank has the highest levels of Caesium-137 in the world if we exclude areas that have witnessed nuclear disasters."
Dr Khalil Thabayneh, nuclear physics researcher, Hebron University³⁷*

Research shows that radiation in Hebron is inflicting serious harm on children, foetuses and mothers. Long exposure can result in fatal diseases such as cancer, and there are reports of children born without hands, and other severe disabilities. Higher than normal levels of infertility in both sexes have also been found.

PENGON's legal and scientific research will help to challenge Israel. The UN's Binding Treaty must create an enforceable legal mechanism holding companies accountable for their crimes in an international court, where affected people, including in occupied territories, can access justice.

Global call for a Binding Treaty in front of the United Nations in Geneva, 2017
©Victor Barro/FoEI



FRIENDS OF THE EARTH ASIA PACIFIC IS DEMANDING THAT THE UN:

- ➔ creates an enforceable legal mechanism holding transnational corporations, including state-owned enterprises, to account for their crimes in an international court
- ➔ ensures companies, including state-owned enterprises, are accountable for human and environmental rights violations anywhere in their global supply chain
- ➔ holds international finance to account for environment and human rights violations
- ➔ includes an international grievance mechanism ensuring justice for affected people, and
- ➔ includes specific provisions ensuring legal protection for those who defend peoples' rights and nature from corporate interests.

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Front Cover Photo: 'Throw away the Rampal Agreement' say people affected by coal project in Bangladesh @DhakaTribune

Friends of the Earth International is the world's largest grassroots environmental network with 75 member groups and over two million members and supporters around the world.

Our vision is of a peaceful and sustainable world based on societies living in harmony with nature. We envision a society of interdependent people living in dignity, wholeness and fulfilment in which equity and human and peoples' rights are realised. This will be a society built upon peoples' sovereign and participation.

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