

UNGP+5: Where is the party?

Thursday, June 16th marks the 5th anniversary of the UN Guiding Principles on Business and Human Rights. Yet, violations of human and environmental rights continue, and access to justice remains as difficult as it ever was.

Just look at the pollution by Shell in the Niger Delta, where there still hasn't been a proper clean up. Or consider oil palm company Wilmar's track record of land grabbing and deforestation, and lack of corporate accountability by either the company or its financiers. Then there is Chevron which refuses to pay compensation for oil damages in Ecuador. And seven months after the largest environmental crime in Brazil at Doce River, caused by Vale and BHP Billiton, no concrete solution was presented to the affected population.

We'd like to be celebrating today to commemorate the fact that five years ago in Geneva the members of the UN Human Rights Council endorsed the Guiding Principles, written by then UN Special Representative on business and human rights, John Ruggie. That this led to dramatic changes in laws and corporate behavior, safeguarding rights for all. But we're not celebrating. Sadly. Because...

"Endorsed", is not the same as "accepted" or "voted upon". Always good to get the record straight: the Guiding Principles are not official UN criteria or guidelines. They are discussed by UN members, business and non-governmental organizations in so-called multistakeholder spaces, but they are not standing UN policy negotiated by States. So States are not obliged to incorporate the Guiding Principles into their own national policy. Instead, all States are 'strongly encouraged' to develop, enact and update a National Action Plan (NAP) on business and human rights.

The truth is that neither the UN Guiding Principles, nor the related National Action Plans, have been able to hold large multinational corporations to account. They have also not been able to provide affected people and communities with a strong, enforceable mechanism to ensure they have access to justice, and secondly that any judgment or verdict on their case will be also implemented. So the UN Guiding Principles have not brought us any closer to getting access to justice or stopping corporate impunity.

Luckily, it is not all doom and gloom. On 26 June 2014, the UN Human Rights Council adopted resolution 26/09 calling for an intergovernmental working group to establish binding rules for transnational corporations and other businesses in relation to human rights – a process commonly referred to as the "Treaty". This historic decision means that, if the Treaty is adopted and enforced, international human rights law will for the first time apply to the activities of transnational corporations.

Hundreds of non-governmental organizations and social movements have joined in the discussions of the content, nature and scope of this treaty. Many engaged in UN discussions and premises in Geneva for the first time, as they claim that this was the

first time there was a UN process that they believed in, and that, if adopted and endorsed, would be able to change the lives of the people they campaign for.

However, the European Union, as well as other UN Members, voted first against the resolution and later tried to derail and boycott the process. They claim more attention needs to be given to the implementation of the UN Guiding Principles. So one would expect the first step towards adopting National Action Plans for the UN Guiding Principles should be taken by the home countries of the biggest transnational corporations with records of human rights violations worldwide. The European Union is not really giving the right example though, as only seven out of 28 member states have adopted a National Action Plan (NAP) since 2011¹. Yet other states, such as South Africa, stress the need for something that goes beyond the UN Guiding Principles.

The EU's and US's lack of support for the UN treaty on business and human rights stands in stark contrast with its support for securing privileged treatment for corporations around the globe through investment treaties and trade deals. These often include business-friendly private tribunals that wield the power to make governments compensate corporations for any new laws or regulations that reduce corporate profits.

We need to have a UN treaty on business and human rights that takes precedent over special privileges given to corporations by trade deals. There should be space to have the discussion at the UN that has been enabled to us by the resolution 26/09 without the regulations being captured or negotiated away by corporations. It is time for UN member states to rule over transnational corporations, and not be ruled by them. One of the UN's primary purposes is "promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion". Human Rights are not negotiable and should be put by the UN and all states above corporate interests.

This is our unique opportunity to put these words into a meaningful legal instrument, an opportunity which we believe may only come once in a lifetime. Let's seize this chance, and stop the current corporate impunity.

Anne van Schaik, Friends of the Earth Europe.
Lucia Ortiz, Friends of the Earth International.

Friends of the Earth is the world's largest grassroots environmental network, uniting 75 national member groups and some 5,000 local activist groups on every continent. We campaign on today's most urgent environmental and social issues. We challenge the current model of economic and corporate globalization, and promote solutions that will help to create environmentally sustainable and socially just societies.

¹ The UK, the Netherlands, Italy, Spain, Sweden, Denmark, Finland and more recently Lithuania have released NAPs. At least 13 others are in the process of developing one (Switzerland, France, Germany, Ireland, Belgium, Scotland, Austria, Czech Republic, Slovenia, Portugal, Greece). See for the full list: <http://ohchr.org/EN/Issues/Business/Pages/NationalActionPlans.aspx>