

TNCs AND PEOPLES' RIGHTS IN LATIN AMERICA AND THE CARIBBEAN: VIOLATIONS OF PEOPLES' SOVEREIGNTY



**Amigos de
la Tierra
América Latina
y el Caribe**

Mapping the presence and impacts of Transnational Corporations
in Latin America and the Caribbean, by Friends of the Earth Latin
America and the Caribbean (ATALC)



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Photography collage: Firefighter on the fifth day searching for persons who disappeared under toxic mud in Brumadinho (MG, Brazil). Credit: Brasil de Fato, 2019; Woman at demonstration on the first anniversary of the Brumadinho environmental crime. Credit: Joka Madruga/MAB, 2020.

This document is a follow-up to, and contains information from the mapping of Transnational Corporations and Human Rights conducted in 2019 by Friends of the Earth Argentina (ATA) on behalf of ATALC, with support from Diakonia.

CHAPTER 1

Introduction: **We need to change the system**

We cannot understand the configuration of the capitalist system in recent years without considering the role of Transnational Corporations (TNCs) in the process of capital accumulation. TNCs are key actors leading the process of capital expansion, both in the territory and in all spheres of life. Trade and investment liberalization policies – including new norms in the services sector, public procurement, intellectual property, as well as dispute settlement mechanisms within free trade agreements and bilateral investment treaties – were designed to promote and protect the interests of TNCs. In order to understand how TNCs impose the primacy of their interests – for example through political and trade agendas, we must examine the functioning of the architecture of impunity, which benefits TNCs and enables them to be unaccountable for their violations of human, environmental, and peoples’ rights.

[Friends of the Earth Latin America and the Caribbean](#) (ATALC for its acronym in Spanish) mapped a diversity of cases throughout the region where TNCs attempted to, or succeeded in, imposing their interests by creating and/or exacerbating systemic crises, violating or infringing upon the rights of peoples, destroying territories and livelihoods.

ATALC member groups denounce the actions of TNCs and the rights violations that they perpetrate. Grounded on their own experiences of struggle in the territory and in defense of peoples’ rights, the groups put forward the cases that inform this publication. Chapter 2 provides descriptions of key different sectors where TNCs operate; the cases referenced will be developed into a series of podcasts produced by Real World Radio.

The mapping is not exhaustive, but it seeks to provide a substantiated description of the role of TNCs in the region and their aggressive actions in territories and societies against the rights of working-class peoples, Indigenous Peoples, Afro-descendant communities, and women. The report also describes the efforts by affected peoples to reject and resist corporate impositions.

ATALC’s ethical motivation is to highlight the people, communities, organizations, and movements affected by TNC-driven agro-industrial, forestry, mining-energy, or services projects.

ATALC and its members are part of [Friends of the Earth International](#) (FOEI), which fights for environmental, social, and gender justice, and has Economic Justice and Resisting Neoliberalism among its programs. As such, part of this work is reflected in FOEI member groups’ participation at the United Nations (UN) Human Rights Council’s Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with respect to Human Rights. Since 2014, the Working Group has been debating a Binding Treaty to set rules for transnational corporations and pass judgement on the human rights violations they commit around the world.

Civil society’s contributions to the UN working group to regulate and judge TNC’s human rights violations highlight the importance of peoples’ rights, defense of territories, and peoples’ sovereignty above trade agreements and global value chains, and are channeled through the Global Campaign to Reclaim the Sovereignty of the People, Dismantle Corporate Power and End Impunity (Global Campaign).

FOEI/ATALC groups also participate in [the Continental Platform for Democracy and Against Neoliberalism](#) and the Global Campaign alongside organizations and movements including La Via Campesina, the World March of Women, the Movement of Peoples Affected by Dams, and the Trade Union Confederation of the Americas, deepening debates within the region and bringing the voices of organizations and their struggles to international spaces. As discussed in Chapter 1, the political analysis reflects both the impacts of corporate action and peoples’ emancipatory projects already underway.

The struggle against the advance of TNCs is part of FOEI’s struggle for system change with the allies mentioned above. What system do we want to change? The capitalist, racist, patriarchal system that produces and reproduces systems of oppression and exploitation; creates structural social inequalities; and sustains itself on inequity, discrimination, violent (physical and symbolic) extractivist life practices, bodies, and territories.

Driven by profit and economic rationality, capitalism turns social activities and the commons into merchandise, and integrates them into the circuit of capital accumulation, imposing its reductionist and privatizing logic. It doesn't matter if the country is European or Asian, if it relates to workers, peasant communities, farmers and/or fisherfolk, migrants or Afro-descendent communities, women or Indigenous Peoples – all peoples are subjected to the logic of transnational capital's power (Carrau, N and Drago, M, 2016).

With this logic of accumulation, capitalism imposes modes of production based on the domination and exploitation of nature, of the working class, and of women's bodies and labor through the sexual division of labor, and it generates deep systemic crises that threaten ecological systems and life on the planet.

The transnationalization of production is organized in global value and production chains, helped by some countries' comparative "advantages", such as low wages and lax or no labor and environmental regulations, to install harmful and polluting mega-projects. Along with the concentration of economic power, the capacity of corporate lobbying (pressure) on institutions and governments, and even the weakening of the regulatory role of the State, this organization of global production has repercussions on the monopolization (or control) of the productive sectors and on the control of territories.

PEOPLES' COLLECTIVE RIGHTS

There is increasing collective resistance to the advance of capital and large corporations from the side of peoples' power, with collectively built strategies to stop TNC's rights violations and destruction of livelihoods.

The response of the corporate and capitalist interests to collective resistance has been to systematically threaten and attack defenders of peoples and territories. Defending the lives of women and men who represent the struggles of their communities is a necessary precondition for achieving system change.

FOEI's – and therefore ATALC's – work to address Human Rights violations incorporates the collective rights of peoples, meaning the defense of land and territory, food sovereignty, water, the right to self-determination, preserving ancestral and traditional practices and forms of accountability and justice.

(Friends of the Earth International Conceptual Framework: In Defense of Peoples' Collective Rights and Defenders of Territories)

Transnational Corporations are key actors in the system we want to change

Transnational corporations are the main drivers of the capitalist system. Corporations wield disproportionate power by controlling production at the global, regional, and – to a large extent – national level. They also use multiple instruments, institutions, mechanisms, and processes endorsed by capitalism to facilitate the expansion of transnational capital and exercise its hegemony over any other form of organizing society and the market.

A transnational corporation, whatever its specific legal form and status, is a company operating in more than one State, or a group of companies operating in more than one State, controlled by a decision-making center. The control may be exercised directly, indirectly, financially, economically or otherwise. The decision-making center is sometimes called the "parent company", and may comprise extensions into other countries. Among the controlled companies are "affiliates", "branches" and others. If the TNC consists of only one company, this company is the TNC's "parent company".

TNCs define and control – directly and indirectly – all decisions and activities that take place in their global value chains. Institutions, actors and processes revolve around these companies and are ultimately shaped according to corporate interests.

TNCs determine the conditions and prices they will pay for production at different stages of the value chain, in a context of strong competition in the world market and constant pressure from shareholders and investment funds to increase their profits.

At the same time, governments put in place policies to attract and promote investments that include highly favorable tax schemes with exemptions in specific sectors, restricting progress towards tax justice. Countries and local companies that provide services, materials, and manufacturing for TNCs end up in a “race to the bottom”, competing to meet the TNC’s demand at the cost of weakening environmental legislations and control, low wages, “flexibilization” of working conditions, and offshoring or outsourcing of less profitable tasks and responsibilities.

TNCs exercise political, economic, legal, and cultural power: “69 of top 100 economic entities are corporations not countries”, according to a 2016 study by Global Justice Now!

Information and Communication Technologies (ICT) and trade liberalization have played a crucial role in the corporate-driven organization of global production into global value chains through the fragmentation and de-localizing of production processes and market expansion. Thus, production processes that break space-time boundaries are promoted and amplified to benefit transnational capital. For the first time in history, thanks to these technologies, capital is managed 24 hours a day in globally integrated financial markets that operate in real time.

