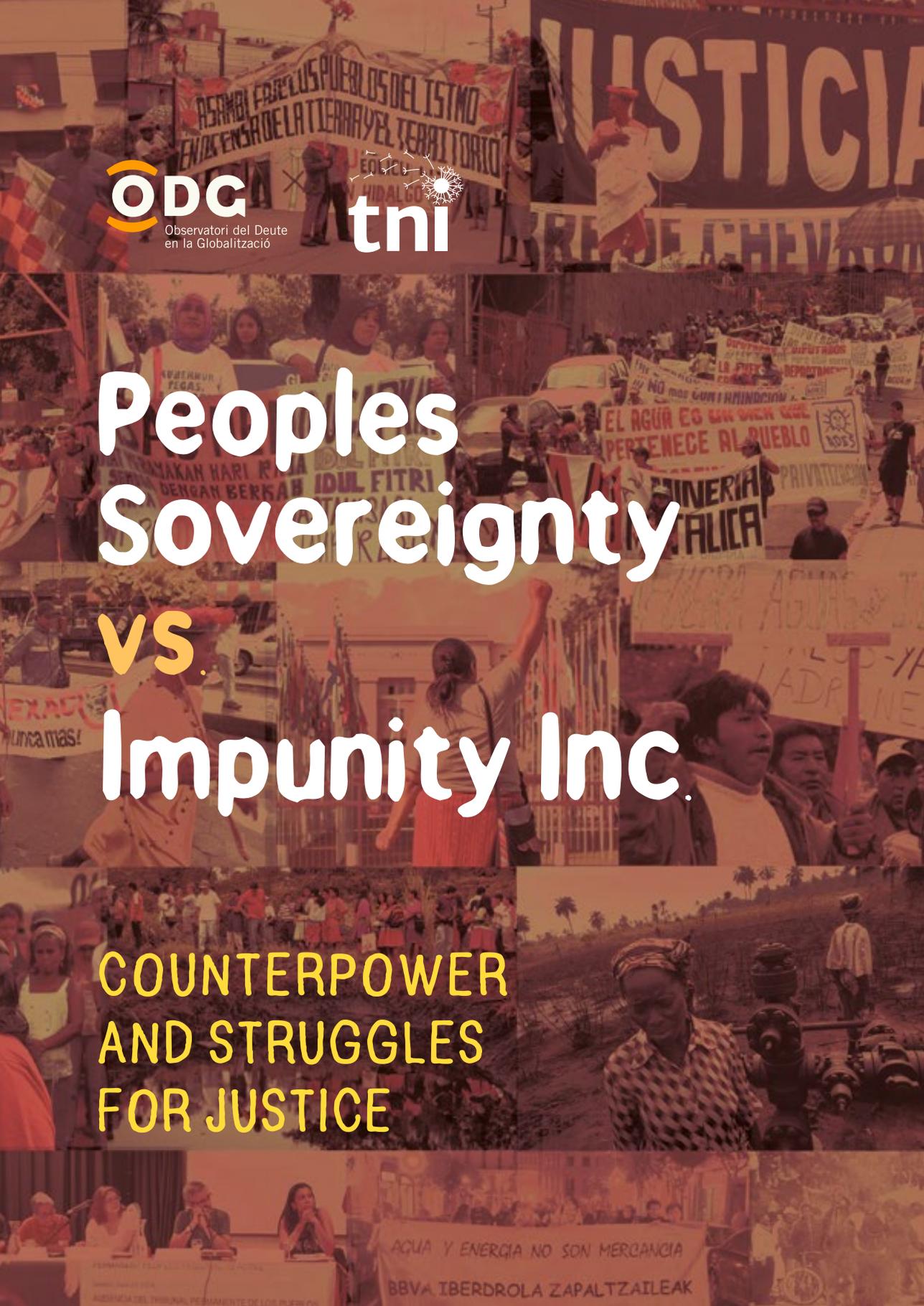




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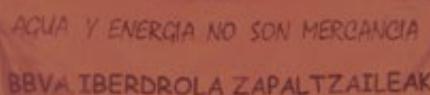


Peoples Sovereignty

VS.

Impunity Inc.

COUNTERPOWER
AND STRUGGLES
FOR JUSTICE



AGUA Y ENERGIA NO SON MERCANCIA
BBVA IBERDROLA ZAPALTZAITLEAK



JUSTICIA YA...!
TEXACO BASTA...!

RESOLUCION POR LOS PUEBLOS DEL ISTMO
DE LA TIERRA Y EL TERRITORIO

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Micaela Antonio González, from the Civil Society Movement of Santa Cruz de Barillas (Guatemala), in front of the United Nations, Geneva, 25 June 2014/Victor Barro/Friends of the Earth Spain

About the authors

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Mónica Vargas has been a researcher and programme officer at the Observatory on Debt in Globalisation (ODG) since 2005. She is pursuing her Ph.D. degree at the Institute of Research in Science and Technology for Sustainability (Polytechnic University of Catalonia). Her other publications include: Impunity Inc.; Interferencias UE-ALC: Asociación o anticooperación birregional?; Ploughing through the meanders in food speculation; and El Complejo del Río Madera: un caso de anticooperación española.

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Richard Girard is the Executive Director of the Polaris Institute where he has coordinated in-depth research and published numerous articles and reports on the topic of corporate power in relation to water privatization, the corporate capture of the United Nations, and the oil and gas industry.

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Foreword

Mónica Vargas, Observatory on Debt in Globalisation (ODG),
Diana Aguiar and Brid Brennan, Transnational Institute (TNI)

The asymmetry that characterises relations between transnational corporations, states and peoples is an undeniable trait of the capitalist globalisation process. This asymmetry is directly reflected in the contrast between the binding norms that protect investors' interests and soft law that reduces transnational corporations' obligation to respect human rights to mere voluntary measures. This contrast is at the basis of an authentic **"Architecture of Impunity"**.¹ On one hand, with the complicity of states that are interested in guaranteeing that they are "attracting investment", transnational corporations have been covering themselves with a solid armour made up of free trade and investment protection agreements and their respective sanctioning mechanisms. These mechanisms are established according to a logic in which arbitration strives to substitute justice by force. Institutions such as the International Centre for Settlement of Investment Disputes (ICSID) constitute clear examples of the privatisation of justice. On the other hand, violations of human rights and the rights of peoples and nature have become inherent to transnational corporations' operations and can only be equated with their growing economic and political power. Furthermore, corporate violations have become systematic and corporations are certain of the impunity of their operations, which is becoming evident in an increasing number of areas of our lives, as corporations advance in the dispossession and appropriation of the commons.² To confront all of this, popular resistance has become increasingly globalised and coordinated by linking up counterpowers opposing the most powerful corporations on the planet.

