

# **PUTTING AN END TO HUMAN RIGHTS ABUSES BY COMPANIES**

**FROM SOCIAL RESPONSIBILITY TO DUTY OF CARE**



## Thousands of victims, but no justice

Economic globalisation results in winners and losers. Among the losers, there are victims of disasters, such as oil spills or the Rana Plaza collapse in Bangladesh; there are farmers whose land has been grabbed, deforested or polluted by companies; human rights and environmental activists who have been murdered; and workers who are exploited and do not enjoy decent working conditions...

People around the world regularly suffer abuses of their fundamental rights by businesses, and this trend is only getting worse. The complex global structures of transnational corporations, and the absence or inadequate enforcement of the regulations governing cross-border business activities, help to explain such violations.



## In 2013, the Rana Plaza collapsed, killing more than 1,000 textile workers

On 24 April 2013, near Dhaka, the capital of Bangladesh, the Rana Plaza building collapsed, killing 1,138 workers and leaving 2,000 seriously injured. On the eve of the disaster, cracks that foretold the worst had already become apparent. And yet, despite workers' protests, their employers forced them to return to work, threatening them with wage deductions and mass dismissals.

The building housed several garment factories that supplied global clothing brands. The tragedy generated a wave of global outrage and raised awareness of the limits of low-cost manufacturing.

Since then, more than 200 brands, as well as global and local trade unions, have

signed the 'Bangladesh Accord'<sup>1</sup>, which has helped to improve working and safety conditions. The Accord is legally binding, and consists of an inspection and compliance programme for the factories that supply the signatory companies. It covers more than two million workers.

During checks, inspectors identified more than 130,000 safety issues, in which all the factories were implicated. Of course, implementing this agreement is not perfect; 96 factories opposed the inspection and renovation of their buildings, which resulted in their exclusion from any contract with the signatory brands of the Accord. In addition, some 1,200 factories have fallen behind in the implementation of their action plans.

Nevertheless, the Accord has already saved lives and has improved safety at work for more than two million Bangladeshi women and men.

1. Accord on Fire and Building Safety in Bangladesh: a legally binding agreement between clothing brands and retailers on the one hand, and local and international trade unions on the other.

Given the difficulties encountered in ensuring the extension of the agreement by the various parties, it would appear that the adoption of a UN global binding treaty to regulate companies has become a matter of urgency.

It should also be stressed that the compensation obtained by victims and their families doesn't stem from conventional legal mechanisms, but rather from the wave of global solidarity initiated by civil society. An international treaty would make remediation mandatory.



**The UN Guiding Principles on 'Business and Human Rights'** are centred around three main areas: States should protect their citizens; businesses should respect human rights; and people should be able to access justice and remedy. The Special Representative on 'Business and Human Rights' John Ruggie drafted and published these in 2011.

Since then, they have guided all emerging initiatives seeking to regulate businesses.



## Risk sectors

Numerous cases of human rights abuses involving companies have been identified in sensitive and socially at-risk sectors such as mining, construction, textiles, food, timber, dredging and forestry. Many countries rely on domestic legislation to sanction such abuses. However, multinational companies use their enormous economic power to evade these regulations, thus rendering null and void any victim's demands and claims for compensation.

Moreover, under pressure from companies, some States do not hesitate to deregulate their own labour and tax laws in order to attract rich investors. This results in legislation tailored to companies' requirements, often violating the fundamental workers' rights.

The development of 'free trade zones', especially in Central America and the Caribbean, which are in reality lawless areas, reflect the disproportionate power businesses hold over States.

## Voluntary initiatives – a first, but insufficient, step!

There are existing global initiatives to address these deficiencies. In recent years, international organisations have developed instruments promoting the observance of human, environmental and labour rights within the operations of these businesses. While they should be commended for bringing the debate to the table and establishing a commonly accepted framework, the OECD Guidelines on Multinational Enterprises, the Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy (ILO), and the UN Guiding Principles on Business and Human Rights (UNGPs) suffer nevertheless from their purely voluntary nature. They don't set down any obligations, which might explain why many companies continue to commit violations, with total impunity.



