

Binding Treaty on Transnational Corporations and Human Rights: 'We have prospects of success because for the first time the windows of the United Nations have opened and the people have come in'

The [2017 State of Civil Society Report](#) described civil society's leading role in the campaign to establish a binding global treaty to hold transnational businesses to human rights standards. CIVICUS speaks on this issue to Mónica Vargas Collazos, a researcher with the Corporate Power project, developed within the framework of the Economic Justice Programme at the Transnational Institute (TNI), and since 2015 a facilitator for the Global Campaign to Reclaim Peoples' Sovereignty, Dismantle Corporate Power and End Impunity. Founded in 1974 as a global network of researchers-activists, TNI is an international research and advocacy institute that works towards a more just, democratic and sustainable world. For more than 40 years, TNI has operated as a forum for interconnection for social movements, committed academics and policy-makers.



1. Why is it important to have a binding treaty on transnational corporations and human rights?

First of all, it's important because of the asymmetry that exists at the level of international law between the 'rights' of investors and human rights. Although they are accepted in various ways by the constitutions of most countries, the rules that make up the international human rights system are generally not met when the interests of large

corporations are at stake. Regarding transnational corporations, the existing norms have so far been those of voluntary compliance. From 2011 onwards, these have taken the form of the United Nations' (UN) [Guiding Principles on Business and Human Rights](#). However, it is clear that this framework is insufficient, since transnational companies have continued to operate with great impunity.

The increasing power of transnational corporations, as well as the associated human rights violations this brings, is well documented. Our network, the Global Campaign to Reclaim Peoples' Sovereignty, Dismantle Corporate Power and End Impunity ([Global Campaign](#)) was preceded by Enlazando Alternativas (Linking Alternatives), the [Bi-regional Network](#) for Europe, Latin America and the Caribbean, which worked mainly to document cases of violations. Jointly with the [Permanent Peoples' Tribunal \(PPT\)](#), a court of opinion, and the PPT's host organisation, the [Lelio Basso Foundation](#), Enlazando Alternativas brought European transnational corporations to trial for human rights violations and environmental damages in Latin America and the Caribbean between 2006 and 2010. Around 60 cases involving some 40 companies were submitted. On the basis of all this evidence, the tribunal [ruled](#) that human rights violations by companies were systematic and of a structural nature, and that an instrument was therefore needed to force them to change their policies. This was a very important step in our network's journey to the UN.

In summary, the seriousness of the situation demands a treaty that breaks the asymmetry of power and imposes obligations on companies by placing human rights above any right that companies might have.

2. Along with this asymmetry of rights, do you observe any tensions between corporate power and democracy?

Without a doubt. Our [analysis](#) recognises multinational corporations as a leading actor in the process of capitalist globalisation. Their power rests on a legal and institutional architecture that grants them impunity. This architecture involves, for example, states that uphold the trade and investment regime, including free trade agreements, investment agreements and a whole series of regulations that 'compel' other states to respect the interests of companies.

These interests have penetrated deeply into many institutions, including those of the UN, where we have long observed that they are being represented by the positions of some states and regional entities such as the European Union (EU). The penetration of these interests in international, regional, national and local institutional spaces has resulted in a privatisation of democracy, a process of great concern throughout the world.

3. What kind of work does the Global Campaign do? How is it organised, and where and how does it seek to exert influence?

The Global Campaign is an extension to the global level of the earlier bi-regional network. Now we are also present in Africa, Asia and North America. Active since 2012, the Global Campaign is a network of more than 200 movements, social organisations and trade unions, united by their opposition to free trade agreements as they are being proposed and by the idea that it is necessary to go beyond the narrative of companies' voluntary codes. We have alternatives, which we have compiled in a matrix document, the [International Peoples Treaty](#). The first part of this document outlines a legal alternative at the international level, which is in a way the predecessor of the binding treaty that we are proposing. The second part presents the alternatives that movements have built in response to the architecture of impunity, including on food sovereignty, energy sovereignty and debt audit strategies, among others.

The Global Campaign operates under that wide umbrella that is the Peoples Treaty. We often meet virtually, and we do a lot of work at the regional level, using dynamics that are adapted to each region's characteristics. And at some point we come together in various spaces. For instance, in Geneva we have an annual event, the [Week of Peoples Mobilisation](#), that coincides with the session on the Binding Treaty at the UN Human Rights Council. One feature that characterises us, compared to other networks that promote the Binding Treaty, is that consider ourselves a movement. Of course within our network there are social movements as well as more formal civil society organisations (CSOs), but first and foremost we maintain the dynamics of a movement of communities affected by transnational corporations.

