

# AMERICA LATINA *en movimiento*

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## Transnational Capital vs People's Resistance

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# AMERICA LATINA *en movimiento*

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**ALAI: Postal address**  
Casilla 17-12-877, Quito, Ecuador

**Office address:**  
Av. 12 de Octubre N18-24 y Patria,  
Of. 503, Quito-Ecuador  
Telf: (593-2) 2528716 - 2505074  
Fax: (593-2) 2505073

URL: <http://alainet.org>

Email: [info@alainet.org](mailto:info@alainet.org)

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# Towards a Systemic Response to Transnationalized Capital

Gonzalo Berron & Brid Brennan

This special edition of ALAI's *"Latin America in Movement"* magazine examines in great detail how transnational capital functions: the sectors it operates in, the globalised logic it follows, the structure of its promiscuous relations with public authorities at all levels, the magnitude of its abuses and its social, economic and environmental irresponsibility. In the following pages, the scope of its power and the challenge we, the people, have before us emerge very clearly.

## Confronting Transnationals - Confronting Capitalism

The task of confronting Transnational Corporations (TNCs) is none other than that of confronting the contemporary expression of capitalism, just as Marx described it in the 19th century. The difference lies in its global dimension and the capacity it has today to move from one country to another with great speed and agility. The increasing depersonalisation of its management and ownership makes it all the more dangerous, as it is increasingly rare to find a human face to hold responsible – ethically, morally or legally – for the decisions taken about capital. In these circumstances, the possibility of corporations' adopting decisions that disregard human values and are guided only by rational calculations and profits also becomes greater.

Furthermore, the phenomenon of hyper-concentration of capital is now emerging in the context of the crisis, which has even strengthened this tendency. The degree of concentration has been adjusted to one of the contemporary dimensions of the market: to be a global player requires having the logistical-economic capacities in order to "compete".

These are acquired almost exclusively through mergers, takeovers and capital accumulation taken to the extreme. Finally, the crisis has exposed the financial nature of capital and the dependency of all productive activities on market speculation. This, in turn, contributes to the depersonalisation and cynicism of investors' decisions. As Walden Bello stated, "the disconnect between the real and the financial economy is not accidental – that the financial economy exploded precisely to make up for the stagnation owing to overproduction of the real economy"<sup>1</sup>.

## The Architecture of Impunity: the Construction of Corporate Capture

In the pages that follow, authors describe the establishment of the so-called "architecture of impunity" – a term popularised in the analysis of the *Enlazando Alternativas* network on TNCs<sup>2</sup> – which refers to the multiple policies and instruments of the international trade and investment regime that legitimise the modus operandi of TNCs. This "architecture of impunity" is indeed the globalised expression of

1 Bello, W. (2009), *The Global Collapse: a Non-orthodox View*. Monthly Review magazine article based on an essay by the author released by the British Broadcasting Corporation (BBC) on Feb. 6, 2009. <http://mrzine.monthlyreview.org/2009/bello200209.html>

2 The term "architecture of impunity" refers to the analysis of the Bi-regional Europe-Latin America and the Caribbean *Enlazando Alternativas* network on the protection of TNCs' interests and privileges through international and bilateral trade and investment agreements and the policies of the WTO, IMF and WB. See *"The European Union and Transnational Corporations. Trading Corporate Profits for People's Rights"* [www.enlazandoalternativas.org/spip.php?article522](http://www.enlazandoalternativas.org/spip.php?article522)

the struggle between classes over control of the State apparatus described by Marx. It is necessary to understand, however, that the struggle for State power – the State being an entity that generates norms and laws and is able to “enforce them” – is reproduced in an infinite number of spheres. What is more, in an increasingly globalised world, institutions are also transnational and therefore, the Nation State itself is under strong pressure, similar to what was experienced by ‘states’ and provinces in the era of formation of the modern Nation State. The struggle to control the State, which is no longer staged only at the national level, requires an international protest movement capable of responding to this challenge. We are talking here about a social response to build counter-power, which identifies the different levels of resistance and can bring them together in greater coordination. In this way, resisting Barrick Gold in Argentina<sup>3</sup> means resisting the ICSID, the IFIs that fund TNC operations as well as the investment and trade agreements established since the 1990s that guarantee their interests. Resistance, as in the case of Barrick Gold, needs to be coordinated at the international level. Other emblematic cases of popular protest and resistance to TNCs at national and international levels are: Bhopal-Union Carbide (India), Shell and Chevron in the Niger Delta and British Petroleum in the Gulf of Mexico.<sup>4</sup>

If organisations do not engage in resistance on multiple levels, their efforts are condemned to failure. A specific campaign to resist a particular TNC in one country will be more successful if coordinated with others at the global level so as to prevent the TNC from moving to other places where it will try to apply the same strategy. While this is the main motivation for coordinating efforts at the global level, there are many more.

Transnational capital acts astutely and efficiently at the level of international institutions to strengthen the institutional armour that protects its “rights” and “privileges” as an investor. It seeks to expand these “rights” by increasing the areas of the economy being lib-

eralised from state regulation and by systematically blocking any attempt to advance regulation at the international level. The obstruction tactics used by TNCs range from acting on UN mechanisms that protect human rights to the creation of mechanisms of “self-regulation” and “auto-control” – or more accurately “no control”, namely voluntary codes that serve as ethical guidelines but do not impose any binding obligations. This allows TNCs to “excuse” their crimes and to face the public and the global society – as for instance using the OECD Guidelines, Global Compact and other voluntary codes. Finally, what often happens at the national level (where capital “co-governs” with democratically elected governments) also occurs in international institutions. This phenomenon is what social organisations and movements now refer to as “corporate capture” in order to draw attention to how the UN and its various bodies have come to accept the political orientation and policy proposals of the corporations as their own.<sup>5</sup>

### Building people’s power to confront corporate power

The choice between resisting the concrete and specific abuses of one transnational corporation or another, on the one hand, and building systemic resistance to transnational capital, on the other, is, in fact, a false dilemma. Choosing between one or the other will only

3 Famatina Says NO to Barrick Gold – see <http://www.miningwatch.ca/argentina-famatina-says-no-barrick-gold>

4 International campaign for Justice Bhopal at <http://bhopal.net/>; Shell and Chevron in Niger Delta <http://www.eration.org/>; BP Gulf of Mexico <http://louisianajusticeinstitute.blogspot.com/2012/04/two-years-on-anger-and-frustration-on.html>

5 The *Reclaim the UN from Corporate Capture!* declaration is an initiative of Friends of the Earth International, La Via Campesina, Jubilee South Americas, The Transnational Institute, Third World Network, Corporate Europe Observatory, World March of Women, Polaris Institute, The Council of Canadians, and Peace and Justice in Latin America/SERPAJAL [http://www.foei.org/en/get-involved/take-action/end-un-corporate-capture?set\\_language=en](http://www.foei.org/en/get-involved/take-action/end-un-corporate-capture?set_language=en)

lead to failure and end up strengthening the globalised and corporate capitalist system that is being constantly re-configured. While the former has limits, the latter tends to be distant from the concrete problems and impacts of TNCs and, as a result, loses the human dimension of the solutions that people and communities urgently need. Therefore, the structural option that needs to be built by the people is that of coordinating resistance and local campaigns, strengthening international solidarity and coordinating actions to oppose the power of transnational capital in the global arena. The verdict from the Permanent People's Tribunal (PPT) Madrid session emphasizes the people's crucial role in building such counter-power"<sup>6</sup>.

The challenge is gigantic, as is the threat we face. In this international battlefield, movements and organizations have accumulated a lot of experience and won many victories. However, the task of creating a counter hegemonic vision that includes not only explanations to unmask transnational capital, but also paths and tactics for concrete resistance remains to be done. Over the last 40 years, many attempts have been made in the multilateral system to elaborate proposals on establishing controls on transnational corporations and defending

<sup>6</sup> *The European Union and Transnational Corporations in Latin America: Policies, Instruments and Actors Complicit in Violations of the People's Rights*. December 2010. Printed by the Transnational Institute (TNI) and the Bi-regional Europe - Latin America and the Caribbean *Enlazando Alternativas* network. The verdict concluded that "work of the movements that have put their testimony before this Tribunal highlights the broad guidelines for respecting and guaranteeing the rights they defend. We are not referring here to the concept, described as voluntary, of a self-regulated market based on a code of good practices, which defines corporations' social and environmental responsibility, but rather to a mandatory legal framework in the context of international law. This must be one of the first steps on the path to creating a different world order" (p.5).

The *International Call to Action* towards Building Together a Global Campaign to Dismantle Corporate Power is organized around 3 pillars:

1. Synergies and solidarity between existing national, regional and international struggles.
2. A People's Treaty for the Dismantling of Corporate Power and the operations of TNCs – to build a global consensus and counter-power, advance the struggle against the economic and political power of TNCs and build people's alternatives.
3. Expose the TNCs' architecture of impunity and generate binding obligations for TNC operations and the international instruments to enforce them.

A campaign with specific objectives and plan of action will be implemented over the next 4-5 years. For more information, contact: Brid Brennan, [bridbrennan@tni.org](mailto:bridbrennan@tni.org) and Karen Lang ([karen.lang.brazil@gmail.com](mailto:karen.lang.brazil@gmail.com))

human rights. Until now, these have all failed, not only due to the obvious size of the enemy, but also in terms of the correlation of forces. Global civil society has not had the same experience in generating major mobilizations around corporate power as it did in the fight against neoliberalism and its military dimensions. Thus, we now need to reclaim this experience and channel efforts to build counter-power that will put an end to the transnational capital's system of impunity and domination.

Organizing, over the next three or four years, a global process that succeeds in giving visibility to resistance and building a convergence of values, ideas, concrete proposals and strategies for dismantling corporate power and imposing binding obligations on TNCs at the global level is undoubtedly the task at hand. <

*Gonzalo Berron* has a PhD in Political Science; TNI Associate Fellow  
*Brid Brennan* is Programme Coordinator, Economic Justice, Corporate Power & Alternatives, Transnational Institute (TNI)

# Curbing the Corporations: Who? How? When?

Susan George

Capitalism is in trouble. Not enough trouble, certainly, but still having to deal with far more complex problems than a decade or two ago. Don't chee—or weep—yet. A hungry, cornered animal is more dangerous than a well-fed, free one and at every moment, capital is wondering where its next meal is coming from.

Since neoliberalism became the dominant economic model in the early 1980s and the International Monetary Fund – IMF imposed structural adjustment programmes, first in indebted Southern countries, now in Europe; a great many, but not all, public services have been privatised. That's not enough. The corporations want *all* the public services that can become a source of profit but will be happy to leave the loss-makers to the public sector. The new frontiers for corporate takeover are healthcare (through insurance or for-profit hospitals), schools (with a voucher system) and prisons (with a guaranteed occupation rate...)

Most natural resources have already become commodities, but not all: much of the earth's land and water long remained out of bounds for corporate control. But since 2008 when world food prices went through the roof, the context has changed. Now landgrabs are snatching tens of millions of hectares from their traditional tillers and putting them to corporate use, for export. Water is seen as the perfect capitalist product—it is indispensable, there is no substitute for it and the market for it can only grow as the world population increases.

Capitalism is nothing if not imaginative and

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*Susan George*, author, is President of the Board of the Transnational Institute. Her latest book is: *Whose Crisis? Whose Future?* (Polity Press). <http://www.tni.org/tnibook/whose-crisis-whose-future>

myriad new markets have been created out of thin air, especially those for innumerable financial products, particularly derivatives. Trading on derivatives markets is approximately US \$2.100 billion *a day*. Money itself is the world's most traded commodity and currency transactions amount to US \$4.000 billion *a day* (i.e. 4 trillion). Both these markets have increased by 25% since 2008 when the financial crisis broke.

Newly invented categories of services such as "ecosystem protection and restoration" are another new frontier. Business hopes and foresees that the Rio + 20 conference will legitimise the "market" as the solution for all our environmental ills and it sees carbon trading as only the beginning. As far as capitalism is concerned, everything on earth—animal, vegetable, mineral, solid, liquid or gaseous, material or immaterial—can be given a price, bought and sold.

## The regulation dilemma

As the transnational corporate system spreads into ever-expanding territory, the dilemma of regulation is posed more sharply. Any system requires rules and in the richer countries, industrial corporations are reasonably well regulated—this is one reason they move to poorer ones. It's easier, for example, to get away with a major oil spill in Nigeria than just off the coast of the Southern United States.

Financial corporations have been more skilful than heavy industries in wiping out oversight. The financial industry spent over \$5 billion on lobbying over the decade of the 1990s to get rid of all the New Deal banking regulations of the 1930s. The consequent lack of restrictions was the prime cause of the ensuing disaster. We are still living with the results of the mess created and there is probably worse to come.

