PEOPLES RIGHTS CONFRONTING CORPORATE POWER IN LATIN AMERICA

OCTOBER 2017

Bento Rodrigues, Mariana municipality (MG), after the sludge flooding from the Fundão dam. Photo: Guilherme Weimann/Dam Affected Peoples Movement (MAB)

economic justice resisting neoliberalism
INTRODUCTION

Petitions to control the power exerted by transnational companies at global level are not new. This was the focus of Salvador Allende’s speech before the United Nations (UN) General Assembly in 1972, less than a year before his death on September 11, 1973, when a military coup d’Etat gave way to Pinochet’s dictatorship, with Milton Friedman as economic affairs adviser. This was the cradle of neoliberalism in Latin America. Since 2014, we have once again a process in the UN for the development, by its member states, of an international legally binding treaty on transnational corporations and other business enterprises with respect to Human Rights. Currently, this negotiation process is taking place in the context of a new ultra-neoliberal offensive against peoples in our America; of escalation of violence against territory and life defenders; of greater concentration of power in the hands of transnational capital that is allowed to violate human rights and commit environmental crimes around the world; and the advance of an architecture of impunity that builds walls to protect the profits and interests of transnational companies, through “free” trade agreements and investment protection treaties that threaten peoples’ rights and sovereignty as well as public interest policies from the States.

This publication includes cases of systemic and systematic violation of human rights, environmental rights and the rights of affected peoples in eight countries of the region. These are struggles described by members of Friends of the Earth Latin America and the Caribbean, which include denunciations, lessons learnt from resistance struggles and concrete proposals to further develop international Human Rights law, from the bottom up, and to dismantle corporate power. With these proposals, we will mobilize from the local and national level to the international level, following the negotiations of a new binding treaty, which started this year of 2017 with a draft text on the table, in the sphere of an Open-ended Intergovernmental Working Group in the United Nations Human Rights Council.

Friends of the Earth International is the world’s largest grassroots environmental network with 75 member groups and over two million members and supporters around the world.

Amigos de la Tierra América Latina y Caribe (ATALC) unites the organization-members of the Friends of the Earth Federation (FoEI) in 13 countries of Latin America and Caribbean.

Our regional and international positions are informed and strengthened by our work with communities and by our alliances with Indigenous Peoples, peasants and women movements, trade unions, human rights groups and others.

OUR VISION:

Is of a peaceful and sustainable world based on societies living in harmony with nature. We envision a society of interdependent people living in dignity, wholeness and fulfilment in which equity and human and peoples’ rights are realised. This will be a society built upon peoples’ sovereignty and participation. It will be founded on social, economic, gender and environmental justice and be free from all forms of domination and exploitation, such as neoliberalism, corporate globalization, neo-colonialism and militarism.

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Half past four. The kettle on the stove screams with hot water for my coffee. It is too late: it is now boiling; at some point it always boils. I open the window and I see the sludge.

Almost two years after the largest environmental crime in the history of Brazil, trials are suspended and Samarco, a joint-venture of BHP Billiton and Vale, is planning to resume activities.

The story of the collapse of the Fundão dam, in Bento Rodrigues town, Mariana municipality, in the Brazilian state of Minas Gerais, didn’t start here or now. For the sludge to come, the dam had to collapse, and a dam doesn’t collapse that easily, or at least it shouldn’t. This, the Fundão dam, operated by Samarco SA, collapsed on November 5th, 2015, becoming one of the largest socio-environmental crimes in the history of humanity, the largest in Brazil and the most important one related to mining in the world.

Looking out the window, this is what I see, and please try to picture it: 62 million cubic meters of sludge with mining waste, the amount that flowed out from Samarco’s collapsed deposits according to estimations, towards me, towards my house, my animals, my city. I must say it scares me. Better to run, but where to?

First, it is necessary to identify the actors in this story. When we say Samarco SA we are actually speaking of BHP Billiton, an Anglo-Australian company and Vale SA, a Brazilian company privatized during Fernando Henrique Cardoso’s administration in 1997. These companies share Samarco’s assets through a joint-venture, 50% each.

The Anglo-Australian giant landed in Brazil in 1984 and in addition to operating through Samarco, it also has operations in the aluminum sector, with shares amounting to 14.8 control of the bauxite mining company MRN (Mineração Rio do Norte)1 and shares in Alumar company (Construção de Alumínio do Maranhão)2. According to a 2017 ranking by PwC consulting, BHP Billiton is the largest mining company in the world and Vale is the fifth1. In 2014, a year before the dam collapsed, BHP Billiton’s turnover amounted to $13.8 billion US dollars (only in the first semester of the year); and Vale’s amounted to almost $1 billion Brazilian reais, with a 72% increase in relation to 20133. Yet, despite their sizes and profits, they failed in what was crucial and exposed their crimes: they didn’t listen to Joaquim. Let me explain myself:

This is the year 2014, and the Fundão dam is still there, covering all waste sludge that would be spilled on the cities and would end up destroying the basin of an entire river. The death of Rio Doce, back then, was not even imaginable. During an inspection of Samarco’s facilities (remember: BHP Billiton and Vale), engineer Joaquim Pimenta de Ávila – who, as a matter of fact, was the one who planned the dam years before and was now offering consultancy services – detected cracks, real openings in the works that modified the Left lateral wall of Fundão dam4.

In compliance with his task at hand, Joaquim referred to this in his report. Despite this, the warning was not a cause for much concern among the company’s directors, who a year later, now in 2015, the year the dam collapsed, did not inform the new consultancy firm, Vogti, about the fact that cracks had been detected on the dam the previous year. Samarco (BHP Billiton and Vale) considered this information was dispensable5.

It was no coincidence, then, that it was precisely this sector of the dam that broke up on November 5th. It took approximately ten minutes after the collapse for the waste to arrive to Bento Rodrigues municipality6. With no sirens ringing to warn the population during situations of emergency; not even the kindness of engineer’s voice, they will certainly not listen to the voices of the people affected by their mistakes.

Even before Joaquim’s warning, other concerns and alerts were ignored as well: in 2009, RTI company developed an action plan for emergency cases, but the plan was never adopted because it implied excessive costs7. The year before, in 2008, the net revenue accumulated by Samarco was more than $4 billion reais8. Warnings had been issued, indeed, but they were systematically silenced by BHP and Vale9. After the fact (because the required inspection that could have avoided the crime was not conducted beforehand), the Public Ministry released internal Samarco documents, showing that the risks were known by the company’s high executives: on April 2015, they talked about the possibility of up to 20 deaths, serious environmental damage and the suspension of business activities for up to two years in case the dam collapsed10.

The risk was known. And the predictions weren’t so wrong: the collapse of Fundão killed 19 people and spread mining waste mud down 663 kilometers of rivers, resulting in the destruction of 1469 hectares of vegetation, including Permanent Conservation Areas11. This was no surprise, not an unexpected event, and it is frightening that they are trying to categorize this as an accident, when it was clearly a stinking crime.

The advance of the sludge into the Rio Doce basin killed 11 tons of fish12. The Brazilian Environmental and Renewable Natural Resources Institute (IBAMA) estimates that out of over 80 species that were characterized as native before the crime, 11 were considered endangered and 12 barely existed in the affected region13.

The water polluted by the mining waste affected the “Central Atlantic Forest Corridor”, a conservation area for various fauna and flora species stretching through Bahia, Espirito Santo and part of Minas Gerais states14. Moreover, the Rio Doce water basin covers 230 municipalities in Minas Gerais and Espirito Santo states, many of which supply their populations - 3.5 million people in total - with drinking water taken from the river15.

Access to water, a fundamental human right, was violated by the reckless and criminal actions of BHP Billiton and Vale. Furthermore, thousands of fisherfolk lost their livelihoods: 1249 fisherfolk were registered in the region, and one can imagine that the number is even higher if those that were not registered are added16.

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ded 22. The scale of the destruction caused by Samarco was huge, beyond what is measurable, and the damage will be felt for many years on. Nothing could be saved in the path of the sludge, except the companies, which still haven’t paid for their crimes.

Life and the planet endured a deadly attack, and unfortunately, it was not the first time: BHP Billiton has many deaths on its record. In 1979, the explosion of a coal mine killed 14 people; in 1986, in a similar case, 12 people died; in 1994, 11 people died17. In 2015, a BHP book registered the death of 180 steel workers from the company between 1926 and 196418. These only includes the death toll in Australia, where by the way, people are questioning a project taken over by BHP in 2005, claiming that it generates radioactive waste and uses excessive amounts of water. That project is the Olympic Dam mining center, with copper, gold and silver deposits, and possibly the largest uranium deposit in the world according to its extension19.

But the damage caused by the company is not only felt in Australia: in Chile, there are denunciations of copper waste spills20. IndoMet, the coal extraction project in Indonesian forest ecosystems (considered “the worst of the worst”), from which BHP is...
Many of their crimes remain unpunished because they take place every day, without being tragedies of global dimension. An example of this is the “Carajás Corridor,” a 900 kilometers railroad operated by Vale that runs through Brazil between the Para and Maranhão States, invading in its path several agricultural, indigenous, quilombola communities and urban peripheries.[13] Due to complete negligence, since simple caution signals and measures could avoid accidents, there is an average of 2 deaths every three months caused by the passing of the train, without counting the death toll of animals.

Of all their crimes, there is one that stands out: a BHP Billiton mine in Papua New Guinea released, over a decade, millions of tons of waste from copper exploitation in the Ok Tedi and Fly river basins.[14] This affected 50 thousand people, and its impacts have been felt by 120 traditional peasants and fisherfolk communities in the region. After the scandal was made public, the company abandoned the business: it wasn’t good for its image to have ties to the deliberate destruction of nature. Well, BHP company abandoned the business: it wasn’t good for its image to have ties to the deliberate destruction of nature. Along the same lines, it is unable to understand that he does not have the power to bring it back to life: his money and carbon credits are absolutely ineffective, given the goals they have embedded in their souls. Rio Doce is dead. The CEOs murdered it.