ICTs are also key in ensuring dissemination of TNCs and what they do. Corporate domination of these technologies enables mass messages that favor the exploitation of natural resources, justifying the dispossession of peoples and territories. Projects that plunder and contaminate usually have a large media presence through paid advertisement placed in communications and social media, allowing them to spread their greenwashed image.

TNCs are present in all countries and cover all economic activities. They exercise great economic power and often handle a volume of annual income greater than the Gross Domestic Product (GDP) of many countries. They grow by merging with, or acquiring other companies, including through the privatization of public companies. They build global oligopolies that can dominate national internal markets by controlling strategic companies in key sectors.

The United States is home to 53 of the 100 largest companies in the world; China has 11 companies in the top 100 list, and the United Kingdom is in third place with 9 companies.

TNCs operating in Latin America and the Caribbean are primarily based in Global North countries. This transnationalization is strongly linked to the privatization of State-owned companies through structural reforms that began in many countries in the 1970s with dictatorial governments, and deepened in the 1990s with neoliberal governments that favor the insertion of transnational capital in the stock packages of State-owned companies and public services.

Transnational capital seems invisible, but it is present in international trade’s global value chains. It simultaneously affects diverse societies and territories around the world, and its responsibilities are blurred between the TNC’s parent company that is based in a Global North capital city and its branches in the Global South, where it takes the shape of sweatshops and maquilas; Employment and Economic Development Zones (ZEDEs for its acronym in Spanish); genetically modified monocultures of soybean, pine, eucalyptus, or oil palm; mines; hydroelectric mega-projects; and cellulose pulp mills.

In the international division of labor, the Global South was assigned the role of supplying raw materials through the hoarding and exploitation of natural resources – meaning the private appropriation and devastation of lands, forests, rivers, wetlands and livelihoods.

Latin America and the Caribbean is a faithful representative of that role. Being the “world’s breadbasket” and glorifying the agro-export model since the end of the 19th century contributed to the mutation and renewal of the dependence-based international division of labor perpetuated today in the region, with a reduced capacity to autonomously build fair socio-environmental strategies for insertion in the international economy.

The export matrix for the region within the international division of labor has been very beneficial for TNCs but highly exclusionary for the working classes. Additionally, by exacerbating systemic crises and creating severe environmental problems that affect the health of ecosystems and peoples’ lives, it reinforces social, environmental, economic, and gender injustice.

Can we defend ourselves against criminal neoliberalism?

In this neoliberal phase, the capitalist system has set out to expand its capacity for accumulation through privatization, commercialization, and financialization of nature and the diverse dimensions of life. This is made possible by the development or deepening of international norms that facilitate the process of accumulation and increasing profit rates for transnational corporations.

Neoliberal globalization, whose process is incomplete and asymmetrical, is characterized by a large deficit in governance and has created profound changes in modes of production around the world. The transnationalization of capital through global value chains is the current form of accumulation. Its impacts, therefore, have no boundaries and threaten ecological systems that make life and its functions possible.

Proponents of this globalization reclaim the theory of comparative advantage as the basis for advocating in favor of fully opening international trade, which would supposedly benefit everyone equally. However, the real beneficiaries of unrestricted opening are the TNCs that have complete freedom to invest, extract, and commercialize the wealth of peoples, undermining general well-being and human rights (individual and collective), and hiding their actions behind big publicity campaigns and Corporate Social Responsibility (CSR).

TNCs apply systematic pressure to open up competition and minimize or eliminate any State regulation in all sectors where extraction of market value is possible.

Along with the advance of transnational capital, the peoples of Latin America and the Caribbean face political offensives from the right-wing, conservative, and ultra-conservative sectors that attack the democratic system and the rights-based agendas that have been achieved or are in dispute. Through a process where TNCs “capture” the State and democracy in many countries, the public agenda ends up being controlled by the interests of the corporations’ Chief Executive Officers (CEO). These same CEOs often occupy high-level government positions; use hate speech; impose economic and social models that further the grabbing and destruction of territories; and deepen social, class, ethnic-race, and gender inequities and inequalities.

As capital and TNCs expand into the territories, those who defend nature and the peoples’ rights resist and suffer criminalization: illegal arrests, harassment, persecution, threats, raids, and even murder. Human rights violations perpetrated by TNCs have been widely documented.

At least four defenders of peoples and territories were killed every week in 2019.

In its [2020 Report](#), Global Witness recorded the killing of 212 defenders of territories and peoples who struggle against the advance of extractivist projects worldwide in 2019. More than two-thirds of these killings took place in Latin America, and more than half of the killings were connected to communities affected by mining. Other crimes, attacks, and harassment against defenders are linked to agribusiness, oil, and gas projects. These same industries are responsible for the TNC’s activities that exacerbate the climate crisis through deforestation and increasing carbon emissions.

The cases included in this mapping reveal many similarities in the resistance of social movements and local communities facing the transnational offensive against rights and territories. Corporate behavior affects peoples’ sovereignty at many levels, and has sparked organizational processes to push back.

Violence against bodies and territories is a warning signal on the need to develop concrete proposals and defend the sovereignty and sustainability of life in collective spaces where the production and reproduction of life, social organization, struggle, and political and cultural construction take place.

Although these human rights are violated in the context of social and environmental conflicts, they are part of a broader story: the violation of peoples' rights. That is, the violation of the right to land, to food, to water, to work with dignity, to share knowledge and natural resources, and to exercise traditional and ancestral practices, which include a peoples' judiciary system.

While the emphasis is often placed on rights violations committed by States, there is a striking omission of violations perpetrated by other actors such as transnational corporations.

The struggle to end impunity for TNCs and achieve justice: the UN Binding Treaty

Over the last 10 years, the deepening of conflicts has brought together new alliances among peoples, movements and organizations that resist extractive projects and defend ancestral territories, focusing on denouncing those responsible for violations. The Global Campaign to Reclaim the Sovereignty of the People, Dismantle Corporate Power and End Impunity was convened with representatives from affected communities, social movements and organizations from all continents, mobilizing inside and outside the UN Human Rights Council to achieve the approval of a Binding Treaty to defend human, environmental, social, and economic rights violated by TNCs.

Peoples' left-wing environmentalism has taken a more active role in continental struggles for environmental, social, economic, and gender justice.

In 2014, the Permanent Peoples' Tribunal (PPT) – created in Bologna (Italy) in 1979 as follow up to the Russell Tribunal II on Latin American dictatorships (1974-1976) – [condemned the actions of TNCs](#). PPT members in Geneva put on record the enormous damage caused by TNC's appropriation and economic and social exploitation in Latin America and the Caribbean, especially since the corporations have no legal counterweight.

Existing voluntary instruments have not been effective in stopping human rights violations committed by TNCs in territories. If the real objective of these economic projects were to promote sustainable development, then States would impose demands, requirements, and limits on TNCs. This could be achieved with a [Binding Treaty](#) – an international legally binding instrument on transnational corporations and human rights discussed at the United Nations since 2014, which looks at the responsibility of large transnational corporations along the entire global value chain. The Binding Treaty seeks to surpass current instruments that are merely voluntary, like the UN Global Compact or the Guiding Principles and the OECD Guidelines for Multinational Enterprises.

The Ten Principles of the UN Global Compact

Human Rights

Principle 1: Businesses should support and respect the protection of internationally proclaimed human rights.

Principle 2: make sure that they are not complicit in human rights abuses.

Labor

Principle 3: Businesses should uphold the freedom of association and the effective recognition of the right to collective bargaining.

Principle 4: the elimination of all forms of forced and compulsory labor.

Principle 5: the effective abolition of child labor.

Principle 6: the elimination of discrimination in respect of employment and occupation.

Environment

Principle 7: Businesses should support a precautionary approach to environmental challenges.

Principle 8: undertake initiatives to promote greater environmental responsibility.

Principle 9: encourage the development and diffusion of environmentally friendly technologies.

Anti-Corruption

Principle 10: Businesses should work against corruption in all its forms, including extortion and bribery.

