
Time has come to provide justice for the victims of systematic violations perpetrated by Transnational Corporations

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What is the Architecture of Impunity and how TNCs benefit from it?

One of the main systemic reasons for widespread corporate impunity is what many social movements have conceptualized as the Architecture of Impunity: the asymmetric normative framework that, on one hand, grants TNCs “super rights” through LexMercatoria (the legal framework that protects the interests of investors, such as Free Trade Agreements, Bilateral and Plurilateral Investment Treaties, etc.), while, on the other hand, undermines the strength and implementation of all juridical norms designed to protect human rights.

Therefore, while LexMercatoria juridical instruments are binding and have enforcement mechanisms – such as the WTO’s Dispute Settlement Mechanism and the World Bank’s ICSID (International Centre for Settlement of Investment Disputes) – the international Human Rights system does not have a binding Treaty on TNC violations and crimes, and even less an enforcement mechanism.

Instead, the UN Business and Human Rights Unit promotes weak voluntary guidelines through the Corporate Social Responsibility (CSR) framework as false responses to corporate impunity, with the complicity of governments and even some CSOs, as well as an obvious sponsorship by major TNCs. CSR provides non-binding norms, with no enforcement mechanisms, allowing for corporations to continue perpetrating systematic HR (?) violations and crimes, without facing adequate responses through processes of accusation, investigation, trial, corresponding indictment and punishment, as well as compensation and remediation for victims. Today this is expressed by the Guiding Principles on Business and Human Rights proposed by UN Special Representative John Ruggie, in 2011, and adopted by the UNHR Council.

Exposing voluntary guidelines as false solutions

The Global Campaign to Dismantle Corporate Power and Stop Impunity (see www.stopcorporateimpunity.org) organized with allies a demonstration (see <http://www.stopcorporateimpunity.org/?p=4704>) outside of the UN Business and HR Forum (2-4 December 2013) against the corporate capture of the UN and, simultaneously, demanded binding regulation on TNCs. This Forum is the annual meeting where the CSR framework is “celebrated”, and it is supposed to assess the advances in the implementation of the Guiding Principles. The space expressed without disguise the UN capture by corporate power, not only through widespread presence of TNCs but also through the deceiving underlying rationale that there is no difference between private and public interest, thus the idea that having a space for dialogue would lead to some sort of fruitful collaboration among equally oriented “stakeholders”. This is in open denial of the asymmetry of power between recurrent perpetrators of violations (in this case, several TNCs, as documented) and victims (local communities and people more broadly), and in many cases states that should supposedly protect populations end up being complicit to violations.

Historic attempts for binding regulation

Throughout several decades all attempts to constitute binding frameworks within the HR system through an International Treaty and enforcement mechanisms were dismantled by corporate lobby and government complicity.

A binding Treaty does not mean an ideal world without violations. However, within the framework of international law, it would be the most advanced mechanism to counter corporate impunity and to get remediation and compensation for victims. At the same time, consequent juridical cases and indictments would reinforce the denunciation of the systematic character of corporate violations and crimes and this would be extremely important in one of the major tasks we face today: dismantling the hegemonic cultural legitimacy of corporations within the capitalist system, a legitimacy that has led public policy at all levels to be carried within a misleading ideology with tragic consequences –as if what is good for private interest of corporations would be exactly the same as the public and common good of societies.

The ongoing initiative for a binding Treaty on TNCs within the United Nations

A recent initiative of 85 countries (see <http://www.stopcorporateimpunity.org/?p=3830>) has requested the UN Human Rights Council to consider adopting a resolution for a binding Treaty.

Opposition to the initiative is widespread. Most of the 85 countries are investment recipients and some might have already suffered harassment from Northern governments claiming that being linked to such an initiative would lead to loss of investment inflows, as the usual narrative goes.

However, what is important to stress is that over 40 years of attempts for binding regulation lacked pressure from a social movements base that could bring victims’ testimonies to the forefront and have them holding the demand for a binding Treaty as a powerful instrument for their struggle for justice. It is this important gap – social movements and corporate crimes victims’ counterpower – that the Global Campaign and its Peoples Treaty tries to close.

The Peoples Treaty process: a social movements’ alternative

One of the key strategies of the Global Campaign to dismantle corporate power and stop impunity is the Peoples Treaty (PT) process. The idea of a Peoples Treaty (see <http://www.stopcorporateimpunity.org/?p=4638>) has come from an understanding that the

Architecture of Impunity should be countered with a radical and alternative use of law and justice from below, a proposal that originates from the people, especially from those most affected by corporate crimes. This means the PT will lay-out the political vision of social movements' and affected communities' norms and principles for justice and for a global system without corporate capture and power.

The added value of the Campaign and the PT process is exactly its potential for popular education and affected communities 'ownership' of the demands for a binding Treaty. And as such, it can and will be used as a political instrument for showing popular support and peoples' voices in pushing governments to establish a binding mechanism to punish corporate crimes and provide remediation and compensation for victims.