Built on the work of the **Bi-regional Europe – Latin America and the Caribbean 'Enlazando Alternativas' Network**,³ the **Global Campaign to Dismantle Corporate Power and Stop Impunity**⁴ is evidence of how this resistance process has matured and expanded. More than 190 social movements and organizations in Africa, Europe, Asia and the Americas participate in the Campaign. Since its launch in 2012, it has advanced and facilitated spaces of dialogue, exchanges of experiences and mobilisations, as well as spaces where representatives of affected communities and other civil society actors denouncing corporate impunity come together to design common strategies. To oppose the "architecture of impunity" mentioned earlier and the capture of public goods by transnational corporations, the Global Campaign is currently paving the way towards an **International Peoples Treaty** as a political instrument for the establishment of the basis of an alternative vision on law and justice from the peoples.

Experiences in building counterpower and struggles for justice in which affected communities and popular resistance movements are the protagonists have been highlighted throughout the **Permanent Peoples Tribunal (PPT)** process. In fact, it is worth noting that nearly all of the articles in this publication⁵ are related to cases presented at one of the Permanent Peoples Tribunal sessions organised by Enlazando Alternativas – including the ones in Vienna (2006),⁶ Lima (2008)⁷ and Madrid (2010)⁸ – or by the Global Campaign.⁹ Among the thirteen cases presented at the “PPT Hearing on Corporate Human Rights Violations and Peoples Access to Justice” (Geneva, June 2014) were those on Shell in Nigeria, Chevron in Ecuador, Pacific Rim in El Salvador and Glencore in Peru, which have been updated and are analysed here. Similarly, the conflicts generated by Suez in Argentina and Bolivia were brought to the PPT session in Vienna. The situation surrounding the dams on the Madera River were denounced at the Lima and Madrid sessions, and the Iberdrola case was presented at the PPT hearing in Madrid.¹⁰ The presentation of all these cases to the PPT allowed the corporate violations happening all over the planet to be denounced and, at the same time, exposed how the victims’ lack of access to justice is a structural problem. In other words, it was shown how corporate power had captured justice systems at different levels – national, regional and international – in its favour.

The PPT Hearing in Geneva inaugurated the **Week of Mobilization to “Stop Corporate Crimes and Impunity!”**,¹¹ which culminated in a historical victory in international law: the United Nations Human Rights Council’s Resolution A/HRC/26/L.22/Rev.1¹². The resolution opens the way to establishing binding norms on transnational corporations. This publication coincides with the first meeting of the **“Open-ended intergovernmental working group on an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights”** in July 2015.

Peoples Sovereignty vs. Impunity Inc.

COUNTERPOWER AND STRUGGLES FOR JUSTICE

Articles in this publication



P.14

“Environmental Human Rights Violations by Shell in Nigeria’s Niger Delta”

– written by Godwin Uyi Ojo of Environmental Rights Action/Friends of the Earth Nigeria – examines and brings up-to-date information on the dramatic case of oil exploration in the Niger Delta. Shell alone has exploited half of Nigeria’s oil and earned billions in profits, while the high number of oil spills and gas flaring have caused unprecedented environmental damage. Even though the environmental disaster generated by the oil industry in this country has been recognised by international institutions, such as the United Nations Environment Programme, the corporation continues to ignore the Nigerian justice system. Persistent local resistance and protests against Shell - which are also linked to the communities’ loss of access to their ancestral territories, most fertile land and fishing resources - have been systematically met with repression, criminalisation and the assassination of their leaders. This case is particularly important, as we commemorate this year the twentieth anniversary of the execution of Kenule “Ken” Beeson Saro-Wiwa, historical leader of Nigerian communities’ resistance to Shell, and eight other comrades. Corporate impunity has been made possible in this case due to the remarkable influence the corporation has gained over the years by penetrating the highest echelons of political power. Even so, proposals and alternatives have been emerging from Nigerian social and environmentalist organisations and the affected communities themselves, who have not wavered in their efforts to obtain environmental and social justice in this country. Their participation in the preparation of a post-oil era in Nigeria¹³ and in the elaboration of the “Terra Viva” manifesto¹⁴ for a sustainable planet are also worth highlighting.



Secondly, **“The Historic Struggle for Justice of the Coalition of the Communities Affected by Chevron in the Ecuadorian Amazon”** – written by Pablo Fajardo Mendoza of the Union of Peoples Affected by Chevron-Exxon in Ecuador (UDAPT) – refers to the socio-environmental impacts generated by another oil giant, Chevron, on over 400,000 hectares of land in the Ecuadorian Amazon. It explains how each stage of oil production contributed to the destruction of one of the most biodiverse areas on the planet over the years. To save money, the corporation took shortcuts to avoid disposing of its toxic waste properly. The consequences of this for the environment and the local population were tragic, to the point where it led to the disappearance of an entire indigenous group. Here, the transnational corporation’s ongoing efforts to avoid being brought to justice, first in the United States and later in Ecuador, are of particular importance. This case shows what transnational corporations are capable of doing in order to avoid being held accountable: the mechanisms used range from corrupting public authorities in the country of investment (Ecuador) and corporate diplomacy in the form of considerable support from the home country government (in this case, the United States) to bilateral investment protection treaties and their corresponding arbitration system. However, it also clearly illustrates the tenacity of the affected communities’ members who pursued their quest for justice and compensation for over 20 years. In fact, this ironclad will led them to denounce in 2014 Chevron’s CEO, John Watson, at the International Criminal Court for crimes against humanity.



Mining is another one of the sectors examined in this publication. **“The Pacific Rim – OceanaGold Case against El Salvador: impunity and violations of human rights, democracy and national sovereignty”** – written by Manuel Pérez Rocha of the Institute for Policy Studies (IPS) – highlights the local population’s resistance and efforts to prevent and stop the transnational corporation from causing socio-environmental damage. Even without having obtained the concession, the corporation already generated grave environmental impacts in the exploration phase and its presence coincided with the repression (and even torture and assassination) of environmentalists and human rights defenders. Paradoxically, once again, the arbitration system was activated as a resource for corporations in the private sphere whose decisions take precedence over national laws and directly challenge states’ authority to exercise its sovereignty over natural resources. It is yet another open conflict, which has been met by a powerful popular response from the Salvadoran social movement against metal mining.



Next, “**Glencore and Mining in Peru: avoiding responsibility**” – written by Mónica Vargas Collazos of the Observatory on Debt in Globalisation (ODG) – updates information on the Glencore case, which had already been analysed in Impunity Inc. Reflections on the “super-rights” and “super-powers” of corporate capital. This time, the article concentrates specifically on ongoing conflicts with the corporation in Peru. The article highlights the seriousness of the socio-environmental conflicts generated by Glencore and Xstrata, which have now merged into one company, and another troubling strategy developed by transnational corporations, which consists of establishing very close relations (some formalized in contracts) with the local police. Observations are also made on the bilateral investment protection treaties that shield Glencore’s operations in Peru. Finally, it is shown that there is growing coordination between the communities affected by the transnational corporation in different parts of the world - a trait that is particular to resistance to this company.