## The primacy of human rights over economic interests and investors' rights

Today, companies engaged in transnational activities enjoy broad protection to secure their commercial interests and investments through trade agreements and investment protection mechanisms.

Meanwhile, there is too little binding protection of a similar nature for human rights at national, continental

and international levels that might benefit those affected by such activities.

Therefore, it is time for States to reaffirm their commitment to establish a hierarchy of standards safeguarding human rights. In other words, in the event of conflict between the observance of human rights and commercial interests, human rights must take precedence.



## Asbestos – when profit takes precedence over human health

Although asbestos production has been banned in Belgium and the Netherlands since the late 1990s, this mineral is still manufactured and causes many cases of cancer, asbestosis and mesothelioma in several countries, including India, where the Belgian company Eternit has set up operations—even though there's no longer any doubt in Europe about the danger of its asbestos-based products. The Belgian film 'Breathless' ('Ademloos'<sup>1</sup>) deals with this terrible reality and seriously questions our capacity to regulate globalisation. After the death of his father and many people from Kapelle-op-den-Bos, his home village in Flanders, producer Daniel Lambo initiated a fascinating quest to uncover the truth about the hazardous asbestos industry. His research took him to the largest open-air asbestos landfill site in India and highlighted an industry, lacking in compassion, that still endangers workers' and citizens' lives around the world.

Unfortunately, several obstacles currently make it difficult, if not impossible, for those affected to seek justice.

The film shows the importance of putting an end to transnational corporations' impunity, and giving precedence to human rights over profits. It is a huge task being tackled through a United Nations (UN) international treaty (under preparation).

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1. 'Ademloos': a film by Daniel Lambo (produced by 'StoryHouse Film', Belgium, 2018), [www.ademloos.film](http://www.ademloos.film)





## Duty of care versus social responsibility

Corporate social responsibility is now an outdated concept, as it does not allow for profoundly changing practices. Some critics have claimed that the projects implemented amount to philanthropy or greenwashing without addressing head-on the human rights abuses committed in the context of commercial activities.

Instead, introducing 'duty of care' for businesses in relation to human rights is an essential step in order to respond to the need for justice that has been called for by those affected. This duty of care would oblige companies, as part of a process they would have to put in place, to identify the potential impact, both direct and indirect, on human rights caused by their operations and those of entities under their control or directly related to their operations (branches, suppliers and subcontractors). They should also take action to prevent, mitigate and remedy this impact.

Gradual sanctions should be imposed on companies failing to comply with their duty of care or to prevent adverse impacts. In addition, the results of the process should be made fully transparent to the public, and accessible to the communities of people who are adversely impacted, as well as more broadly to citizens wishing to know more.





## Encouraging initiatives in some countries

Until now, national governments have been unable or have not demonstrated a real willingness to regulate the activities of businesses.

For most States, measures are restricted to voluntary initiatives, which have recently shown their limitations and lack of effectiveness in enforcing human rights.

However, it appears that we are now reaching a tipping point. In recent years, some countries have passed encouraging legislation, such as the 'duty of care' law in France (*'Loi sur le devoir de vigilance'*) in 2017.

At the European level, discussions leading to the adoption of a binding European standard seem to be blocked by a number of States wanting to protect their corporations from any mechanism that obliges them to conduct 'due diligence'. For the time being, no signal points to such an initiative taking root in other regions of the world.

## European countries are beginning to take action!

Apart from France, other countries are also developing similar frameworks to enforce mandatory duty of care, though sometimes only partially. Examples include the Modern Slavery Act in the United Kingdom, the Child Labour Due Diligence Act in the Netherlands and sectoral initiatives in Switzerland and Germany. Finland is also examining the introduction of similar legislation. In each of these cases, civil society plays a major role in leading public campaigns for the establishment of these legal frameworks.

The excellent website [www.business-humanrights.org](http://www.business-humanrights.org) provides up-to-date information on all ongoing initiatives around the world. Please take a look!