One of the main stumbling blocks in the negotiations is the open or veiled opposition to any binding – meaning, enforceable – standard voiced by TNC spokespersons at the UN, the International Organization of Employers (IOE) and the International Chamber of Commerce (ICC), and by the countries that are home to major TNCs (members of the European Union, the United States, Canada, Japan, Australia and other countries mostly from the developed Global North).

The binding treaty must address the legal regulatory vacuum that currently exists in relation to TNCs.

The [Global Campaign participates in these debates](#) by bringing the perspective of peoples affected by the impacts of deregulation and impunity for TNCs and transnational projects in their territories. The campaign actively engages in the negotiations, analyzing the contents of the [Binding Treaty drafts](#) that have been published up to now, and advocating in favor of proposals from movements, social organizations, and communities.

These drafts [do not meet civil society's expectations](#) for a binding treaty, whose end goal is to broaden the spectrum of guarantees for human dignity and natural resource defense, given the violations perpetrated and that remain without any response. After reviewing the second draft that was published in August 2020, the Global Campaign stated that it continues to be a “weak” text. Among the concerns, it is problematic that “the extension of the scope to all enterprises, without distinction, is maintained and exacerbated, contrary to the historical purpose of the instrument and to Resolution 26/9 which clearly refers to enterprises ‘with transnational activity.’”

The second draft of the Treaty “again fails to impose joint and several liability on all companies involved in a violation along the global value chain and in general weakens the previous text regarding the liability of parent and/or controlling companies,” explain the members of the Global Campaign in a [statement](#).

Many of the proposals made by social movements, representatives of affected communities, and states during the fifth session (in 2019) were not included in the latest draft. Additionally, the text does not recognize TNC’s obligations to respect human rights; it does not include global value chains, which are pillars of the international corporate architecture; it fails to include effective international legal mechanisms to implement the Treaty and to sanction in case of non-compliance, such as the proposal for an international court; and it lacks unequivocal recognition of the primacy of international human rights law over any other legal instruments, in particular over trade and investment agreements. “We are also alarmed by the deficiency of provisions to effectively address the problem of corporate capture, a central issue in neutralizing the drastic power asymmetries between big TNCs and States, especially in the Global South,” concludes the Campaign.

Corporate capture as a threat to democracy and a strategy to violate peoples' rights

In addition to demanding and monitoring States' responsibilities to guarantee and promote rights, it is essential to analyze transnational corporate behavior that may block access to, and exercise of human rights and peoples' rights, because TNCs use their disproportionate power against governments and peoples.

TNCs are involved in human rights violations through different practices, despite their obligation to respect international human rights norms – which are universal, indivisible, interdependent, and interconnected, and which must be recognized, protected and promoted in a fair and equitable manner on an equal footing and with equal emphasis.

Corporate capture is a strategy of subordination, control and monopoly by the economic elite to undermine access to human and environmental rights; it exerts undue influence on institutions and decision-makers at the national and international levels. This modus operandi is found in various spheres, especially in the international architecture of trade law, and has even reached institutions like the United Nations.

An example of this is the Strategic Partnership Agreement for the implementation of the 2030 agenda (the Sustainable Development Goals – SDGs) signed on June 13, 2019 between the UN and the World Economic Forum (WEF). The Partnership will provide privileged access to TNCs and was widely rejected by social movements and organizations in an open letter to António Guterres, UN Secretary General, published on September 25, 2019:

“This [UN-WEF] agreement is fundamentally at odds with the UN Charter and with intergovernmental decisions on sustainable development, the climate emergency, and the eradication of poverty and hunger. This public-private partnership will permanently associate the UN with transnational corporations, some of whose core essential activities have caused or worsened the social and environmental crises that the planet faces. This is a form of corporate capture. We know that agribusiness destroys biodiversity and sustainable and just food systems, oil and gas corporations endanger the world's climate, Big Pharma weakens access to essential medications, extractive corporations leave lasting damage to countries' ecologies and peoples, and arms manufacturers profit from local and regional wars as well as repression of social movements. All these sectors are significant actors within the World Economic Forum.”

Types of corporate capture

Coopting and/or manipulating communities through Corporate Social Responsibility.

Economic diplomacy.

Interference in the national judicial system.

Features and consequences

Tactic to manipulate or divide communities targeted with mega-projects so the TNC can obtain a “social license” to operate. Through corporate-linked foundations or non-governmental organizations that promise social projects, seeking to interfere with educational and health institutions, particularly in places where the State is weak or absent.

TNC support to diplomatic missions that promote corporate interests abroad.

Corporate influence over judicial resolutions or actions. Courts decide in favor of companies, undermining due process and efforts to access reparations and accountability.

Types of corporate capture

Legislative and political interference.

Privatizing public security services.

Revolving door.

Imposing narratives.

Capturing academic institutions and general education.

Threats and claims at international tribunals.

Features and consequences

TNC representatives put pressure on legislatures in order to receive better business opportunities, eliminate/weaken State regulation of business activities. TNCs interfere in democracy by undermining States' regulatory authority, using their power to operate outside established norms.

This entails corporate payments of salaries or other incentives to the police, military, or other public security services so they act in favor of corporate interests instead of protecting local communities, thereby giving way to all kinds of abuses and human rights violations.

Movement of TNC employees (in management or high-level technical positions) to public positions in State entities or agencies, and vice versa. This affects the impartiality of State entities, facilitates policies and regulations that are favorable to corporations, makes the implementation of existing regulations more flexible, and endorses business-friendly contracts. There are examples of revolving door situations between TNCs and the UN.

TNCs influence public opinion through the media, and they propagate messages about the meaning of progress and development. These become dominant and hegemonic narratives about corporate behavior, and put it in a positive light. They also seek to delegitimize the struggles of affected communities and those who resist the advance of TNCs on territories. In this way, they contribute to the stigmatization of struggle in the territories, associating peoples' mobilization and resistance actions to criminal acts.

Corporations engage with academic institutions, offering funding to universities (public and private) and research centers. This translates into TNC interference in curriculum design, in research programs, and in professional development opportunities for students and professors employed by the companies or who conduct research on issues that respond to corporate interests. This capture has increased with privatization and other neoliberal reforms that affect education at all levels in a large majority of countries.

The Investor-State Dispute Settlement (ISDS) mechanism is a key component of the architecture of impunity for TNCs. The institutions that are part of this system, as well as the rules and processes that install and legitimate it, constitute true violations of States' sovereignty. The best-known tribunals are the International Center for Settlement of Investment Disputes (ICSID), which operates under the auspices of the World Bank, the United Nations Commission on International Trade Law (UNCITRAL) and the International Chamber of Commerce (ICC). Other international tribunals were created ad hoc to protect the interests of TNCs. One of the most notorious effects – beyond the millions of dollars from the public budget that States must disburse to face the claims and suits that they usually lose – is the “regulatory chilling effect” created by the mere news that a TNC is taking a State to court for disagreements with a political or regulatory decision. Exposure to these lawsuits often provokes a retreat or freezing of the policy or regulation that the State was implementing.

Asymmetries and misgovernance of Transnational Corporations

The ways in which TNCs build power and domination are related to the rules established by states. Even when there are no rules, TNCs act to create them and favor their interests. Companies also use their power to block initiatives that could involve regulation of their actions.

TNCs are invisible in international law with regard to their obligations and responsibilities as transnational actors. However, their rights as expressed through the current validity of *Lex Mercatoria* certainly appear to be ensured; they are enforced any time a company believes its rights have been violated.

The architecture that TNCs rely on is also part of *Lex Mercatoria*, and this is why trade and investment agendas are so crucial to TNCs: investment treaties, trade agreements, and Investor-State Dispute Settlement (ISDS) mechanisms are all instruments designed to perpetuate the power of TNCs.

The “criminalization” of countries’ policies and regulations unfolds from the mercantile rights that the TNCs claim for themselves within trade and investment agendas. [Investor-State claims have been widely documented](#), along with actions to denounce rights violations committed by TNCs.