A third sector assessed in this publication is that of “Watery” – a field where multiservice corporations active in the water and wastewater services and energy industries come together. “**Iberdrola is Not Green: the hypocrisy of a transnational energy corporation that painted itself green**” – written by Martin Mantxo of Ekologistak Martxan – examines the case of Iberdrola, one of the largest energy corporations in the world, and its expansion in Latin America. Although it attempts to portray itself as the champion of renewable energy, it still obtains a large part of its profits from fossil fuels and projects that generate major socio-environmental conflicts, such as wind farms in Mexico and Greece and nuclear energy facilities in the Spanish state.



“**Suez, Suez Environnement and GDF Suez**” – written by Richard Girard and Erin Callary of the Polaris Institute - shows the different options transnational corporations have to make use of the pillars of the architecture of impunity. The example of Suez and its role in the privatisation of water in the Global South bring light to how, in a sector that is so strategic for social reproduction, the objective of maximising profit is contradictory to environmental concerns, the defence of public health and poverty reduction. This case illustrates once again how the international arbitration system disassociates itself from the obligation to respect human rights and guarantees transnational corporations’ “right to profit”, while it fails to take into account the dire consequences of the lack of access to resources such as water for human beings. Here, each case offers examples of the irresponsibility of transnational corporations’ operations, which is sustained by their capacity to influence elected officials and corruption.



Diving further into the complexity of the coexistence and coordination between the different interests of transnational corporations from the construction, energy, mining and agribusiness sectors, among others, “**Requiem for a Dream of Progress: the political economy of megadams in the Brazilian Amazon**” – written by Diana Aguiar of the Transnational Institute (TNI) and Marcela Vecchione of the Belem Letter Group – presents an analysis on megadams in the Amazon region. The authors go beyond simply looking at the generation of electricity and concentrate on megadams’ role in the historical process of accumulation by dispossession of local communities. So-called “development” is demystified and greater emphasis is placed on the corporate grabbing of the commons. The state’s role in the political economy of megadams is highlighted, namely its participation in financing, the establishment of legal certainty for investments, the adaptation of legal frameworks, the legitimisation of the projects and finally, the repression of sectors that are critical of megadams. The article adds a reflection on the incommensurability and irreversibility of the socio-environmental damages generated by this type of infrastructure, which are key aspects to consider when contemplating binding mechanisms that sanction the operations of transnational corporations.



Finally, “**A Tree for a Fish: the (il)logic behind selling biodiversity**” – written by Joanna Cabello and Tamra Gilbertson, members of Carbon Trade Watch – explores a new niche for the market – and impunity of – transnational corporations. More specifically, it deals with mechanisms that accompany and ensure the continuity of real estate construction, highways, open pit mines and other projects that destroy biodiversity. The article examines different examples of a still new and relatively unknown phenomenon.

We recommend that readers consult the “Thematic Map of the Permanent Peoples Tribunal Hearing on the Corporate Human Rights Violations and Peoples Access to Justice”.¹⁵

“**Peoples Sovereignty vs. Impunity Inc.: Counterpower and Struggles for Justice**” provides proof that can serve as tools of action for the struggles of activists from different continents for access to justice against the systematic violation of human rights and other crimes committed by transnational corporations. As the unforgettable Mario Benedetti said about the future, “*slowly but surely...*”. This future is palpable in every article of this publication. While there is still a long way to go, the immense wall of corporate impunity is beginning to crack and the increasing interlinked popular resistance struggles are there, patiently carving out bigger holes. In the face of growing corporate grabbing of the territories, natural resources and commons in general, the process of building popular counterpower advances full steam. Persistent, dynamical and creative all at the same time, this counterpower is not only the protagonist in spaces such as the Permanent Peoples Tribunal, but also the laboratory for real and practical alternatives that are already being implemented. “*Slowly but surely*”.

We would like to express our thanks to all of the authors who participated in the publication - Erin Callary, Godwin Uyi Ojo, Joanna Cabello, Martin Mantxo, Manuel Pérez-Rocha, Marcela Vecchione, Pablo Fajardo, Richard Girard and Tamra Gilbertson – for their enormous contribution and the tremendous patience they have shown. It is also important to recognise the invaluable work done by specialists on the issues who revised the texts: Juan Hernández Zubizarreta, Jutta Kill, Maria Elena Saludas, Nick Buxton, Pablo Bertinat, Satoko Kishimoto and Stephan Suhner. Furthermore, this publication would not have been possible if it were not for the meticulous translation and editing work of Beatriz Martínez and Karen Lang, as well as the contributions of Jorge San Vicente, translation by Laura Sánchez and lay out by Ricardo Santos.

We dedicate “Peoples Sovereignty vs. Impunity Inc.: Counterpower and Struggles for Justice” to the communities, the collectives and the organisations in resistance in the Global South who, on a daily basis, are building the foundation for counterpower with courage and dignity. It is also dedicated to the members of the Permanent Peoples Tribunal for their commitment and dedication.

Notes

- 1 Hernandez Zubizarreta, J. (2015). “The New Global Corporate Law”, in Buxton, N. and Bélanger Dumontier, M. (ed.). The State of Power 2015. TNI. http://www.tni.org/sites/www.tni.org/files/download/tni_state-of-power-2015.pdf
- 2 See: George, S. (2015). Los usurpadores. Cómo las empresas transnacionales toman el poder. Barcelona, Editorial Icaria.
- 3 See: <http://enlazandoalternativas.org/>
- 4 See: <http://www.stopcorporateimpunity.org>
- 5 The exception here is the article on compensation for the loss of biodiversity, which exposes structural elements of a new threat to the peoples’ sovereignty over their territories.
- 6 See: <http://www.enlazandoalternativas.org/spip.php?rubrique49>
- 7 See: <http://www.enlazandoalternativas.org/spip.php?rubrique50>
- 8 See: <http://enlazandoalternativas.org/spip.php?article983>
- 9 See: <http://www.stopcorporateimpunity.org/?p=5875>
- 10 See: Permanent Peoples Tribunal (2010). The European Union and Transnational Corporations in Latin America: policies, instruments and actors complicit in violations of the peoples’ rights. The Judgement. December. <http://www.enlazandoalternativas.org/IMG/pdf/TPP-verdict.pdf>
- 11 See: http://www.stopcorporateimpunity.org/?page_id=5542
- 12 See: http://ap.ohchr.org/documents/dpage_e.aspx?si=A/HRC/26/L.22/Rev.1
- 13 See: Environmental Rights Action/ Friends of the Earth Nigeria (2009). Building a Post Petroleum Nigeria (Leave new oil in the soil). 25 November. <http://eraction.org/publications/presentations/leaveoilproposal.pdf>
- 14 See: Shiva, V., Lockhart, C. and Shrof, R. (ed.). 2015. Terra Viva: Our Soil, Our Commons, Our Future. A new vision for Planetary Citizenship. Navdanya International. January. http://seedfreedom.info/wp-content/uploads/2015/05/Terra-Viva_Manifesto-English.pdf
- 15 See: <http://ejatlas.org/featured/dismantle-corporate-power>