The corporate system is dangerous because it is so interlinked and so concentrated. In a brilliant paper, three mathematicians specialising in complex systems theory have mapped the corporate universe.<sup>1</sup> Starting from an OECD data base of 43,000 TNCs, they trace all the complex financial interconnections between them and show that 80% of the value of those 43,000 TNCs is in the hands of a mere 737 of them. It gets worse. Through inter- and intra-investment and participation in each other's affairs, just 147 TNCs hold 40% of the value of all the TNCs in the world. And the crowning finding of the paper is that the top 50 among these hugely interconnected TNCs—with the single exception of Walmart—are all giant financial corporations (45) or insurance companies (4).

This is what the authors call the “knife-edge model”: if the economy is going well, the system appears robust. But an accident in any one of these top fifty TNCs could quickly become a shattering crisis for everyone and would make the fall of Lehman Brothers look trivial. This is the truth we must keep repeating: we are living on a knife-edge.

The industrial TNCs may be bad, they may plague the lives of this or that community and avoid their taxes everywhere but the worst and most threatening among them are the huge banks and hedge funds. They have the power to destroy even their sister corporations and each other and reduce the world to chaos.

## Coalitions and alliances

So who can do what to get these beasts under control, if, indeed, it is possible at all? Let's take first the case of a community faced with the destruction—social and/or ecological—caused by a specific company in a specific location. This is likely to be the situation faced by many readers of ALAI. Company A pollutes the local river and the inhabitants are getting sick;

Company B discriminates and harasses women; Company C refuses to improve wages and working conditions and is trying to bust the union—everyone knows these stories of which only the details change.

The ideal way to act would be legal—to have binding international laws that could be used against them—but we don't have the means for that yet. So second-best to take on the TNCs is *first* to ensure one has a solid coalition of interests on the ground locally and *second* to identify and link with similar groups in the place where the company is headquartered, almost invariably in the North. If the case against the company is made with sufficiently powerful and persuasive research (of which many examples have been provided in the People's Tribunals) and if the Northern headquarters support groups are kept informed and asked for specific inputs, one can make life very uncomfortable for the corporation from a public relations viewpoint. Possible alliances may exist where you might not look. Don't forget, for example, the local churches' capacity to link South to North and vice-versa. National or international boycotts can sometimes work, but they need long and careful preparation to be successful.

However necessary and satisfying victories may be in such cases, everyone can agree that they don't limit the power of the system itself; for that, we must seek solutions elsewhere. What about CSR, the famous Corporate Social Responsibility movement, invented by businessmen, which claims that corporations can self-police and self-regulate? I don't deny that some CEOs are model citizens and some corporations really do try to do their best for their people and their communities wherever they are, but we would be foolish to count on CSR to rectify all corporate abuse.

I once remarked in a talk that a Good Corporate Citizen was one that paid its taxes, all its taxes, everywhere. A lawyer next to me on the panel gave me a horrified look and explained as if to an idiot-child that his job was to help his corporate clients avoid as much taxation as possible. We are still far away from closing down

1 Vitali S, Glattfelder JB, Battiston S (2011) The Network of Global Corporate Control. PLoS ONE 6(10): e25995. doi:10.1371/journal.pone.0025995

tax havens or from imposing country-by-country tax-reporting laws that could eliminate transfer pricing, but it's possible that austerity programmes in Europe may concentrate the minds of Northern governments simply because they now need all the income they can get, just like governments in the South. Together, it is also possible we can get our governments to act together: they must force the corporations to pay their fair share into each national treasury in each jurisdiction where they are active. Everyone but the company shareholders and top executives is losing from the present system. And there is no need to reinvent the wheel: the Tax Justice Network is international and has already done all the research and spade-work.<sup>2</sup>

No one admires the specific campaigns—against extractive industries, for indigenous peoples' rights, the right to food and water, etc. more than I do. Still, most important in my view, because it goes to the heart of our brutal and unstable system, is the necessity to create worldwide alliances to get finance under control. We need financial transaction taxes (also known as "Robin Hood" taxes) to tame speculation and use the proceeds to repair the ecological and social damage already done to communities and the earth. We need to tax companies country by country and close down the tax havens which also prevent governments from collecting at least \$250 billion a year in taxes. We need to cancel entirely the public debt of countries, particularly in Sub-Saharan Africa still under IMF austerity programmes. Overhauling the World Trade Organisation rules would be another excellent initiative, as would dismantling most parts of the new regional or individual Free Trade Agreements which are all "WTO Plus" and give even more advantages to corporations. Some successes, for instance against pharmaceutical companies, show this can be done.

However, in a globalised world, it can't be done without alliances. No single interest group today, no matter how determined, can win by itself. This means that we must learn to work together, often with people we don't know and this can't be done over the internet. Debate and discussion are necessary for people to realise that at bottom, trade unionists, farmers, ecologists, women, students, academics, retired people and so on have the same needs and share the same interests. One needn't agree on everything to do something together. In fact, it's the only way to win. ◀

2 [www.taxjustice.net](http://www.taxjustice.net)

# Transnational Corporations

**Alejandro  
Teitelbaum**

**T**ransnational corporations constitute the fundamental core of the capitalist system in its current phase. They are involved in production and services, in practically all areas of human activity – and also in financial speculation. They even intervene in illicit activities and in the grey area between legality and illegality. They play a leading role in the decisions of power and control mass media, which allows them to dictate to human beings what their behaviour, ideas, aspirations and habits should be.

Corporate activity is dominated by one fundamental objective: to obtain maximum profit in minimum time. In order to achieve this goal, transnational corporations, especially the most powerful ones,



will resort to any means, with the complicity of a majority of the national and international political elite, not to mention the services of a good portion of the intellectual elite and high-profile individuals from so-called "civil society". And when needed, they can also enjoy the support of the major powers' visible and/or clandestine armed forces – that is, the army, "special services," etc.

The activity of transnational corporations contributes to voiding representative democracy of all content and is a critical factor in the political, economic, social, ecological and cultural crisis currently affecting humanity.

Many insist on calling the current dominant socioeconomic system "neoliberal globalisation", as if it were a temporary and curable illness afflicting capitalism. However, "neoliberal globalization" is none other than the real current capitalist system.

According to a recent study, the bulk of world economic power lies in the hands of 737 major corporations, the majority of them being banks and financial groups that, through different networks and linkages, control the assets of 80% of the major transnational corporations. Of those assets, 40 percent are controlled by only 147 corporations.

So there is not, on the one hand, a capitalism that is ailing from neoliberal globalisation, characterized by periodic crises (which now take place one after another, practically without pause for recovery), war mongering, racism, neo-fascist outbreaks and environmental degradation, and, on the other hand, another "possible" capitalism that is stable and efficient, operates fluidly and is free of crises, militarism and other calamities.

With the emergence of monopolistic capitalism, which was consolidated in the second half of the 20th century with the so-called scientific and technical revolution (electronics, computing, etc), transnational corporations became the basic pillars of the world economic-financial system and substituted the mar-

ket as the method for organizing international trade. This did not mean, however, the end of competition between the major oligopolies, which tends to be fierce and merciless.

So when we hear references to the market and that "the economy must be allowed to operate free of market forces," it is important to understand that the way the economy (and society in general) functions has to remain subject to the strategy defined by transnational monopolistic capital, whose objective is to appropriate the fruits of labour, savings and human society's traditional and scientific knowledge through all possible means.

Up until the second half of the 20th century, the industrial and commercial activity of the major transnational corporations was perhaps their dominant but not exclusive feature. Already a division of roles began to appear between a core that adopted strategic decisions and only had this function, separate from industrial and commercial activity, which was entrusted to subsidiaries or outsourcing firms. This division of roles is now a dominant feature of the globalized economy.

Another feature of major transnational capital is that it can operate simultaneously or successively in the real economy and in financial speculation, production, trade and in services. Moreover, for different reasons, the major transnational corporations that constitute its main structure tend to change their territorial locations and names.

Financial capital's current hegemony is the result of a profound change in the world economy that began in the 1970s, aided by the deregulation of the financial system and the free circulation of capital. This is the moment that marks the end of the welfare state, characterized by mass production and mass consumption driven by an increase in real wages as well as the generalization of social security and other social benefits.

The decline of the welfare state model was due to several factors, among which two

stand out: the post-war reconstruction efforts, which had served as a motor for economic expansion, came to an end and mass consumption tended to stagnate or diminish, as did corporate profits. The oil “shock” at the beginning of the 1970s also had an impact. In order to give a new boost to the capitalist economy and to revert the trend of decreasing profit margins, there was a need to incorporate new technology (robotics, electronics, computing) into industry and services and this required major capital investment.

Someone had to pay the bill. An age of austerity and sacrifice (wage freezes, deterioration of working conditions and increased unemployment) was thus heralded in and accompanied the industrial reconversion. Meanwhile, the technological revolution in the most developed countries drove growth in the services sector and led to the displacement of part of traditional industry to peripheral nations, where salaries were – and are – much lower.

Essential goods needed for survival (food, health care, medicine, housing, etc.) remained beyond the reach of the large majority of the poorest segment of the world’s population: the three billion human beings who live with less than 2.5 dollars per day. The idea of public services (health care, education, etc., for all) and an irrevocable right to essential goods required in order to live with a minimum of dignity was replaced by the affirmation that everything must be subject to the laws of the market. The “comparative advantages” of States became the “comparative advantages” of transnational corporations with diverse territorial locations.

In these circumstances, the so-called “neoliberal globalization” began to take shape; there was a shift from a system of national economies to one economy dominated by four major world centres: the United States, Europe and Japan and a group initially constituted by the “four Asian tigers”: South Korea, Taiwan, Hong Kong and Singapore. Recently, this panorama has changed due to the emergence of new economic powers, four in particular: China,

India, Russia (that is recovering from its split from “real socialism”) and Brazil. This group is called ‘BRIC’. It became the ‘BRICS’ with the inclusion of South Africa.

Of these four centers, three stand out due to their concentration of financial capital and because the majority of transnational corporations are based there. In order of importance, they are: the United States, China and Europe. However, this order could change in a few years, with China overtaking the United States and the BRICS moving ahead of Europe.

Low economic growth rates prevailed, especially in the United States and Europe, as a relatively narrow market (the virtual freezing of real wages and the deterioration in social benefits) imposed limits on production and the phenomenon emerged of vast quantities of idle capital (including petro-dollars) that was not productively invested. For the owners of this capital (individuals, banks, financial institutions), however, it was inconceivable to leave it lying around without having it bear fruit.

This is how the role of finance at the service of the economy, intervening in the production and consumption process (with credit, loans, etc.), was overtaken by **financial capital’s new role: to generate profit without participating in the productive process.**

This was brought about in basically two ways. One consists of institutional investors, pension fund managers, insurance companies, collective investment bodies and mutual funds buying shares in industrial, trade and service companies. The investment funds collect money from pension funds, corporations, insurance companies, individuals, etc. and use them to buy industrial, commercial and service businesses. They keep them if they are profitable or for strategic reasons; or if they are deficient or not very profitable, they “sanitize” them, laying off staff and then selling them for a significant profit. These financial groups then intervene in the companies’ policy decisions with the goal of having their investment produce the high revenues they expect, im-

posing short term strategies.

The other way the role of speculative financial capital increases is when financial groups (investment funds, etc.) invest in speculation (for example, the so-called financial derivatives) and industrial, trade and service sector businesses do the same with a part of their profits, instead of re-investing it in production.

**As a result, the practice of generating profit by creating financial products or buying existing ones and using them for speculative operations has become widespread.**

In addition to the traditional financial products (stocks and bonds), many others have been created. Among them are derivative financial products, which are shares whose value depends or "derives" from an underlying share, that are placed in financial markets for speculative purposes. The underlying assets can be a good (raw materials and food: oil, copper, corn, soya bean, etc.), a financial asset (a currency) or even a basket of financial assets. As a result, the prices of raw materials and food staples no longer depend on supply and demand, but rather on the trading of speculative papers and as such, food prices can (and do) increase heedlessly, at the population's expense and to speculators' benefit.

For example, when the production of agro-fuels is announced, speculators "anticipate" that the price of agricultural products (traditionally destined for food) will increase. Then, the financial paper (derivative product) that represents them gets quoted at much higher prices, which has repercussions on the real price consumers pay for this food.

Investment in financial products involves various levels of risk. In the hope of covering these risks, a complex series of financial products have been invented, which further inflate the bubble and draw it even farther away from the real economy, making it possible to talk of the emergence of an international speculative economy. This is how the accumulation of a

significant amount of capital in the hands of a few has accelerated, at the expense mainly of workers, the retired and small-scale savers.

In the case of the participation of financial capital (pension funds, insurance companies, investment funds, banks, etc.) in industries and services, the high return that the owners of this capital demand and obtain is based on the deterioration of the working conditions in these industries and services. It is well known that when a company announces layoffs, its shares increase in value.

These are the ways in which transnational capital has maintained and continues to maintain high profit levels and an accelerated rhythm of accumulation and concentration, in spite of slow economic growth and the existence of a restricted market.

Despite the dominant role that financial capital currently plays, there is no doubt that productive capital is the permanent basis of the capitalist economy, without which financial capital (hegemonic or not) could not exist.