- > From the mid-1990s to today, the number of claims by TNCs against Latin American countries has grown nonstop. According to the Transnational Institute (TNI), 91 claims were documented between 1996 and 2006, and the number jumps to 165 between 2009 and 2019.
- > Claims against Latin American and Caribbean countries represent 28.6% of all known investor-state disputes around the world. More than half the countries in Latin America and the Caribbean have been sued through the arbitration system.
- > Argentina, Venezuela, Bolivia, and Ecuador are the countries most sued in Latin America and the Caribbean.
- > Investors have won 70% of the cases.
- > In the cases that were resolved, the amount that States were actually ordered to pay is US\$ 20.6 billion, which could cover Bolivia’s budget for health and education for four whole years.

These numbers are not just the public funds that States spend on lawyers to represent them at the arbitration tribunal. They also represent resources that were not directed towards public policies but instead were used to unfairly compensate corporations; regulations that were paralyzed or rejected; legislations that never saw light of day; and corporations that were not held accountable for their actions.

The huge asymmetry of power in favor of TNCs is also reflected in the architecture created to protect them, since access to the arbitration mechanisms are unidirectional: only TNCs can present claims. Neither States nor social organizations or communities have the dual advantage of having an international dispute resolution body in addition to the national procedures and instances provided for in domestic regulatory frameworks.

The flow of claims and their objectives underline the regressive and conservative character of the ISDS mechanism, granting enormous privileges to TNCs and consolidating the architecture of impunity. To such extent is this true that it enables the imposition of private and individual rights of corporate legal entities at the expense of individual and collective human rights.

International arbitration processes are known for their lack of transparency. The arbitration documents submitted by companies or governments are not public, and in most cases are only made public once the case is over. That is, when the tribunal makes its final sentence. Even then, some of the information, as well as the burden of proof used by the parties’ defenses or by the court itself, may remain confidential.

This information and other details of the claims, such as the amounts of compensation demanded by the transnational companies, are crucial not only as a matter of transparency, which creates democracy. It is important information for in-depth research on TNCs and the power they wield in defining the future.

We must deepen the debate about who wins and who loses in these international trials, even when – in some cases – the courts rule in favor of the States. Otherwise, we legitimize the notion that investment, capital, earnings, and profits are above peoples’ rights.

We must analyze the impacts of TNC claims. Corporations sue countries for implementing public policies; public policies are sovereign decisions and instruments with which states use for the general public interest. Therefore, what the dispute settlement mechanism actually arbitrates is whether or not peoples are able to access their rights and the ability of States to regulate actions, investments, or claims. That is why it can be said that ISDS is an attack on countries' right to development and on democracy.

We can also analyze the claims based on who launches them. That is to say, TNCs and their actions, the mechanisms that allow them to sue States, and a reflection on the power TNCs wield in this process. This second analysis is crucial to demystify the role given to foreign investments and to understand the urgent need to challenge the role of these investments and the power wielded by these companies.

The dispute resolution system is set up as an apparatus with transnational companies at the center exercising their power, maximizing profits and minimizing or socializing costs. ISDS is an attack on countries' right to development and on democracy.

Within and beyond national borders, these forces function with the same objectives, based on the same rationality, and using almost the same instruments. In the case of TNCs suing States, this process takes States outside of their borders to international arbitration spaces with new rules and institutions. The suits also show the asymmetries between the parties, because TNCs have a vast trajectory with these types of disputes and they access powerful law firms that specialize in defending corporate interest in anti-democratic spaces – they know how to exploit the power asymmetries and contradictions.

Impacts of TNCs on feminized lives

April 24 is the Day of Feminist Solidarity and Worldwide Action against the Power and Impunity of Transnational Corporations, convened by the World March of Women to demand justice for the victims of the Rana Plaza building collapse in Bangladesh.

More than 1,000 women textile workers died and many others were injured on that day in 2013, showing the world the dangerous and exploitative conditions in which brand-name clothes are made. The tragedy also calls to question the conditions and the human cost of food produced on large farms managed by agribusiness, exploiting migrant workers; the conditions in which food ordered through mobile apps and delivery platforms arrives; and how, despite various socio-environmental crimes, workers continue to work for mining, hydroelectric and forestry companies that generate energy and paper at the expense of life and natural resources.

Gender inequality is a structural component of the capitalist system; this is how the system operates socially, culturally, symbolically, politically, and economically: from a patriarchal perspective. Women are considered objects, parts in the system. Empirical evidence shows that the impacts of the market paradigm – which today even integrates services in the trade agenda – are bigger on women.

There is an unequal distribution of productive and reproductive tasks. In the on-going sexual division of labor, reproductive tasks – paid and unpaid – are assigned primarily to women, girls, and, to a lesser extent, boys. Even in countries where care systems are in place – public policy experiences that try to balance or make visible the value and time involved in all the tasks for reproducing life – women are still the ones employed in these services. Although with variations, States have not had much presence in the provision of services. Partly because these already existed in the community and perhaps the State did not organize them – since there may not have been a concrete demand. Another reason is that, having been attacked and undervalued in public budgets, State-provided services are not maintained through time and private services win out in the market, capturing existing demand. This has a negative impact on women who cannot access the market to provide services.

Ensuring the sustainability of life not only entails men and women carrying out these tasks, but foreseeing the role of the State, the importance that the public nature of State services has on the quality of what is provided, and how these services help to sustain life.

Women's role in services is key. For example, in countries where there is no access to public services such as water and sanitation, women are the main suppliers of water, often in nefarious conditions, having to travel long distances carrying water for hygiene and food ([Carrau, N., REDES-AT, 2020](#)).

Having a public water and sanitation service clearly improves people's quality of life, especially for women, considering who is mostly responsible for caring for the household and dependents. Water is a central element in women's lives, particularly regarding hygiene and women's biological cycles. In many countries, lack of access to water and sanitation leads many girls and women to abandon their education because they do not attend during their menstrual cycle.

In this regard, it is worth mentioning that only four transnational corporations (Suez, Veolia, Thames Water, and Bouygues) dominate nearly the entire market for storage and distribution of drinking water worldwide. It is a clear example of why TNC's control of natural resources creates a risk for the sustainability of life.

Remote work during the pandemic has made women's responsibility for the economy of care more visible. Women are over-burdened with work, productive and reproductive in the home – along with educating their children, while in parallel, governments threaten teachers with moving to online education with no resources or assurances, putting the quality and continuity of education, as well as jobs, at risk.

Corporations in the online economy work with “algorithms” that reproduce existing gender inequalities and reinforce stereotypes, prejudices, and inequities. At the same time, access in the Global South is not the same as access in the Global North.

The COVID-19 pandemic has exacerbated remote working as a way of “not stopping” the economy, to not stop producing, now from our homes (assuming that the conditions exist). Remote working is one of the hallmarks of the so-called future of work, but there are still some labor rights and regulations missing in order to take it up in a satisfactory manner. Companies are benefitting enormously from this situation.

It must be noted that remote working is not the same as the current situation of working from home. Regulations for the latter are also needed to ensure the “right to be disconnected” and to protect workers' personal data from surveillance by employers. In the debate about the “future of work”, which already raises questions, for example, about new technologies replacing jobs and functions with a certain amount of automation, it is also worth asking about the sectors in which women participate: where are they perceived as less qualified or are paid lower salaries? What are the working conditions? All of this must be included in discussions with companies that aspire to operate in the market.

CHAPTER 2

Descriptions of specific sectors

Analysis of the extractivist sectors (agribusiness, forestry, mining, energy) and the services sector where the TNCs mapped by ATALC operate.

The case studies that exemplify each sector description will be further detailed in a podcast series produced for ATALC by Real World Radio, soon to accompany this publication.

Extractivism

The extractivist development model is the result of brutal colonial exploitation and is a key component of this neoliberal phase where the commons are [privatized and commercialized](#). The financialization of nature reduces the commons to commodities; it assigns the commons a price in the global market, leading to the destruction of territories and livelihoods, the displacement of communities, and a loss of rights for peoples.

Extractivism is a form of large-scale resource extraction, especially in sectors such as mining, energy, agro-industry and forestry, as seen in the cases included in this mapping.