# An international legally binding instrument to stop abuses!

Given the limited number of ongoing regional and national initiatives worldwide, it is about time we set up an international legally binding instrument to regulate companies, hold them accountable for their abuses and guarantee access to justice for those affected. In this way, we would create a global playing field in which the same rules would apply to all companies. It

would encourage States to pass legislation at their level in order to comply with the new international standard.

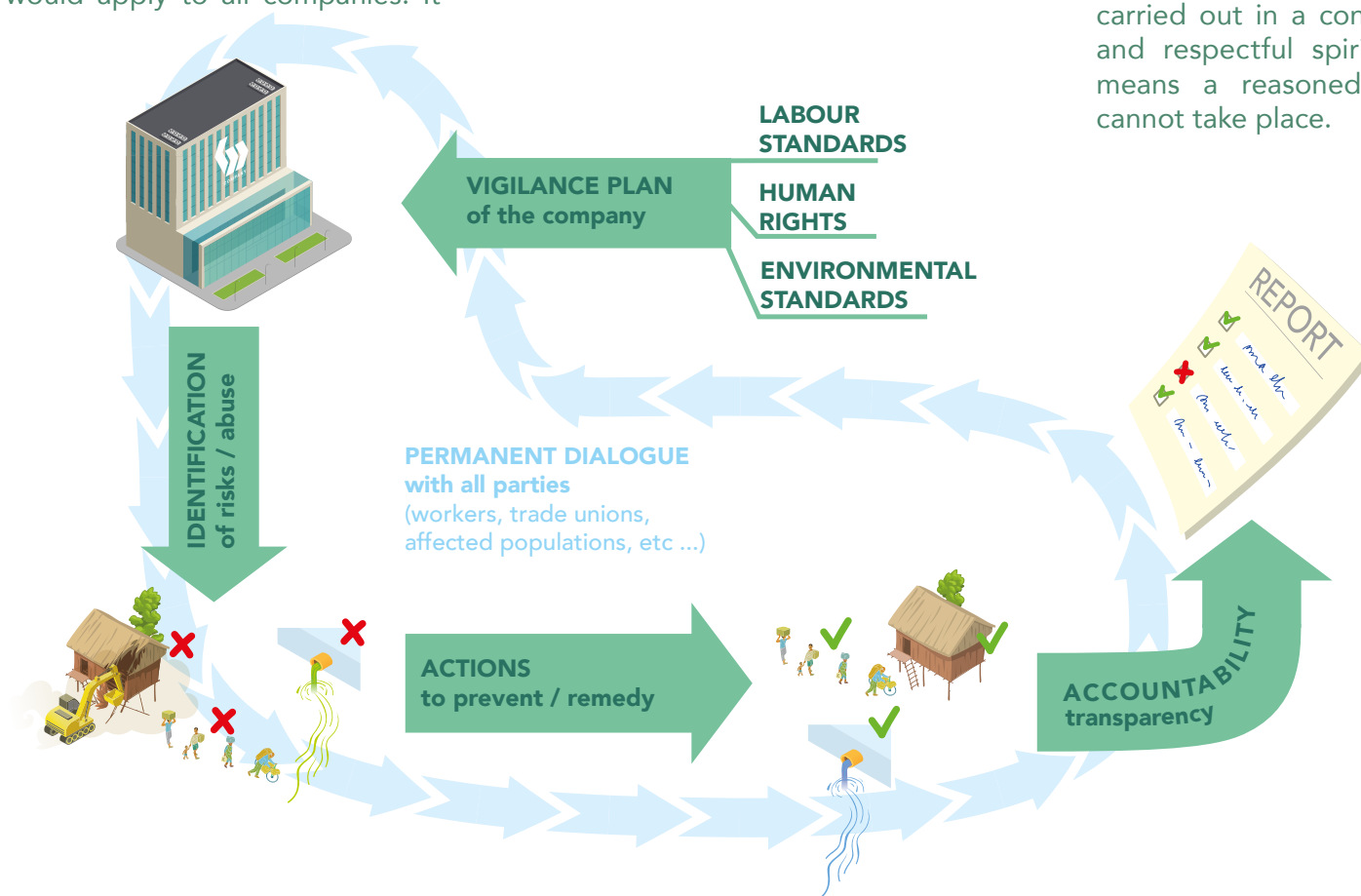
In June 2014, on the basis of the 'Guiding Principles on Business and Human Rights', the UN Human Rights Council adopted a landmark resolution that paved the way for the development of an international treaty.