For this reason, major transnational capital not only plays the main role in the financial system, but also carries out productive activities in diverse areas: from the extraction of raw materials to the provision of all types of services (banking, insurance, health, education, communications, information, pension funds, etc.) including the production of a wide variety of goods (immediate consumer goods such as food; durable goods such as cars, etc.) and in all types of research, particularly in advanced technology: electronic, engineering, genetic, etc. Areas in which the same rule that inspires all of its activities is applied: maximum profit in minimum time at the expense of the well-being of the immense majority of humanity. (*Translation TNI*)

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*Alejandro Teitelbaum* is a lawyer, graduated in international economic relations and the author of "La armadura del capitalismo. El poder de las sociedades transnacionales en el mundo contemporáneo" (Icaria Editorial, Barcelona, January 2010).

Lex Mercatoria:

# New Global Corporate Law

**Juan Hernandez Zubizarreta**

The rights of transnational corporations are protected by a global legal system based on trade and investment rules that are imperative, coercive - sanctions, fines, diplomatic and military pressure - and executive in nature. Their obligations, on the other hand, fall under national legal systems that have been subjected to the neoliberal logic, a manifestly fragile international human rights law and Corporate Social Responsibility, which is voluntary, unilateral and cannot be legally enforced.

The political, economic and legal power at transnational corporations' disposal allows them to act with a high degree of impunity, while normative control over them is highly imbalanced, as their rights are protected by a new *Lex Mercatoria* made up of a series of multilateral, regional and bilateral trade and investment contracts, agreements, treaties and norms and the decisions of the arbitration tribunals and the World Trade Organization's Dispute Settlement System. Moreover, institutions from the economic-financial arena such as the World Trade Organization (WTO), the International Monetary Fund (IMF), the World Bank, the Inter American Development Bank... are all at the service of transnational capital.

However, their obligations come under national legislations subject to neoliberal policies such as deregulation, privatization, and a reduction of the State's role in public policy and the strengthening of the military and social control apparatus. Legislation is built *ad hoc* to defend transnationals' interests.

Furthermore, international human rights law and international labor law have an obvious weakness when it comes to the protection of the rights of social majorities. In the context of the legal realities mentioned here, Corporate Social Responsibility and its codes of con-

duct have emerged as soft-law formulas for containing the power of transnational corporations. Their apparent "goodness" and normative "neutrality," essentially understood as being complementary to the fulfilment of legal norms, mask their true purpose: to replace the hallmarks of national systems - that is, imperativeness, coerciveness and judicial control - with voluntarism, one-sidedness, and in the best of cases, specialised audits that fall beyond the judicial system's rules of operation.

Transnational companies have become extremely powerful economic agents that directly or indirectly condition the drafting of state and international regulations, through formal and informal agreements on a global scale and specific conflict-resolution mechanisms - arbitration tribunals - that operate outside of the criteria and foundations of the international judicial system. Moreover, the legitimating criteria, based more on power than democracy, guarantee them full legal security. It is not universal law that is being nurtured, but rather global law that is more private than public. The rights of capital take precedence over the peoples' rights.

Social movements, the Permanent People's Tribunal, experts and social activists have proposed concrete alternatives to control transnational corporations' practices. The approval of a binding code, the creation of an international tribunal that judges transnational firms and the creation of an information centre focussing on them are some of the key ideas on which civil society alternatives are being built. (*Translation TNI*). ↩

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*Juan Hernandez Zubizarreta* is a Professor at the Pais Vasco University and a member of Hegoa.

# The Green Economy and Corporations

Lyda Fernanda Forero

Lucia Ortiz

The term “green economy” has become increasingly popular and is presented as the solution the world needs to stop the destruction of the planet and promote “sustainable development.” However, when we analyse what it means to governments and multilateral institutions, it is clear that it is not a solution for the multiple environmental, energy and food crises the world is facing. Instead, it is a neoliberal policy proposal that is in line with the economic interests of the few and that seeks to resolve the financial crisis. As such, it will benefit the same actors who caused it structurally.

This concept has largely been developed in view of the upcoming United Nations Conference on Sustainable Development, to be held in June 2012. This Conference is known as Rio+20, to commemorate 20 years since the first one was held, also in Rio de Janeiro, in 1992.

Documents from the United Nations Environment Program (UNEP)<sup>1</sup> as well as a document drafted by member states in preparation for Rio+20 (draft of the “The Future We Want” declaration)<sup>2</sup>, recognize the existence of multiple crises but do not present any considerations regarding their structural causes. On the

1 PNUMA, 2011. *Hacia una economía verde: Guía para el desarrollo sostenible y la erradicación de la pobreza - Síntesis para los encargados de la formulación de políticas.* [www.unep.org/greeneconomy](http://www.unep.org/greeneconomy)

2 [http://cupuladospovos.org.br/wp-content/uploads/2012/05/O-futuro-que-queremos\\_22-maio-2012.pdf](http://cupuladospovos.org.br/wp-content/uploads/2012/05/O-futuro-que-queremos_22-maio-2012.pdf)

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*Lucia Ortiz* is the International Coordinator of the Economic Justice Programme - Resisting Neoliberalism, Friends of the Earth International. *Lyda Fernanda*, an economist, works with the Economic Justice and Alternatives Programme of the Transnational Institute.

contrary, they are focused on the creation of new concepts and mechanisms that make it possible to maintain and reproduce the economic model and the power structures that sustain it. In the present text, we will use quotes from the two documents (we refer to them as GE - Green Economy and FW - The Future We Want) to expose the links between the concept of “green economy” and corporate power.

While “green economy” mechanisms may appear to be more of the same or an attempt to paint the capitalist system green, they in fact imply a great deal more. They propose adjustments to national policies, especially in developing nations, which have not historically been responsible for the problem.

In order to have these changes adopted, green economy proponents enjoy the support of international financial institutions (IFIs) and private capital, as noted in FW: “We encourage all countries to design and implement policies related to a green economy in the context of sustainable development and poverty eradication. We support the creation of a capacity development scheme involving UN agencies, multilateral and bilateral donors and the private sector to provide country specific advice, in accordance with national circumstances and priorities, and to assist developing nations in accessing available funds and technologies.”

The UNEP considers an “adjustment to the structure” to be necessary, which means relocating capital and prioritizing natural capital over physical, financial or human capital - that is, to include everything “green” and social in the market. This proposal is based on the idea that only the market is capable of resolving the problems humanity and the planet are facing. According to this argument, it is

the inefficient inclusion of different aspects of life and natural processes in the market that has led to the current crisis: “We recognize that (...) an attractive environment for investment is essential for sustainable development, including sustained economic growth and the eradication of hunger and poverty.”

If we hand the different natural processes, territories and social relations – even all life functions themselves – over to the private sector, then the “invisible hand of the market” will be responsible for guaranteeing the well being of humankind. However, it is precisely this “invisible hand” that has generated the current crisis, inequality and the concen-

### **The Concrete Expression of the Corporate Capture of the UN**

The preamble of the Charter of the UN starts with the words “*We the peoples of the United Nations*”. Today, however, corporate interests are increasingly prioritised over peoples’ interests in some UN processes and institutions. As the positions of key UN member states are captured by major corporate interests, businesses have gained enormous influence over UN decisions. Business has been granted the status of a “major group” under Agenda 21, despite the fact that it should not be treated as part of civil society because of its essentially different nature. Likewise, as corporations hold far greater resources to influence negotiations than civil society, they often outnumber civil society delegations. Corporate lobbying within UN negotiations has managed to block effective solutions for problems related to climate change, food production, the violation of human rights, water supply, health issues, poverty and deforestation. The enormous influence of corporate lobbyists and the related power imbalances in some negotiation spaces – such as the UNFCCC – undermines democracy and all too frequently results in the postponement, weakening or blocking of urgently needed progress in international social and environmental justice issues.

Lobbying for market-based systems – for air, biodiversity, water, land or other common goods – as solutions to the current environmental crisis, illustrates the promotion of false solutions. Such solutions serve business interests – to profit from crises that affect millions of people – without tackling the core of the problem, while further concentrating the control of corporations over land, resources, and peoples’ lives.

Many UN agencies, including UNICEF, UNDP, WHO and UNESCO, have engaged in partnerships with major transnational companies (TNCs). UNEP has established partnerships with Exxon-Mobil, Rio Tinto, Anglo American and Shell, all of which are involved in human rights violations and the destruction of biodiversity. Other examples include: Coca Cola and UNDP on water resource protection, and BASF and Coca Cola with UN-HABITAT on sustainable urbanisation. Such partnerships not only damage the credibility of the UN, they also undermine its ability and willingness to respond to and regulate the business sector where it is involved in social, environmental and human rights violations. Moreover, the UN Global Compact promotes “responsible corporate citizenship” without obliging companies to adhere to internationally accepted standards. It allows notable human rights violators to participate and gives the false impression that the UN and TNCs share the same goals. Thus it allows for “bluewash” and merely helps businesses to boost their image and profits, instead of promoting binding obligations that would contribute to changing companies’ performance.

In the lead up to the “Rio+20” Earth Summit, the UN is partnering with the International Chamber of Commerce (ICC) and the World Business Council for Sustainable Development (WBCSD) in Business Action for Sustainable Development. The Zero Draft declaration for Rio+20 reinforces the role of business as a promoter of the so-called green economy, but completely fails to address the role of business in creating the financial, climate, food and other crises.<sup>1</sup>

<sup>1</sup> From the declaration “Reclaim the UN from corporate capture!”, in: <http://www.foei.org/en/get-involved/take-action/end-un-corporate-capture>

tration of wealth in the hands of a few. Transnational corporations (TNCs), driven by their intrinsic search for economic growth and accumulation, are the ones who are promoting this initiative. As a result, financial corporations, or 1% of the planet, go from being the cause to the solution of the crisis.

The FW has adopted this vision of the “financialization and commodification” of nature, even though it uses ambiguous language with some nuances, such as insisting on poverty reduction to avoid rejection from civil society. Despite this, far from advancing toward changes in social relations, the guidelines it presents aim to generate the conditions needed to broaden and guarantee transnational corporations’ actions and their control over nature.

“We invite business and industry to consult with relevant stakeholders in a transparent manner to take a green economy approach to achieving results including greening their supply chains in achieving the goals of their sustainability strategies.”

The UN Conference on “Sustainable Development” has become a space for trade negotiations that will result in profound policy changes, the loss of the peoples’ rights and sovereignty and the corrosion of principles (such as common, but differentiated responsibilities) that have already been agreed upon. At the same time, though, it could become a space for dispute, where the people demand that the State uphold its responsibility to protect the interests of the people and not those of the transnationals.

The green economy will not only be an opportunity for investment, business and new markets. It is also about implementing control over resources, in creating “natural capital” through the invention of an accounting system for nature’s services by companies<sup>3</sup>, whose

3 “We recognize the importance of the corporate sustainability reports and we invite public and private companies, where appropriate, including major state owned enterprises, to *integrate the sustainability information in their periodic reports*, based

human or environmental rights violations are deliberately ignored.

There are some elements that reinforce the policies promoted since Rio 92 and Rio+10. This is the case, for example, of the privatization of public services, promoted through Public Private Partnerships (PPP), which have been used by companies such as Aguas de Barcelona or Union Fenosa to appropriate natural resources.

“[Greening] may focus on improving institutional arrangements, entitlement and allocation systems; expanding the use of payments for ecosystem services; reducing input subsidies; and improving water charging and financial arrangements” (GE).

“We recognize that the active participation of the *private sector can contribute to the achievement of sustainable development, including through the important tool of public-private partnerships*”. “We encourage existing and new partnerships, in particular public-private partnerships, to mobilize significant financing from the private sector, complementing public financing” (FW).

Even though the profits multinational corporations have obtained from the privatization of public services are very high, and despite the harm they have caused to millions of people by denying access to basic services and the universal human right to water, not to mention charging rates that are too high to pay, “greening” proposes broadening this type of alliances and concessions.

The defence of the international trade system as a fundamental part of the green economy represents a failure to recognize its role in the generation of the economic and environmental crisis. Greenhouse gas emissions from the transportation of merchandise makes international trade one of the main causes of the climate crisis. Transnational corporations are

on the experience of the international frameworks for the elaboration of reports.”

behind the signing of trade agreements, which enable them to buy and sell their products at a lower price, offer guarantees for their investment and generate supra-national legal frameworks that exempt them from respecting human or labour rights or environmental standards.

At the same time, new markets are created or activity on those trading fictitious goods is intensified, thereby strengthening the financialization of nature. In terms of carbon markets: "We acknowledge that a mix of regulatory measures, voluntary approaches and market-based mechanisms can promote inclusive green economy" (FW).

"The instruments based on the market, such as tradable permits, are adequate tools to resolve 'the economic invisibility of nature' (...). The Kyoto Protocol, for example, allows countries to negotiate credit to reduce their emissions. In total, in 2009, 8.7 billion tons of carbon were negotiated for the amount of \$144 billion."