Since capital seeks to recover or increase the rate of profit, it incorporates nature and its functions into the circuit of accumulation by dispossession ([Harvey, D. 2004](#)). Here, ecosystems are considered sources of raw materials that can be exploited indefinitely, or like providers of environmental services that must acquire a monetary value, thereby creating various mechanisms [for nature to become credit, bonds, or assets for financial speculation](#).

In this way, corporations consolidate private property rights over natural resources, as is happening in many countries in the region through measures like privatizing water, native seeds and other genetic plant materials; land grabbing to develop mega-projects with high socio-environmental impacts; imposing genetically modified crops and monoculture plantations, among others.

The cases in this mapping are grouped in two complementary areas: extraction of the commons (extractivism) and the services associated with these activities. The latter are strongly linked with large infrastructure, trade, and services projects in transportation (roads, ports, airports), energy (dams, hydro-electric plants, fracking), finance entities (banks), and communications (telephone and internet), whose objective is to facilitate the extraction and commercialization of commodities to countries or regions of destination, in order to ensure supply in central economies.

Agribusiness

The term agribusiness refers to economic activities connected with, or derived from the industrial agro-food system, including processing, transportation, and distribution. This leads to a collision between the natural speed of the reproduction of life (which is respected by the agroecological model) and the dynamics of neoliberal capitalist rationality.

Not all extractivist activities involve the industrial phase: as stated earlier, Latin American countries tend to conduct primary sector activities, with little added value and low product transformation. Industrial agriculture is an extractivist activity that takes soil as an inert substrate from which to extract nutrients (proteins and minerals) using technology and agrochemicals (such as fertilizers, pesticides, herbicides, and fungicides) without any replacement or compensation, destroying its structure and irretrievably depleting it.

According to the UN-supported Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), industrial agriculture is the main cause of global biodiversity loss. In 2019, more than one-third of the world's land surface

and nearly three-quarters of available freshwater resources were devoted to crop or livestock production. The expansion of the industrial agricultural frontier in Latin America, with the intensification of agriculture and grazing land, has led to a decrease in the surface area and quality of habitats, causing 70% of the deforestation in the region.

78% of the world's agricultural land is used for large-scale livestock industry (pastures or fodder crops). 60% of grains grown worldwide are used to feed animals in confinement in industrial factory farms. (Revista Biodiversidad, N°104, April 2020)

Agribusiness is increasingly producing raw materials, commodities, and food products at a large scale, exporting them to supply central economies.

The Atlas of Transgenic Agribusiness in the Southern Cone (2020) details that:

- > 89% of soybeans grown in Uruguay have only one destination: China.
- > 87% of soybeans grown in Argentina are exported to China.
- > 81% of soybeans grown in Brazil are exported to China.

China portrays itself as a “dynamic trade partner” for South America, a global manufacturer and large-scale consumer of the commons, as well as a net importer of fuel, minerals, and raw materials that is interested in securing transportation routes and supply sources. China is “updating classic dependency patterns” in the region ([Fornillo, B., NUSO, 2014](#)).

Instead of contributing to diversification or internal development, the industrialization of certain agricultural sectors has deepened this “agro-exporting” characteristic without creating conditions for food sovereignty. Added to this is the adoption of the so-called Green Revolution’s “technological package” of monoculture grain plantations and genetically modified seeds that are resistant to glyphosate, which propelled the soybean agribusiness and other initiatives claiming to alleviate hunger.

The agro-food system uses 70-80% of land, water, and fuel for agricultural purposes, but only feeds 30% of the world's population. The only beneficiaries are the transnational corporations. (Revista Biodiversidad, N°104, April 2020)

The arrival of the agribusiness model in the Southern Cone of Latin America with the introduction of genetically modified soybeans in the mid-1990s (maize came later, and most recently, wheat) led to an accelerated process of land grabbing, which became more acute after the 2008 financial crisis as part of the neoliberal logic of accumulation by dispossession. Land becomes an economically valuable asset that investors allocate for multiple purposes: direct purchase, leasing for soybean and wheat production, purchase and division to re-sell land plots, among others.

As it deepens agro-industrial production, transnational capital acquires lands that are often part of ancestral territories, modifies soil in forests that are unsuitable for agricultural production, and replaces traditional cultivation systems with highly technical intensive production (known as *AgTech*). Examples of this situation are found in Argentina, which went from 6.6 million hectares of conventional soybean production in 1996 to 20.5 million hectares of genetically modified soybeans in 2015. Uruguay went from 9,000 hectares of soybean production in 2000 to 1.1 million hectares in 2018. Brazil had 3 million hectares of soybean production in the late 1990s and reached 36 million in 2019 ([Aranda, D, Revista Biodiversidad, N°104, April 2020](#)).

“The advance of the soybean model in the Southern Cone wiped out 35 million hectares of native forest: an area the size of Germany, where Bayer-Monsanto’s headquarters are located; or eight times the size of Switzerland, where Syngenta-Chem China was created.” (Revista Biodiversidad, N°104, April 2020)

The mass imposition of monoculture crops in an extensive territory entails concentration of land, displacement of small-scale producers, criminalization of peasants and Indigenous Peoples, destruction of regional economies and ecosystems, oligopoly control of the market by a handful of corporations, and the impact of agribusiness on women's bodies ([Atlas del agronegocio transgénico en el Cono Sur, 2020](#)).

Transnational corporations engage in “land grabbing” through “privatization and public take-overs of properties and subsequent sale or long-term leasing.” This phenomenon grew starting in 2007-2008 due to the exponential increase in food prices because of “speculation with land prices, expansion of monocultures to export commodities to the developed world, listing grains in the stock market and growing financialization, and the imposition of agrofuels as a substitute for fossil fuels.” This led to the “rising cost of land, and strangled the activity of small producers and family farmers” ([Barreto, V. Carrau, N., REDES-AT Uruguay, 2015](#)).

The industrial agro-food chain is managed by a handful of TNCs:

- > *6 companies control the world trade in agricultural commodities (grains and oilseeds): Cargill, Cofco, ADM, Bunge, Wilmar International, and Louis Dreyfus Co.*
- > *3 companies control the entire sale of poultry genetics in the world: Tyson, EW Group, and Hendrix.*
- > *6 companies are the largest processors of poultry, pork, and beef: Cargill, Tyson Foods, JBS, NH Foods, and WH Group-Smithfield. The latter, of Chinese origin, is the largest pork company in the world; it dominates in North America and owns Carroll Farms – where the swine flu originated.*

(Revista Biodiversidad, N°104, April 2020)

Corporate pressure, as exercised by Bayer-Monsanto, is also reflected in the unprecedented approval of genetically modified events. Up to 2019, there were 85 approvals in Brazil; 61 in Argentina; 40 in Paraguay; 19 in Uruguay; and 3 in Bolivia.

Latin America and the Caribbean accounts for 13% of the world's trade in agricultural products, with an annual growth rate of 8% over the past 20 years. “The Southern Cone is a major supplier of soybeans used as inputs for meat production; the production of ‘flexible crops’ or wildcards – maize, sugarcane, and palm – has also expanded for food purposes, and can also be used as animal feed or biofuel” (Gorenstein, 2016).

TNCs in the agro-food sector play a key role in the integration of diverse territories into relationships of global production and consumption. TNCs form complex structures through their investments and organizational modalities. By acting in multiple locations, they govern different links in the agribusiness chain, with regulatory and competitive frameworks that combine national, regional, and global instances in a complex manner. The mapping includes cases from Bayer-Monsanto, JBS, AdecoAgro, Dole, and Del Monte.

Forestry

Just like forests, plantations are made up of trees, but they are radically different. A forest is a complex system that regenerates itself and includes soil, water, microclimate, energy, and a broad variety of interrelated plants and animals. A commercial plantation, on the contrary, is a cultivated area whose species and structures were created to produce timber, firewood, resin, oil, or fruit. In contrast to forests, trees in a plantation tend to be very limited in age and species variety, and they require constant and broad human intervention.

Industrial tree plantations have the characteristics of a monoculture: they require a deep and aggressive transformation of the landscape, conflicts over land, devastation, and financialization of the commons. Tree plantations in Latin America and the Caribbean are expanding over native forests, grasslands, natural savannahs, and wetlands, in territories belonging to Indigenous Peoples, peasants, fishing communities, and Afro-descendent communities. This is why we can assert, [“monoculture plantations are the visible face of the agribusiness model”](#).