Environmental Human Rights Violations by Shell in Nigeria's Niger Delta¹

Godwin Uyi Ojo, Environmental Rights Action/Friends of the Earth Nigeria*

Environmental human rights violations are rife in the Niger Delta. Royal Dutch Shell² started business in Nigeria in 1937 as Shell D'Arcy and was granted an exploration license in 1938. In 1956, Shell Nigeria discovered the first commercial oil field at Oloibiri in the Niger Delta and oil production in commercial quantities began. Since then, the Delta communities have known no rest. Oil exports soon started in 1958.³ For more than five decades, oil has been Nigeria's leading export product, with Shell being responsible at times for up to one-half of the country's oil production.⁴

There has been massive environmental degradation from frequent oil spills and gas flaring, which have resulted in declining fish stocks, poor crop yields and impoverishment. Community protests since the late 1980s have been met with oppression and repressed by Nigeria's armed forces backed by Shell.⁵ Those guilty of human rights violations and of failing to adhere to environmental standards continue to act with impunity, making it imperative to set global standards and enforcement mechanisms to control transnational corporations. Some of the many instances of environmental and social dislocations leading to human rights violations are presented below.

Gas flaring

Routine gas flaring has been prohibited in Nigeria since 1984, the year when a law on gas re-injection⁶ came into effect. Since then, oil companies can flare only with a special permit from the ministry responsible.⁷ However, the requirements to obtain this special permit are unknown. Shell's flaring permit has not been made public, making it impossible for local people to determine the grounds on which it was granted.⁸ Moreover, the fine for flaring gas is too low to act as a deterrent for oil companies.⁹

* Revised by Richard Girard, Executive Director of the Polaris Institute.

Therefore, even though it is forbidden under Nigerian law, gas flaring has continued unabated.¹⁰ As of 2010, Shell was still keeping almost 100 gas flares burning day and night.¹¹ Together, the gas flares produce as much CO₂ as three million cars driven on roads in Europe.¹² But this gas could be used for other purposes, such as electricity generation. The once fertile wetlands of the Niger Delta have been transformed by the oil leaks into the world's largest oil disaster. Even during the colonial era, the British government was aware of the undesirability of the situation, but took no action.¹³

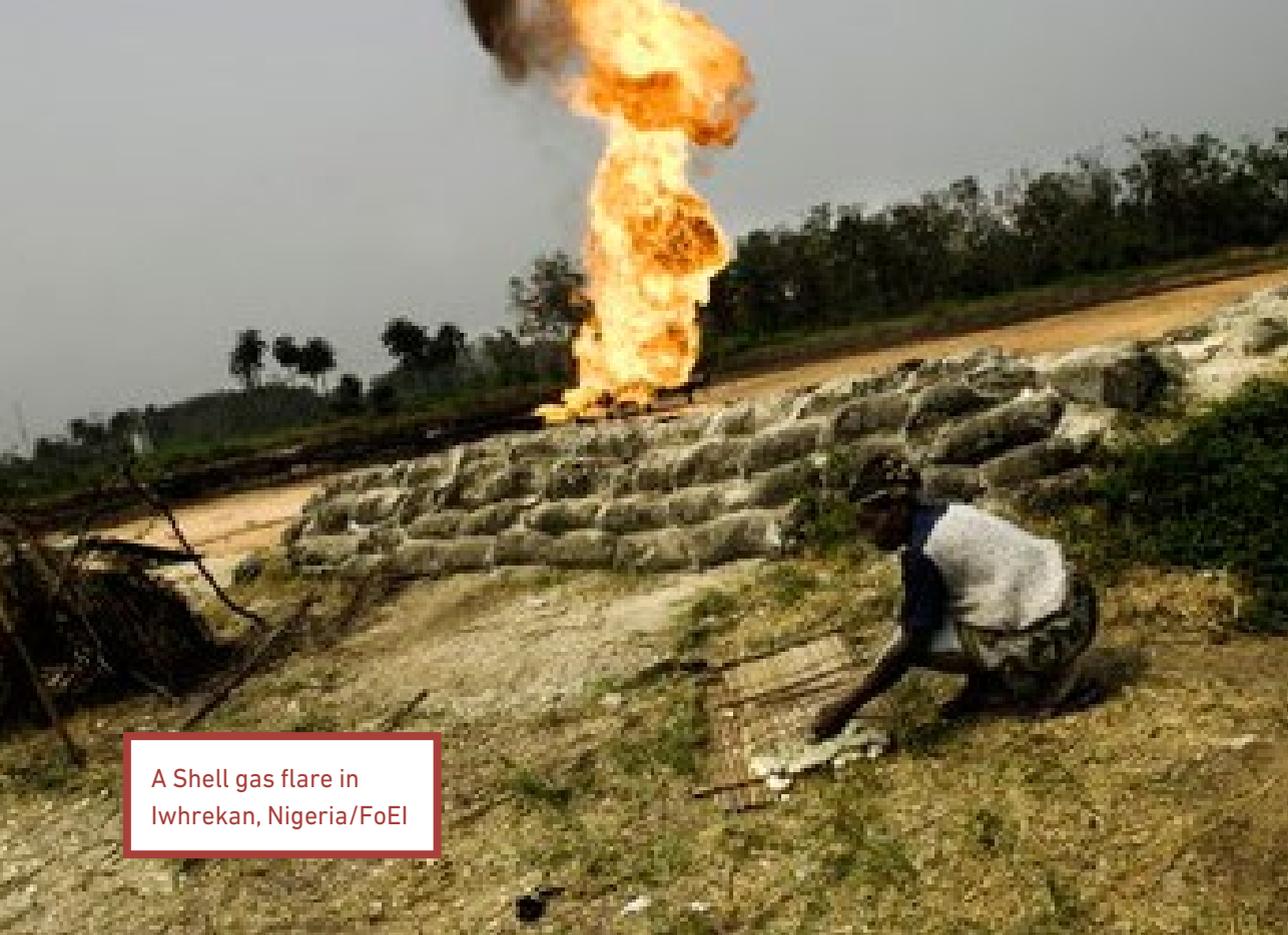
Several studies point to the devastating effects of gas flaring on people and the environment. According to the report "Doubt Still Over Gas Flaring" (2011),¹⁴ gas flaring has had known effects on the Ogoni people and their environment. For example, noise pollution, itching and skin rashes, discomfort generated by the light from constant flaring, and the black dust and soot that settles in people's homes and on food and clothes undermine their quality of life and their right to live in a healthy environment in which to fulfil their potential.¹⁵

