

Briefing for Northern Ireland MPs: UN Treaty on Business & Human Rights

Trócaire is undertaking significant work in the area of business and human rights in response to widespread reports of corporate human rights abuses in the communities in which we work. For example, in Honduras, corporations with ties to the government and the military have exploited the land of indigenous communities to develop mining, logging and hydroelectric projects for commercial gain. The actions of irresponsible businesses are resulting in the displacement of communities, violent evictions, pollution of land, destruction of livelihoods and loss of shelter, which is particularly impacting women and indigenous communities.

Human Rights Defenders

We are very concerned about the rising severity and range of risks faced by human rights defenders who are calling for corporate accountability. Our partners are reporting restrictions of freedom of assembly, harassment by police and military forces, smear campaigns, travel bans, violent attacks, imprisonment, gender-based violence and killings of human rights defenders. In 2016, Berta Cáceres, a Trócaire partner and Honduran human rights defender was murdered as a direct result of her work to support indigenous people's rights in Honduras.

Since 2015, more than 1,400 attacks on activists working on human rights issues related to business have been documented.¹ In 2018, Last year, globally 247 people were murdered for defending land, indigenous peoples and environmental rights.

UN Treaty: a legally binding instrument to regulate, in international human rights law, the activities of transnational corporations and other business enterprises.

The UN Treaty is viewed as an instrument that will address the gap in access to justice for victims of corporate human rights violations, by clearly asserting legally binding obligations in the area of business and human rights. The Treaty is needed to help address gaps and insufficiencies in the global legal framework.

Lack of Access to Remedy

There is a recognised gap in access to remedy for victims of human rights violations by corporations. The current legal framework has not kept pace with the proliferation of large and powerful corporations in a globalised economy.

- Given the vast power of corporations and the complex ways in which they can operate to evade accountability, existing international instruments relating to business and human rights are not adequate to hold corporations to account.
- Victims of human rights violations by transnational corporations can find it difficult to access remedy in the host state (where the violation occurred) for reasons such as lack of due process or political interference, and can also face barriers to accessing remedy in the home state of the transnational corporation.
- There are particular difficulties in obtaining remedy for human rights violations in home states, including the difficulty of holding a parent company accountable for actions of a subsidiary, difficulties in building a claim when trying to access information and evidence in different countries, and legal obstacles that can be used to defeat extraterritorial claims.²

¹ See Business and Human Rights Resource Centre database.

² UN CRC [2013] 'General comment No. 16 (2013) on State obligations regarding the impact of the business sector on children's rights' [UN Doc CRC/C/GC/16](#).

The process at the UN

In October this year, the UN open-ended intergovernmental working group on transnational corporations and other business enterprises with respect to human rights (IGWG) will meet for its fifth session, in Geneva, to build on the initial draft of this Treaty. The UN Deputy High Commissioner for Human Rights has stated that the Treaty drafting process ***“is our opportunity to take a bold step forward for protection of human rights in the context of business activities, and, most importantly, for strengthened accountability and more effective remedy for those who are the victims of business-related activities.”***³

Progress on an international instrument on business and human rights complements the UN Guiding Principles. It will also help to set a level playing field of environmental, social and human rights standards globally, which will be helpful to responsible businesses. The following areas are crucial to address as part of negotiating a new UN Treaty:

- Prevention of human rights abuses through human rights due diligence and gender impact assessments;
- Access to remedy for community members and human rights defenders who have their human rights violated by transnational and other business enterprises; taking into account the gendered impacts on communities and the specific harms experienced by women human rights defenders;
- Protection of human rights defenders - with a focus on women human rights defenders;
- The primacy of human rights in trade and investment policies;
- Effective enforcement mechanisms, especially in relation to complex multinational corporate structures.

³ Gilmore, K. [15 November 2018] ‘Opening of the 4th Session of the OEIGWG in Charge of the Elaboration of an International Legally Binding Instrument on Transnational Corporations and Other Business Enterprises, With Respect to Human Rights’.