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The State of Corporate Power – Insights into the Power of Corporations

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TNI's 2014 State of Power Report¹, reveals that in the past year, transnational corporations (TNCs), particularly gas and oil industry and banking have continued to benefit extraordinarily from the ongoing economic and financial crisis while ordinary people pay the costs. Despite their responsibility for the financial and ecological crises, bailouts and "austerity packages" work to the benefit of the 0.001% and squeeze the income and tighten the pressure on the 99%.

Our research has demonstrated that in the first nine months of 2013, the 25 richest billionaires have increased their wealth by US\$ 85 billion, while in the global south as in US and the EU, more people lose their income through unemployment or loss of livelihood and endure hunger and impoverishment. The centralisation of power is also ever greater. A study of 43,000 corporations showed that less than 1% mainly Banks control the shares of 40% of global businesses. This is not only unjust but also shows the extreme vulnerability of our current economic system.

The statistics show that our inability to address poverty, inequality, pay for free education or invest in a green transition is not down to lack of money, but who has that money. The current wealth of the top 100 richest people could, for example, pay for: 1,111 years of the Rwanda government expenditure² or 130 years of the costs of climate change adaptation³.

The Nobel prize-winning economist, Paul Krugman, has commented that this "drive for austerity was about using the crisis, not solving it. It still is"⁴. The ongoing trend of massive siphoning of resources from the commons, from citizens and their public institutions for the enrichment of the already ultra-rich is integral to this phase of the restructuring of the neoliberal model of the economy.

But this is not the story only of ultra-rich individuals, drawing their wealth from the operations of the transnational corporations they own or lead. Nor is it about which corporations have better or worse behavior. The concentration of corporate wealth, power and their resulting impunity is built on a system of extraordinary privileges and "super-rights" of transnational corporations put in place by the corporate capture of the legislative functions of government and frequently with the active complicity of many governments. According to Professor Jeffrey Sachs, "(we have) a culture of impunity based on the well-proven expectation that corporate crime pays."⁵ This allows TNCs to continue to act with impunity at the expense of widespread violations of established human and people's rights and sustained destruction of the planet.

This is drawn out in our study of the top world's corporations. Nearly all in the last five years have been charged, fined or accused of money-laundering, fraud, bribery, corporate espionage⁶. This is not about good or bad: it is about a structure of power and impunity that means corporate profit can ignore, hide or deliberately conceal any social and environmental costs of their operations.

¹ <http://www.tni.org/briefing/state-power-2014>

² <https://www.cia.gov/library/publications/the-world-factbook/fields/2056.html#15>

³ <http://www.tni.org/article/global-0001>

⁴ Paul Krugman, The Austerity Agenda New York Times, 31 May 2012

⁵ <http://www.project-syndicate.org/commentary/the-global-economy-s-corporate-crime-wave>

⁶ www.tni.org/sites/www.tni.org/files/download/corporate_planet_crimes_and_fines_website_table_with_sources.pdf

One of the main systemic reasons for widespread corporate impunity is what has been conceptualised by social movements as the “architecture of impunity”: the asymmetric normative framework that, on one hand, grants TNCs “super rights” through Lex Mercatoria (the legal framework that protects the interests of investors) such as Free Trade Agreements, Bilateral and Plurilateral Investment Treaties (IIAs), the majority of which include an ISDS mechanism (investor-to-state dispute settlement mechanism which allows corporations to sue governments) while, on the other hand, all juridical norms designed to protect human rights and environmental standards are undermined. The global International financial Institutions (IFIs), the International Monetary Fund and the World Bank and their policy prescriptions as well as those of the World Trade Organisation (WTO) also have their role in this architecture of impunity.

These Lex Mercatoria juridical instruments are binding and have enforcement mechanisms – such as the WTO’s Dispute Settlement Mechanism (where governments check and sue each other on compliance with trade liberalisation put in place by corporate lobby) or the World Bank’s International Centre for Settlement of Investment Disputes (ICSID), where corporations sue governments and are frequently rewarded with mega compensation. In 2013, the ICSID fined the Ecuador government 2.3 billion US\$ for ending the contract of Occidental Petroleum Corporation (OPC), even though it was the OPC which had first breached its contract with the Ecuador government. The amount leveled against Ecuador represents 59% of the country’s 2012 annual budget for education and 135% of the country’s annual healthcare budget⁷.

The international Human Rights system on the other hand does not have a binding Treaty on TNC operations and even less an enforcement mechanism to address corporate crimes or offer remedy and justice to affected communities. Instead, the UN Business and Human Rights Unit, in conjunction with complicit governments promotes weak voluntary guidelines through a Corporate Social Responsibility (CSR) framework as false responses to human rights violations and corporate crime.

The track record of this corporate impunity has been charted in well-documented cases of TNC violations of human rights and environmental standards as in Impunity INC⁸. They are also well documented in the multiple campaigns launched from the affected communities whose forests are denuded, rivers polluted, land strewn with toxics or whose communities are devastated by the extraction of natural resources and evictions as we see in the Case list selected for 2014 Public Eye Awards⁹.