Regarding health, studies have found a link between gas flaring and acid rain. Acid rain acidifies lakes and streams, damages crops and vegetation, leads to the corrosion of roofs and is a known carcinogen. Acid rain affects human health by causing miscarriages and congenital malformations, increasing the incidence of respiratory illnesses and cancer, amongst other ailments. Its sulphur leads to low farm yields, which affect the livelihood of the people. In the Niger Delta, community folks claim that some yams harvested and fish caught have lost part of their taste and smell because of oil spill contamination.^{16 17}

Shell has promised to extinguish the flares as a result of pressure from the Nigerian people, government and environmental organisations.¹⁸ Yet, Shell has not yet kept these promises. Instead, it exerts its political and economic influence on the national government to get it to acquiesce in shifting the goal posts. For instance, in 1996, Shell promised it would stop flaring in 1998. In 2000, the Nigerian Minister of Environment stated that an agreement had been reached with the oil sector to end flaring in 2004.¹⁹ In 2002, Shell stated that the flames would be extinguished in 2008. But in 2003, Shell repudiated its commitment to end flaring by 2008. Other agreed deadlines were 2009, 2010, and 2013. This strongly suggests that the company is out to buy time, rather than to end gas flaring.²⁰

Affected communities' attempts to access justice in cases involving gas flaring

In reality, and according to a 2011 Environmental Assessment of Ogoniland by the United Nations Environmental Program (UNEP), Shell is following neither its own internal regulations, nor Nigeria's regulations.²¹ In response to this lack of compliance, a campaign to end gas flaring, led by Environmental Rights Action/Friends of the Earth (ERA/FoE),



A Shell gas flare in Iwhrekan, Nigeria/FoEI

has been internationalized. One of the campaign's high points has been a national court case filed by a coalition of international and local NGOs and the Iwhrekan community in Delta State.²² Given the government's inability to completely halt gas flaring in the country because of its complicity and weak regulations, the coalition sued Shell Petroleum Development Company of Nigeria Limited (SPDC) for its continued flaring of gas. On 14 November 2005, the Federal High Court ordered a stop to gas flaring, declaring it a "violation of the fundamental human rights to life and dignity... which inevitably includes the right to [a] clean, poison-free, pollution-free healthy environment".²³

Shell has displayed a total disregard for the Nigerian justice system. No detailed and clear phase-out scheme has ever been submitted to the Nigerian government. In spite of the long-standing laws against gas flaring in Nigeria, and because of changes to the deadlines for ending the practice, the activity continues, with the serious health consequences it has for people living nearby; hence the need for a higher order to restrain Shell and compel it to end gas flaring. Since it is the federal government agencies that have oversight functions on oil and gas, the Nigeria National Petroleum Corporation (NNPC) is compromised in its role as both a marketing firm and a regulatory agency. This partly explains why it is unable to enforce standards.

Wikileaks: Close ties between the Nigerian government and Shell

Why has there been such a systematic failure to effectively implement the numerous court rulings ordering Shell to clean up its damage? With 2015 being an election year in the country, one would think that oil pollution would be a defining factor in the electoral campaign. However, it had little impact in the race and both leading candidates hardly addressed the issue. If things remain as they have been for the past five years, the possibility of a real clean up happening is highly unlikely.

A US cable leaked by Wikileaks in 2010 goes some way to explaining the failure. The cable detailed a conversation between Shell's top executive in Nigeria, Ms. Ann Pickard, and the US ambassador in the country and revealed the company's strong influence in Nigeria's political spheres. Shell's meddling in Nigeria's internal affairs had already been publicised for years: accusations include claims of the corporation's involvement in espionage,²⁴ the funding of a "peace camp" for Nigerian rebels²⁵ and even the assassination of Ken Saro Wiwa. With regards to the latter, Shell paid a settlement of \$15.5 million, however it denied liability for the death and claimed the payment was part of a "process of reconciliation"²⁶.

But the Wikileaks cables went even further and showed that, in Pickard's words, Shell had "seconded people to all the relevant ministries" and "had access to everything that was being done in those ministries".²⁷ The conversation focused on the status of the proposed Petroleum Industry Bill (PIB), which gave them room to discuss several other matters related to the oil industry in Nigeria as well. Among these issues were the requirement to end gas flaring by 2010 (which Pickard said would not be possible due to "lack of investment and security"), China's interest in bidding on oil blocks in the country, and the government's recent offer to grant amnesty to separatist militants in the Niger Delta - an issue that goes beyond the oil industry.²⁸ In the final comments in the cable, it was recognised that Shell would be "much more vulnerable" than other international oil companies (IOCs) in relation to certain terms of the proposed PIB.²⁹

A spokesman of the Nigerian National Petroleum Corporation assured that the claims of Shell's involvement in government decisions were "absolutely untrue", while the company declined to comment on the allegations.³⁰ After years of disputes between federal lawmakers and oil corporations, the PIB has not yet been passed and will likely take even longer due to the recent elections.³¹ Under the in-coming government of president-elect General Buhari, it is doubtful that pollution of the Niger Delta will be a priority, hence the need for a global legally binding mechanism that controls the wrongdoings of transnational corporations.

Jorge San Vicente, Transnational Institute (TNI)

Oil Spills

More than 60% of people in the region depend on the natural environment of the Niger Delta for their livelihood.³² Shell's environmentally destructive practices have severely affected the people of these communities, as oil spills have destroyed farmland and fishponds and polluted sources of drinking water.³³

Between 2004 and 2007, oil spills from Shell destroyed fishponds and farmland in the Bodo and Goi communities. In 2004, for instance, a major oil spill from the Trans-Niger Pipeline, which runs through Ogoniland to the Bonny Export Terminal, destroyed the fishponds and farmland of Chief Barizaa Dooh, one of the plaintiffs in the case filed against Shell.³⁴ The spills and fires have rendered the area completely uninhabitable. Although the former residents of Goi now live scattered among neighbouring communities in the area, which are less damaged, they still meet in their town hall by the waterside as often as possible to stay united and rekindle the hope of living together in the near future.