By the way, the attack against Rio Doce is also a case of environmental racism: 84.5% of the people killed by the collapse of the dam were black.[15] With money, companies try to silence the pain of those affected. But not so much: effective remediation actions are permanently postponed, with judicial delays and trials that come and go and come back again. Most families are still living in temporary housing. New locations are being considered, but none of them are suitable for the lifestyle the population used to have.[16] In the end, among the choices offered, they have nothing else but to choose the “least worst” option.[17] After receiving “emergency aid” there is no definition about final compensation sums.[18] Of the 63 fines imposed to Samarco, only one of them was partially paid (the first in 59 installations). This represents 1 percent of the total, which amounts to $552 million reais.[19]

In March 2016, the federal government, the states of Minas Gerais and Espirito Santo and the guilty companies -BHP Billiton, Vale and Samarco- signed the Terms of Transaction and Concord. Under these terms, the so-called “acordão” (big agreement), mitigation measures were defined and three months later Fundación Renova was created, through which the companies themselves would manage the compensatory programs of the damage caused by the crimes of which they themselves are responsible. Unbelievable if it wasn’t tragic. This episode could also be titled “The fantastic case of criminals defining and managing their own sentences”.

This “agreement” cannot even be considered, since the most essential piece in the story has not been involved in its design: the people affected by the sludge from the companies’ profiteering and the State’s collusion did not have their voices heard when deciding about how to remediate the damage caused by the companies.[20] It is in fact that the entire planet suffered with these crimes, which are crimes of corporate crime in the history of Brazil. However, a few people were left without a home, without an income, without any goods, nothing. Maybe it would be interesting to listen to them before signing any agreement. With the absence of the people affected, the Federal Public Ministry (MPF) -which was also left out of the negotiations for the agreement- had no choice but to reject the terms, and refused to ratify it.[21]

The fine according to the TTAC ‘agreement’ amounted to $20 billion reais. Does it seem a lot? In May this year, the Public Ministry for the Environment (MPA) in Brazil’s Federal Regional Tribunal (TRF) ratified the adherence to the procedural point of view[22]. This is why the ratification was immediately reversed by the TRF itself.[23]

Despite this, in the meantime of all the swaying and judicial maneuvers, this is the agreement the companies are following, on the sidelines of law. Fundación Renova acts as if it was the solution to the problem, ignoring being itself -due to the fact that is managed by Samarco- the cause of the damage that it is supposedly trying to remediate.[24] On top of this situation where solutions are not given, except for those proposed by the perpetrators of the crime, the criminal actions filed before the legal system against the companies and their leaders were suspended in August this year[25]. The defendant’s defense argues the use of illegal evidence during the trial. The judicial coming and going and the silencing of people affected is a proof of the difficulty of national institutions, the federal and state governments, public bodies, the judiciary (let alone companies) in finding solutions for the largest socio-environmental crime in the history of Brazil, even though the country holds one of the most advanced laws in relation to environmental crimes, which establishes direct obligations and sanctions to companies. Palliative care is not enough.

Fundación Renova, managed by those who murdered a river and 19 people, will never have the authority to repair the damage that was caused by itself. In fact, Renova’s program Chair, Gas-lb Chaim, had a long professional trajectory in Vale, where he was executive director of capital projects until July of this year[26]. Wilson Brumer, chair of the Board of Trustees of the Fundación Renova, had been executive president of Vale and of BHP Billiton[27]. They only had to change their business cards, but they are still on the same side.

More important than war itself is to know who is on your side of the trench. Adding to Hemingway’s famous phrase, I would say that it is even more important to know who your enemies are. And we do know. But how to face transnational corporations that concentrate profits that run higher than the GDP of many countries? How to combat their development logics that put profits above any human rights or environmental concerns? And what legal instruments can we use to face companies so powerful whose operations and violations know no borders and are many times associated among them, like the case of BHP Billiton and Vale? Here lies the importance of a treaty that holds companies accountable for the crimes committed internationally. If cases were analyzed on a one-by-one basis, the problems caused by these companies could seem a local or national matter. But their actions are very similar in many countries and thus what is local becomes global, and therefore, the solution should have the same scope.

Today, the difficulty to obtain a sentence against the companies with headquarters outside the territories where they act and violate rights is huge. But even greater is the difficulty to make convictions stick. If in countries where the companies operate it concentrates huge political and economic power, in an asymmetrical way in relation to the States and in a brutal way in terms of affected communities.

Under the protection of a binding treaty related to human rights that subverts the logic imposed by capital over what is human and that establishes legal instruments for implementation, such as an International Tribunal on Human Rights and Transnational Corporations, the struggle and resistance on the territory can be connected at international level, overcoming borders and joining forces when confronting big transnational corporations.

At the end of the day, there isn’t a clearer and more systematic pattern in terms of the actions of these huge corporations around the globe, and especially in the South, than the human and socio-environmental rights violations committed by them everywhere they act. In the same way, they are ensured impunity: Samarco, the holder of many corporate social responsibility awards, is trying to resume its activities soon, without many obstacles, and its new environmental license requests are already under way[28]. Life that goes on, while others’ can’t go on, simply because there is no way for them to go on. Whether because there are no more fish, or fishing nets, or no more land, unless you own it; whether because the livelihoods of affected people were destroyed, together with their memories and traditions, or just because, when the coffee and water boiled, I opened the window and the sludge came in.
Argentina: After the collapse of the dam, houses from different communities still show signs of the crime. A large house on the Rio do Carmo, part of the Rio Doce, in Barra Longa municipality, Ribeirão, November 2016.

Photo: Douglas Mello/Agência de Terra Brasil

Mexico - Canadian mining company Blackfire against territory and life defenders in Chiapas

Gustavo Castro Soto
Otrus Mundos, A.C. / Friends of the Earth Mexico

According to the Canadian Natural Resources Department (NRCan), 52% of mining companies in the world are listed on the Canadian stock exchange. Mexico is second in the world in terms of Canadian mining assets outside of Canada. In 2015, 11.3% or $19.4 billion Canadian dollars of mining assets outside Canada were in Mexico in the hands of 125 mining companies, only surpassed by the US with 14.5%.1 According to Mexico’s Economy Secretariat, until 2013, Canadian mining companies represented 69% of foreign mining companies operating in Mexico.2

In Chiapas State there are 99 mining concessions - to different companies, among them Canadian; active in 16 municipalities covering one million hectares (25% of the territorial surface of the State).3 From 2007 to 2010, mining company Blackfire Exploration, based in Calgary, Canada,4 and its subsidiary Blackfire Exploration Mexico SRL, operated in Chicomuselo municipality, mining for barite in the Payback/La Revancha mine, which is located in Chico Municipality and the mine it is necessary to go through the Nueva Morelia communal land. Approximately 40 thousand people live in Chicomuselo municipality and 90% of the population live under poverty conditions with subsistence agriculture and cattle farming activities.

Environmental leader and local coordinator of the Mexican Network of People Affected by Mining (REMA), Mariano Abarca Roblero, was criminalized and then murdered on November 27, 2009, because of his activities against the negative effects of the mining for barite in the Payback/La Revancha mine, which is located in Chiapas State, Mexico, 42.000 inhabitants, 42 km from the border with Guatemala.

Mariano Abarca Roblero, supported by the community and the Canadian Embassy, managed to obtain political favors from the Chiapas government, which in turn was pressured by the US government. In November 2010, Mariano was threatened and beaten by mercenaries hired by the Canadian company in charge of Blackfire public relations, and then murdered on November 27, 2009, because of his activities against the negative effects of mining for barite in the Payback/La Revancha mine, which is located in Chiapas State, Mexico.

The Canadian government supported Blackfire’s investments in the region. The Canadian mining company not only threatened the people opposing it. On the other hand, the Canadian company hired local staff within their ranks. The person in charge of Blackfire public relations had weapons with which he threatened Mariano Abarca Roblero and even beat him. The Canadian company invented charges he received repeated threats and physical attacks from people linked to the company. He filed legal complaints for this, but these failed nor concluded in punishment for those responsible. They also obtained the support of local economic sectors which would benefit from those investments. They also obtained the support of communal authorities for them to convince the community to communal authorities of Chiapas State, which in turn was pressured by the US government. In November 2010, Mariano was threatened and beaten by mercenaries hired by the Canadian company in charge of Blackfire public relations, and then murdered on November 27, 2009, because of his activities against the negative effects of mining for barite in the Payback/La Revancha mine, which is located in Chiapas State, Mexico.

Blackfire used different tactics to ensure its investments and impeded the murder and corruption. The Mexican government guaranteed by law the use of land for mining exploitation as wherever there were concessions. Owing to this, environmental authorities and other federal and state governmental bodies would facilitate mining investments. The Canadian company managed to obtain political favors from the Chiapas government as well as the municipal director of Chiomuselo, who received money in his personal account to ensure the project and control opposition. This corruption lawsuit was brought before a few years. Blackfire executives divided the community. They granted money to communal authorities to convince the community and accept the mining project. They also obtained the support of local economic sectors which would benefit from those investments, such as taxi and hotel owners, workers, transport companies, and even groups of light industry. They also obtained the support of local economic sectors which would benefit from those investments, such as taxi and hotel owners, workers, transport companies, and even groups of light industry. They also obtained the support of local economic sectors which would benefit from those investments, such as taxi and hotel owners, workers, transport companies, and even groups of light industry.
international level led by Otros Mundos AC / Friends of the Earth, Mariano Abarca denounced for the Canadian Embassy in Mexico that Blackfire was harassing him and threatening him, so the Embassy would be to blame if anything happened to him. And then he was murdered. The Canadian Embassy itself assisted and advised the company to enable its mining project and the impunity of its actions. The Mexican government has given all its political and legal support to mining investments, despite the systemic violation against human rights and even other irreversible environmental alterations. After the murder of Abarca Roblero, the government hindered investigations and did not advance on them. The criminal investigation was not carried out due diligence, since the facts were not duly explained and the responsibilities of those who acted as direct and indirect perpetrators of the crime were not determined. To this date, the previous findings have returned to the Public Ministry to continue with the criminal investigation.

Mariano Abarca Roblero’s murder gave rise to the initiation of a ministerial investigation, number 051/FS10/2009, whereby several people declared as witnesses, among them Mario López Zuñiun and José Mariano Alarcón Montejo, who stated they saw who was running from the crime scene with a weapon, Jorge Carlos Sepúlveda Calvo, former contractor of Blackfire Exploration. Nevertheless, the criminal investigation did not go deep enough to clear up the events; the Public Ministry induced the witnesses to blame one person, saying that other people, who had not agreed to provide testimony, saw that the perpetrator of the gunshots was Sepúlveda Carlos. Additionally, the Public Ministry did not pursue anything else, which would have been important to establish the responsibility, such as identifying the weapon used, the trajectory of gun shots, the probable height of the perpetrator with reference to the location of the gun shots in Abarca Roblero and Velazquez Rodriguez bodies. The inquest didn’t broaden the investigation to interrogate other people who could provide testimonial information about events before and after the crime. Criminal case 11/2010 at the First Criminal Court based in Cintalapa, Chiapas, includes the facts about the events related to the crime, but lacks information that shows that a line of investigation was developed and exhausts reference to the probable participation of Blackfire Exploration Mexico executives in the events, even though what happened before the crime renders their involvement highly likely. Their testimonies were not heard at any point, just like the testimony of the deputy Secretary of Government who had voiced life threats against Abarca Roblero.

