ASIA DEMANDS BINDING RULES ON BUSINESS
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), 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’. They must also consider the 2017 ‘Elements Paper’ and the results of the three previous sessions of the IGWG.

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.

BUILDING A STRONG AND BINDING TREATY

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

<table>
<thead>
<tr>
<th>Country</th>
<th>Voted for UN Binding treaty in 2014*4</th>
<th>Presence at IGWG binding treaty sessions</th>
<th>UNHRC mandate until’</th>
<th>Engagement with civil society on UN Binding Treaty</th>
</tr>
</thead>
<tbody>
<tr>
<td>AUSTRALIA</td>
<td>Not a member at the time</td>
<td>2016</td>
<td>2020</td>
<td>NO</td>
</tr>
<tr>
<td>BANGLADESH</td>
<td>Not a member at the time</td>
<td>2015 / 2016 / 2017</td>
<td>2017</td>
<td>NO</td>
</tr>
<tr>
<td>MALAYSIA</td>
<td>Not a member at the time</td>
<td>2015 / 2016</td>
<td>-</td>
<td>Limited. Meeting planned with Minister of Foreign Affairs.</td>
</tr>
<tr>
<td>PHILIPPINES</td>
<td>YES</td>
<td>2015 / 2017</td>
<td>2018</td>
<td>Limited. CSO consultation initiated by the Commission on Human Rights (CHR).</td>
</tr>
<tr>
<td>RUSSIA</td>
<td>YES</td>
<td>2015 / 2016 / 2017</td>
<td>-</td>
<td>NO</td>
</tr>
<tr>
<td>SOUTH KOREA</td>
<td>NO</td>
<td>2015 / 2016 / 2017</td>
<td>2018</td>
<td>LIMITED</td>
</tr>
<tr>
<td>SRI LANKA</td>
<td>Not a member at the time</td>
<td>2015 / 2016 / 2017</td>
<td>-</td>
<td>NO</td>
</tr>
</tbody>
</table>
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 blockades. 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 exports, and in 2016 timber exports were worth more than US$ 5.3 billion.

“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

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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 India.

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 water. Millions of people depend on it for timber, pulpwood, fish, thatching materials and honey. Mangrove forests are also a vital protection against climate change, and the Sundarbans acts as a natural barrier to the floods, cyclones, tidal bores and salinity ingestion 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 Danger.

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.

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 India—and is home to endangered Royal Bengal Tigers, Ganges and Irawadi dolphins, estuarine crocodiles and the critically endangered endemic terrapin—is threatened by the Rampal coal power plant.

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MALAYSIA: GLOBAL SUPPLY CHAINS DRIVING LAND RIGHTS VIOLATIONS

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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.
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.

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.

On the Road to Chance to end corporate impunity

1972
Salvador Allende calls for an international instrument to control TNCs

1974
UN Centre on Transnational Corporations (CTC) established

1974/1988
Substantive UN negotiations on the Code of Conduct for TNCs; essentially ended in 1984

2003
Sub-commission of UNHRC presents Norms for Business on Human Rights, rejected in 2003

2014
UNHRC adopted Treaty Resolution 26/9 that establishes the IGWG on TNCs on respect to Human Rights

2015/2017
First 3 sessions of IGWG, negotiations start on 2017 based on Elements Paper

2018
UN Treaty Zero Draft on the table for IGWG 4th session

1973
Coup D’Etat in Chile implemented first neoliberal experiment in Latin America

1992
CTC downgraded into a unit of UNCTAD; business gained status of NGOs at Rio 92 WSSD

1994
Radical changes to CTC mandate; no longer undertakes valuable studies on TNCs

2000
Global Compact and Millennium Development Goals promoted by UN with business support

2003
Equator voluntary Principles for financial institutions

2005
UN Sec. General nominates John Ruggie on “human rights and TNCs and other business” issue

2011
UN Guiding Principles on Business and Human Rights adopted by UNHRC

2017
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

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

The Global Campaign to Dismantle Corporate Power is building UN Treaty proposals from the bottom up.

@Victor Barro/FoEI
A large-scale US$152 million public-private sugarcane project is being proposed in Dehigama-Rideemaliyadda, Sri Lanka. 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.

SRI LANKA: A BITTER SUGAR LAND GRAB

Rosatom is a Russian state-owned transnational corporation which builds and operates nuclear power plants in Russia and globally. The state-run nuclear industry in Russia has a long history of nuclear crisis, including the Kyshtym disaster in 1957 and Chernobyl in 1986. 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).

The Rooppur Nuclear Power Plant under construction in Bangladesh is an example. Serious concerns have been raised about lack of public consultation and safety in relation to Bangladesh’s first nuclear power plant, and Bangladesh is particularly prone to natural disasters such as floods, cyclones, earthquakes and drought which can trigger nuclear accidents. The return of nuclear waste to Russia 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

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.

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.
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, and the suspected dumping of Israel’s nuclear waste in Palestine, are having a debilitating impact on the health and environment of people living in the Hebron Governorate in the southern part of the West Bank.

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 dangerous.

“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 University

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.

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.

references
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' sovereignty and participation.