4. How did the Global Campaign reach the UN, and what are its activities at the Human Rights Council?

In 2013, the government of [Ecuador](#) led a [statement](#) that initiated the process towards the Binding Treaty. By that time, the Global Campaign had already moved to Geneva to put this demand forward, so this statement converged with what we were already working on and opened a window of opportunity for us. Our network is not very used to walking the hallways of the UN, so this was a very interesting learning process. What we did from then onwards was to enter a dialogue with governments and remain present both inside and outside the UN, since we symbolically wanted to make clear that we came from the streets. We set up a tent in front of the UN headquarters and we carry out our activities there while also working within the premises. We have been doing this since 2014, when the historic vote took place on the [resolution](#) promoted by the governments of Ecuador and South Africa, which opened the way to the Binding Treaty.

When it comes to the dialogue about the Binding Treaty, states have their own negotiations and tensions. In international diplomacy there is no watertight dialogue; instead, states negotiate simultaneously in different arenas, so that they may give way in one forum - for instance, with regard to the Binding Treaty - if their counterparts yield on another issue at, say, the Climate Change Conference or the World Trade Organization. This is a very complex, and often quite opaque, system. As civil society we have tried to

deal with this, and our strategy has been to bring the affected communities to the negotiations, so they can directly take part in plenary sessions and meet with government representatives.

5. How is the current initiative different from previous attempts to subject transnational corporations to human rights standards? Does the current campaign have greater prospects for success?

Indeed, there were previous attempts to move towards binding norms for transnational corporations. There were some attempts of this kind in the 1970s, such as in 1972, when Chile's President Salvador Allende denounced transnational corporations at the UN. There were also attempts in the 1990s. The most recent antecedent dates back to 2003, when a document was drafted on the norms and responsibilities of transnational companies. This document got the support of the Human Rights Commission, the predecessor of today's Human Rights Council, but was eventually ruled out due to strong pressures from business actors such as the International Organisation of Employers and the International Chamber of Commerce.

The qualitative difference between current and previous experiences is gigantic. Unlike the fleeting and truncated attempts of the past, the current process has maintained its momentum for three years. And the reason why this happened is that for the first time the windows of the UN have opened and the people have come in. The affected communities have come in and as a result it has been possible to raise issues that governments had initially not intended to include, such as the trade and investment regime and international financial institutions. The process has been underpinned with much communication and publicity: we have organised a public communications campaign, we have shared information, and we have mobilised parliaments. This prevented actors who resist the process from stopping it. Those who were already in this struggle back in 2003, such as our colleagues at [CETIM](#) - which is based in Geneva and is very much a UN insider, where it has consultative status – have told us that they failed because they were quite isolated. There were very few organisations working on this and nobody in the world knew what was happening.

In sum, the difference is being made by civil society involved within the UN system. And this is not just any kind of civil society, but a grassroots, anti-establishment civil society. This is important, because generally speaking, in multilateral forums and multi-actor initiatives such as the [Forum on Business and Human Rights](#), only the least questioning social actors are typically tolerated. This is not the case with the Global Campaign: we bring in the lawyer representing the 30,000 victims of Chevron-Texaco in Ecuador, a man of indigenous descent and a winner of the Goldman Prize, who knows exactly what he is talking about when he talks about the impunity of transnational corporations. Or we bring in a fisherwoman who has lost everything because of the collapse of a dam in Brazil. In the face of this type of testimony, companies do not find it so easy to disqualify and question the veracity of the allegations. On the other hand, if we accept a purely technical debate

on abstract rights and legal norms, we enter an arena where it is not so easy for us to defend ourselves.

In short, what distinguishes us and confers legitimacy on us is the conviction that the law must be created from the ground up. We are creating law, and we cannot waver, because we will not always have an opportunity like this. If we have any chance of achieving our goals today, it is thanks to the presence of a combative and organised civil society on the ground working jointly with organisations like CETIM, which have a lot of experience with the UN system.

To complete the picture, a [Global Interparliamentary Network](#) has also been created in support of the Binding Treaty, and a resolution supporting the process was issued and has so far been signed by some 200 parliamentarians from around the world. Several parliaments - such as Brazil's, El Salvador's and Uruguay's, as well as the European Parliament - have held sessions on the issue. Finally, there is an additional broad network, the [Treaty Alliance](#), that we contributed towards establishing and that brings together human rights CSOs worldwide. This network does not have a unified perspective and is rather characterised by internal debate, but it is nevertheless united in its support for the Binding Treaty.