Once established, tree plantations replace natural ecosystems at significant scales, severely affecting biodiversity and creating several major environmental impacts because of the amount of water they consume, the negative carbon balance, the degraded conditions of the soil, and the pollution produced by the use of agrochemicals. Tree plantations [in most of the region's grasslands](#) were shown to acidify soils and in some cases stream water, mainly as a result of their high calcium consumption. The plantations also create changes in fire dynamics and facilitate the advance of invasive species.

Additionally, the scale of cellulose industries and their factory systems, along with lax State supervision and control, create pollution and dispossession, thereby provoking conflicts in the communities where the mills are located. These areas have also seen increased cases of sexual exploitation, human trafficking and smuggling, especially of girls and women.

These extractivist projects are usually accompanied by “false promises” of jobs and projects in the communities where they are installed, such as the construction of schools, hospitals, and recreational centers. This is in addition to the “false solutions” claiming that this type of plantations will help fight climate change, when in fact they deepen the causes of the climate crisis. The new “greenwashing” of TNCs in the forestry sector includes the notion of “nature-based solutions”, instead taking responsibility for their actions in violation of peoples’ rights.

“While corporations are responsible, many governments are responsible too since they promote this type of business and false solutions. This is why Friends of the Earth International works to put this issue on the agenda of the UN Convention on Biological Diversity, which will resume discussions sometime next year on the new biodiversity framework. There, it will be important to speak about the impacts of monoculture plantations, the culprits behind them, how they greenwash their discourse and make promises that are not real. We must promote effective and binding mechanisms to protect nature and impose international-level sanctions for violations of peoples’ collective rights to territory and traditional knowledge, as well as for murders, human rights abuses and threats against environmental defenders” ([Isaac Rojas, 2020](#)).

Friends of the Earth International promotes Community Forest Management as a proposal that must be strengthened in order to change the system.

The forestry sector is composed of a few corporations that exert hegemonic control over the different links of the value chain, particularly in the production of cellulose. Chilean Arauco and CMPC, and Brazilian Suzano are clear examples of this. The sector focuses on the production of low-durability and high-impact consumer goods. It is notorious for failing to stimulate local or regional economies.

Tree plantations that are not part of the cellulose value chain are similarly structured around large-scale units of production and with little diversity in primary sector production, mainly monocultures of pine, eucalyptus, or oil palm. In plantations that are run by smallholders, there is a trend towards outsourcing plantation management to forestry service companies, often subsidiaries of a TNC.

TNCs have used forest laws to gain State benefits and subsidies for increasing afforestation rates. The Forests Code in Brazil dates back to the mid-1960s, but recent deforestation and intentional fires in the Amazon leave no doubts about the [sprawling neoliberal fire](#). In Uruguay, the Forests Development Law has promoted the expansion of monocultures since 1987. In 2020, there are more than one million hectares planted by foreign companies, primarily in priority forestland, to export wood to Portugal for cellulose production and other types of wood to China and the United States. Chile and Argentina also have laws that promote forestry.

Latin America concentrates its interest in offering cellulose due to the “attractive” costs of forestry and cellulose production for TNCs, the favorable conditions to grab lands for forestry, and the fast growth of the tree species most commonly used

*The total forest area worldwide is more than 300 million hectares (FAO, 2018).
The rate of expansion is 450,000 hectares per year.
Latin America and the Caribbean went from having 8.8 million hectares of forest in 1990 to 15.6 million hectares in 2015.*

in the industry (eucalyptus and pine).

Looking to diversify investments, financial instruments like pension funds, Timber Investment Management Organizations (TIMO), Timberlands Real Estate Investment Trusts (T-REIT), and hedge funds have made inroads into forestry. US-based TIMOs are structures that bundle funds by gathering numerous institutional investors that may not be interested in directly purchasing and administrating plantations, or that may want to invest small portions of their funds. TIMOs usually create funds that are invested over a 10-year period. Real estate T-REITs that have expanded into the forestry sector were created in the United States and have grown rapidly since 2000. Since 2004, the investment assets of a number of forestry corporations have been restructured into T-REITs, which have more tax benefits for shareholders (Núñez Mutter, 2011). Up to now, TIMOs and T-REITs have invested in a relatively small number of countries or regions: Oceania, Chile, Brazil, South Africa and Uruguay, where forestry is already consolidated.

Hedge funds appeared in 2005, operating with high-risk funds. The huge amount of money and credit available in the global financial system until mid-2007 enabled these funds to surpass the capacity of forestry corporations, TIMOs, and T-REITs in buying large tracks of tree plantations, which are then re-sold (Núñez Mutter, 2011). The tree plantation corporations belonging to the Harvard Management Company investment fund and distributed across various countries in the region are an eloquent example of how TIMOs function in the forestry sector.

Meanwhile, oil palm monocultures also gained strength in Latin America and the Caribbean. The annual demand for palm oil in the world is 165 million tons, and is estimated to reach 310 million tons by 2050 (Paz Cardona, 2019). Countries in Southeast Asia concentrate 85% of global production, but they are running out of land to expand the plantations. Encouraged by government programs, TNCs moved into countries like Ecuador, Colombia, Honduras, and Peru (González Cardenas, 2016), “planting on a large-scale and in monoculture, frequently through conversion of tropical biodiverse forests” (FOEI and WRM, 2018). Although Latin America and the Caribbean accounts for 5.77% of global palm oil production, the dynamics that emerged in recent decades make it a strategic sector within the region’s economies.

Half of the world’s tropical forests are found in Latin America and the Caribbean (FAO, 2018). These same geographic areas hold 6% of global palm oil production, and it is the region with the biggest expansion of the crop worldwide, according to the Roundtable on Sustainable Palm Oil (RSPO). The crop is present in Peru, Colombia, Ecuador, Honduras, Costa Rica, and Guatemala. Every country is expected to increase production areas in the next years. This would require 3 million hectares of plantations in Colombia. In Peru, 11,754 hectares of Amazon rainforest were cleared by 2015 to make way for oil palm.

Large oil palm trees take 3-4 years to produce their first fruit, and they are productive for at least another 20 years. Production is not very flexible, which can lead to high price volatility. Palm oil is an industry favorite for its versatility and low price, and it has a “competitive advantage” in relation to other vegetable oils. The push to use palm oil for biofuel in recent years has added a new variable: the fluctuating price of petroleum (Villadiego, L. FOE Spain). “Opaque and complex value chains in the palm oil sector can insulate investors from awareness of the social and ethical impacts and risks of their investments,” affirmed Friends of the Earth US in a June 2016 report.

The oil palm plantation sector has emerged as a strong factor in the destruction of nature and the dispossession of rural peoples. Government support in countries with environmental conditions that are suitable for the crop replicate the scheme of subsidies and benefits mentioned earlier for tree plantations for wood and cellulose. Increasing global consumption and the depletion of land in Asia are indications that this sector will expand considerably in Latin America and the Caribbean.

The socio-environmental impacts are already significant: in Honduras, [environmental organizations such as Movimiento Madre Tierra/ FOE Honduras](#), along with peasants and indigenous Garifuna communities [have denounced the relationship between increasing violence in their territories and the expansion of oil palm plantations](#). This is on top of the militarization of territories and the link between para-State actors and drug trafficking in much of the 190,000 hectares of oil palm planted in the Central American country.