In 2005, the Oruma community in Bayelsa State suffered from an oil spill from Shell's facility, which destroyed their fishponds, farms and trees, and therefore, their sources of livelihood³⁵. In the 2007 Ikot Ada Udo oil spill case, the community suffered from the contamination of their farmland, ponds and community land.³⁶

Affected communities' attempts to obtain justice in cases involving oil spills

In 2008, ERA/FoEN and its Netherlands-based sister organization Milieudefensie took Shell to court in The Hague to seek environmental clean-up and compensation for the affected peoples' loss of livelihood, which included the destruction of the farmland and fishponds of Goi, Oruma and Ikot Ada Udo communities. Shell blamed sabotage by militants for most of the spills.³⁷

The Dutch court ruled in 2013 that Shell and its Nigerian subsidiary SPDC were not responsible for the spills that occurred in the Oruma, Goi and Ikot Ada Udo villages between 2004 and 2007. SPDC was, however, held liable for not doing enough to prevent the sabotage that resulted in the oil spill. The court ruled that in the case of the oil spill at the Ikot Ada Udo village, SPDC could have prevented the sabotage by plugging the well at an earlier stage.³⁸ Victims are highly suspicious of Shell's claim of sabotage, which was validated by the court, especially since the oil was leaked from corroded pipelines that are more than 35 years old.³⁹ Environmental field monitoring visits within this period by ERA/FoEN showed that Shell fails to conduct pipeline integrity tests and to replace them, choosing instead to criminalise the people to avoid liability.



Oil spill at Goi, Nigeria/ Friends of the Earth International



Oil installation in Ikot, Nigeria/ Friends of the Earth International



Court case in the Netherlands/
Milieudefensie/Pierre Crom

Since October 2014, the case is being appealed⁴⁰ on the grounds of the non-disclosure of information related to Shell's operations, namely the integrity of its pipelines in the area. This information is needed to strengthen the communities' case and to compel Shell to pay compensation, but the corporation continues to escape justice because of technicalities, rather than the substance of the case. The rights of the fisherfolk have been violated, as the entire Goi community has had to vacate its ancestral home due to the acid lake that Shell left behind in the community's river and floodplains.

Furthermore, two oil spills in 2008 and 2009 devastated the lives of Ogoni farmers from the Bodo community. Initial estimates from Shell accounted for 4,000 barrels of oil spilled, while oil experts estimated the amount to be up to 60 times as much. Some 11,500 members of the affected Bodo community in Ogoni filed a lawsuit against Shell in the United Kingdom that has recently ended with an out-of-court settlement in which Shell will pay £55 million in compensation.⁴¹ This court case and the previous one in the Netherlands reinforce each other, and expose how environmental justice court cases now flow across international jurisdiction boundaries. The implication of this is that it marks a watershed in environmental justice, as a flood of court cases will now follow in the pursuit of environmental justice.

Several court cases filed by the communities of the Niger Delta are now before national and international courts to seek redress over oil spills and pollution. They argue Shell has deliberately fostered a regime of environmental racism by failing to deploy in Nigeria the operation standards they use in Europe. They also place the onus of protecting the facilities on the owners and note that the government has not taken action because Shell has infiltrated its administration.

The Shell Bonga Spill

The Shell Bonga oil spill occurred at a Shell facility on 20 December 2011, during which at least 40,000 barrels of crude oil spilled into the Atlantic Ocean, affecting the fisherfolk who depend on the ocean waters as a source of livelihood.⁴²

The communities alleged that harmful chemical dispersants – such as Slickgone NS, Corexit 9500 and 9527 and Biosolve, among others, which Shell Nigeria Exploration and Production Company Limited used to breakdown and disperse the spilled crude oil – spread to the fishing areas. There, they became the causes of the diseases that were later prevalent in the communities.⁴³ According to the communities, common ailments affecting them included mental disorders; hypertension; eye irritations; nose, throat and skin lesions; vomiting and rectal bleeding; liver and kidney damage; short-term memory loss and confusion; respiratory problems; miscarriages; and blood in urine.⁴⁴

Following the Bonga oil spill, the National Oil Spill Detection and Response Agency (NOSDRA) imposed a \$5 billion fine on the Shell Petroleum Development Company.⁴⁵ The Nigerian Maritime Administration and Safety Agency (NIMASA) Director General, Patrick Akpobolokemi had said earlier at a public hearing organized by the House of Representatives Committee on Environment that the maritime agency calculated that a total of \$6.5 billion should be paid to the communities affected by the spill as compensation for damages.⁴⁶ In spite of these attempts to regulate Shell and make it accountable, the company refused to pay,⁴⁷ treating the government and its agencies with disdain.

The Ogoni Movement of Resistance

The Ogoni are a close-knit minority tribe of farmers and fisherfolk in Rivers State in Southern Nigeria. Their territory, Ogoniland, was once considered the breadbasket of the state.⁴⁸ As environmental degradation became more and more widespread, in 1990, the Ogoni, through their representative organisation, the Movement for the Survival of the Ogoni People (MOSOP), embarked on a peaceful campaign to stop Shell's devastation of their natural environment. The Ogoni gained international attention following a massive public protest involving approximately 400,000 persons against Shell Oil, led by the MOSOP in 1993. Protestors demanded that oil companies and the government clean up the environment and pay adequate compensation and royalties to the oil-producing regions.⁴⁹

Cases of environmental degradation, community protests and state murder of activists with Shell's complicity are well known.⁵⁰ In fact, in 1993, the MOSOP declared Shell *persona non grata* and expelled it from the Ogoni oilfields.⁵¹ Gross human rights violations followed as hundreds of Ogonis were hunted down and killed – about 2,000 – by a joint military operation, while hundreds more fled the country⁵² and went into exile in the United States, the United Kingdom, South Africa, Ghana, and the Republic of Benin. On 10 November 1995, environmentalist and author Ken Saro-Wiwa and eight others were put to death on orders from the Nigerian military regime, in collusion with the transnational oil corporation, after a military tribunal had convicted them on trumped up charges of murder at a trial that drew international condemnation.⁵³

In January 1997, over 80,000 Ogonis celebrated Ogoni Day in an environment of heightened repression. Four people were wounded by gun shot and 20 people were arrested, tortured and detained.⁵⁴ In response to this situation, MOSOP stated, “in recent months since the anniversary of the judicial murder of the late Ogoni leader, Ken Saro-Wiwa, and eight others, a frightening wave of state terrorism has been unleashed on the area with the deployment of over 2,000 armed soldiers. ... Ogoni stands in the threshold of complete extinction”.⁵⁵ The World Council of Churches also issued a report at the time of the incident confirming the dire situation in the delta: “A quiet state of siege prevails even today in Ogoniland. Intimidation, rape, arrests, torture, shooting and looting by the soldiers continue to occur”.⁵⁶

Local communities claim that Shell supported the repression of Ogoni activists by arming and financing soldiers who occupied Ogoniland between 1993 and 2000.⁵⁷ The wave of insecurity and militarisation of Ogoni and throughout the Niger Delta continues, although to a lesser degree, as well as during the protests.

Human rights day/ Friends of the Earth International/Luka Tomac



Building a Post Petroleum Nigeria (Leave new oil in the soil)

The devastating environmental and humanitarian impact of the oil industry in Nigeria has pushed scholars and activists to search for alternative ways to halt this degradation and redirect the benefits towards the Nigerian people. This is the objective of the proposal submitted by Environmental Rights Action (ERA)/Friends of the Earth Nigeria to the Nigerian government in 2009.⁵⁸ The proposal highlights several reports that claim that about half of Nigeria's crude oil production is being stolen and sold on an international illegal market, generally with the compliance of the same security agencies that are meant to protect the reserves. This results in the loss of up to US\$1.6 billion every year.