In 2010, Caralampio López Vázquez and Jorge Carlos Sepúlveda Calvo were arrested. Caralampio López Vázquez and Ricardo Antonio Coutiño Velasco were also detained. Caralampio López Vázquez was an ‘employee’ of the company (Blackfire’s human resources and security manage, in addition to translator and driver for a Blackfire executive), Ricardo Antonio Coutiño worked as a “contractor” and owned a truck that he drove for Blackfire. They have all been released now. However, the government used the perpetrator to pacify other political enemies.

By taking Mariano Abarca Roblero’s life, the Public Ministry agent started, ex officio, the prior inquiry in January 2010. The judge at the First Criminal Court based in Cintalapa municipality, Chiapas, opened criminal records thus launching criminal proceedings. In June 2013, there was a judgment of acquittal in favor of the only person accused of the crime, Jorge Carlos Sepúlveda Calvo, former contractor of Blackfire Exploration. In May 2015, the Regional Criminal Tribunal for Area 1 of the Supreme Court of Chiapas State, when solving the appeal filed against the acquittal, confirmed it without any other legal recourse against it. However, the Public Ministry did not follow up the investigation.

In July 2016, the wife of Mariano Abarca Roblero requested to be informed of said investigation, but she hadn’t had a reply until this very day. In March 2017, she requested an inquiry and a subpoena on Horacio Culebro Borrayas, Nemesio Ponce Sánchez and Julio César Velázquez Calderón, for them to expand on their declarations. In April, she appeared before the Special Prosecution Office for Homicide Crimes to ratify her request. However, since Mariano Abarca Roblero was murdered and since the only person prosecuted was acquitted, there hasn’t been any additional investigation.

The Mexican State failed in its obligation –under American Convention on Human Rights– to protect the life of Mariano Abarca Roblero, giving priority to corporate interests and responding to the requests by the Canadian Embassy. It also failed to prevent that his life was taken away from him and to ensure his rights, despite knowing he was in danger. The Inter-American Court on Human Rights (the Court or the Inter-American Court) has emphasized clearly that States are obliged to respect the right to life.

The Inter-American Court has established that the State is responsible even when the individual perpetrator is not identified. In the case of Abarca Roblero, there is evidence that there has been a violation of the rights enshrined in the convention it is not necessary to determine, as is the case with the domestic criminal law, the responsibility of the perpetrators or their intention, and it is also not necessary to individually the perpetrators accused of the violation events. It is enough to prove that there has been support or tolerance by public authorities in the infringement of the rights embodied in the Convention, or omissions that enabled these violations to take place.

There are elements to suspect the State is directly responsible for the act of killing as well as when murdering the victim, however, even supposing that those who perpetrated the crime were individuals linked to the mining company, the Mexican State’s responsibility remains, due to the support and tolerance for the actions that involved impunity with reference to the denunciations by Abarca Roblero and the unjustified arrest suffered three months before the crime. For the Inter-American Court, “it is enough to prove that there has been support or tolerance by public authorities in the infringement of the rights embodied in the Convention, or omissions that enabled these violations to take place.”

However, criminal responsibilities have not been established against the corporate intellectual perpetrators who violate human rights beyond their borders. There are also legal obstacles to identify national workers as employees of transnational corporations.

Not even the administrative case against Blackfire on corruption was successful in Canada - a tax, political and impunity haven for mining transnational corporations in the world. This impunity is strengthened with Free Trade Agreements that enable this impunity by forcing countries to modify laws and other tariff measures, otherwise risking economic lawsuits against them that are so huge that they become unsustainable for governments.

The close link between the interests of States and corporations, the interests of million-dollar investments at stake, prevents us from accessing full justice. Therefore, a Binding Treaty is urgently necessary, to hold transnational corporations accountable for so many human rights violations and irreversible effects on the environment.

Accuracy
51. Additional and detailed information can be found in the report: “Corruption, Murder and Canadian Mining in Mexico: The case of Blackfire Exploration and the Canadian Embassy.” Available at https://miningwatch.ca/sites/default/files/blackfire_embassy_report-webpdf
53. According to a search conducted on October 25, 2016 by Monarch Records in Alberta province, Canada; at the Companies Registry of Alberta, Blackfire Exploration Ltd. continues active as a company in Canada its registered office is 4150, 825-8 Avenue SW, Calgary, Alberta, T2P2T5 and its record office is the same. Directors continue to be Emilio Canals Avila, William Brett Wilks, Craig Willis, and Bradly Craig Wilks.
55. Part of this document is a summary of the murder case of Mariano Abarca Roblero submitted before the Inter-American Commission on Human Rights (IACHR) on June 26, 2015 by José Luis Abarca Roblero as representative of the Mariano Abarca Environmental Foundation (FAMA, AC); Gustavo Castro on behalf of Otros Mundos A.C.; Jair Benitez on behalf of MiningWatch; Carlos Gustavo Lizardo Guevara on behalf of the Mexican Network of People Affected by Mining (REMA); and lawyer Miguel Angel de los Santos on behalf of the Human Rights Center of the Law School of Universidad Autonoma de Chiapas (UNACH).
56. According to documents obtained under the Canadian Transparency Law, through the former Department of Foreign Affairs and International Trade, the Canadian embassy workers in Mexico reporting the embassy’s political advisor, Douglas cbisell, traveled to Chiapas to meet with the workers of Blackfire Exploration in 2012 in the context of the investigations and non-governmental organizations from November 29th to December 1st, 2007. At the time of the visit, the mine had not reached any agreement with the local communities and it had not started its operations. Request to access information to the Department of Foreign Affairs and International Trade of Canada, A-2010-01057/RF1.p.p.00015-001599. https:// www.circutorchid.com/documents/59519/184/Documents-pertaining-to-Blackfire-Explo-ration-and-the-Canadian-Embassy-in-Mexico-April-2012-secret_passwords19/ j04108T/0/650A261
60. Holmen, Par 110.
In Honduras, there are plans for the State to invest $88 billion Lempiras (4 billion dollars) for the execution of metal, non-metal and hydrocarbon extraction projects in the next 10 years. So far it is estimated that there are 155 exploitation concessions granted, covering a third of the Honduran territory, amounting to 35,000 square kilometers - an area that is larger than the whole of El Salvador.

The Agua Zarca hydroelectric project is in San Francisco de Ojuela municipality, to the North-West of Honduras. The project was established without consulting the population of Rio Blanco, on the Gualcarque River - a Lenca community which was not consulted, clearly in violation of ILO’s Convention 169 - as a colonialist project with the purported idea of promoting “clean energy”. In Honduras, since the 2009 coup d’état, approximately 200 hydroelectric and mining concessions have been granted, protected under the General Water Law of 2009. After the June 2009 coup d’état, the government’s trend to abandon all legal bans on project concessions, such as the one in Agua Zarca, was strengthened.

The Honduran company Desarrollos Energéticos SA de CV (DESA), has been planning to build the Agua Zarca dam on the Gualcarque River, bordering the wildlife reserve Montaña Verde, since 2009, with an energy production capacity of 21.3 MW. “For the construction and installation of the project, in 2012, the Central American Bank for Economic Integration (CABEI) granted DESA a loan for $24.4 to $25 million dollars” and so far, it has earned $381 million dollars, meaning that it increased its original social capital by 15 times, one of the reasons why the MACCHI is investigating this company61.

DESA was created amid a critical context for the country, a coup d’état, after which a de facto administration was established, led by Roberto Micheletti, who during his term in office passed detrimental laws such as “Decree 253 which repeals all previous decrees that banned hydroelectric projects in protected areas”62. We could add that DESA, being the holder of the concession, started to subcontract other companies, such as SINOHYDRO, a Chinese company, to start implementing the project. This company is very well known worldwide for several denunciations, in Africa due to the bad construction quality of dams, in Bolivia due to the mistreatment of workers63, and it was also accused by the population in the area as the one to blame for the irreversible pollution of the Macal River that holds the Chalillo dam in Belize.

In response to the increasing conflict (on the Gualcarque River) SINOHYDRO terminates its contract one year later (in 2010) and withdraws62. DESA then hired Voith Hydro GmbH & Co. KG, from Germany, to build the turbines.

What happens with DESA and the hydroelectric phenomenon in Honduras is not a coincidence—it is part of the ongoing implementation of the “Latin American interconnected system which in Honduras expresses itself as the Central American Electric Interconnection System (SIEPAC), which was completed in 2014 after a $505 million dollars investment. SIEPAC is particularly relevant for the development of private hydroelectric dams in Honduras because it connects the National Electricity Company’s (ENEE) grid to a regional infrastructure, and most private hydroelectric projects in Honduras have a public-private agreement (PPA) with ENEE, including projects that have not yet been developed, such as Cuyamel II by CONERISA. This interconnection system will be connected with Mexico to the North and with Panama to the South for them to be the alternative suppliers of electricity to the US and Canada whenever they face electricity deficits in the near future, when fossil fuels become scarce62.

Unlike other hydroelectric projects in the country that were implemented with low, or even nonexistent resistance, Agua Zarca has been hindered by persistent opposition by the Lenca indigenous people in the municipality, with the support of the Civic Council of Popular and Indigenous Organizations of Honduras (COPINH) that Bertha Cáceres used to lead. From the outset of the struggle, the members of COPINH traveled to the communities as part of the campaign against Agua Zarca, because, as stated by the Lenca neighbors of San Francisco, the dam would affect the river’s ecosystem, which they claim is part of their ancestral territory.

Years later under this same context and after failed criminalization attempts, Bertha Cáceres was murdered in the middle of a conflict over the construction of the Agua Zarca dam in the West of Honduras. Through COPINH (the Civic Council of Popular and Indigenous Organizations of Honduras), the activist had led the protests of local communities against the project.