What is worse is that there are attempts to further enshrine corporate capture into the functioning of our democratic system. This is elaborated in the Global Redesign Initiative (GRI) – the World Economic Forum’s own Report published in 2010 – *Everybody’s Business: Strengthening International Cooperation in a more Interdependent World*¹⁰. The GRI is a determined attack on representative democracy as we know it – and is supported. In the GRI the WEF and the Davos Class leave no doubt that they know best how to govern the global economy as well as our daily lives: “governing today is no longer a matter for government alone...governments’ basic ‘public functions’ have been redefined...hence the challenge is how to re-invent government as a tool for the joint creation of public value”. The WEF sees the solution in a “multi-stakeholder” form of governance which consists of corporations, government and selected civil society, but mainly of corporations¹¹.

This multistakeholderism approach to government is already operational in such bodies as the European Roundtable of Industrialists (ERT), the World Business Council for Sustainable Development (WBCSD) and the Trans-Atlantic Business Dialogue (TABD). The TABD sees itself as a political body having an official role in determining the priorities of EU-US public policy and whose latest achievement has been in the mainly secret preparation of the TTIP – the proposed US-EU Free Trade Agreement.

This radical threat to democracy is also underlined by Susan George in her State of Corporations article: “It’s not just their size, their enormous wealth and assets that make the TNCs dangerous to

⁷ Decision on the Stay of Enforcement of the Award, Occidental Petroleum Corporation vs The Republic of Ecuador ICSID Case o. ARB-06-11. <http://kluwerarbitrationblog.com/blog/2012/12/19/icsids-largest-award-in-history-an-overview-of-occidental-petroleum-corporation-v-the-republic-of-ecuador/>

⁸ http://www.odg.cat/documents/publicacions/Impunity_Inc.pdf

⁹ <http://publiceye.ch/en/>

¹⁰ http://www3.weforum.org/docs/WEF_GRI_EverybodysBusiness_Report_2010.pdf

¹¹ David Sogge: State of Davos-The camel’s nose in the tents of global governance. http://www.tni.org/sites/www.tni.org/files/download/state_of_davos_chapter.pdf

*democracy. It's also their concentration, their capacity to influence, and often infiltrate, governments and their ability to act as a genuine international social class in order to defend their commercial interests against the common good*¹². It is such decision making power as well as the power to impose deregulation over the past 30 years, resulting in changes to national constitutions, and to national and international legislation which has created the environment for corporate crime and impunity.

Historically there have been many attempts to oppose and reverse this rule by and for corporations and these continue in the many global trade and investment campaigns as well as in campaigns to establish a binding regime of obligations on TNCs. Among the most recent, there is the Extraterritorial Obligations (ETOs) initiative and the launch of the Global campaign to Dismantle Corporate Power and End Impunity¹³. This campaign, led by more than 150 movements, civil society and human rights networks foresees the development of a People's Treaty for Binding Obligations on TNCs. Its main demands have been carried forward by an official Submission made by the Ecuador government, supported by 85 other governments, and placed before the UN Human Rights Council last September 2013¹⁴.

In the face of such crimes as Rana Plaza in Bangladesh, the Marikana massacre of striking platinum miners in South Africa, the BP oil spill in the Gulf of Mexico, and the global race for fracking and landgrabbing, a global resistance is emerging at the local level as communities fight extractivism, labour practices and operations of transnational corporations. It is a resistance built on what Naomi Klein calls "the rise of people's reconstruction"¹⁵. It is a resistance going beyond critique to what Hilary Wainwright sees as building and embedding in institutional change the struggles and opportunities for transformative power¹⁶. This emerging transformative power is also taking on the challenge to roll back and dismantle corporate power and impunity.

The Davos moment is an important occasion to highlight this and place it at the center of public opinion and a transformative political agenda.

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A TNI Fellow, Brid is originally from Ireland, lived and worked in the Philippines for several years, and has been based in The Netherlands for more than a decade now. She is co-founder of the European Solidarity Centre for the Philippines and most recently, of RESPECT, a Europe-wide anti-racist and rights network for migrant domestic workers. Currently, Brid co-ordinates the Economic Justice, Corporate Power & Alternatives programmes at TNI.

She has edited a number of books including most recently (June 2013) the Report IMPUNITY INC. - Reflections on the "super-rights" and "super-powers" of corporate capital - including three case studies on Glencore Xstrata, Inditex and Pescanova. The report was published by the Observatory on Debt in Globalisation (ODG) & Transnational Institute (TNI). <http://www.tni.org/briefing/impunity-inc?context=70929> and (includes [online Map](#)). She also co-ordinated the publication of Transnational Capital vs People's Resistance - a special English-Spanish edition of ALAI's "Latin America in Movement" magazine prepared for Rio+20 (June 2012) which examines in detail how transnational capital and transnational corporations function.

<http://www.tni.org/sites/www.tni.org/files/download/alai476w-en.pdf><http://www.tni.org/sites/www.tni.org/files/download/alai476w-en.pdf>

She also co-authored an article in the publication: *Towards a Systemic Response to Transnationalized Capital* with Gonzalo Berron.

¹² Susan George: State of Corporations – The rise of illegitimate power and the threat to democracy. http://www.tni.org/sites/www.tni.org/files/download/state_of_corporation_chapter.pdf

¹³ <http://www.stopcorporateimpunity.org/>

¹⁴ <http://www.stopcorporateimpunity.org/?p=3830>

¹⁵ Naomi Klein: The Shock Doctrine.

¹⁶ Hilary Wainwright: State of Counter-power - How understanding neoliberalism's cultural underpinnings can equip movements to overthrow it. http://www.tni.org/sites/www.tni.org/files/download/state_of_counter_power.pdf