It is clear that the "green economy" maintains some aspects of the Kyoto protocol that are related to the carbon market. There is no consideration about the need to reduce greenhouse gas emissions, assume binding commitments or respect the principle of common but differentiated responsibilities. On the contrary, it aims to reproduce the scheme of the carbon market and to extend it to all of nature's processes, with the creation of the "environmental services" concept.

As we have mentioned earlier, the idea that merely assigning a price to something can guarantee its environmental conservation is erroneous and limited to a concept of the world based on the market. Additionally, it is important to take into account that once again, those who benefit from this perspective are the transnational corporations, as has been the case of the Clean Development Mechanisms and pilot projects from the REDD (Reducing Emissions from Deforestation and Forest Degradation) program.

## Energy hungry TNCs and their extractive industries

The texts do not address fundamental questions such as the need to change the energy matrix, which is based on the use of fossil fuels. While they recognize the need to promote "alternative energies", they do not explain which ones and include electricity and the biomass is this broad group, failing to recognize the environment and social problems they generate.

According to a study prepared by the ETC Group "The 10 main energy firms on the planet concentrate 25% of the global energy market (...). And they do not only seek to create a cleaner or greener image. They believe that future earnings will depend on the diversification and control of supplies with a biosynthetic base for the production of energy." Companies such as Royal Dutch Shell, Exxon Mobil Corporation and Chevron, which are known for the extraction of fossil fuels, have investments in agrofuels, and are among those that control biomass.

Emphasizing even further the extractive industries' energy-intensive relationship, the FW draft tries to present the nonexistent sustainability of the mining sector:

"We note that mining industries are important to all countries with mineral resources, in particular developing countries. We also note that, when managed, regulated and taxed properly, mining offers the opportunity to catalyze broad-based economic development, reduce poverty and assist countries in meeting internationally agreed development goals, including the MDGs."

## Rejection of false solutions

People reject the false solutions of the "green economy," promote real solutions and demand from their governments a commitment to the interests of the people and not those of the TNCs.

Changing the energy matrix implies making ☞



# Corporate Capture of the European Union

Olivier Hoedeman

Corporate lobbyists have EU decision-making in an ever-tightening grip. As a result, a large proportion of EU laws and policies are heavily influenced by lobbying. The economic crisis has shown the urgency of rejecting the neoliberal ideology that dominates EU policy-making and of reining in the influence of corporate lobbies.

The number of lobbyists in the EU capital, Brussels, grew from 650 in the mid-80s to an estimated 15,000-30,000 today, with most representing industry. Research shows that 68% of lobby groups represent business, with just 1-2% representing unions. This shocking imbalance reflects the fundamental problem that on virtually every issue, from energy policy to food labelling to banking rules, industry lobbyists outnumber and outspend public interest NGOs and unions. Big business does not always win, but it often does.

Corporate lobbyists' power in Brussels is further boosted by their privileged access to EU decision-makers, particularly in the European Commission. Many Commission advisory groups, which provide expert advice on a wide range of policy issues, are dominated by commercial interests. When the Commission initiates new international trade talks, it routinely

consults big business lobby groups. It creates business fora to help lobby national governments against obstacles to international trade and investment. This approach benefits EU-based multinationals wanting to expand their operations overseas, often at the expense of pro-poor development and environmental safeguards. Civil society groups have long campaigned to liberate EU trade policy from the grip of corporate lobby groups, but the European Commission firmly resists.

The underlying flawed assumption is that what is good for big business is good for Europe – and the rest of the world. The Commission has promoted neoliberal reforms to expand the role of markets for the last 30 years, in international trade policy, but also within the European Union. This includes a push to 'complete the single market' by subjecting all sectors of the economy to market forces, from public transport to energy and health. However, in some cases, such as water, public opposition has been too strong. This deregulation and privatisation agenda naturally favours corporate interests.

Industry's heavy lobbying power, combined with this ideological approach, has been bad news for environmental policies in Europe.

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☞ changes to the production and consumption patterns of our societies, unmasking and breaking the links between energy production and the intensive demands of extractive industries and a redefinition of the relationship between people and nature, recognizing the rights of Mother Earth and advancing toward non-mercantile societies.

The solutions people are putting forward, such as sovereignty in food, energy and territories, are proposed in an integral fashion and are based on principles that constitute real alternatives in the quest for a change to the system and power relations, radically democratizing it and promoting environmental and social justice at all levels. (*Translation TNI*) ☞

Take the example of climate change. European public opinion supports ambitious measures to curb greenhouse gas emissions, but overall reduction targets have remained low, not least because of lobbying by BusinessEurope and other industry groups. Indeed, EU climate policy is based on a market, allowing corporations to trade emissions rights. This approach has failed to reduce emissions, but has perversely created hefty windfall profits for large energy users. Instead of insisting on cutting emissions at source, the Commission has embraced flawed 'solutions' promoted by industry lobby groups, such as agrofuels, nuclear energy and costly carbon-capture and storage.

The EU is promoting this market-based approach at the UN summit on sustainable development (Rio+20). It wants to use markets to "protect" biodiversity and other natural resources, regardless of the obvious failings. Working closely with business lobbies, the Commission is promoting this as part of what is misleadingly referred to as the 'Green Economy'. The underlying agenda is that 'biodiversity trading' will give EU-based corporations and investors access to resources and new markets in the South.

The dangers of this neoliberal agenda are clear. The corporate capture of EU policies played a central role in sparking the devastating economic crisis which is haunting Europe. The financial crisis that erupted in 2008, triggering a deep economic crisis, was the result of an unsustainable bubble economy caused by the deregulation of financial markets, initially in the US. In Europe this led to a drive to create a single European market for financial services, heavily steered by the financial sector. The Commission's advisory groups on financial regulation were dominated by lobbyists, effectively allowing the financial industry to draw up its own rules.

The EU's neoliberal agenda has unleashed market forces which now also threaten to dismantle the welfare state and other progressive achievements to an extent never seen before. When the public debt crisis – caused

by the bailouts of banks – threatened the survival of the euro, the EU's response was to impose harsh austerity conditions and sweeping privatisation programmes in return for loans. This has caused a social disaster in Greece and Portugal. A similarly dogmatic austerity push is now hitting many other EU member states, as a result of the 'economic governance' rules that were rushed through in record time last year. To add insult to injury, the new EU Treaty is to make budget deficit rules irreversible and further tighten the screws, introducing a 0.5% long-term budget deficit cap that will cause further massive cuts in public budgets, deepening the crisis and further destroying the welfare state.

Industry lobby groups such as the European Roundtable of Industrialists have seen their longstanding wish implemented. More power to the EU to force governments to introduce neoliberal reforms. The Commission's use of its new economic governance powers will reshape societies in exactly the way that these lobby groups have demanded. While big business lobbies are cheering, the EU is alienating itself from the citizens.

There are signs that the public are not prepared to accept these impositions. New citizens' movements have emerged, such as the *Indignados* and Occupy, that demand real democracy instead of de facto government by market forces. Trade unions and other citizens' groups are stepping up their actions to defend social justice. With ALTER-EU, there's now a vibrant pan-European civil society coalition pushing for strong transparency and ethics rules to help curb corporate influence. It is from these and other progressive forces – and pan-European alliances between them – that the pressure for a different Europe will come. ◀

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*Olivier Hoedeman* is the research and campaign coordinator at Corporate Europe Observatory (CEO), a Brussels-based group working to expose and challenge the influence of corporations in EU policy making.

Fight for Our Future:

# The Time for Food Sovereignty is Now!

**Henry Saragih**

La Via Campesina<sup>1</sup>, together with many other social movements around the world, has long struggled against the impunity and crimes against humanity and the environment of transnational corporations (TNCs). TNCs are one of the implementers of the capitalist system that exploits people and nature. With the multiple global crises hitting capitalism and its instruments, we can see that TNCs and capitalism itself have been severely delegitimized and have begun to lose their hold and power.

At the upcoming Earth Summit or Rio+20, however, we see that with the proposed “green economy”, the “Future We Want” discusses not the future that the people or nature want or need, but rather, the future that TNCs and capitalists want and need in order to save themselves from their crisis and profit from the remaining natural resources that have so far remained free from their control.

This proposed framework is based on the idea that unlimited growth can continue. There is no recognition that nature does not exist simply to be exploited and that the pattern of overconsumption that neoliberalism has promoted cannot go on as usual. Simply labeling something green does not make it good for the planet and the people.

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1 La Via Campesina is an international movement of peasants, small- and medium-sized producers, landless, rural women, indigenous people, rural youth and agricultural workers. It is an autonomous, pluralist and multicultural movement, independent of any political, economic, or other type of affiliation. Born in 1993, La Via Campesina now gathers about 150 organisations in 70 countries in Asia, Africa, Europe, and the Americas.

In Indonesia, we are already feeling the negative impacts of the proposed “green economy.” A corporation has been violently displacing farmers in the name of conservation. This is one of our current struggles and we see this as a fight for our future, a future that holds a different path to development that is based on the wellbeing of all, that guarantees food for all, that protects and guarantees that the commons and natural resources are put to use to provide a good life for everyone and not to meet the needs for accumulation of a few.

## **Green Economy: The Rebranding of Capitalism**

Green economy simply put is the grabbing of all remaining natural resources on the planet, commodifying them, and making a profit from it all. Science has long confirmed the fact that in order to save the planet, people need to change the way they consume and produce. The capitalist system of overproduction and overconsumption fueled by fossil fuels can no longer continue. However, through the proposed green economy, capitalism has found a way to rebrand itself as “green” and create a role for itself in the post-fossil fuel world. Their proposed solution though is not to address the root causes of the crisis of overexploitation and limitless growth on a planet that has reached its limits, but rather to devise ways to cheat nature, continue business as usual and all the while, make profit from it.

Concretely, the post-fossil fuel world they propose is not to change the system of overproduction and overconsumption, but rather, just to change the fuel they use. In the proposed “green economy,” biomass (forests, soils, plants

and micro-organisms) will be used as raw materials and will also replace fossil fuel in order to continue manufacturing the same products such as plastics, chemicals and a whole array of products. This so-called bio-economy will employ the use of geo-engineering and new and hazardous technologies to further exploit nature.

The second aspect of the “green economy” proposal is the protection of ecosystems and biodiversity. This protection though is a perverse kind of conservation. Their logic is that in order to appreciate nature more, people should pay for it, or as they say, to protect, they need to enclose. This translates literally into the putting of a price tag on everything in nature and then charging a premium on its use. But this goes beyond the material goods that have traditionally been exploited from nature such as wood; it even puts a price on the functions of nature. In essence, it is the privatization, commodification and further exploitation of nature. There are other aspects of this such as the labeling of the functions of nature as environmental services and the introduction of the concept of biodiversity offsets, which will allow the rich to “offset” the loss of biodiversity. As long as you conserve somewhere, you can destroy somewhere else.

### **The Indonesia Case: What the “Green Economy” Future Holds for All of Us**

In Indonesia, we are already suffering the impact of the “green economy” perversion of the concept of conservation.

In Jambi, a resource rich province of the island of Sumatra, small farmers such as Sarwadi Sukiman, a member of the Serikat Petani Indonesia (SPI- Indonesian Peasant Union), a member of La Via Campesina, witnessed in the early eighties the devastation of the forests. A wood company called Asialog, granted a concession by the Indonesian government, displaced the local people and logged the forests into exhaustion. At the end of the 25-year concession, the private company left, leaving the area completely devastated.

Five years after the land was left for dead, peasants reclaimed the barren land and cultivated it back to life. The 101, 635 hectares of barren land that spanned the province of Jambi and South Sumatra, was occupied by 1,500 families, tilling the land, growing a diverse set of crops such as vegetables, rice and rubber, and building their homes and communities.

In 2007, however, a consortium of local and international conservation organizations formed a corporation called REKI (PT Restorasi Ekosistem Indonesia or Restoration of Indonesia’s Ecosystem), and secured a 100-year concession from the government of Indonesia, in order to restore the said area. The consortium of NGOs is made up of Yayasan Burung Indonesia, Royal Society for the Protection of Birds (RSPB) and Bird Life International.

REKI, with their supposed noble aim of conservation, then proceeded to kick out the peasants and all their families from the land. The locals were intimidated, interrogated and arrested. Some were forced to sign a letter stating that they agreed to leave the land and to never come back again. One of them was detained for six months.

The following year, in 2008, Prince Charles came to the area and declared it as a prime example for his campaign to save rainforests. Dieter Hoffman, the head of the international program of Bird Life International then announced that the forest could be placed in the REDD program as it could absorb the annual carbon emissions of the city of Manchester. This brought a lot of local and international media attention to the area but there was no mention of all the farmers being forcibly displaced by the company.

Sarwadi, though, together with the other peasants, continued to hold their ground and resist REKI. But the corporation continued their assault, and have in some cases, beaten some of the peasants. And just last April 2012, REKI began a national media campaign against SPI, declaring us as terrorists because of the continuation of our struggle and resistance against them.

The struggle continues and we are trying to bring the attention of national and international media and allies to this case in order to get support against the violent displacement of small farmers and their families and support for our right to the land.