So far, eight people have been arrested for their potential involvement in the crime, among them (former) military officers and employees of DESA, the company in charge of developing the project. Recently, the person who supposedly shot Gustavo Castro Soto, the only witness of the murder and member of Otros Mundos Chiapas / Friends of the Earth Mexico was also detained.
After the assassination of Cáceres and strong pressure both by the victim’s family and civil society organizations and the international community, important financiers suspended their involvement and the Agua Zarca project was left in a limbo. Among them, we find FMO development bank (The Netherlands) and FinnFund (Finland) and the Central American Bank for Economic Integration (CABILDE). The murder of Cáceres also led German company Voith Hydro to suspend the supply of turbines for the Agua Zarca project. Nevertheless, non-governmental organizations such as Oxfam Germany and the German NGO GegenStörung (“Against the tide”), maintain their accusations against Voith Hydro and German multinational company Siemens for being co-responsible for Cáceres’ death. Siemens is a minority owner of Voith Hydro. The Honduran State’s behavior and actions have been mostly to ensure impunity. Only 4 per cent of homicides are solved. In 2014, there were 3 forensics for every 100,000 inhabitants, and the proccesses assisted by public lawyers amounted only to 32 per cent, because the number of public lawyers for every 100,000 inhabitants is only 0.3. In any case, according to reports by CONADEH, the degree of impunity is a structural problem peaking at 90% in Honduras, in addition to Honduras being the fourth country with most killings of environmental activists in Latin America.

In the case of the defense of the Gualcarque River, the State has acted in collusion with DESA and with all hydroelectric companies scattered throughout the country. This manifests itself in police and military officers protecting the “property” and installations of DESA, and also in the excessive use of force, with live bullet shots, as shown in multiple videos by COPINH, in addition to judicial persecution and criminalization —taking into account that Aureliano Molina, Tomás García, Berta Cáceres and other community leaders have all been required by the police—, but also due to its ineffectiveness and the prevailing impunity for the rest of the murderers of COPINH leaders, including Paula (2013)71, Tomás García (2013)72, Juan Galindo (2014)73, Moises Durón Sánchez (2015)74, Berta Cáceres (2016).

State support to all hydroelectric projects becomes explicit in the statement published in relation to another current conflict between the Pajuil communities in Atlántida, and HIDROCEP. On August 17, 2017 “the government restates how important it is for the Honduran State to ensure that economic development and renewable energy production projects are carried out”, thus showing their affiliation in this type of conflicts.

In Honduras, the struggle of our comrades in the Civic Council of Popular and Indigenous Organizations (COPINH) for the defense of the Gualcarque River is still alive, since the deadly Agua Zarca project has not yet been permanently suspended. On July 6 this year, Desarrollos Energéticos SA (DESA) corporation, owner of Agua Zarca, announced in a press release “their decision to suspend the project.” But far from recognizing the multiple human rights violations generated by the project and its responsibility in the murder of the coordinator of COPINH, Berta Cáceres, on March 22nd, 2016, the company portrayed its decision as a “gesture of good will that will contribute to reducing tensions and facilitate a solution on the future of this clean and renewable energy initiative”.

The company writes that “we feel proud for the important benefits generated and the contribution that this project could continue to bring for the development of Honduras and its communities”. “Agua Zarca will never impose a project upon any community”, they added, explaining that the project is suspended with the intention to open a “voluntary, transparent dialogue, free from external influence” with the communities that would be affected by the project. This ignores the criminalization and violence processes that have been implemented against COPINH members and does not consider that Sergio Rodríguez, former Technical and Environmental Manager of DESA and Douglas Bustillo, former Security Director of DESA are both among the people accused for the murder of Berta Cáceres.

At the same time, the two European development banks that funded Agua Zarca, FinnFund (Finland) and FMO (the Netherlands) announced that they are officially withdrawing from the project, over a year after having expressed this intention. “Their exit responds to the denunciations and the relentless struggle by COPINH against banks’ funding for projects that openly violate the rights of Lenca communities and that are imposed and developed through the murder of leaders such as Berta Cáceres and Tomás García”, wrote COPINH in response to the announcement. However, the organization denounced that “FMO and FinnFund have ignored COPINH’s recommendations regarding a responsible exit; since they did not recognize their own role, and DESA’s role, in the murder of Berta Cáceres and the other human rights violations perpetrated against the members of COPINH throughout their struggle for the defense of the Gualcarque River.” Companies are often responsible for human rights violations in countries such as Honduras, where the structure of power is favored by the State, where rules are weakened to the benefit of big capital. The crimes perpetrated by said companies are left unpunished due to gaps in international law, the absence or weakness of national policies or the corruption of the judicial system, where, as in the case of Honduras, links can be drawn between representatives of the State institutions and transnational companies. We urgently need an instrument that reigns in the architecture of impunity behind the crimes committed by companies, which currently allows them - as in the Agua Zarca case - to continue operating, even when there are pending processes that have not been dismissed and an increasing wave of criminalization against environmental defenders and social organizations.
Philip Morris (PMI), the biggest tobacco company in the world, with administrative headquarters in Lausanne, Switzerland (although originally a US transnational corporation) deployed an offensive tactic against public health policies that different countries - among them Uruguay - passed and implemented in compliance of their obligations under the only binding multilateral convention related to the protection of health in the framework of the World Health Organization (WHO), the Framework Convention on Tobacco Control (FCTC).

The tobacco company filed a complaint at the International Centre for Settlement of Investment Disputes (ICSID) that operates under the World Bank sphere, challenging measures and laws adopted by the Uruguayan government to protect its citizens against the proven health risks entailed by the consumption of tobacco products, arguing noncompliance with the Bilateral Investment Protection and Promotion Agreement signed between Switzerland and Uruguay in 1988 (and ratified in 1991). ICSID is one of the main fora for resolution of investor-State disputes, its decisions cannot be appealed and it has been included in many free trade and investment agreements, offering companies a way to coerce States and thereby allowing corporations to impose their interests on them. When companies file a lawsuit against the State under Free Trade Agreements (FTAs) or Bilateral Investment Treaties (BITs), an ad hoc tribunal is established, made up by three arbitrators chosen from a select group of international arbitration companies, and who sometimes act as judges and others as lawyers of TNCs, and even some have been members of the Boards of large transnational companies, therefore biased and acting under conflict of interests\(^1\).

The rules and proceedings for the protection of foreign investments included in BITs and in the investment chapters of FTAs are a powerful weapon used by transnational corporations to make their pursuit of profit prevail over and at the cost of peoples’ rights. Both BITs and FTAs are the result of a neoliberal economic doctrine imposed against the popular will in the last decades of the last century, which has caused multiple crises that have affected and still affect the immense majorities, while benefiting a few who concentrate more and more resources.

Under the previous administration (2005-2010) of current Uruguayan president, Dr. Tabaré Vázquez, the first left-wing government of the country passed a series of unprecedented measures to protect the health of citizens and combat the scourge of tobacco use, in compliance with the commitments it made when ratifying the WHO’s FCTC, adopted in 2003 and in force since February 27, 2005.

Uruguay was back then the first Latin American country that banned tobacco ads on the media and smoking in public and work places (March 2006), and imposed higher taxes on the sales of these products. It also established very strict rules for the commercialization of tobacco products that became law in March 2008, including mandatory health warnings and deterrent photos that must cover 80% of cigarette packs, tobacco packs and advertisement in sales points, and the prohibition to sell more than one product per trademark (for instance, only one type of Marlboro) to avoid the sale and deceitful advertisement of “light” varieties and other supposedly less damaging tobacco products.

This last set of commercialization rules were the specific target of PMI’s lawsuit, which demanded the Uruguayan government compensation for damages, in addition to requesting their annulment. PMI argued that the above-mentioned rules implemented by the Uruguayan government violated four of its obligations under the BIT between Switzerland and Uruguay:

1. Do not hinder the management, use, enjoyment, growth or sale of investments through “unjustified” or “discriminatory” measures (Article 3 (1));
2. Provide “fair and equitable treatment” to the plaintiff’s investments (Article 3 (2));
3. Abstain from expropriation actions, except if they serve a public end and the corresponding compensation is paid (Article 5 (1)); and
4. Respect its investments obligations, and specifically, its commitments under the WTO’s TRIPS agreements (Trade Related Aspects of Intellectual Property Rights) and the Paris Convention for the Protection of Industrial Property (in its Article 11).

In short, the company argued that the measures adopted by the Uruguayan government represented a discriminatory, unfair and unequal treatment and that they were equivalent to an expropriation of their intellectual property without due compensation.

In their defense, and objecting ICSID’s jurisdiction over the case, Uruguay argued very reasonably and convincingly in its written presentation that the company failed to comply with the following requirements: a. Public health measures are explicitly protected against lawsuits by “Swiss” investors according to the BIT terms between Switzerland and Uruguay (Article 2); b. PMI should have pursued first an amicable settlement (for 6 months), and in case of not obtaining one, it should have resorted to Uruguayan national courts with its demands (for 12 months), before resorting to the international arbitration system at ICSID; terms and processes that were not complied with. c. PMI’s business in Uruguay cannot be considered an investment, since according to Article 27 of the ICSID Convention, in order to be considered an investment, such needs to serve a public end and the corresponding compensation is paid (Article 5 (1)); and d. The provisions on the “most favored nation” treatment included in the clauses on “fair and equitable treatment” of the BIT between Switzerland and Uruguay are not applicable to dispute settlement. This is in relation to point 2 in PMI’s lawsuit, that stated that in other BITs Uruguay does not demand what has been pointed out here in point b of the Uruguayan defense team, and allows investors to take their demands directly to arbitration in international tribunals, and therefore, according to the most favored nation and fair and equitable treatment provisions in the BIT between Switzerland and Uruguay, Uruguay would be forced to provide these same conditions to Swiss investors.

This lawsuit was not an isolated case, but a strategy orchestrated by the largest tobacco company in the world with the aim to intimidate the countries that try to protect the health of their population and comply with international obligations in the framework of the WHO’s FCTC, and ultimately to weaken this unique multilateral treaty on health protection.

But the Philip Morris lawsuit against Uruguay was identified at international level as one of the most arbitrary and unreasonable lawsuits, and thus it contributed with the discussion at global level about the excesses of the investor-State dispute settlement mechanisms enabled by these treaties, and about the thriving and immoral industry of law firms and lawyers who obtain profits from this system and promote and benefit from the multiplication of lawsuits filed by investors against States.

Uruguay also had the powerful support of the World Health Organization and the Pan American Health Organization, who presented themselves as “amicus curiae” in defense of Uruguay, when most of the times it is non-governmental organizations that present themselves as “amicus curiae” and are generally rejected by arbitration tribunals.

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Transnational companies such as PMI have deployed all their power to obtain a wide range of rights and a system to protect their interests that has come to fruition through BITs and the investment chapters in FTAs. The resulting regime enables transnational companies to file lawsuits against States before international arbitration tribunals, while States or communities don’t have a protection system that allows them to sue justice before an international court, when their rights are violated by TNCs.