In 2015, Nigeria plans to raise its oil production to five million barrels per day. If government efforts were directed towards securing Nigeria's current production capacity, instead of opening new oil fields, production would already reach four million barrels per day. ERA/FoE Nigeria proposes that revenue from the remaining one million barrels per day be paid to the 140 million Nigerians living in the country. The proposal estimates that this "crude oil solidarity fund" would provide approximately \$156 per year per inhabitant.

According to the proposal, stopping the development of new oil fields would not only help preserve the environment, but also retain more of the huge revenues of a billion-dollar industry for Nigerian citizens. Even though there are similar actions around the world defending the idea of "leaving oil in the soil"⁵⁹, the ERA/FOE Nigeria proposal has not received any official response.⁶⁰

Jorge San Vicente – TNI

UNEP Report on Ogoniland

The report on the pollution of Ogoniland prepared by the United Nations Environment Program (UNEP), released on 4 August 2011,⁶¹ unequivocally shows that the MOSOP, under the leadership of Ken Saro-Wiwa, was not crying wolf when it maintained that grave injustice and human rights violations had indeed been inflicted on the Ogoni people. The UNEP assessment presented to the Nigerian President Goodluck Jonathan confirmed hydrocarbon pollution in the surface water of the creeks of Ogoniland up to 8 cm and in groundwater that supplies drinking wells at 41 sites, including a serious case found

at Nisisioken Ogale in Eleme, Rivers State. Soils were found to have been polluted with hydrocarbons up to a depth of five metres in 49 observed sites, while benzene, a known carcinogen, was found in drinking water at a level 900 times higher than acceptable levels defined by the World Health Organization (WHO). The report also documented that fisheries have been destroyed and the wetlands around Ogoniland have been highly degraded and are facing extinction. Combined, they have led to the irreparable loss of livelihood and will take at least 30 years to remedy.⁶²

The fact that Shell and the Nigerian government have failed to implement the UNEP's recommendations is even more disturbing and illustrates the continued existence of high-level impunity. The UNEP recommended the creation of an initial clean up and restoration fund of \$1 billion, the establishment of a medical health complex, the distribution of relief materials and the erection of warning signposts on acid lakes currently used as swimming pools by Ogoni children.⁶³ To date, virtually nothing has been done to restore the environment or heal the wounds of injustice and human rights violations. The government has simply failed to exert pressure on Shell to clean up the damage or to contribute its fair share of the funds for the clean-up.

The struggle for justice of the people affected by Shell in Nigeria continues

Neither international and local advocacy, nor national regulatory agencies have been able to compel Shell to change and to respect human rights in the Niger Delta in any of these cases. None of them have been resolved in the communities' favour, nor has any remedy been implemented. Shell refuses to respect the regulatory agencies, the national government and the laws of the land, making it look as if the regulated has become the regulator. This level of impunity demonstrates the dire need for an international mechanism to hold companies to account uniformly, rather than allowing for voluntary corporate mechanisms that are not legally binding.

Given the continued lack of access to justice for the affected communities, these cases were presented at the Permanent Peoples Tribunal hearing on "Corporate Human Rights Violations and Peoples Access to Justice" held in Geneva in June 2014. The jury's ruling recognized "the systematic violations of human rights and the legitimacy of the resistances of the affected communities" and called for a binding treaty on transnational corporations.⁶⁴ This recognition and call for access to justice is a step forward in the Niger Delta's affected communities' continued struggle against Shell's decades-long human rights violations and environmental degradation in their territories. The time to act is long overdue.

Notes

- 1 A previous version of this article was submitted to the United Nations Human Rights Council (A/HRC/26/NGO/5) by Europe-Third World Centre (CETIM) and Environmental Rights Action / Friends of the Earth Nigeria (ERA/FoEN). The inputs of Laurent Gaberell from CETIM were fundamental in the drafting of that version. The author is thankful to the research support provided by Jorge San Vicente from the Transnational Institute (TNI).
- 2 Shell Nigeria is the common name for Royal Dutch Shell's Nigerian operations carried out by its four subsidiaries, primarily through the joint venture Shell Petroleum Development Company of Nigeria Limited (SPDC). From this moment on in the article, Royal Dutch Shell and its Nigerian subsidiaries will be referred to as 'Shell'.
- 3 Shell. 1936-1979: Our first steps. <http://www.shell.com.ng/aboutshell/who-we-are/history/country/first-steps.html>
- 4 Human Rights Watch (1999). The Price of Oil: Corporate Responsibility and Human Rights Violations in Nigeria's Oil Producing Communities, page 7. <http://www.hrw.org/reports/1999/nigeria/nigeria0199.pdf>
- 5 Project Underground (1997). All for Shell: A Brief history of the struggle for justice in the Niger Delta, pages 3-5. http://priceofoil.org/content/uploads/2006/05/ALL_FOR_SHELL_2005_.pdf
- 6 Gas reinjection is a technique that utilizes the gas mixture produced from oil extraction by reinjecting it into an already exploited oil field in order to increase the pressure and extract as much oil as possible.
- 7 IRIN (2012). Nigeria: Gas flares still a burning issue in the Niger Delta. IRIN Africa. 8 March. <http://www.irinnews.org/report/95034/nigeria-gas-flares-still-a-burning-issue-in-the-niger-delta>
- 8 Milieudefensie (2010). Factsheet: Nigeria is on fire. Broken promises. April. <https://milieudefensie.nl/publicaties/factsheets/factsheet-broken-promises>
- 9 Justice in Nigeria Now (2010). Gas Flaring in Nigeria: an Overview. <http://justiceinnigerianow.org/jinn/wp-content/uploads/2010/04/JINN-2010-Gas-Flaring-an-overview.pdf>
- 10 Lobe, J. (2005). Judge Orders Gas Flaring to Stop Immediately. IPS. 14 November. <http://www.ipsnews.net/2005/11/nigeria-judge-orders-gas-flaring-to-stop-immediately/>; and IRIN (2012). Nigeria: Gas flares still a burning issue in the Niger Delta. 8 March. <http://www.irinnews.org/report/95034/nigeria-gas-flares-still-a-burning-issue-in-the-niger-delta>
- 11 Ten Kate, A. (2011). Royal Dutch Shell and its sustainability troubles. Milieudefensie (Friends of the Earth Netherlands). June, page 10. <https://milieudefensie.nl/publicaties/rapporten/shell-background-report>
- 12 Ibid.
- 13 Environmental Rights Action/Friends of the Earth Nigeria, and The Climate Justice Programme (2005). Gas Flaring in Nigeria: A Human Rights, Environmental and Economic Monstrosity. June. http://www.foe.co.uk/sites/default/files/downloads/gas_flaring_nigeria.pdf
- 14 Utomwen, D. (2011). Doubt Still Over Gas Flaring. The News Magazine. April.
- 15 Ibid.
- 16 Environmental Rights Action/Friends of the Earth Nigeria, and The Climate Justice Programme (2005), op. cit., page 26.
- 17 Amnesty International (2009). Nigeria: Petroleum, Pollution and Poverty in the Niger Delta. Amnesty International Publications, page 36.
- 18 Milieudefensie (2010), op. cit.
- 19 Ojeifo, S. (2002). Nigeria: Environment Ministry Formulates Action Plan to End Gas Flaring By 2004. Vanguard. 24 May. <http://allafrica.com/stories/200205240699.html>
- 20 Ibid.
- 21 UNEP (2011). Environmental Assessment of Ogoniland. http://postconflict.unep.ch/publications/OEA/UNEP_OEA.pdf
- 22 The coalition of civil society groups involved Friends of the Earth International, Milieudefensie/Friends of the Earth Netherlands, and Friends of the Earth EWNI, UK.