For us in Indonesia, where the majority of the people are landless, the struggle for land and genuine agrarian reform is central. The government of Indonesia has long promised to implement agrarian reform and in fact, according to the Indonesian constitution, law No. 5 of 1960, the land belongs to the tiller. But this has not been implemented. Rural peasants, if they do have land, only have 0.3 hectare of it. Indonesia has become an importer of food and an increasing number of people in the rural areas suffer from hunger and many have been forced to migrate to other countries in search of work. The importance of land to the small farmers cannot be emphasized enough. In cases, where SPI members have occupied the land, we see the landless people able to feed themselves and the community, increase their income and have food sovereignty. But now with the threat of the "green economy" and REDD, we see that land will not only be taken away from peasants, it will also be used not for food but for the carbon market and carbon offsetting.

## Fight for Our Future

For us, we see the future that the "green economy" holds for the people and Mother Earth. If we do not resist this future, TNCs and capitalists will control all of nature, further destroy it and condemn us all to a future too bleak to imagine.

We cannot allow this. We must fight for our future – a future that has another way of living, producing and co-existing with nature. The people and nature itself hold the real solutions to the multiple crises of food, climate and energy; it is just a matter of changing the system and reclaiming our sovereignty and peasant systems of production.

We, in La Via Campesina, have always called for food sovereignty. Since 1996, La Via Campesina has been developing and promoting food sovereignty as an alternative to the dominant agricultural and food system under the capitalist and neoliberal world. Food sovereignty which places at its centre sustainable peasant agriculture will not only feed the people with healthy, locally produced food, but it puts the aspirations and needs of those who produce, distribute and consume food at the heart of the food systems and policies rather than the demands of markets and corporations. For food sovereignty to work, however, we need genuine agrarian reform, which changes the system and structural relations with resources. Furthermore, agroecology, or the use of ecological principles to the production of food, is a sustainable form of agriculture. Numerous studies have shown it to be more effective in not only feeding people, but also ensuring their nutrition. Moreover, it has also been shown to be effective in cooling down the planet.

It is not too late, if we come together in this struggle, we can fight for our future. The time is now for changing the system, changing the world, and reclaiming our future. <

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*Henry Saragih* is Chairman of the Indonesian Peasant Union (SPI) and General Coordinator of La Via Campesina.

# Transnational Corporations and the Extractive Industries

David Fig

Based in Africa, it is easy to see the legacy of the transnational corporations' appropriation of the continent's mineral and natural resources.

The richness of Africa's endowments is not reflected in the welfare of the majority of its population. Instead the continent suffers from the 'resource curse' leaving it with mass poverty, unemployment, hunger, deficits in education and health, weak infrastructure, and blighted livelihoods. Resource extraction has seen the vast transfer of wealth abroad, enrichment of local elites, devastating conflicts, dislocated communities, political corruption and repression, extreme forms of labour and child exploitation, and ecological destruction.

In the Niger delta, oil transnationals have ruined the land and the water, fomented mass repression, co-operated with tyrannous leaders, and been implicated in the execution of political dissidents like Ken Saro-Wiwa.

The exploitation of the rainforests and mineral regions of the Democratic Republic of the Congo has been part of a process of massive exploitation since the start of Belgian colonial rule. Vast swathes of the forest are allocated to timber corporations becoming sovereign in areas that the state cannot reach. Gold transnationals have collaborated with warlords; warlords involved in the mining and distribution of coltan, a vital ingredient in mobile phones, using slave labour.

In Niger, regions like Arlit have seen their population's health and environment compro-

mised by uranium mining, and the transnational mining company Areva has monopolised the local water supply. The people now have to purchase their water from Areva.

In South Africa mining companies created the system of migrant labour which impoverished the countryside. Racial job reservation was standard and helped reinforce segregation and the introduction of far deeper apartheid measures. Today in abandoned gold mines, no-one is left to take responsibility for rising mine water which is acidic, toxic and radioactive, and which is likely to enter the environment on a scale much larger than previously foreseen.

The hold of the transnationals on Africa's resources continues, whether through conflict diamonds, wars over oil, land grabs for agro-fuels and other resources, or the setting up of mines in protected national parks of Namibia and Tanzania.

What TNCs are doing in Africa, they are doing in the rest of the world: corporations are applying the same strategies and tactics, causing the same devastating effects on national economies, people and the environment in Latin America, Asia, North America and Europe.

Corporate capture of bodies like the United Nations has served to prevent any kind of global accountability and transformation. The market itself rewards the worst exploiters. Corporate self-regulation has never worked.

We cannot keep our eyes closed to this super-exploitation. But how do we hold the transnationals accountable and curb their excessive powers? We could emulate the Popular Tribunals set up to judge the behaviour of Europe- ☞

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*David Fig* is an independent researcher on environmental issues based in Johannesburg, South Africa.

# Resistance as Advocacy in the Oilfields of Nigeria

**Nnimmo Bassey**

Fossil fuels extraction is extremely destructive to the environment and to the people. Whether crude oil, natural gas, coal or bitumen, their extraction means abuse of the people and the environment. Furthermore, their use means attacks on Mother Earth. Thus, the fossil-driven civilisation is a cannibal civilisation that eats up people.

The direct attacks on the people and the communities incubate resistance that manifest in different ways and continue to build up. Unfortunately, peaceful resistance to destructive extraction continues to be met with repression and criminalisation.

We see from the example of Ken Saro-Wiwa, martyred leader of the Movement for the Survival of Ogoni People (MOSOP), that resistance can be conducted in a variety of ways. Mass movement building was the path chosen by the Ogoni people and this continues to inspire other peoples who have a clear objective situation that they wish to overturn.

For Ken Saro-Wiwa, cultural revival was an essential tool. He saw the basic need to fight for the dignity of the people and respect for their cultural milieu with tools including drama, poetry and fiction.

Cultural tools are indeed ready vehicles for spreading messages and communicating with wide and diverse audiences. The power of music and poetry as well as other art forms to shape public opinion and cultural direction is well known. For a people impacted by an average of one oil spill per day and with toxic

wastes dumped into their environment, resistance is an inescapable route to survival.

In the history of repression of oil field communities in Nigeria, the major offence of the people remains their consistent call for dialogue and repair of the harm visited on them. The response to the people's call for dialogue with Shell at Umuechem in 1990 led to the destruction of a large swatch of the community as well as the murder of several community people. In 1998 the call for dialogue by Ilaje youths in Ondo State of Nigeria received no attention from Chevron until the youths occupied the Parabe platform in a peaceful direct action. The response was a commando style attack of the unarmed youths by the military conveyed in Chevron's helicopters. In the attack on 28 May 1998, two youths were shot dead, others were injured and both the living and the dead were carted into custody.

Women of the Niger Delta remain a formidable, selfless part of the resistance to the environmental degradation and livelihoods decimation by the oil companies in Nigeria. Their involvement in the struggle hinges on the historical heroic stance of Nigerian women, grew in the women's wing of MOSOP and reached new heights in the Ijaw women who occupied Chevron's flowstations between 2002 and 2003 and who in 2011 occupied bridges at Edagberi/Betterland (in Ahoada West, Rivers State, Nigeria) to block access of Shell to their facilities.

The demands of the women have remained largely the same: respect and dignity for them and their community, clean water and basic in-

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☞ based transnationals in Latin America. We could go further in crafting new binding global instruments that will bring them to book. In order to right the immense wrongs being done

by transnationals in Africa and around the world, civil society needs to come together urgently to debate and take action on this matter. ☞

frastructure, jobs for their husbands and sons. In utter desperation the women have been forced to deploy what has been termed “the naked option” – stripping in protest, as the ultimate display of disgust at an industry that ignores the people and the environment and focuses on nothing apart from profit and power.

Although much of what the world hears of the resistance in the oil fields of the Niger Delta has to do with the violent militancy of 2005-2009, the truth is that there has been a consistent resistance through mobilisations against gas flaring, for example, that has galvanised signatures from around the world to tackle the menace. Currently thousands of citizens from around the world are signing petitions demanding that Shell cleans up the mess they have piled up in the Niger Delta.

Communities are also forming themselves into networks, eliminating inter-community conflicts and monitoring and reporting incidents in their territories as a key means of environmental defence. Litigations have also been used in efforts to make the recalcitrant oil companies and collaborating State agents and agencies to listen to reason. Such cases have been pursued in courts both in Nigeria and in the home countries of the transnational companies.

To the people of the Niger Delta, the environment is their life and resistance is a key expression of advocacy. ↩

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*Nnimmo Bassey* is President of Friends of the Earth International.

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## Canada’s Modern Day Pizarros

**Richard Girard & Jennifer Moore**

“Looking to the future, we see increased Canadian mining investment throughout the Americas, something that will be good for our mutual prosperity,” said Canada’s Prime Minister Stephen Harper at the 2012 Summit of the Americas to an audience of government and business elites. Harper’s role as industry cheerleader is no surprise given that 60% of the world’s publicly traded mining companies list on Canadian stock exchanges and some 500 Canadian mining companies control half of the mineral exploration in Latin America and the Caribbean.

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Canadian mining in the region became dominant first as result of the Washington Consensus that forced many countries to open their econ-

omies to resource exploration and extraction by foreign investors. Canada played an active role in this process in countries such as Colombia. As part of the broader neoliberal project, Canada has also aggressively sought trade and investment agreements to lock-in favourable conditions for investors. Canada heavily promotes its industry as socially responsible, although it lacks any meaningful framework to ensure this.

While mining expansion enriches industry executives and shareholders, communities suffer as a result of related environmental and social impacts, including cases of serious repression and violence. Canadian mining companies have been found to be involved in five times more conflicts than companies from the UK or the US. Despite the efforts of a growing corporate accountability movement, they continue to operate with impunity in collusion with local au-

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*Richard Girard* is the Research Coordinator at the Polaris Institute in Ottawa. *Jen Moore* is the Latin America Program Coordinator at MiningWatch Canada in Ottawa.



thorities while an unapologetic Canadian government provides unwavering support.

Since Goldcorp's Marlin mine in north-western Guatemala went into operation in 2005, the company has amassed assets greater than the real GDP of Guatemala. But indigenous communities cannot win respect for their right to free, prior and informed consent, despite pronouncements by prestigious human rights bodies for the suspension of operations at the Vancouver-based company's Marlin mine. Concerns also persist about long-term risks to water, public health and security that communities will bear well after the mine closes.

Vancouver-based Pacific Rim Mining is suing El Salvador for more than \$77 million after failing

to obtain the social and environmental licence needed to develop a gold mine in the department of Cabañas. El Salvador has already spent \$5 million fighting the suit, enough to provide one year of adult literacy classes for 140,000 people. Meanwhile, several environmental activists have been killed and others repeatedly threatened.

Barrick Gold's mines in Peru, Chile and Argentina are the subject of numerous complaints and lawsuits for reasons including lack of respect for indigenous rights, environmental impacts and mine worker deaths. This Toronto-based company has also used its influence to lobby against progressive policies, such as glacier protections in Argentina and a corporate accountability bill in Canada.

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## Pharmaceutical TNCs Rewrite National Laws

**Renata Reis**

This brief article aims to stimulate reflection on an issue that has not been thoroughly explored in the literature or even in political debates on the actions of transnational corporations: their strategies to change, via revisions or re-interpretations, national laws through court actions. It is not rare to find a strong connection between international corporations and national law firms proposing strategic litigation with the goal of not only satisfying a specific legal guarantee, but also having laws modified or reinterpreted according to corporate interests. In this text, we will use pharmaceutical companies and intellectual property rights as a window of observation, taking examples from Brazilian and Indian courts. We can speculate, however, that this trend is not specific to this industrial sector and therefore, while keeping its particularities in mind, we can draw parallels in other areas and other countries.

There is nothing new about the economic (and political) power of major pharmaceutical corporations. The global pharmaceutical market grew 8.3% in 2010, reaching a volume of 875 billion dollars. Currently, the market is dominated by the United States, which was responsible for 28% of global sales in 2009, followed by the European Union with 15%, and Japan with 12%. Together, these three markets represent almost 55% of the global market<sup>1</sup>.

With regards to their political power, much has been written in the literature on this aspect. The pharmaceutical industry is considered one of the most influential interest groups in politics. As well as defending their interests at the

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1 Pharmaceutical & Biotech Industry Global Report - 2011. IMAP Healthcare Report. Available at [http://www.imap.com/imap/media/resources/IMAP\\_PharmaReport\\_8\\_272B8752E0FB3.pdf](http://www.imap.com/imap/media/resources/IMAP_PharmaReport_8_272B8752E0FB3.pdf). Consulted on September 18, 2011.

national level, pharmaceutical companies also engage in actions in multilateral organisms, such as the World Trade Organization (WTO) and the World Health Organization (WHO). For instance, during the World Health Assembly in 2008 – the year when public health and intellectual property issues were discussed in depth – the presence of pharmaceutical corporations was strongly felt in the WHO’s hallways, where they were trying to influence various actors. On that occasion, more than 80 industry representatives (industry associations and private companies) were at the United Nations Palace in Geneva<sup>2</sup>.