In the case of PMI, neither the Uruguayan State whose ability to define, decide and implement public policies was questioned, nor the victims of deceitful advertisement and the sale of tobacco products that are detrimental to health, had a legal system and an international court that allowed them to sue the company for its actions that violate human rights.

BITs, together with FTAs, are part of the architecture of impunity that on the one hand protects transnational corporations so that they do not have to take responsibility for their human rights violations, and on the other hand provides them with all kinds of privileges and even the power to challenge public policies and sue States when they consider that their profits are being affected or expropriated.

Therefore, it is key that all countries of the South, following Ecuador’s example, conduct a thorough audit of their BITs that allow them to assess, among other things, the impacts of the clauses that restrict the public policy space of States and how and in what way they have threatened regulations designed in the interest of the public and human and environmental rights.

In addition, just like Ecuador, it is key that Third World countries denounce these agreements and refuse to accept the continuity of the investor-State dispute settlement system.

In addition to denouncing the BITs and the investor-State dispute settlement system, Third World countries like Uruguay, should actively participate in the negotiations and promote a binding Treaty in the framework of the UN on transnational corporations and human rights to put an end once and for all to the impunity of TNCs, and seek justice for the affected people and communities.

Said treaty should:

- reaffirm the hierarchical supremacy of international human rights laws (including the human right to health) above commercial and investment laws.
- force States to refuse accepting human rights issues being decided in international investment and commercial arbitration tribunals
- establish an international court on TNCs and Human Rights where people and communities affected by TNCs and their activities can sue TNCs and obtain justice.

**Modified version of an article written by Alberto Villarreal titled “Philip Morris lawsuit against Uruguay” published in America Latina en Movimiento, ALAI, in May 2013.**

**74.** Modified version of an article written by Alberto Villarreal titled “Philip Morris lawsuit against Uruguay”, published in America Latina en Movimiento, ALAI, in May 2013.

**75.** Oliver S and Eberhardt P (2012), “Cuando la injusticia es negocio, Cómo las firmas de abogados, árbitros y financieros alimentan el auge del arbitraje de inversiones”, CEO and TNI, pg. 8

It is not bold at all to presume that it was partly thanks to all these circumstances that the ICSID arbitration tribunal acquitted PMI and the Uruguayan State of any responsibility in the case, to save their reputation and the reputation of the international investment protection regime at a whole.

Despite and beyond the ruling in favor of Uruguay in this particular case, there is no doubt that the investor-State dispute settlement system through international arbitration is an instrument that confers extraordinary powers to investors and transnational companies by considering them equals to States before the law, when they indeed only care about their profit interests, while States care (or should care) for the general interest and the common good, and in this case in particular, for the right to health of Uruguay’s population.

Meanwhile, the arbitrators of the ad hoc tribunal that is established when one TNC files a lawsuit against a State, are paid on an hourly basis for their services, and therefore the proliferation of cases benefits them. Thus, international arbitration tribunals have become a lethal weapon against democracy and sovereignty, and more and more governments understand today that it is necessary to review, reform or even eliminate this biased system of conflict resolution and the BITs that promote and sustain it.

In addition, the FCTC is not the only public interest multilateral treaty whose national compliance laws have been challenged by investors and transnational companies. Given the ambiguity of BITs and investment chapters included in FTAs, and the structural vices and the huge discretion within arbitration tribunals to interpret them, it is not far-fetched to say that all multilateral treaties of public interest, on environment, human rights and others,
In 2006, after 13 years of privatization, the Argentinian State recovered its largest drinking water and sanitation company, known today as Aguas y Saneamiento SA (AySA). It had been the largest sanitation system granted in concession in the world, with six million users.

The water company was of meaningful relevance since its foundation in 1912, when it was created with a public health goal in mind: to stop the yellow fever epidemics that hit Buenos Aires. Because of its disagreements with the State, Suez filed a complaint at ICSID for $1.1 billion dollars. ICSID is a World Bank tribunal, where conflicts between companies and States are resolved. It was established in 1966 by the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, (the ICSID Convention). The ICSID Convention is a multilateral treaty established by World Bank executives to comply with the Bank’s objective of promoting international investments.

Investment agreements are a powerful tool in the hands of corporations that allow them to challenge legislation and measures adopted by States regarding extremely important aspects such as regulations aiming to protect workers’ rights, public health, and the environment and the supply of services. Foreign investors thus obtain more legal protection and privileges than nationals and other social actors.

To the same extent it opened itself to foreign capital, Argentina received the largest number of international arbitration claims in the years following the 2001 crisis and its related measures, such as the freezing of tariffs and the depreciation of the Argentinean Peso in 2002. Up to now, the country has faced 59 claims, most of them at ICSID. This makes it the country with the most claims in the international arbitration system. Investor-State claims have risen in the past two decades, from a total of three known cases under treaties in 1995, to 767 known cases today.

In March 2006, then president N. Kirchner revoked through an executive decree the concession held by Suez Lyonnaise des Eaux Dumez multinational corporation and the Soldati group (national) together with Aguas de Barcelona, Anglian Water and Compagnie Générale des Eaux, in addition to two more nationals: Meller and Banco Galicia. The new AySA (Aguas y Saneamiento SA) corporation was created, with 90% of shares owned by the State as non-transferable, while the remaining 10% was assigned to the water sector workers.

While the recovery of the privatized utility in the Argentinian case was not featured by large street confrontations as in the case of Bolivia, it was the result of citizens mobilizations and years of denunciations for lack of compliance, which many times violated basic human rights.

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The World Bank aimed at improving the atmosphere of mutual trust between investors and the receiving States and thus promote industrialized country investments in developing countries. Argentina accepted its jurisdiction under the C. Me nem administration as an international insertion strategy, thus giving away legal sovereignty to international tribunals.

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In 2010, four years after the recovery of the privatized utility and 5 days after the UN declared “safe and clean drinking water and sanitation a human right essential to the full enjoyment of life and all other human rights”, the International Center for Settlement of Investment Disputes (ICISD) ruled against Argentina.

This ruling was made effective in 2015, when ICISID sentenced Argentina to pay $405 million dollars to Suez for having canceled the agreement in 2006. Even though Argentina requested the ruling to be rendered null, this request was rejected in May this year, thus confirming the sentence to pay said amount to the three plaintiffs: the French group Suez, the Vivendi holding from France and Spanish corporation Aguas de Barcelona.

Representatives of the current administration have not questioned this fact, although the payments determined by the ICISD are not mandatory. Under the new neoliberal wave in the country, these situations would be frequent, generating public expenses which would be completely counterproductive to the times of crises we are experiencing. Ever since the new administration took office in 2015, there have been numerous propositions for Free Trade Agreement negotiations and attempts to conclude pending negotiations such as the Association Agreement with the European Union. In addition, M. Macri’s administration committed to honor the ICISD arbitration awards still pending payment. Everything indicates that during this administration, transnational links with the State will be deepened or resumed, as pointed out by the officials that resumed dialogue with Suez prior to the ICISD ruling against Argentina. In addition, similar mechanisms to those already seen in the 90s are resurfacing, such as tariffs hikes, which in the case of water, amounted last year to a 375% increase that is most damaging for the poorest people and community spaces such as pensioners centers and neighborhood clubs, which see their activities at risk since it is impossible for them to continue paying these rates. To solve this critical situation, the State has opened a registry for “social rates” that is stacked with bureaucratic requirements and is therefore scarcely implemented.

Our country’s problems with water multinationals are not only related to Suez: in 2011, a lawsuit by five other companies was pending case against the country, initiated in Buenos Aires following the decision by then governor of the province, F. Solá, who revoked the water delivery concession held by Aguas del Gran Buenos Aires, and a lawsuit filed at ICSID as well for $40 million dollars, by the French corporation Sauti that exploited the water delivery service in Mendoza, which is awaiting a direct negotiation with Argentina.

This shows the extensive legal activity and the high expenses incurred by the Argentinian State for having accepted ICSID’s jurisdiction and having signed numerous BITs (Bilateral Investment Treaties). Under these arbitration procedures, States always lose huge amounts of money paying private firms of lawyers and expenses associated with the cases. Even though the ruling may be favorable, they still must disburse absurd sums of money at the cost of other expenses in the country. According to the OECD (the Organization for Economic Cooperation and Development), legal costs average $8 million dollars per case. That means that the expenses for Argentina’s 59 cases add up roughly to $472 million dollars on average. The claims as such mount up to skyrocketing sums that turn them into new sources of foreign debt.

In addition, the ICISD arbitration system is questioned for several reasons. The disputes are decided by a tribunal made up of three arbitrators who come from the private sector and incur in clear conflict of interests with their activities. Unlike judges, there are no guarantees of independence or impartiality, they do not have certainty in their positions, they are allowed to have other paid jobs, they can still practice law in parallel and they don’t have a fixed salary. They are paid fees for each case in excess of $3000 dollars per day. Arbitrators have vested interests to please-in-
vestors and are plagued with conflicts of interest that put their impartiality into question.

Today, almost 10 years after the recovery of the privatized utility back to the hands of the State, Argentina is still litigating cases related to water at ICSID. Of the 59 cases filed, 9 correspond to water claims. Of these 9 cases, 5 have had rulings against our national interests, thus turning Argentina into a “serial payer” of claims in this sector, related to nothing less than commons that are indispensable for life. Today, 10 years after its recovery, the privatized company continues generating losses and harm to the country.

In this context, we consider it crucial to support the development of an international legally binding instrument on transnational corporations (TNCs) and human rights.

This instrument should reassert the obligation of TNCs to respect Human Rights over their profits, including among these rights, the right to water.

The instrument should also reaffirm the State obligation to protect Human Rights against violations perpetrated by TNCs, such as the case of the recovery of AySA in the hands of the State, which cannot be understood as an attack on transnational corporations, but as a sovereign decision in defense of public health and the environment. We must not allow water speculation and the privatization of commons. States should ensure that TNCs in their territories respect Human Rights, including environmental regulations.

The power of TNCs undermines sovereignty and casts a shadow of doubt on the role of the public sector and its indisputable link with the inalienable rights of the population. This case clearly shows that international investor-State arbitration tribunals allow TNCs to coerce public policies. Instead of promoting investments for Southern countries’ “development”, arbitration ensures profits for transnational corporations at the expense of vulnerable countries. It is necessary to reaffirm the unquestionable hierarchical supremacy of international laws on Human Rights.