Since then, a working group has met on several occasions; however, no significant progress has been made. While countries such as South Africa and Ecuador are making a vibrant call for the adoption of this instrument, western actors, including the European Union (EU), are putting the brakes on. They argue that many laws have already been passed around the world, and that negotiations are not being carried out in a constructive and respectful spirit, which means a reasoned debate cannot take place.

## Are 'National Action Plans' effective tools?

The UN Guiding Principles (2011) encourage States to develop national action plans (NAPs) on 'Business and Human Rights'. The aim of these plans is to establish concrete actions (information, training, communication tools, etc.) to provide improved access to justice for individuals impacted by commercial activities, but also to promote companies' respect for human rights. Too few States have adopted an NAP so far, due to a lack of interest or capability. In addition, it should be stressed that current NAPs are generally weak, with a blatant lack of concrete performance indicators and deadlines. Finally, their scope is limited as their implementation is not binding and is often left to the discretion of States and companies. Nevertheless, we must acknowledge that the adoption of such a plan helps to put corporate responsibility on the political agenda and provides civil society with a tool to hold businesses and States accountable.

The [www.globalnaps.org](http://www.globalnaps.org) website provides a comprehensive and up-to-date overview of NAPs worldwide, whether they are being developed or have already been published. Its interactive map allows for quick access to the texts of all countries.



**The adoption of an international treaty** would oblige States to affirm the primacy of human rights over economic interests, oblige transnational corporations (and also their suppliers, subcontractors and subsidiaries) to respect human rights wherever they operate, and hold them accountable for abuses.

## What should be included in this international treaty?

The instrument should provide a mechanism obliging States to pass regulatory legislation so that companies adopt and implement human rights due diligence policies and procedures in a transparent manner.

Also, the universal instrument should be applicable to all companies, regardless of their size, sector, operating context and ownership, in order to avoid legal vacuums. It should reflect the complexity of our globalised economies, requiring all subcontractors of parent companies to conduct a duty of care; in other words, to oblige them to apply extraterritorial due diligence. As such, this requirement would be imposed on the countries where the headquarters of companies are located, obliging them to exercise extraterritorial jurisdiction over the conduct of their companies abroad. A company based in the United States could thus be prosecuted by the State where it is established for any human rights violation committed by another company that is commercially linked to it and that is part of its production chain, even if the activities of the latter are located abroad.

Finally, this instrument should include a grievance mechanism and pave the way for the creation of a supranational jurisdiction so that citizens who have been victims of human rights violations can obtain remediation and thus ensure that the perpetrators of the abuses are sanctioned.

There is still a long way to go until such a treaty is adopted, and the road is fraught with obstacles; hence the importance of widespread mobilisation by denouncing abuses and demanding that States and regional bodies make the 'duty of care' of companies mandatory.

Voluntary schemes have reached their limits; it is time to move up a gear by proposing mandatory legislation!