Those living on fertile land where corporations choose to apply their industrial model for palm oil production pay a very high price. Violence is intrinsic to this model. [Friends of the Earth International along with the World Rainforest Movement have denounced the failure of the Roundtable on Sustainable Palm Oil \(RSPO\)](#) to eliminate the violence and destruction that oil palm plantations cause in the territories where they are established. More than 100 organizations signed a 2018 statement detailing the consequences of this extractivist forestry model:

- violence and repression when communities resist the corporate take-over of their land because they know that once their land is turned into monoculture oil palm plantations, their livelihoods will be destroyed, their land and forests invaded. In countless cases, deforestation caused by the expansion of this industry has displaced communities or destroyed community livelihoods where companies violate customary rights and take control of community land;

- sexual violence and harassment against women in and around the plantations, which often stays invisible because women find themselves without possibilities to demand that the perpetrators be prosecuted;

- child labor and precarious working conditions that go hand-in-hand with violation of workers' rights. Working conditions can even be so bad as to amount to contemporary forms of slavery. This exploitative model of work grants companies more economic profits while allowing palm oil to remain a cheap product. That is why, neither them or their shareholders do anything to stop it;

- exposure of workers, entire communities and forests, rivers, water springs, agricultural land and soils to the excessive application of toxic agrochemicals; and

- depriving communities surrounded by industrial oil palm plantations of their food sovereignty when industrial oil palm plantations occupy land that communities need to grow food crops.

Two matters to consider regarding the expansion of oil palm plantations in the region are characteristics that were developed in Asia for the production of raw materials. The first is the increasing participation of different types of investment funds in the purchase or lease of land for oil palm production. The second is the application “futures contracts” – “agreements between producers and buyers through which a future commodity is promised at the prevailing price at the time of the agreement” ([Villadiego, L. FOE Spain](#)). This exacerbates financial speculation and labor precariousness. Companies tend to evade property taxes and establish alleged “strategic alliances” or “productive associations” with peasants and Indigenous People on whose lands the extractivist project is established, who go so far as to hand over their labor without a work contract, as supposed “partners”. As previously noted, this occurs if there are no conflicts or struggle in defense of territories.

The main factors driving tree plantations continue to be the consumer market demand from the cellulose, wood and oil sector, and the alleged comparative advantages that Latin America has for such expansion (FAO, 2017). This is part of the strategy by TNCs for opening new market niches, alongside “greenwashing” – using a sustainability discourse that seeks social and ecological legitimacy for harmful activities.

The mapping includes cases from CMPC, Suzano, Harvard, Celulosa Arauco, and Constitución (CELCO).

Mining

Mining is the selective extraction of minerals from the earth's crust. The onslaught of mining in Latin America and the Caribbean by transnational corporations shows the clear interest of Global North countries in metals such as gold and copper, whose prices have increased more than fivefold since 2002, according to data from the economic and business consulting firm Ecolatina.

This advance is directly proportional to the development of the extractivist model that comes hand-in-hand with land grabbing, as described earlier. The current form that mining has taken on in many parts of the world is known as “mega-mining” or “large-scale transnational mining”: an exploitation carried out by TNCs in territories, using enormous amounts of freshwater. The process of grabbing includes multiple strategies for coopting governmental actors, educational actors, and community residents, fomenting confrontation with those who disagree with the projects. Mining companies raise funds for exploration and exploitation of the commons by placing securities on the stock market or advertising to investors and shareholders.

Local companies and governments highlight the alleged contribution of mining companies to regional economies and to the Gross Domestic Product (GDP) of the countries where it explores and exploits. However, data on the environmental, socio-economic, and human rights impacts of large-scale mining in the region call into question the relative contributions and revenues it generates. Mining's contribution to the GDP in Mexico, Bolivia, or Colombia is below 10%. In Chile, it stands at 15%. Corporations seek to promote the Dominican Republic, Brazil, and Argentina as key countries for mining investment in exploration and active mines. Beyond the contributions to the GDP, a large portion of what TNCs obtain as final product of mining exploitation remains within the corporations themselves, and the activity usually carries a minimal tax burden.

Canada is one of the main suppliers of mining corporations or investments for Latin America, including TNCs such as Barrick Gold, Yamana Gold, and Pan American Silver. Fifty-seven percent of Canadian mining companies are listed in the Toronto stock market, giving the corporations access to financing even for countries labeled as “high risk”. It is difficult to trace the real origin of the funds that are invested, but it is estimated that even the shares invested are widely distributed among the Canadian population (Moore, 2009). Large-scale mining activity in the region has increased in recent years, both in terms of financing for exploration and the amount of minerals mined and exported in raw form by the Swiss-based TNC Glencore.

Large-scale mining projects require work in their initial phases, which creates an illusion of permanent jobs. Globally, industrial mining for metals employs 2,750,000 persons, representing 0.09% of jobs worldwide. Meanwhile, small-scale mining employs 13 million people. According to the International Labor Organization (ILO), one-third of mineworkers in the 25 countries with the highest production of minerals lost their jobs between 1995 and 2000. The main reason: the introduction of new technology that displaces workers. Additionally, mining imposes a return to a primary sector economy, which prevents adding value and economic development (Moore, 2009).

Mega-mining leads to biodiversity loss, deforestation, soil erosion, and problems with water – regarding both availability and the quality and conservation of water. Mining involves a large amount of water, not only causing a decrease in the water table, but also producing a great deal of pollution due to the waste and products involved in the minerals' treatment processes. This results in the emergence of acidic water with the presence of heavy metals that is not suitable for consumption.

The companies' financing is not very transparent and they tend to establish a double standard between their parent company countries and the peripheral countries where they conduct mineral extraction and exploration.

TNCs in the mining sector are also highly protected by investment treaties and other trade agreements, as described earlier in the section on “Asymmetries and misgovernance of Transnational Corporations”. They turn to these instruments to push forward the implementation of mega-projects when these face local resistances. They also exercise corporate capture and succeed in obtaining other economic returns when international tribunals rule in their favor in spaces such as ICSID.

The mapping includes cases from Barrick Gold, Glencore, Grupo México, Holcim, Vale, Votorantim, and Pan American Silver (PAS).

Energy

The Latin American and Caribbean region holds a strategic place in international energy production, given the hydrocarbon reserves, the hydroelectric potential, and the extraction of raw materials for “biofuels” production. As such, the region is targeted by TNCs that have monopolized the diverse energy sectors in a very short time period.

With 10% of the world's oil reserves and 4% of gas, the region is strategic for the Global North due to its proximity to the United States. In addition, although the uninterrupted consumption of fossil fuels inevitably leads to a global energy crisis, the regional energy matrix still has little diversification: Hydrocarbons (oil, gas, and coal) account for 74%, hydroelectric for 15%, renewable sources for 3% (OLADE, 2012).

At the same time, the regional GDP continued to grow, thereby increasing consumption mainly by extractive mega-projects. As such, energy demand increased in all stages: extraction of raw materials, processing, production, transportation, and final disposal. Following the current growth rates, the Inter-American Development Bank (IADB) estimates that energy consumption in the region will increase by 80% by 2040. If the current energy matrix is maintained, dependence on fossil fuels will represent at least two-thirds of the total, and electricity needs will increase by 91% (IADB, 2016).

Since reserves are being depleted, TNCs resort to unconventional methods of extracting hydrocarbons. Fracking—extracting oil or gas through hydraulic fracturing of the subterranean rock—is the most widely used, even though it has met great resistance from peoples, who know the serious environmental impacts it causes. Fracking requires excessive flows of water for the extraction of hydrocarbons—often in desert regions; it uses various chemicals (such as cyanide and sulfuric acid) that contaminate the earth’s surface, groundwater, and air; and it increases the rate of seismic activity.

The hydroelectric sector has grown exponentially in the last fifty years. During that period, the supply of electricity increased by 47%, and hydroelectric accounts for half of the electricity generated in Latin America (OLADE, 2012). The hydroelectric market is very attractive to TNCs with primarily European, North American, and Chinese capital, and TNCs are expected to expand their reach into the region’s large hydrological reserves.

However, the socio-environmental impacts of dams present serious risks to the region, unleashing social and environmental conflicts and a strong rejection by affected communities. Dams designed to produce large amounts of electricity require colossal infrastructure works that profoundly alter the environment and ecological systems. This creates ecosystem variations and biodiversity loss, changes in the course of rivers, water shortages, deforestation, displacement of communities, large floods, and gas emissions, among others.