Water is a commons whose value exceeds economic approaches. Water is indispensable for life and that is why it is a fundamental human right. It was so recognized by the UN on July 28, 2010. Water is a commons whose value exceeds economic approaches. Water should be exempted from all existing and future international and bilateral free trade and investment agreements. It is necessary to keep drinking water as a public commons, avoiding conflating the public sphere with governmental spaces, given that even though water delivery services are provided by State entities, its use is a construction that is built in the democratic political space where all actors in society participate. Therefore, we state:

- “The struggle for access to safe drinking water is also a struggle for fundamental Human Rights.
- “Water and air belong to the Earth and to all species, and nobody has the right to take over or take advantage of them at the expense of others.
- “The governments of the world should protect water in their territories and declare it a Commons.

They have the obligation to preserve it”. All this entails an inextricable obligation by the State to protect water basins and secure access to safe drinking water in sufficient quantities and good quality for all the country’s inhabitants.

Our water company has expanded its networks and continued addressing challenges. One of them is to reach 100% sanitation and drinking water coverage within the concession area by 2018, in a sustainable way and through the promotion of social inclusion. Water traders discuss the “profitability” of the company, obscuring the analysis with threats of economic valuation without considering the social and environmental variables associated to public health. The company faces new challenges currently, including advancing towards economic self-sufficiency and avoiding funding from International Financial Institutions (IFIs); allowing access by users to public information, in full compliance of decree 1172/2004 on access to public information; as well as promoting citizens participation in ways that are in line with the experience accumulated in the years following the 2001 crisis, when social struggles have been deeply involved in defending the public sphere.

Nation States should recover the ability to legislate in defense and for the protection of their populations, territories and commons, regulating foreign investments through public policies that respect human rights.

This requires dismantling the architecture of impunity that allows TNCs to obtain more power and privileges than citizens. It requires our country to withdraw from ICSID, after having experienced the serious damage it has caused to our heritage. To achieve this, it is also necessary to implement more creative forms of democracy, with mechanisms for direct participation in the control of public services and the enforcement of environmental laws.

Water and Sustainability Campaign.

77. ICSID - https://icsid.worldbank.org - accessed on September 2nd, 2017

Friends of the Earth International
Oceana Gold corporation has assets in the Philippines, New Zealand, and the U.S. It operates the Didipio Gold and Copper Mine located in Luzon Island, the Philippines. In New Zealand’s North island it operates the Wahi gold mine, and it operates the largest gold mine of the country in the South Island, in Macraes Gold-field, which includes a series of open pit mines and the Frasers underground mine. In the U.S, it is currently building the Haile gold mine, a high-level asset located in South Carolina along the Carolina terrane.

The presence of this corporation in El Salvador dates to 1993 when studies to reopen El Dorado mine in San Isidro Cabañas were conducted, under an exploration concession granted to Canadian Pacific Rim Mining Corp. In 2002, the company found approximately 1.2 million gold ounces of high purity gold and over 7.5 million ounces of silver in underground deposits in the Northern area of the country. In addition, it found 58 thousand ounces of gold and 1.2 million ounces of silver of lower quality. In 2004, Pacific Rim requested from the Salvadoran State permission to exploit these precious metals, but the authorization was denied following findings that indicated a lack of compliance with the observations made by the Environment Ministry to the Environmental Impact Assessment study.

In response to this negative reply, Pacific Rim filed a complaint against the Salvadoran State at the International Center for Settlement of Investment Disputes (ICSID). The claimed damages added up to $77 million dollars in compensation for the company’s investment during the exploration stage. The claimed sum was subsequently elevated to $301 million dollars and there after lowered to $150 million. Pacific Rim declared bankruptcy in 2013 and sold its shares to Australian transnational corporation Oceana Gold for $10.2 million dollars, who proceeded diligently with the claim.

Pacific Rim’s litigation process at ICSID against the Salvadoran State took place in two stages: in the first lawsuit filed in 2009, the company resorted to the Free Trade Agreement between the US, Central America and Dominican Republic (CAFTA-DR), and in June 2012, the tribunal dismissed the claims since this was a Canadian company. In the second stage, they filed a complaint in March 2013 under the national investment law of El Salvador.

Because of the strong opposition and protests carried out by social movements and organizations, the Salvadoran government submitted in late 2012 a bill titled “Special Law for the Suspension and Exploitation Projects”. This instrument allows to suspend mining exploration and exploitation in the country. After a seven-year long arbitration, on October 14, 2016, ICSID ruled in favor of the Salvadoran state. The verdict established that the mining company should compensate the Salvadoran government with $8 million dollars to cover the legal costs of the trial, although the amount spent was actually $13 million dollars—a sum of money that could have been used for education, health, public security, food production, and other urgent needs of this country’s population.

However, Oceana Gold continues operating till this very day in the area of San Isidro, Cabañas under three names: Oceana Gold as the commercial identity of the Canadian-Australian corporation, its subsidiary Mineral Tesoro and Fundación El Dorado, an entity with a social mission, through which Oceana Gold continues operating in the communities.

The United Nations has declared El Salvador as the country with the least water availability in the entire continent, and the Environment and Natural Resources Ministry states that over 90% of superficial waters are seriously polluted and only 10% are suitable for purification by conventional means.

Mining around the world has been known to use large amounts of water to operate. It also uses materials that cause negative impacts on the air; it erodes soils; and there is forest loss, reduction: and pollution of rivers, groundwater reserves and diseases, among other consequences. Therefore, the water crisis in the Salvadoran territory would have been more serious if the gold and silver exploitation project of Pacific Rim had gone forward. These were the arguments used by social and environmental movements and organizations during the campaigns against the company.

Leaders and residents opposing El Dorado mine were threatened and intimidated. As a result of the process, two people were injured and eight were murdered. In October 2015, Alejandro Guevara Velasco, a member of Asociación Ambiental La Maraha, was attacked with a firearm though the bullets did not hit him. In June 2011, Juan Francisco Durán Ayala was murdered, and Marcelo Rivera Moreno of Asociación Amigos de San Isidro Cabañas (AASIC) was found dead in June 2009 with signs of having been tortured: Ramiro Rivera Gómez, Vice-president of the Comité Ambiental de Cabañas (CAC) was murdered in December 2009 together with Felicita Echeverría, a 57 years old resident in Trinidi-d Canton, and a 13 year old girl was injured; Dora Alicia Sorto, a member of CAC, was murdered in December 2009 and her two-year old son was injured. Father Luis Quintanilla, a Catholic priest in Cabañas was repeatedly threatened and survived two attacks in 2009; members of Radio Victoria were threatened and pressured. In this case, the IACHR adopted precautionary measures and urged the Salvadoran State to protect the life and integrity of the Radio workers, Horacio Menjivar Sánchez and his wife Espe ranza Velasco de Menjivar were murdered in 2008. They were the parents of one of the people indicted for the murder of Ramiro Rivera Gómez.

Despite this high death toll and the social conflicts generated, the continuous work of social movements and organizations in Cabañas and at national level included: workshops, demonstrations, rallies, lobby work with political actors and decision makers in the government, media campaigns, and forums with mining experts. During exchange tours, the participants visited mining projects in Honduras and Guatemala. In Guatemala, the Martin mine uses 6 million liters of water per day. The communities living near the mine reported that 40 communal wells went dry during the eight years of operation. In Valle de Siria, Honduras, the San Martin mine has dried up 19 of the 23 original rivers in the area after nine years of operation. Learning about the reality and human rights violations in neighboring countries was an important way of generating information and awareness in the Salvadoran people to oppose mining activities and continue struggling.

The National Roundtable against Metal Mining and the Movement of Victims and People Affected by Climate Change and Corporations, MOVICAC, which gathers grassroots groups at national level, submitted proposals and bills to the Legislative Assembly to ban metal mining in El Salvador.

In recent years, sectors such as Universidad Centroamericana José Simeón Cañas UCA and relevant Catholic Church authorities joined the struggle, and their contributions were essential in the national discussion about mining. We also had the international solidarity of institutions and organizations such as Friends of the Earth International, denouncing Pacific Rim / Oceana Gold as a company that violates Human Rights and highlighting the importance to create a legally binding instrument to regulate and punish illegal actions perpetrated by transnational corporations. All these efforts resulted in the Legislative Assembly passing a law on March 29, 2017, banning metal mining in El Salvador.

Much in the same way as most corporations, the transnational mining company started its operations promising jobs and social development in the area. It established a prototype in its facilities to explain the responsible and high standard operation of its mines, it organized tours with students and community leaders to show its safety.

It dispersed perks and benefits to public and private institutions and Community Development Associations – ADESCOS – (giving them school supplies, sport equipment, paint, hiring companies to provide medical attention and medicines, covering the cost of buses to field trips, etc.). The company demanded the beneficiaries to sign lists of attendance that were thereafter presented as people in favor of mining.

It supported the municipal electoral campaigns of Mayors akin to mining, who then served as their allies to facilitate the expansion of the company. This generated a score of supporters among people who saw that the company was meeting needs that other institutions could not attend. Nevertheless, what is most regretful of its actions was the divide it instilled in communities, between the supporters and those who rejected mining, creating mistrust, fights and conflicts even among members of the same families and communities, including homicides.

The country’s big mainstream media have been important allies for the company. For instance, when ICSID ruled in favor of El Sal­vador they did not cover this news accordingly to its significance, denying the importance and relevance of the subject. The same happened with the passing of the law against metal mining. On the contrary, when the bill advanced in the Legislative Assembly,
Oceana Gold started to publish statements in the most important newspapers, using entire pages in color.

The advocacy work by the company with MPs, bringing the ‘experts to submit evidence that mining does not affect human health’ was not well received in Parliament.

The process of struggle against Pacific Rim / Oceana Gold spanned the mandates of three Salvadoran presidents. Elías Antonio Saca of the ARENA party (2004–2009), ordered not to grant exploitation permits to the mining company almost at the end of his mandate.

The legal complaint at ICSID was filed during the administration of Mauricio Funes, of FMLN party (2009–2014). Ever since the passing of the law banning metal mining in El Salvador sets an important precedent for countries that are facing the attacks of transnational corporations that insist on their right to exploit natural resources despite the social and environmental impacts they generate.

Investment treaties allow companies to operate without restrictions and give them the right to submit claims at ICSID. They are even allowed to lie, as in the case of Pacific Rim / Oceana Gold. Given that it is a Canadian company, it could not resort to CAPTA-DR; however, they opened a PO Box in Nevada to have a legal address in the US, and with this they managed to sue the State for indirect expropriation and loss of profit, which are offenses recognized under this treaty.