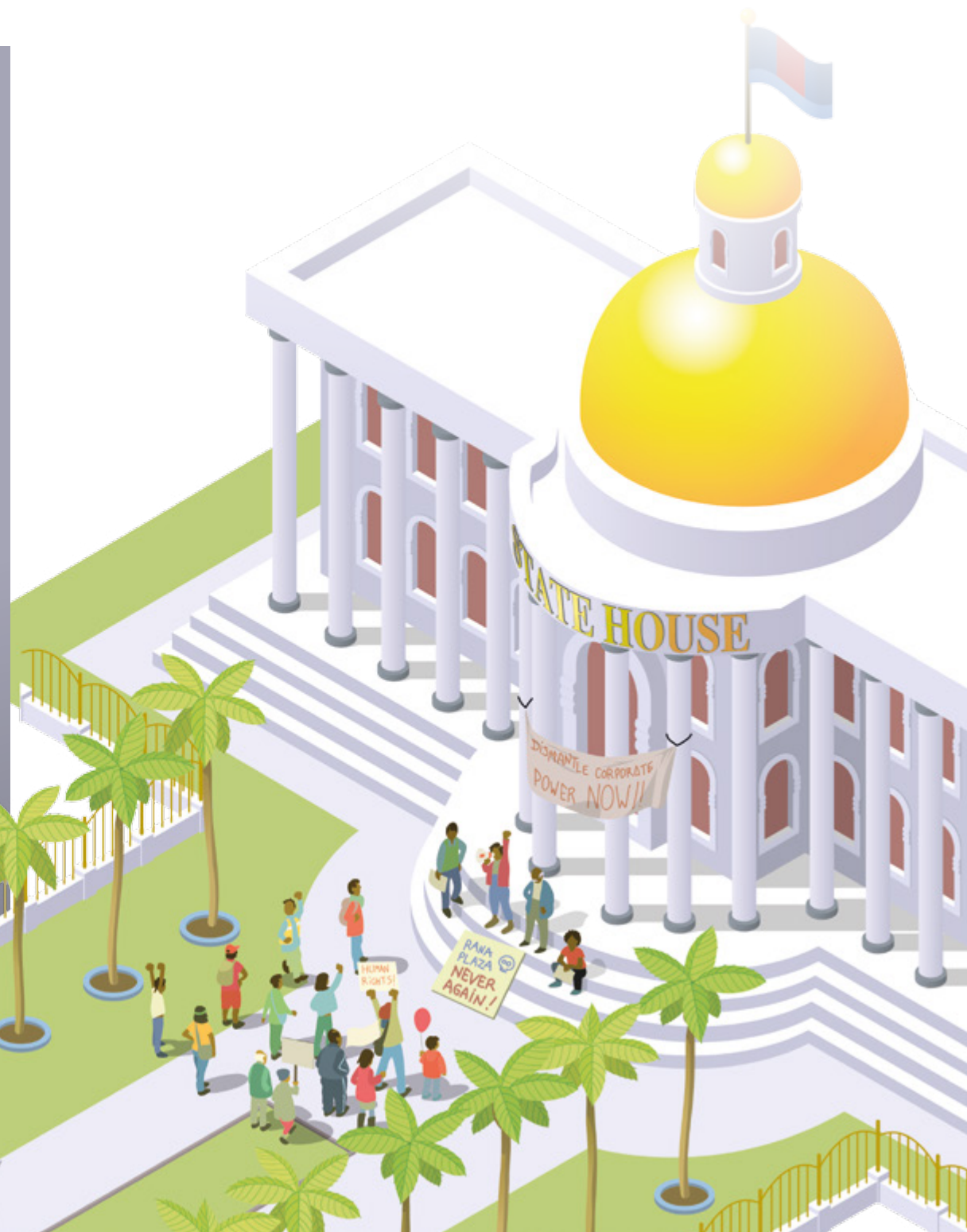




The adoption of an international treaty on 'duty of care' requires the mobilisation of civil society (NGOs, trade unions, social movements, etc.) all around the world!

**We can:**

- encourage our national governments to take a strong and ambitious political position in favour of the adoption of a UN international treaty, making 'duty of care' mandatory;
- lobby our governments to adopt similar national laws, thereby strengthening the international momentum for the treaty;
- insist that a 'National Action Plan' (NAP), aligned with the UN Guiding Principles on 'Business and Human Rights' (UNGPs) is drafted jointly with civil society in every country in the world, and ensure its proper implementation;
- build civil society networks around the world to develop bargaining power with governments and corporations in order to restore the primacy of human rights over those of investors.



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