These companies also exert pressure in countries where they operate and seek to capture markets. Special attention is being given to “middle income” developing countries – like Brazil and India. Currently, global reports on the pharmaceutical sector highlight that the strategy of major corporations is to broaden their operations in flourishing “emerging” markets, a phenomenon that is becoming known as “pharmerging”.

### Pressure hits the legal system

During the process of intense globalisation in the 1990s, there was an increase in the transnationalisation of legal institutions and legal mobilisation – a phenomenon legal scholars refer to as “global judicialisation”. According to Santos (2007), global judicialisation has emerged through the creation of international *ad hoc* or permanent courts and arbitration tribunals and increased recourse to international judicial and quasi-judicial institutions to deal with disputes over trade and human rights issues.

However, what is less visible is the intensification of private sector litigation in national judicial bodies. In cases on intellectual property rights – IPR involving the pharmaceutical industry, much has been written on lawsuits related to individuals’ needs in terms of access to

treatment. However, there is a range of specific cases that are ultimately aimed at modifying or reinterpreting national legislation on rights in favour of private commercial interests, which can have catastrophic results for the defence of public health and countries’ sovereignty in the definition of their own domestic rules. The following examples seek to illustrate this tendency in concrete terms.

### Guarantees won, guarantees that are questioned

After the creation of the World Trade Organization – WTO, a series of multilateral agreements were established, the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) being one of them. The new agreement established that all fields of technology, including pharmaceuticals, are subject to patenting. As it is broadly recognized, although they may not be the only barriers, patents constitute an important obstacle to the entrance of generic medicines on the market. They have impacts on product prices, as they generate monopolies, thereby creating problems of access to treatment. TRIPS established a small margin to manoeuvre so that countries could adopt domestic rules, including details on the requirements for patent concessions<sup>3</sup>.

Every country has used this margin in its own way. Brazil, for example, established what is called “Previous Consent” by ANVISA (the Brazilian Health Surveillance Agency). This measure allows the health sector, along with the national industrial property office to analyse patent applications in the pharmaceutical field. The adoption of this measure has prevented the concession of unmerited patents by having a broader group of State technicians analyse patent applications in this sector.

In 2005, India introduced section 3 (d) in its Patent Law in its reform of the 1970 law. This section establishes that the discovery of new

2 VELÁSQUEZ, Germán. Acceso a Medicamentos: Retos, Respuestas y Derechos. Manizales: Editorial Universidad de Caldas, 2010.

3 Further information is available at: [http://www.iprsonline.org/resources/docs/Correa\\_Patentability%20Guidelines.pdf](http://www.iprsonline.org/resources/docs/Correa_Patentability%20Guidelines.pdf)

forms of known pharmaceutical substances is not an invention, unless there is a significant improvement of their effectiveness. In practice, this section of the law limits pharmaceutical corporations' practice of obtaining new patents for already-known products that have only undergone minor alterations.

Such measures represent important steps within the small discretionary margin provided by the TRIPS agreement, as they allow developing countries to protect their health sector from pharmaceutical companies' abusive prices and help to speed up the entry of generic medicines. However, corporations are systematically challenging these measures in national courts. Two examples can be cited here: the Novartis case in India and the Roche case in Brazil<sup>4</sup>.

In 1998, Novartis AG requested a patent in India for a *beta crystalline* form of imatinib mesylate (Gleevec), a drug used to treat chronic myeloid leukemia. In April 2002, Novartis began to commercialise Gleevec and various Indian companies launched generic versions of this product, thereby reducing prices drastically. In 2006, the Indian patent office refused to award a patent for Gleevec, based on Section 3 (d). Novartis reacted by taking the case to the Madras Supreme Court, contesting not only the Indian patent office's decision, but also the Indian law itself. The company requested that the Supreme Court overturn Section 3 (d) of the 1970 Patent Law, arguing that it violated the TRIPS agreement and the Indian Constitution. Civil society groups adopted lobbying strategies and organized actions targeting the media and parliament in order to give visibility to the case. At the same time, international groups worked with Indian civil society in a broad campaign to pressure Novartis to drop the case. The company has not desisted, despite widespread public exposure. The case is awaiting a decision of the Indian Supreme Court<sup>5</sup>.

4 This case was presented at the Permanent People's Tribunal session in 2008.

5 Further information on the Novartis case is available at: [http://www.deolhonaspatentes.org.br/media/file/Publicações/Livro%20verde%20site%20\(baixa\).pdf](http://www.deolhonaspatentes.org.br/media/file/Publicações/Livro%20verde%20site%20(baixa).pdf)

The Roche case in Brazil is not unique and can also be used as an example. Roche had one of its patent applications for a medicine used for AIDS treatment rejected. This rejection was due to ANVISA's refusal to grant previous consent, as the agency understood that there was no novelty in the product the company was attempting to patent. Disgruntled, Roche filed a legal suit questioning the validity of ANVISA's involvement in the process for analysing patent applications, delegitimising the use of this flexibility for the protection of health and alleging that it was unconstitutional. The case, presented in Rio de Janeiro, is also awaiting a court decision. It should be noted that the previous consent mechanism is being attacked in other forums in Brazil as well, for example, through bills that aim to restrict ANVISA's involvement. In relation to the bills, there is evidence of industry lobbyists intervening to question its validity.

This brief text does not allow us to go into depth on issues that deserve a more careful examination, such as the behaviour of the legal system, the debate on national sovereignty, the invisibility of these issues to the general population and the concrete impact of decisions that are favourable to companies on national health care systems and on the most vulnerable population's access to treatment. In this space, we sought to provoke a debate and bring to light more sensitive issues, namely the influence and power of transnational corporations over the design and upholding of laws that represent gains for society, with the goal of satisfying their commercial interests. Litigation presented by foreign firms in the national sphere that aims to modify protective local laws constitutes a sinister strategy that deserves attention. Although the right to petition is a prerogative in democracies, it is deplorable that corporations use legal actions and manoeuvres that aim to restrict States' capacity to legislate in favour of the people. (*Translation TNI*) ◀

*Renata Reis* is a lawyer at the Associação Brasileira Interdisciplinar de AIDS -ABIA- and coordinator of the Working Group on Intellectual Property Rights of REBRIP.

# Struggles for the Right to Water

Satoko Kishimoto

Transnational corporations are aggressively seeking to expand their control over water around the world, whether it is piped water supply or actual water resources. At the same time, community groups, civil society campaigners and unions have won important local victories and built strong regional and global networks to resist the corporate take-over of water. It is increasingly clear that the struggle for water is essentially a struggle for democracy.

The latest major mobilisation of the water justice movement happened in Marseilles in March 2012, when the Alternative World Water Forum brought together several thousand activists (parallel to the 6<sup>th</sup> World Water Forum). Debates focused on the threats emerging from new forms of privatisation, including the commercialisation of public utilities and the creation of markets for water resources that would further accelerate land and water grabbing. While 'traditional' privatisation of urban water delivery seemed to have lost momentum, the European Union now uses the eurocrisis to push for water privatisation in countries which depend on 'rescue loans', such as Greece and Portugal.

Marseilles showed that water justice activists are ready to resist this multi-faceted threat, while promoting a powerful positive agenda that includes building truly public models of water management, based on the vision of water as a commons. ◀

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*Satoko Kishimoto* is coordinator of the Water Justice project of the Transnational Institute (TNI).

## Europe: The Defence of Water as a Commons

Tommaso Fattori

A process of gradual privatisation of the Water Integrated Service (WIS) management has been developing in Italy over the past 15 years. This process has been blocked, at least partially, by the popular *Referendum* in June 2011.

Since 1994, this privatisation process introduced the following requirements: the obligation to manage water through joint-stock companies (whose objective is to generate profits to be paid to shareholders, who can be either private or public actors); the *full cost recovery* principle, which implies that the rates should cover the entire cost of the service (ruling out

the use of the general state budget, even in the case of public interest structural or extraordinary investments) as well as the obligation to grant a "fair" remuneration for the invested capital (offering guaranteed profits to the shareholders). Transnational corporations such as Veolia, Suez and Acea have been managing a significant share of the Italian WIS during the last 10 years, quite often in joint-stock companies with public and private shareholders.

The impact of the privatisation was evident. Tariffs increased up to 60% (far more than the inflation increase of 25%) and investments fell to 70% – decreasing from 2 billion to 700 million Euros. Furthermore, the companies

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*Tommaso Fattori* is a founding member of the Italian Forum of Water Movements.

planned an increase in consumption of +17,7% for the 20 years to come: the more the sales of the *commodity*, the more the profits. This “market-based logic” led to a deep environmental crisis, preventing the conservation of the resource, both in quantity and quality. In the same period, employment in the sector decreased to approximately 30%.

The decrease in investments brought about a deterioration in the quality of the service, together with a very steep increase in the tariffs. In some areas of the country, we even witnessed extreme cases of suspension of the water supply for entire buildings, whose poor inhabitants (most of them migrants) were not able to afford the higher tariffs. The decrease in investments also led to significant environmental problems: water purification remains inadequate or is lacking in large areas of the country, with considerable consequences on the health of rivers and of the Mediterranean Sea. Furthermore, privatisation turned into an expropriation of democracy: even local elected councils were not allowed to intervene in the main decisions linked to water management, which is now completely in the hands of corporations operating under the rules of private law.

Within the last 10 years, pushed by the social and environmental impacts of these policies and inspired by the principle of the right to water, a strong social movement arose in Italy, demanding water as a commons. Since 2006, this movement formed the Italian Forum of Water Movements: the Forum is constituted by 100 national organisations and more than 1000 local committees. The strength of this movement has been determined by its capacity to work as a network (with different social actors that go beyond political fragmentation, working together in a common campaign) and its capacity to make its own proposals. The movement has also demonstrated that it is not enough to struggle against privatisation; we need to build together the “positive” model we want. Indeed, the first joint initiative of the Forum was the drafting of a Law of Popu-

lar Initiative<sup>1</sup>, which establishes re-claiming the public management of the WIS. We collected 500.000 signatures in support of this Law. This text and the signatures are still lying in the drawers of the National Parliament, and have been waiting for years to be taken into consideration. The draft bill of law designs a model of public and democratically participatory management, with a key role for citizens and workers.

In the meantime, the Forum decided to promote a national Referendum<sup>2</sup> against a new law, which finally imposed the compulsory privatisation of the water service management. Despite the very high *quorum* needed (the result is valid only if the vote surpasses 50% of the electorate), the Referendum was a great success, with more than 95% of the people voting against the obligation to privatise, and expressing a clear No to private profits in water management. The lesson from this experience is that it is possible to win against the power of economic and political lobbies, and ultimately against transnational corporations, in Italy as in Europe, by using participative democratic tools and strategies. For this reason the Italian water movement is now engaged, together with a number of other European actors, in the process of building a European water network, and will support two “Citizens Initiatives” for water as a commons. The Citizens Initiative is a direct participation instrument that is opposed to the “post-democratic” procedures of European Central Bank (ECB) and the European Commission (EC), which are pushing member states to force the privatisation of public services, through austerity policies and conditioned loans particularly for those EU member states with higher debts.

Finally, if we want to win, we need to sus-

1 The Italian Constitution gives the legislative initiative to the people when at least 50.000 signatures are collected supporting a Law of Popular Initiative

2 The Italian Constitution allows for calling for a Referendum to repeal one national law or parts of it. 500.000 signatures are needed to demand a national Referendum.

tain strong pressure and momentum. The great success of the Referendum was a big step forward, but it is still not a definitive victory. The private companies in Italy are still managing water and are trying to disregard the implementation of the referendum results. For this reason, we launched a "Campaign of civil obedience": citizens themselves deduct from their bills the profit margins granted to corporations, which have been cancelled by the Referendum. Furthermore, the referendum is still not a definitive victory, because cancelling the obligation to privatise still does not make water a commons. So we have launched a campaign to reclaim the public management of water: we demand an end to the private partnerships, that the corporations be turned into statutory public bodies, giving the democratic participation of citizens a key role in management. Water and democracy are strongly linked, just as privatisation and post-democracy were linked. (Translation: TNI). ◀

## Asia: Water Citizenship, Democracy and Resistance

Mary Ann Manahan

Asia has been a target of foreign capital and economic restructuring for many decades and more so now with emerging political, economic and military powers and markets such as China and India. But Asia's diverse and complex socio-cultural, economic and political contexts make it interesting in terms of how alternative ideas are given spaces, even as private capital and corporations dominate much of the peoples' lives in the region.

Water presents an arena of intense social and political actions, conflicts and activism. In northern Philippines, for example, the indigenous peoples of the village of Didipio, Kasibu, Nueva Viscaya opposed the mining operations of an Australian mining company, which have filed for water permits that will divert 3.8 million cubic meters of freshwater annually from two rivers. If approved, the water abstraction will affect local agriculture (this volume of water for irrigation can be used to produce some 1,538 metric tons of rice), exacerbate the droughts brought by El Niño and generate waste, which will be dumped into tailing ponds in upstream areas. In short, the indigenous peoples will not only lose access to their traditional community water sources and livelihood but also will irreversibly damage their environment. Their struggle is but one of the many tenacious resistance campaigns to prevent communities from being environmental casualties and refugees. The campaign has captured national and international media attention as it represents a multitude of issues—of corporate control over water resources and competing interests in natural resource use and management, government's weak regulation and sustainable development. With the support of national advocacy NGOs and progressive elements in the Catholic Church, the indigenous peoples continue to claim their stakes and fight for their children's future.