When met with a NO against their projects, the companies activate mechanisms oriented to pressure governments. El Salvador has faced four claims at ICSID, with investors invoking the national sovereignty. El Salvador has signed 24 BITs, meaning that each party to the treaty shall protect at any cost the investments of the other party in the agreement.

On this regard, we consider the proposal to have an International tribunal in charge of accepting, investigating and judging denunciations submitted against TNCs, International Financial-Economic Institutions and also States, whenever they fail to comply with their obligations or are accused of complicity with TNCs that violate human rights, is fully appropriate. This would allow the recognition of the criminal responsibility of companies involved in cases of international economic, industrial and environmental crimes.

This international tribunal should be organized and operated autonomously and independently from the executive bodies of the United Nations and the respective States. Its sentences and penalties should be executive and their compliance mandatory.

On the other hand, the signing of “Bilateral Investment Treaties” (BITs) violates the sovereignty of our peoples, since their goal is the reciprocal promotion, but also protection of investments. El Salvador has signed 24 BITs, meaning that each party to the treaty shall protect at any cost the investments of the other party in the agreement.

Therein lies the importance of having a binding treaty to put an end to the impunity of human rights violations perpetrated by transnational corporations.

Women demand the law to prohibit metal mining in El Salvador.

Photo: CESTA/ Friends of the Earth El Salvador.
COSTA RICA - PINEAPPLE MONOCULTURE PLANTATIONS: A HISTORY OF IRRESPONSIBILITY IN THE MOST POISONED COUNTRY IN THE WORLD

Mariana Porras
CoECO Ceiba / Friends of the Earth Costa Rica

COSTA RICA ranks currently as the world’s major pineapple exporter. Fresh pineapple and pineapple cut are traded in big markets such as the US and Europe; according to the agricultural census, the area planted with pineapples grew by almost 1500% between 1984 and 2012. Two US based multinational companies, Del Monte and Dole, dominate global pineapple trade, and three quarters of the pineapple found on European shelves now come from Costa Rica. It is estimated that Costa Rican pineapple production is 75.8% in the hands of four companies and only 20% is in the hands of 1191 small farmers, who in turn sell their pineapples to these large companies for export.

Companies such as Dole, Chiquita or Del Monte that benefit from the juicy pineapple business are the same ones that featured the banana boom that caused environmental impacts and affected the health of workers without these companies taking on any responsibility. This place not only in Costa Rica, but in other Latin American countries where these companies own plantations.

The steep increase in the area grown with pineapple monoculture plantations has been the highest in the country in the past 20 years. Data from the Foreign Affairs Promotion Office of Costa Rica (PROCOT) reveals a 500% hike in pineapple exports from 2002 to 2012, reaching 1,876,000 tons. In hard currency terms, the steep increase in the area grown with pineapple monoculture plantations has been the highest in the country in the past 20 years. Data from the Foreign Affairs Promotion Office of Costa Rica (PROCOT) reveals a 500% hike in pineapple exports from 2002 to 2012, reaching 1,876,000 tons. In hard currency terms, the area planted with pineapple reached 58,000 hectares, a figure five times bigger than the 11,000 hectares recorded in 2000, and significantly more than the 37,000 hectares registered in the agricultural census of 2014. This 20,000-hectare differential is a testimony of the lack of control and State planning around this crop;

- elimination of traditional agricultural practices and with it, reduced cultivation of essential crops for the food sovereignty of communities; the 2014 agricultural census indicated that since 1984, maize crops have decreased by 73%, beans by 52% and rice by 32%, all of which are grains that are basic for our nutrition, while the area planted with export products such as pineapples increased considerably;
- land concentration in the hands of large corporations such as Del Monte and Chiquita Brand;
- pests that affect cattle and people, such as the biting fly (ste- mopyx calcitrans);
- soil shifting and pollution of creeks, rivers and water sources for communities;
- increased sedimentation in rivers, lagoons and wetlands as a result of erosion, intensive land use and the complete removal of the plant cover before and during its cultivation;
- encroachment into wild protected areas such as the wetlands in the Northern area; specifically, the case of Callo Negro, a Ramsar site that is being transformed into a huge reservoir for toxic wa- ter and soil, polluted with agrochemicals from pineapple crops;
- in terms of labor, the working day established by law is not respected. Workers are exposed to solar radiation, working con- ditions are not respected and payments of social benefits are evaded through subcontracting; there is persecution and even threats to the life of those who try to organize themselves through a trade union. In addition, companies take advantage of irregular immigrants to pay them less, avoiding providing them with insurance benefits and disregard all their rights, thus increasing their own profits. In 2017, the campaign "Union freedom of asso- ciation in private companies" was launched with the purpose of denouncing all these violations;
- a collateral damage of the pineapple industry that has a ne- gative impact on forests is that part of the wood supplied in the country is used to produce the platforms where pineapples are placed for export;
- indebtedness of small land owners dedicated to pineapple pro- duction without harvest insurance and with high risk of losing their houses and lands;
- intensive use of agrochemicals such as bromacil, tradimefon, diuron and other 20 dangerous agrotoxics in the pineapple plantations, generating huge water pollution problems for human and animal consumption in communities including El Cairo, La Franca and Milano in Guapiles and Siquirres in the Caribbean, as well as Veracrúz in the Northern Area, among others. As a result, the State and the population are forced to invest to obtain water to meet their daily needs. Acueductos y Alcantarillados de Costa Rica (AYA) has invested thousands of dollars to bring drin- king water to affected communities.

In October 2010, a public-private initiative was launched, pro- moted by Laura Chinchilla Miranda’s administration in alliance with agroindustrial sectors, in response to all the denunciations regarding the impacts of the expansion of pineapple crops. The National Platform for Responsible Pineapple Production and Trade (PNP) is led by the country’s vice-presidency, involving dif- ferent institutions including the Ministries of Health, Agriculture and Livestock, Environment, the National Technical Environmen- tal Secretariat, the Agricultural Technology Transfer and Innova- tion Institute, public and private universities, private companies, the Rainforest Alliance certification body, Del Monte corporation, BANACOL and the National Chamber of Pineapple Exporters and Producers, with the support of the United Nations Development Program (UNDP). The main source of funding for this initiative is IFCO from the Netherlands.

Neither civil society, nor the environmental sector, or small far- mers are represented in this space; organizations such as the National Front of Sectors Affected by Pineapple Production (FRENASSAP) highlight the “lack of transparency and the lack of responsibility in favor of the business sector by this space”.

Xinia Briecito, a member of the Aguacillas and Sewers Systems Administrators Association (ASADA) in Milano de Siquieres com- munity and also a member of the National Front of Sectors Aff- ected by Pineapple Production (FRENASSAP) referred to the Platform as “greenwashing”. She underscores that “they continue polluting water sources, logging trees, destroying everything in their path, without the commitment to mitigate this damage”.

What is the background of this initiative? What is hidden behind the lack of concrete solutions? asks Xinia in relation to the PNP, and she herself answers her questions: “the economic power of transnational corporations and the lack of involvement by the government in defending the affected communities is the bot- tom line on this issue.

People are not dying here like they die in Syria, on a daily basis; they are killing us slowly, with chemicals, they are causing here- ditary conditions, miscarriages and cancer.”

Through PNP, the aim is for the pineapple sector to take on commitments to ensure the fulfillment of its legal obligations with regard to environmental and social issues. In other words, to make sure it operates with the required environmental permits, without polluting water, not planting in areas that are not suitable for cultivation and establishing protection areas in those unsuitable areas for cultivation, not using banned inputs, taking care of underground and superficial water sources, among others. To think, as can be read in the notes of the work carried out by this platform, they seek to find incentives “to do things the right way”. That is, if they are paid, they can comply with the law and incidentally present themselves as environmentally respon- sible. The pineapple industry sees “there are clear opportunities for producers in terms of generating actions such as carbon neu- tral, conservation projects, biological corridors, best practices in terms of the holistic management of plantations”.

There are previous experiences at international level that show that the purpose of this type of initiatives is to greenwash pollu- tions activities in production. This way, standard compliance with the laws is portrayed as an innovative solution: a standard legal obligation for any individual or legal person in the country is presented to the public as a compromise by the actor carrying out activities that are polluting, leaving the impression that the sector is environmentally aware and responsible.

Cultivation moratoria, a communal struggle

Communities, however, are not just waiting idly, but continue their struggle in defense of the territory and for their rights to a better-quality life. The modalities of struggle have been many, including denunciations, writs of protection, road blockades and demonstrations, among others.

They have also promoted municipal moratoria as those proposed by communities in the Caribbean and Los Chiles in the Northern Area, in the pursuit of solutions to this en- vironmental problem: municipal moratoria on pineapple expan- sion is a step forward involving important levels of participa-
ATALC - peoples rights confronting corporate power in latin america

ATALC - peoples rights confronting corporate power in latin america

more pineapple

participation.

key to build a country where social justice and environmental

country, all before any new permits for plantations are granted

TNCs can sue TNCs and seek justice.

On the other side, communities and organizations will continue

managing agricultural experiences that allow for food produc-

the impacts of these monoculture plantations, joining and also

Struggling for a moratorium on the cultivation of monoculture

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green and fair.

Importance of the binding treaty for the struggle against pine-

apple expansion: the country clearly lacks sufficient national

According to the type of relationship between the parent compa-

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The headquarters on record are in Office 1101 of the West Tower

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PDHSA hydroelectric projects. There have been also incidents against the company, and the company has immediately blamed the population and the leaders who oppose hydroelectric dams: machinery set on fire and the emergence of a supposed guerrilla group called Peasant Armed Forces (FAC). Allies of PDHSA corporation include: its funders, among them Corporación Energía y Renovación Holding S.A (ERH), based in Panama, and the Inter-American Investment Corporation / Inter-American Development Bank. In terms of information management and conflict analysis in the area: Peace, Development and Culture Consortium (Masanuk'ulal, Chi el leehoh, Kóbeyb'al), consisting of the following companies - Acuerdos y Soluciones, S.A. (AYSSA) and Fundación Tecnológica para el Desarrollo de Guatemala (FUNTEDEGUA).