6. It's been three years since the beginnings. When do you think the process will end, and with what results?

In 2017 we went to the [third session](#) of the Intergovernmental Working Group on the binding treaty with our treaty proposal. This [proposal](#) is fully our own, from its preamble to its annexes, and it was informed by the demands of social movements and trade unions and reviewed by experts.

From here, several scenarios are possible. In the best scenario, our treaty proposal is accepted and ratified by all states, the resulting treaty is an instrument with a real capacity to impose sanctions on companies, and it is actually implemented. Indeed, without sanctioning power we would not be able to speak of a binding treaty. The treaty should contemplate a mechanism to receive and process cases of violations after national and regional legal procedures have been exhausted.

So, ideally, in the fourth session of the Working Group, in October 2018, there will be a text on which to negotiate. The government of Ecuador will come to this session with a zero draft - having already presented some guidelines in 2017, which are being revised - and in the best scenario this draft will integrate as many of our proposals as possible.

The worst possible scenario is that those who lead the opposition to the treaty manage to delay the process by finding loopholes to question the validity of the 2014 resolution, and that they therefore manage to weaken and eventually dilute the process. It is important to underline that Australia, Japan, the United States and the European Union have all joined against the treaty. On the other hand, the intergovernmental work team is chaired by

Ecuador, that has put a lot of energy into the process, and that has, along with South Africa, been the driving force of the initiative.

If you map the states that accepted or opposed the 2014 resolution, you will clearly see a global north-global south cleavage. The 20 votes in favour of the resolution encompassed half of the world's population, since - in a quite extraordinary act - both China and Russia as well as India supported the treaty. There were 14 votes against it, all from global north states, and 13 abstentions, mostly from states - including Argentina and Brazil - that voted that way in the knowledge that abstention would still allow the process to move forward. Between then and today, the situation in the world has changed for the worse. The governments of Argentina, Brazil and the United States have changed. In the latest session, some important states such as Russia were more reticent than in the past. And the new members of the Human Rights Council are not particularly attached to the initiative, so the context is less encouraging.

Between those two extreme scenarios lies the most likely one: the emergence of a toothless treaty, with little ability to bite but at least recognising fundamental principles, such as that transnational companies need to respect human rights throughout their productive chain or that states have the obligation to demand this from companies. The recognition of these principles would serve as a basis for further progress.

7. What is required in terms of connections, coalition-building and engagement with other actors to prevent the process from stopping, dragging on or being diluted?

Fortunately, what is required is precisely what is happening. A few years back, a moment came in Latin America when the belief system structured around neoliberalism broke - a moment when we stopped believing for good, and it was no longer possible to keep claiming that neoliberalism worked. Today we are reaching a similar moment, in the sense that the conviction has spread that we cannot afford to limit ourselves to voluntary norms for actors that have such power over the everyday lives of all of us. This rupture is happening. If we manage to keep up the attention and get people to question increasingly the idea of voluntary standards and demand binding rules instead, we will be able to keep moving forward.

Luckily for the Global Campaign, the fight against the impunity of transnational corporations is not limited to the UN nor to the scope of the negotiation of the Binding Treaty. This is a very important negotiating space, and we have and will surely continue to move forward in it. But we have simultaneously taken advantage of its potential to move forward in terms of organisation and mobilisation. For example, the programme that took place in the tent that was set up in front of the UN headquarters in Geneva during the week-long session of the Working Group included nine workshops organised by important groups such as trade unions and migrants' and peasants' organisations to tackle the whole productive chain and the rights of vulnerable populations. It also included numerous [parallel conferences](#) organised by CETIM and other organisations, with testimonies from

affected communities, presentations of the popular treaty proposal and dialogues between UN Special Rapporteurs and victims.

In other words, our coalition is a living organism, and this is our great strength. We have not just a Plan B; we also have plans C and D, and up to Z. People already have the experience of facing transnational corporations and accomplice states in their own territories, and have long been building alternatives. This consensus that we have built is not so easily reversible anymore.

Get in touch with TNI through their [website](#) or [Facebook](#) page, or follow [@StopTNCimpunity](#) on Twitter.

For more information on these issues, see the December 2016 special edition of [América Latina en Movimiento](#) (TNI) on Transnational Corporations and Human Rights.

collectively building
a global movement

to **DISMANTLE**
THE POWER OF

TRANSNATIONAL
CORPORATIONS.



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