Similarly, in Indonesia, civil society, unions and Jakarta's citizens are calling for the termination of the city's contract with Suez, the French water giant, and its remuni-

palization. Twelve years after the privatization of water in Jakarta, Suez has failed to deliver its promise of adequate water supply through pipe connections in the city. The residents had resorted to over-extraction of groundwater which created new environmental problems. A recent report of the Supreme Audit Board of Indonesia concluded that the private contract is non-transparent, unfair and void. Jakarta is the last big city in the global South where Suez still has a concession contract. The termination of this contract, therefore, will have a big political impact not only in Jakarta but all over the world.

Finally, there are many other examples of campaigns to roll back the power of TNCs. The examples above highlight two important points: one, the commercial use of water for mining, extractives, etc. is not only often socially and environmentally destructive, it also conflicts with the human right to water; and two, water resources and service provision must be democratically controlled. Alternative management to this life sustaining resource is possible. ◀

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*Mary Ann Manahan* is a researcher-campaigner at Focus on the Global South and is based in Manila.

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In the Defence of Water:

## The Rising Tide in the Americas

**Marcela Olivera**

*Cause the tide is high,  
And it's rising still  
Arcade Fire*

In an age when neoliberalism took it upon itself to unravel the fabric and the social rights accumulated over decades, at a time in history when all the assets of the peoples were for sale - after 18 years of defeats, history began to take a different turn in Cochabamba, a city in Bolivia.

In April 2000, thousands of groups - including associations of irrigators, urban unions and local mutual support networks - created an extensive social network that expelled a consortium led by a transnational corporation which sought to grow rich from water. In this process, it also created mechanisms for social decision making that demonstrated that new ways to democratize political power and to manage common goods are possible.

This victory was followed by another, in October 2004, in Uruguay. Through a referendum,

the people of Uruguay paved the way for a Constitutional change that declared water as a human right and that its management should be in public hands. This unprecedented victory meant that the Uruguayan people managed to expel another transnational from our continent.

Since then, seven transnationals have left our countries. However, what does this mean in real terms? The diverse ways to manage water that have emerged as a result of the absence of the state and after the exit of the transnationals offer a new definition of what is public that transcends the state. Those who have struggled for water in the streets or in the polls, are now facing a complex challenge that has multiple answers when it comes to providing a solution for water supply.

While a major part of water systems remain in hands of public state enterprises or are self-managing, new platforms for struggle have emerged throughout the continent. Privatization has taken on new forms that have transcended the systems.

In Peru, Guatemala, Bolivia, Chile and Ecuador, social movements are still mobilizing in the face of transnationals and against developmental mega projects that the right wing governments and the so-called progressive governments have been promoting for several years.

In the Americas, discontent grows day by day. We continue to witness not just a series of isolated uprisings, but a global movement against the unrestrained ambition of corporations and for the defence of common goods.

In Chile, in recent months, the population of Aysen has risen up against hydroelectric projects driven by the Piñera government. In Ecuador, recently there was the "National March for life and the dignity of the people." In Peru, the population said No to the Conga mining project that the Ollanta Humala government is proposing to develop. In Bolivia, the native people from the Indigenous Territory and the Isiboro Secure National Park, TIPNIS, have begun the Ninth March against the Villa Tunari – San Ignacio de Moxos highway that the Morales government aims to build as part of a bi-oceanic

corridor that will link Brazil with Chile and will have an enormous impact on the ecosystem of indigenous communities from the lowlands.

The Cochabamba uprising was the beginning of a social movement in the Americas that has transcended the frontiers of water. In April 2000, the people of Cochabamba organized in councils, assemblies and meetings and recovered the right to decide for ourselves about the fate of common goods like water. For many days, we witnessed a new form of democracy based on the collective formation of public opinion, on the expansion of local participation structures, on mutual confidence and the recognition that our own individual welfare is guaranteed through solidarity with others. The strength of this collective action was to demonstrate that the fate of history does not necessarily lie with privatization and resignation. The tide continues to rise in the Americas. (Translation TNI) <<

*Marcela Olivera* is the Latin American Coordinator of the Water for All Campaign of Food and Water Watch

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# Energy and the World Bank + 20

Pablo Bertinat

There is an important debate taking place around the Rio+20 Summit. One of the issues that has not yet been fully incorporated into the debate, however, is in relation to the evaluation of the past 20 years, what has happened, which policies were successful and which ones have failed.

In this context, it is interesting to review the proposals the World Bank made at that time regarding our continent's energy sector in order - at the very least - to infer their relationship with the policy lines currently being promoted.

The framework for the debate in 1992 was the institutionalization of the first issues raised that questioned the sustainability of development. At the time, discussions were marked by the incorporation of the idea of sustainable development into discourse and the tools that emerged from the 1992 Summit, such as Agenda 21 or Program 21. These, however, already carried the seed of evil, as they expressed the strong conviction that market tools were essential in order to advance toward sustainable development.

Only a few months after the 1992 Summit, the World Bank began to include its vision and strategy on energy in its documents. In 1993, the document entitled "The World Bank's Role in the Electric Power Sector: Policies for Effective Institutional, Regulatory, and Financial Reform" (Washington, DC, 1993)<sup>1</sup> laid the foundation for the neoliberal paradigm of privatization and the handing-over of the electricity sector to transnational corporations within the framework of the recommenda-

tions from the Washington Consensus.

Five basic principles were included in this document. The key aspects were:

- Changes in regulatory frameworks in order to avoid government "interference" in electricity-related activities.
- In countries characterized as being "less advanced, in which public and private sectors are weak, [and] market forces are relatively nonexistent", the goal was to incorporate external actors from developed or developing nations.
- A business and commercial model for organizing the sector was adopted, at the expense of a structure based on public service criteria.
- The Bank would only grant loans to countries that "had clearly committed" to these policies.
- The Bank would also finance programs that facilitated private development.

The political reality of Latin American countries, the advance of liberalism in all aspects and the withdrawal of the State from its various functions ensured that these policy lines for the energy sector spread rapidly throughout the continent, allowing private companies - essentially transnational corporations - to enter the sector. They also allowed for the turning over of pre-existing assets, dividing up of sectors and the establishment of the image of energy seen as a type of merchandise.

The results of these policies, promoted by the entire World Bank Group, have been described in numerous studies that demonstrate the role transnationals had in this process and how they

1 The World Bank's Role in the Electric Power Sector: Policies for Effective Institutional, Regulatory, and Financial Reform. International Bank for Reconstruction and Development / World Bank. Washington, 1993.

took advantage of what governments in the region offered them. The practices developed in the 1990s demonstrate the resemblance in the way policies were applied. In several cases, one finds similarities in the drafting of the normative bodies that were to serve as regulatory umbrellas.

Twenty years later, the situation has changed in various ways. The region is largely governed by progressive governments, which made it possible, with a push from social movements, to deal neoliberalism harsh blows. The crisis unleashed by the application of the so-called "structural adjustments" left States without any regulatory power - a power that has reappeared as a necessity, after years of deterioration in the muscle tone of the public system. Furthermore, the presence of governments in the energy sector is currently visible in the design of energy policies, which had been previously delegated to business groups.

However, a large part of the notions associated with the process that began in the 1990s continue to be predominant. For example, the prevailing logic that associates energy with commodities, guaranteeing cheap inputs for extractive development and for semi-finished products, stands out. Current governments have taken charge of the agenda on infrastructure linked to the productive model, which is sparking resistance in various regions due to its destructive impact on the environment and therefore on the communities that live there.

These 20 years have resulted in a marked downplay of the concept of sustainable development as a beacon that can light the way. These failures and the justified criticisms of predominant development indicators such as GDP have become the pretext for building the new/old green economy discourse, or what the World Bank calls "inclusive green growth"<sup>2</sup>.

This new-yet-old strategy attempts to make us believe that the only way to protect common goods is to assign them a monetary value.

2 World Bank: <http://bit.ly/L7kCFY>

Along these lines, the United Nations Statistical Commission has adopted the System of Integrated Environmental and Economic Accounting, which incorporates a methodology for assigning value to natural resources. The World Bank, in turn, has implemented the Wealth Accounting and Valuation of Ecosystem Services (WAVES) system to promote, in its own words, the accounting of natural capital. In the cases witnessed, we can already see the weight that natural capital - and in particular energy - will have in this new system of measuring what the World Bank and the United Nations call wealth.

As a result, a step has been taken toward the commodification of nature, renewing the impunity that emerged with the carbon markets, which has been currently extended to the environmental liabilities concept, as if it were possible to remedy all damages, regardless of their magnitude, simply by giving out money.

Without a doubt, this new offensive to link prosperity and well being to an increase in wealth - wealth being associated with the idea of diverse forms of capital, whether they are manufactured, natural, human or social - is being shaped as a new attempt to impose the private over the public. This means treating nature, and in particular energy, as a type of capital and not as a common good and exposing it to privatization, accumulation and profit-making processes. This is beyond all doubt a path that is contrary to the idea of energy as a right of the peoples.

In light of the urgency raised by the decline in all ecosystem indicators, 20 years after Rio 92, the World Bank is leading an offensive to broaden the market as an alternative - one that excludes all others. To face this, the response must be to strengthen the public sphere and to prioritize measures of command and control, rather than commodification. (*Translation TNI*) ◀

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*Pablo Bertinat* is an electrical engineer with a Master's degree in environmental-human systems. He is the coordinator of the energy area of the *Taller Ecologista* and the *Programa Conosur Sustentable*.

# A Threat to Global Financial Stability

Sarah Anderson y Manuel Pérez-Rocha

Nearly four years after the worst financial crisis in 80 years, the United States and several other governments have adopted modest financial reforms aimed at preventing future crises. However, few are aware that these and further reform efforts could be undermined by international trade and investment agreements.

A growing number of trade agreements and bilateral investment treaties (BITs) give foreign investors, including financial firms and securities traders, the right to sue governments over alleged violations of a long list of so-called “investor protections.” International tribunals rule on these “investor-state cases,” often demanding that governments pay investors hundreds of millions of dollars in compensation. The most frequently used tribunal is the International Center for the Settlement of Investment Disputes (ICSID), associated with the World Bank.

Here are five ways that trade and investment agreements threaten global financial stability:

## 1. Bans on capital controls

Trade and investment agreements often include sweeping prohibitions on the use of capital controls, despite the fact that many countries have used them effectively to address financial volatility. The Belgian investor Gruslin sued the Malaysian government(1) because it used this policy tool to prevent rapid capital flight during the Asian crisis of 1998. The investor filed the claim under a Belgian treaty that only applied to government-approved investments. But while the case was dismissed, the government still had to pay half of the arbitration costs. And most investment agreements are far more restrictive. Typical U.S. agreements ban capital controls even during crisis periods.

## 2. Weak protection for “prudential” measures

Most U.S. trade and investment agreements have language that appears designed to protect a government’s authority to ensure financial stability. For example, the US-Peru agreement(2) reads: *...a Party shall not be prevented from adopting or maintaining measures for prudential reasons, including ... to ensure the integrity and stability of the financial system.*

However, then the text goes on to say: *Where such measures do not conform with the provisions of this Agreement referred to in this paragraph, they shall not be used as a means of avoiding the Party’s commitments or obligations under such provisions.*

Many legal experts have argued that this sentence undermines the rest of the text, leaving significant uncertainty over whether actions to prevent financial crises could be considered treaty violations. We’ll never know how many times regulators failed to act because of fear of provoking a lawsuit.

## 3. Performance requirements and national treatment

Existing agreements prohibit governments from placing certain “performance requirements” on foreign investors or from giving preferences to domestic firms. These rules can lead to an over-reliance on foreign banks and difficulties in meeting the credit needs of

1 [http://www.iiapp.org/media/cases\\_pdfs/Gruslin\\_v\\_Malaysia.rev.pdf](http://www.iiapp.org/media/cases_pdfs/Gruslin_v_Malaysia.rev.pdf)

2 [http://www.ustr.gov/sites/default/files/uploads/agreements/fta/peru/asset\\_upload\\_file461\\_9544.pdf](http://www.ustr.gov/sites/default/files/uploads/agreements/fta/peru/asset_upload_file461_9544.pdf)

small and medium businesses and local residents. For example, Mexico's financial stability is at risk given the high level of concentration of its financial system in the hands of foreign banks. According to the IMF(3) "concentrated loan portfolios increase credit and contagion risks, which are currently not sufficiently monitored and addressed by current regulations and supervisory practices." Two of the four major banks in Mexico are Spanish and the deterioration of Spain's economy has affected their ability to provide credit to Mexican clients(4) and an increased repatriation of their profits.