To secure the safety of their assets they hired Servicios de Seguridad Comercial e Industrial (SERSICO); a private security company founded in 1999 by Colonnio Gustavo Adolfo Padilla Morales and/or Gustavo Adolfo Müller. For construction works: they hired company SoileBoné Interna- tional Ltd. an Israeli company in charge of building infrastructure works for the hydroelectric network of Pojom I, Pojom II and San Andrés. The companies that own the hydroelectric dams are: Generadora San Mateo, S.A., registered in the Market Registry in November 2010, with Carlos Eduardo Radas Marzanos as shareholder with 99% of shares, and Andrés Rodas Godoy with 1% of shares: Owner of the San Andrés hydroelectric project. At local level, the company has built alliances with two municipal mayors. On July 25, 2011, the municipal Mayor granted GSA SA the permit to build the “Valvisit” hydroelectric project. In the past year, the municipal Mayor has tried to convince the inhabitants of communities to accept the project, in addition to accepting and collaborating with other projects of the company. In addition, 12 community leaders, several of whom were part of old paramilitary structures such as the “Civil Self-Defense Patrolling” (PAC) or “Military Com- missioners”, are promoting the supposed benefits of the project among communities. The actions by the State can be summarized in the following way: Ministry of Energy and Mines (MEM): It did not organize a consultation once it had received the investment request. Ministry of Environment and Natural Resources (MARN): it autho- rized Environmental Impact Assessment Studies (EIA) without carrying out community consultations first. The minister back then was linked to the company that carried out the Environmental Assessment of the project, whose owner is her husband. Supreme Court of Justice (SCJ): just as in other cases, it has not enforced compliance with Convention 169. Governance Ministry (MINGOB): reactivated Substation 43-73 of the National Civil Police force (PNC), assigning a 45-strong permanent unit to it, and during critical moments it used the Huehuetenango police station to intimidate the population. The Departmental Government: has supported and argued in favor of the compa- ny. The Defense Ministry (MINDEF), supported the projects with the installation of a military unit in the Ixquisis micro-region, assigning 70 officers: 68 soldiers and two experts, to safeguard the investments of PDHSA and its subsidiaries, Erick Villatoro Le- tona, a PNH assistant in Huehuetenango, has also stood in favor of the company’s activities. The president of the Republic has expressed his enmity with the municipal mayor who had respect- ed the community consultation (2012-2015). On July 17, 2014, the President denounced him during an event held in Ixquisis, for opposing “development” brought by the government together with PDHSA to the municipality. The President was accompanied by Governance Minister Mauricio López Bonilla, the Energy and Mines Minister, Erick Archilla Dehesa, a PDHSA executive and an employee of said company. The brother of said employee was an MP candidate to the National Congress in 2011 and was member of the Presidential Commission for the Police Reform in 2012. As a result of the socio-environmental problems generated in the Ixquisis region, many denunciations have been made by the pop- ulation at national and international level against the violation of their human and collective rights. The judicial persecution by the company and State actors against the people who are de- fending their territory and water has generated an atmosphere of fear and insecurity, and that is why it is more and more im- portant to make these regional problems visible, and that social and human rights organizations continue their solidarity actions and monitor the situation to ensure the life of the communities of the region.

Considering what has been happening in Ixquisis and for the binding treaty on TNCs and human rights to be truly useful and consider the decisions of the indigenous peoples, we request it includes: 1. That TNCs comply with the laws of the country and the international treaties and conventions related to indigenous peo- ple to which the country where the project is located is a party of. To that end, it should establish an international tribunal on transnational corporations and human rights that complements universal, regional and national mechanisms, to ensure that af- fected people and communities have access to independent in- ternational legal spaces to seek justice for civil, political, social, economic, cultural and environmental rights violations. 2. That TNCs respect the sense of belonging and the right to land of indigenous peoples, and beyond the property titles they can show, they should respect the decisions of the people in relation to the projects that they want to implement. 3. That no project promoted by TNCs, with funds or support from IFIs, the UN or other international bodies, could enter a territory where there are indigenous peoples, without first carrying out a community consultation in good faith and other requirements and instruments required by the community. And in case the proj- ect is approved by the community, the company should be forced to compensate or remediate the economic, social, cultural and environmental damage caused by the funded project. 4. Respect for the results of consultations carried out previously in the country regarding the imposition of projects of any kind. 5. Ensure the prior, informed consultation in good faith, along with the right to freedom of expression and expression of thought. That is, nobody can be persecuted for expressing his/her opinions in any kind of consultation.
CONCLUSION AND RECOMMENDATIONS

The cases presented in this report reflect the daily struggle of Latin American peoples against the systemic and systemic violation of their collective rights and environmental effects by transnational corporations. The impacts—environmental crimes, social and environmental conflicts, impacts on nature, and effects on the bodies of men and women—are many times committed by the companies themselves or by the companies and the funders of projects, associated in their global value chains, in a context of impunity strengthened by the asymmetries of the power relations between States—corporations vs. communities and public interest.

These are not the only cases or the last battles, but they can mean life or death for social activists and defenders in each national context. These are also struggles that become stronger when added to many others around the world, that seek environmental and social justice and the unity of peoples for the defense of territories and life, of human dignity to supersede the capitalist system.

As final recommendations, based on territorial struggles and the demands of the people affected by the operations of transnational corporations in their countries, the proposals defended here and presented as a contribution to the binding treaty on transnational corporations and other business enterprises with reference to human rights are the following:

The Treaty should:
- hold corporations accountable for the crimes committed by their actions outside the country of origin and the sphere of its national laws, whether global impact actions, transnational actions or similar actions that are committed in the local sphere in more than one country;
- establish sanctions and create instruments to implement sentences against the companies with parent companies outside the territory where they act and where they violate rights, making sentences effective in the country where the company operates;
- overcome the impunity resulting from the concentration of political and economic power, the asymmetry in relation to States and the violence exerted against affected communities, as well as the close link between the interests of States and corporations that prevent affected communities from accessing full justice;
- establish legal enforcement instruments, such as an International Tribunal on Human Rights and Transnational Corporations, where communities and people affected by companies and their transnational activities can sue transnational corporations and seek justice, in a way that legal cases, struggles and resistance in the territories can be linked at international level, overcoming borders and joining forces when facing corporate power;
- The International Tribunal should be in charge of accepting, investigating and judging all claims submitted against transnational corporations, international economic-financial institutions and also States, whenever they fail to comply with their obligations or if they are accused of complicity with TNCs that violate human rights, recognizing the civil and criminal responsibility of these companies for international economic, industrial and environmental crimes;
- The international tribunal should be organized and operated autonomously and independently from the executive bodies of the United Nations and the respective States, and its sentences and guarantees should be executive and their compliance mandatory;
- The Tribunal should complement other universal, regional and national mechanisms, ensuring that affected peoples and communities are able to access an international legal space that is independent, to seek justice for civil, political, social, economic, cultural and environmental rights violations.
- hold transnational corporations accountable for human rights violations and irreversible impacts on the environment, especially in countries where the State favors the existing power structure and where rules are weakened to benefit big business;
- overcome the impunity of crimes perpetrated by said companies, due to gaps in international law, the absence or weakness of national policies or the corruption of the judicial system, where links can be drawn between representatives of the State institutions and transnational companies.
- prevent that companies that are declared guilty—whether for environmental crimes, human rights violations or the criminalization of defenders, environmental activists and social organizations—continue operating, even when there are pending processes that have not been dismissed or completely cleared up;
- reaffirm the hierarchical supremacy of international human rights laws (including the human right to health and water) over commercial and investment laws;
- force States to refuse accepting human rights issues being decided in international investment and commercial arbitration tribunals;
- reassert the obligation of transnational corporations to respect Human Rights over their profits, including the human right to water;
- reaffirm the State obligations to protect Human Rights against violations perpetrated by transnational corporations, and in the case of the recovery of privatized public companies to the hands of the State, they cannot be understood as an attack on transnational corporations, but as a sovereign decision in defense of public health and the environment.

The states in the South should:
- audit their investment protection agreements in a way that allows to assess, among other things, the impacts of the clauses that restrict the public policy space of States and how and in what way they have threatened regulations designed in the interest of the public and human and environmental rights; they should refuse to accept the continuity of the investor-State dispute settlement system;
- actively participate in the negotiations and promote a binding Treaty to end once and for all with every form of impunity by transnational corporations and seek justice for the affected peoples and communities;
- ensure that transnational corporations that are based in or operate in their territory respect human rights, including environmental regulations and the role of the public sector and its indisputable link with the inalienable rights of the population;
- reaffirm the unequivocal supremacy of international laws on human rights over international investor-State arbitration tribunals that allow transnational corporations to coerce public policies;
- recover the ability to legislate in defense and protection of their populations, territories and commons, regulating foreign investments through public policies that respect human rights;
- dismantle the architecture of impunity that allows transnational corporations to obtain more power and privileges than citizens;

leave the International Centre for Settlement of Investment Disputes (ICSID);

- recognize the legitimacy and moral authority of peoples and communities as key protagonists who oppose these situations, creating regulations and rules that strengthen the supremacy of human rights;
- force transnational corporations to comply with the laws of the country and the international treaties and conventions related to indigenous peoples to which the country where the project is located is a party of;
- respect the sense of belonging and the right to land of indige­ nous people, and beyond the property titles they can show, they should respect the decisions of the people in relation to the pro­ jects that they want to implement;
- ensure that no project promoted by transnational corporations, with funds or support from IFIs, the UN or other international bodies can enter a territory where there are indigenous peoples, without first carrying out a community consultation in good faith and other requirements and instruments, and if the project is approved by the community, the company should be forced to compensate or remit for the economic, social, cultural and environmental damage caused by the project-funded;
- respect the results of consultations carried out previously in the country regarding the imposition of projects of any kind;
- ensure through prior and informed consultation carried out in good faith the right to freedom of expression and expression of thought, so that nobody is persecuted for expressing their opi­ nions in any kind of consultation.

We will defend these proposals both inside and outside the United Nations spaces as Friends of the Earth Latin America and the Caribbean, and we will mobilize for States to defend them as an expression of the demands of the peoples and nature, giving priority to the rights we have conquered from the bottom up and based on the historical struggles of our people, over the profits of corporations.

On the other side, together with communities, organizations and social movements, we will continue fighting for moratoria and for the freedom of our territories from the expansion of agribusiness, extractivism, privatization, commodification and financialization of nature, strengthening the territorial management of communities who have faced and continue to face the arbitrariness of transnational companies on a daily basis. We will join and strengthen community experiences and the building of public policies that allow for the recovery of food sovereignty, the restoration of biodiversity, the recovery of public services as a guarantee of the rights of men and women. We will work reten­ sely for the promotion of economic, social, environmental and gender justice, building sustainable societies where the econo­ mic system serves the needs of the people, rather than those of economic globalization at the service of transnational companies and corporate capital;
PEOPLES RIGHTS
CONFRONTING
CORPORATE POWER
IN LATIN AMERICA

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