The social response to the advance of dams (for hydroelectric and mining projects) is organized and articulated; it is growing and is strengthened through the Latin American Movement of Peoples Affected by Dams (MAR for its acronym in Spanish), which gathers a diversity of organizations and movements in the region. Through organization and mobilization, research, alerts and advocacy, and community popular communications materials, MAR builds, strengthens, and gives visibility as political actors those who have been—or potentially will be—affected by dams. With the slogan of “Water, women, and energy are not commodities!” (“Agua, mujeres y energía: ¡no son mercancía!”), and from a place of political belonging, MAR brings peoples’ struggles against the extractivist model and for energy sovereignty into political disputes, with proposals for a just energy transition that emerge from working-class peoples and territories. MAR participates in spaces for political coordination, such as the Global Campaign and the Continental Platform for Democracy and Against Neoliberalism.

The mapping of the energy sector includes cases from Chevron, BP/Pan American Energy, AES Gener, Renace owned by the Guatemalan Multi Inversiones Corporation (CMI), Agua Zarca, and Hidroituango.

Services

To function in an economy dominated by commodity exports, neoliberal globalization has many needs: transportation infrastructure, energy, logistics to carry out activities, and financing. States are the main guarantors of these services, not only with their own funds but also by seeking investments or incurring debts.

To make exports possible in the global market, TNCs demand that States provide and/or guarantee infrastructure and services, turning these into tradeable commodities instead of public goods. Restrictive definitions of public services are introduced in trade negotiations—for example, in chapters that refer to State owned companies and monopolies, affecting the authority of State agencies or public companies to guarantee access to water, energy, transportation, health, cares, and education services.

The services are grouped in several categories:

- > information technology (e-commerce)
- > communications and telecommunications
- > royalties and licenses
- > financial instruments
- > insurance
- > construction
- > sanitation
- > land, sea, and/or air transportation

Although transnational corporations are not explicitly included in mega-trade negotiations, they play a key role: “They design the treaties’ terms and conditions, seeking to ensure a package of internationally valid rules that enable them to perpetuate and deepen their business model and exploitation” of the commons ([Barreto, 2016](#)).

The services chapters in the trade agenda involve [\(Carrau, N., 2020\)](#):

- > Compromises by negotiating parties that may include negative lists or ratchet clauses that condition and limit the capacity of the State to intervene in the market.
- > Demands for State obligations that strain and restrict the regulatory role of the State in granting licenses or authorizations for the provision of services.
- > Imposing exacerbated liberalization on the definitions of the agreements and their reach.
- > Homogenized regulations between countries to facilitate trade and the entry and exit of investments.

“The economic power of TNCs and their influence over governments through various forms of political financing enables their positioning as a para-State that tramples on democracies, sovereignties, and territories, and that seeks to exploit workers in the Global South and the Global North as long as it can increase their profit margins” (Barreto, 2016).

The fact that services are now considered commodities has a strong impact on the lives of working-class peoples – especially women, Indigenous Peoples, as well as Afro-descendant, peasant, and fishing communities. It also creates environmental impacts, affecting environmental protection and regulations in territories. The policy of privileging exports collides with the development of the internal market, thereby creating, for example, a forced coexistence between extractive industries and peasant agriculture, threatening the rights of peoples vis-a-vis monopolies or oligopolies of services.

The description of the sector is based on the following cases: APM Terminals Management B.V., Farmashop, and América Móvil.

CHAPTER 3

Conclusions and solutions from a peoples' sovereignty perspective

The Latin American and Caribbean region currently faces multiple threats that intersect and feed off each other. These include, among others: social, environmental, economic, and gender injustice; the climate, water, biodiversity, and food crises; and the imposition of a concentrating and predatory production model that intensifies the exploitation of nature and peoples. As important are the excessive growth of TNC's corporate power and the reinforcement of the architecture of impunity; patriarchy, racism, and neo-colonialism; media blackouts and power that are used to dominate peoples; threats and attacks on defenders of territories; and the rapid advance of the right and of fascism. All this poses enormous challenges that can only be faced through collective alliances of unity in diversity, where social movements, organizations and peoples converge in a common agenda to build an emancipatory political project and the sovereignty of our peoples.

The role of TNCs in this scenario is crucial, but it is often invisible or rendered invisible. This is problematic, as TNCs wield a lot of power when it comes to access to information and to privileged decision-making spaces in many spheres.

TNCs are present in negotiations when access is denied to social movements and organizations, especially if these represent vulnerable populations. TNCs also construct narratives and stories to argue their position, both to justify their actions that violate rights and to promote changes or scenarios for their benefit. These narratives also feed the “development” myth in peripheral countries, reinforcing their position as suppliers / exporters of commodities as the only possible activity. This is done by promoting integration strategies that focus on the external sphere – an integration into the global market that reinforces the international division of labor, the center-periphery relationship, the socialization of costs in impoverished

countries, and the concentration of profits in central countries.

All of this weakens governments that try to increase the GDP and to maintain the limited quality and quantity of resources that TNCs provide to the treasury. At the same time, the State is criticized as inefficient or corrupt, without taking into account the impossibility of controlling or sanctioning these corporations, or the diplomatic lobby, or even the corruption promoted by TNCs. States are overwhelmed in their role that is strictly delimited by territorial boundaries, since capital and the TNCs that command it have no boundaries or limitations of movement.

The disproportionate economic power of TNCs also translates into corporate control of extensive territories: alone, the cases cited above in Chapter 2 quantify the control of more than 4,800,000 hectares by transnational capital through various extractive projects.

TNCs shape these territories through violence. They expel Indigenous, peasant, and Afro-descendant peoples from their ancestral and customary territories, either through direct violence due to evictions, or through corporate crimes, as seen in the case of Vale in Brazil, with 20,000 people displaced and 281 deaths, or Chevron in Ecuador, with 30,000 people affected by contamination. TNC actions can alter an entire town, as in cases like BP in Vista Alegre, or La Alumbraera in Andalgalá, and all too often, the number of people affected is immeasurable, as in the case of Bayer-Monsanto and the effects of toxic agrochemicals.

We also see criminal actions in the killings of social leaders who defend peoples' collective rights. This mapping registered 29 killings where TNCs are directly implicated. This number reflects the victims in the Agua Zarca, Hidrotuango, and CMPC cases.

The fact that many of the corporations analyzed in this mapping have signed the UN Global Compact demonstrates that this does not ensure respect for basic rights. The Pact has 9,500 corporate signatories and 3,000 non-corporate signatories. However, the outlook for transnational corporations is far from compliance with standards of respecting human and peoples' rights.

The capitalist economic system imposed by TNCs make the need for system change clear. Alongside peoples' movements, we work to confront the crises by building emancipatory projects that seek to build peoples' power and sovereignty and that are not based on exploitation.

Governments must ensure binding rules to dismantle the power of TNCs by approving the Binding Treaty discussed earlier. Additionally, governments must pass strict laws to regulate corporate activity – including extraterritorially; combat monopolies and tax evasion; reduce corporate privileges; prevent secrecy and classified information; and end corporate handouts to political parties and intergovernmental bodies.

As Friends of the Earth, we propose this series of feasible strategies to accompany measures that build greater economic justice:

- > Provide public services through tax justice: Through fair and redistributive tax policies – especially by significantly taxing large economic actors such as TNCs, we can strengthen democratic and active States that provide public services and guarantee the fundamental rights to water, health, energy, education, transportation, and healthy food through public services.
- > Expand cooperativism, solidarity economies, and support for local markets: This helps to protect local and solidarity economies from the negative influences of TNCs, creating equitable spaces for exchange. Trade is an essential component of human economies, but it is only a means to an end – the equitable distribution of wealth.
- > Create economies with purpose, placing value on the well-being of people and the planet: The current capitalist system depends on unlimited growth in a finite world; we need a transition to an economic system that is based on the sustainability of life and not on profit. We need to create an economy with purpose, in harmony with nature, and with full rights for each and every person.
- > Work with social movements of feminists, peasants, workers, Indigenous Peoples, and Black and Afro-descendent communities around the world: Advocate alongside social movements for economic justice solutions that reduce inequality and contribute to building equitable power relations (also between genders). Broaden the role of cooperation, community management, and sustainable planning in all aspects of life.
- > Controlling the role of large international actors and redistributing wealth will be essential to achieve this.



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