#### 4. Sovereign debt

Recent U.S. trade and investment agreements treat sovereign debt as an "investment" and therefore may restrict governments' ability to restructure debt. For example, after Argentina's financial crisis, a group of Italian bondholders refused to agree to a negotiated "hair cut" and is demanding more than \$2 billion through the "Abaclat and others vs Argentina claim" (5) under the Italy-Argentina BIT. Some recent U.S. deals prohibit debt-related claims during a restructuring unless there is discrimination against foreign investors. However, a nation in crisis may be justified in giving domestic bondholders priority to protect the banking system or ensure fulfillment of wage and pension commitments.

#### 5. Obligation to provide a "fair and equitable treatment"

Typical investment agreements obligate governments to provide foreign investors "fair

and equitable treatment." Tribunals have interpreted these vague terms broadly. For example, a Dutch subsidiary of a Japanese bank, Saluka, successfully argued(6) that the Czech Republic had violated its right to fair and equitable treatment by excluding a small bank in which it had invested from a bailout program made available to larger Czech banks. The Czech Republic was ordered to pay Saluka(7) \$181 million plus \$55 million in interest.

In the wake of the 2008 crisis, the Obama administration formed an advisory committee to suggest changes in the U.S. model BIT. Labor, environmental, and other public interest groups made several recommendations that would have supported global financial stability. However, the new U.S. model BIT, released in April 2012, ignores these recommendations. This model will be used for BIT negotiations with China and India and is expected to be the U.S. proposal for the investment rules in any new trade agreements.

There are encouraging signs from some other governments. Australia is refusing to accept investor-state dispute settlement in the Trans-Pacific trade talks that currently involve the United States and eight others. India, which is facing numerous investor-state claims, is reportedly reviewing its position on investor-state. A recent European Parliament resolution, while not questioning the overall model, makes several interesting proposals, including: 1) excluding speculative forms of investment from protection, 2) ensuring the right to regulate, and 3) requiring investors to exhaust local remedies before taking claims to international tribunals.

The global financial system needs to be transformed to support people and the planet. Overhauling international trade and investment rules needs to be a part of that challenge. ◀

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*Sarah Anderson* is Global Economy Project Director, and *Manuel Perez-Rocha* is an Associate Fellow, of the Institute for Policy Studies in Washington, DC.

3 <http://www.imf.org/external/np/sec/pr/2012/pr12111.htm>

4 <http://www.cesf.gob.mx/docs/inf2012cesf.pdf>

5 <http://bit.ly/JH84KN>

6 [http://www.pca-cpa.org/showpage.asp?pag\\_id=1149](http://www.pca-cpa.org/showpage.asp?pag_id=1149)

7 [http://www.iareporter.com/articles/20091001\\_72](http://www.iareporter.com/articles/20091001_72)

# Investment Agreements: a Key Component of TNC impunity

Cecilia Olivet

By signing international investment treaties, in the hope of attracting foreign investments, governments are conceding transnational corporations greater rights than to their own citizens. These agreements undermine the sovereign right of governments to regulate in the interest of people and the environment and expose countries to the risk of spending millions in law suits by corporations.

## Threats that are worth more than a thousand actions

How many times have you heard politicians, economists, business men or journalists saying, if a country wants to develop, it just needs three things: investment, investment and investment! This statement follows one of the basic premises of neoliberal economics:

*Foreign Direct Investment (FDI) is a pre-condition for development:*

- *to attract FDI you need to protect investors;*
- *the only way to protect investors is by signing investment agreements.*

While at first these were presented as recommendations from developed to developing countries, they quickly became clear threats. The latest came from EU Trade Commissioner Karel De Gucht when, referring to the Argentinian nationalization of the oil company YPF, he stated:

*"...But companies only make the serious, long-term and expensive decisions to invest in a country when they are sure that their investment is secure. By taking this action, Argentina has sent shock waves through the international business com-*

*munity. The consequences for its own economic development will be felt for a long time to come."*<sup>1</sup>

Influenced by these type of threats and due to a blind belief (not supported by evidence<sup>2</sup>) that signing investment treaties was needed to "attract" foreign capital, governments around the world adopted the recipe wholesale and Investment Treaties have mushroomed over the last 2 decades. While in 1989 there were only 385 Bilateral Investment Treaties (BITs), today 2807 BITs have been signed worldwide. The EU alone holds 1300 BITs, an incredible 46% of the total amount<sup>3</sup>. It is important to consider that when we talk about Investment Agreements, we are also referring to the investment protection chapters included in Free Trade Agreements (FTAs). The United States started negotiating FTAs with an investment chapter in 1994, and the European Union (EU) since 2011<sup>4</sup>.

1 [http://trade.ec.europa.eu/doclib/docs/2012/april/tradoc\\_149369.pdf](http://trade.ec.europa.eu/doclib/docs/2012/april/tradoc_149369.pdf) (accessed 21 May 2012)

2 Many studies have assessed whether there is a direct correlation between signing investment agreements and attraction of foreign direct investment. Evidence shows that "investment treaties are neither necessary nor sufficient for attracting foreign investment" (Bernasconi, - Osterwalder et al, 2011: 12 <http://www.iisd.org/publications/pub.aspx?pno=1534>).

3 [http://www.unctad.org/en/docs/wir2011\\_embargoed\\_en.pdf](http://www.unctad.org/en/docs/wir2011_embargoed_en.pdf) (accessed on 12 November 2011)

4 With the coming into force of the Lisbon Treaty on 1 December 2009, the European Commission (EC) now has the competence to negotiate investment protection ([http://www.s2bnetwork.org/fileadmin/dateien/downloads/eu\\_investment\\_reader.pdf](http://www.s2bnetwork.org/fileadmin/dateien/downloads/eu_investment_reader.pdf)). This has led to the inclusion of investment protection chapters in the FTA negotiations with Canada, India and Singapore (Leaked versions of the texts <http://www.s2bnetwork.org/themes/eu-investment-policy/eu-documents/text-of-the-mandates.html>).

## Some Emblematic Cases

### *Corporations vs the right to health (Philip Morris vs Uruguay)*

When Uruguay tried to protect public health by applying restrictions on cigarette marketing, it got sued by Philip Morris. Philip Morris argued that Uruguay's proposal to include graphic images of the health consequences of smoking and health warnings covering 80% of the cigarette packages were "unreasonable" measures and an expropriation of Philip Morris's trademarks<sup>1</sup>.

### *Corporations vs the right to respond to financial crisis (CMS and 40 other companies vs Argentina)*

When Argentina took measures in response to its 2001–2002 financial crisis, such as freezing of utility rates (energy, water, etc.) and devaluing its currency, it was hit by over 40 law suits by investors. Big Companies like CMS Energy (US), Suez and Vivendi (France), Anglian Water (UK) and Aguas de Barcelona (Spain) demanded multi-million compensations for revenue losses<sup>2</sup>.

1 Further details on the case: [http://www.fpif.org/articles/philip\\_morris\\_vs\\_uruguay](http://www.fpif.org/articles/philip_morris_vs_uruguay) and IISD: <http://bit.ly/M11qQS>

2 Further details on the case: [www.cipamericas.org/es/archives/649](http://www.cipamericas.org/es/archives/649)

### *Corporations vs right to protect the environment (Metalclad vs Mexico)*

When Mexico denied the U.S.-based Corporation Metalclad the permit to operate a toxic waste site and instead declared the area a natural reserve to protect the environment, Metalclad retaliated by filing a lawsuit demanding \$130 million in compensation for damages and loss of future earnings<sup>3</sup>.

### *Corporations vs right to water (Bechtel vs Bolivia)*

When families living with only US\$60 per month in Bolivia protested against an increase in water rates of more than 50%, Bolivia was sued by US-based Bechtel and Spanish Abengoa for \$50 million because the protests forced the company to leave the country<sup>4</sup>.

3 Further details on the case: <http://www.forumdemocracy.net/article.php?id=110>; and [http://www.biicl.org/files/3929\\_2000\\_metalclad\\_v\\_mexico.pdf](http://www.biicl.org/files/3929_2000_metalclad_v_mexico.pdf)

4 Further details on the case: <http://democracyctr.org/bolivia/investigations/bolivia-investigations-the-water-revolt/bechtel-vs-bolivia-details-of-the-case-and-the-campaign/>

However, the danger of investment agreements has been long overlooked and its impacts kept from public scrutiny. It is then worth reminding ourselves that:

- Investment agreements allocate to one side (the governments) all the duties and obligations and to the other (the corporations) all the rights and protection.
- Investment agreements allow multinationals to sue governments at secretive international arbitration tribunals when these governments try to regulate in favour of the public interest. However, governments cannot take any action at the international level against multinationals if they commit human rights abuses or environmental damage.

- Investment agreements grant corporations risk-free investments and greater rights than to citizens.

### **Transnational Corporations: drivers and beneficiaries of the international investment regime**

Transnational corporations (TNCs) have been long-standing advocates of an international investment regime that is biased towards the investor. They have largely succeeded since the current rules of international investment grant immense privileges to investors while placing no binding obligations on them.

The same TNCs that promoted the system in the first place, are the clear beneficiaries.

TNCs have increasingly made use of the possibility to sue governments. In 1990, the total number of cases filed by TNCs against States under the International Centre for Settlement of Investment Disputes (ICSID), of the World Bank,<sup>5</sup> was just 26, but during the 1990s and particularly since 2000, the number of cases increased massively. Between 2000 and 2011, 300 cases were filed, bringing to 369 the total number of cases filed by the end of 2011. Bilateral Investment Treaties - BITs have played a major role in this trend, since 63% of all cases brought to ICSID invoked BITs as their main basis of consent<sup>6</sup> (ICSID, 2012).

When we explore which TNCs are behind the upsurge of law suits against states, it should come as no surprise that the majority of the corporations are based in Europe and North America. According to one public database including 249 cases, 45% were filed by US corporations and 31% by Western and Northern European corporations<sup>7</sup>.

Suing governments has become a lucrative industry. The demands for compensation have been on the increase. In 1999 Methanex Corporation demanded \$970 million in damages against the United States<sup>8</sup>. Only 7 years later, that request seemed small compared to new emerging demands from corporations. In 2006, Occidental Petroleum Corporation demanded US\$3 billion in compensation from Ecuador<sup>9</sup> and in 2007, Saba Fakes demanded US\$19 billion in damages from Turkey<sup>10</sup>.

5 Although ICSID was founded in 1966, it was almost dormant for the first 30 years of its existence.

6 ICSID, World Bank: <http://bit.ly/xWWiJR> (accessed on 21 May 2012)

7 [http://iiapp.org/media/uploads/report\\_of\\_claimant\\_nationality\\_by\\_treaty\\_type.pdf](http://iiapp.org/media/uploads/report_of_claimant_nationality_by_treaty_type.pdf) (accessed 16 December 2011)

8 [http://www.unctad.org/en/docs/iteit20054\\_en.pdf](http://www.unctad.org/en/docs/iteit20054_en.pdf) (accessed on 3 December 2011)

9 IISD: <http://bit.ly/KWV6Kn> (accessed 13 December 2011)

10 DLA Piper: <http://bit.ly/KYoS1Y> (accessed 15 December 2011)

Even if award damages ordered by Tribunals do not always reach the aspirations of corporations, they can still reach astronomic figures. In 2010, Ecuador was ordered to pay US\$698.6 million in the dispute of Chevron vs Ecuador<sup>11</sup>.

There seems to be a trend towards higher and higher demands and awards. *The American Lawyer*, which releases an annual Arbitration Scorecard, warns that "bringing a billion-dollar claim is no longer enough to stand out in a survey of international arbitration. Nor is it enough to win a measly \$100 million"<sup>12</sup>.

### If corporations are cashing in, who is picking up the tab?

Clearly developing countries are at the receiving end of law suits. In 2010, 51 cases were filed against developing countries compared to 17 against developed countries. The country that tops the ranking of suits is Argentina with 51 cases<sup>13</sup>.

But ultimately, it is the people who bear the double burden of corporate abuses on the one hand, and diversion of their taxes to pay corporations millions in law suits, on the other.

The time has come for a public debate about the "benefits" of investment treaties! <

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*Cecilia Olivet* is part of the Economic Justice, Corporate Power and Alternatives programme of the Transnational Institute. She works on issues related with the European Union's trade and investment agenda, the international investment regime and alternative regionalisms.

11 <http://www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202498052041> (accessed 15 December 2011)

12 <http://www.law.com/jsp/cc/PubArticleCC.jsp?id=1202499018258> (accessed 10 December 2011)

13 [http://www.unctad.org/en/docs/wir2011\\_embargoed\\_en.pdf](http://www.unctad.org/en/docs/wir2011_embargoed_en.pdf) (accessed on 12 November 2011)

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Contact: [tni@tni.org](mailto:tni@tni.org)

De Wittenstraat 25, 1052 AK Amsterdam, The Netherlands

Tel: + 31 20 662 66 08 Fax: + 31 20 675 71 76