- 23 See the judgement of the Federal High Court of Nigeria Benin Judicial Division in the case Between Mr. Jonah Gbemre and Shell Petroleum Development Company Nigeria Ltd, Nigeria National Petroleum Corporation, Attorney General of the Federation, in suit No: fhc/b/cs/53/05 (Judgment of 14 November 2005). http://www.tjst.edu/slomansonb/11.3_Ghemre.pdf
- 24 Donovan, J. (2011). Shell espionage activities in Nigeria. 23 April. <http://royaldutchshellplc.com/2011/04/23/shell-espionage-activities-in-nigeria>
- 25 Public Library of US Diplomacy (2005). Cable 05LAGOS605_a: Militant Delta youth set aside arms and differences. 25 April. http://www.wikileaks.org/plusd/cables/05LAGOS605_a.html
- 26 BBC (2009). Shell settles Nigeria deaths case. BBC News. 9 June. <http://news.bbc.co.uk/2/hi/africa/8090493.stm>
- 27 The Guardian (2009). US embassy cables: Shell says 'we have people in all relevant Nigerian ministries'. 20 October. <http://www.theguardian.com/world/us-embassy-cables-documents/230356>
- 28 Ibid.
- 29 Ibid.
- 30 Smith, D. (2010). WikiLeaks cables: Shell's grip on Nigerian state revealed. The Guardian. 8 December. <http://www.theguardian.com/business/2010/dec/08/wikileaks-cables-shell-nigeria-spying>.
- 31 Ochelle, F. O. (2015). Election Postponement May Delay Passage Of Nigeria's Oil Industry Bill. Ventures Africa. 16 February. <http://www.ventures-africa.com/2015/02/election-postponement-may-delay-passage-of-oil-industry-bill/>
- 32 UNDP (2006). Niger Delta Human Development Report, page 74. http://web.ng.undp.org/reports/nigeria_hdr_report.pdf
- 33 UNDP (2006), op. cit., page 49.
- 34 Milieudéfensie. The Goi case: A reluctant boxing match against Shell. <https://milieudéfensie.nl/publicaties/factsheets/factsheet-goi>
- 35 Milieudéfensie The Oruma case: Oil spill - from a high-pressure oil pipeline. <https://milieudéfensie.nl/publicaties/factsheets/factsheet-oruma>
- 36 Milieudéfensie. The Ikot Ada Udo case: the hissing and leaking 'Christmas tree'. <https://milieudéfensie.nl/publicaties/factsheets/factsheet-ikot-ada-udo>
- 37 "Shell has a 30 percent stake in the SPDC joint venture: the state-run Nigerian National Petroleum Corporation (NNPC) holds 55 percent, Total 10 percent and Agip 5 percent." Sekularac, I. (2011). Shell says cannot take sole blame for Nigeria spills. Reuters. 26 January. <http://uk.reuters.com/article/2011/01/26/uk-dutch-shell-idUKTRE70P5EZ20110126>
- 38 Milieudéfensie. Milieudéfensie response to the verdict in the Shell Nigeria court case. <https://milieudéfensie.nl/english/pressreleases/milieudéfensie-response-to-the-verdict-in-the-shell-nigeria-court-case>
- 39 Amnesty International (2012). Another Bodo oil spill: another flawed oil spill investigation in the Niger Delta. Amnesty International Publications, page 9.
- 40 Milieudéfensie (2014). Appeal proceedings begin in Milieudéfensie vs. Shell legal case. 7 October. <https://milieudéfensie.nl/english/pressreleases/appeal-proceedings-begin-in-milieudéfensie-vs-shell-legal-case>
- 41 Vidal, J. (2015). Shell announces £55m payout for Nigeria oil spills. The Guardian. 7 January. <http://www.theguardian.com/environment/2015/jan/07/shell-announces-55m-payout-for-nigeria-oil-spills>
Amnesty International has called this a landmark case; see: Allen, K. (2015). Shell in Nigeria: the landmark oil case is a warning shot to multinationals. The Guardian. 9 January. <http://www.theguardian.com/global-development-professionals-network/2015/jan/09/nigeria-shell-oil-case-warning-multinational-companies>
- 42 Gambrell, J. (2011). Shell oil spill off Nigeria likely worst in decade. The Guardian. 22 December. <http://www.theguardian.com/world/feedarticle/10007651>
- 43 Emmanuel, H.O. (2013). Delta, Bayelsa communities lament Bonga oil spill. Daily Independent. October 29. <http://dailyindependentnig.com/2013/10/delta-bayelsa-communities-lament-bonga-oil-spill>

- 44 Ibid.
- 45 Ojameruaye, E. (2012). A Commentary on the \$5 billion fine imposed on SNEPCO by NOSDRA. Vanguard. 21 August. <http://community.vanguardngr.com/forum/topics/a-commentary-on-the-5-billion-fine-imposed-on-snepco-by-nosdra>
- 46 Ibid. The NIMASA director said, "The kind of impunity Shell and its allies have demonstrated so far in the Niger Delta area must stop if the future of the people of Nigeria and the environment are to be protected." He also affirmed that in other countries when spills like this occur, the first thing is remediation, attention to the affected communities and finding ways of reducing the suffering of the people and restoring the eco-system. "Shell fell short of all these criteria and of course it is sad that it is only in Nigeria that we can witness this degree of impunity... We, in NIMASA, we see this as a serious infraction of our laws; the damage done to the communities and the eco-system can be seen as genocide." See Iwori, J. (2014). Bonga Oil Spill: NIMASA Slams Shell. This Day Live. 14 February. <http://www.thisdaylive.com>
- 47 Eziukwu, A. (2013). Shell Denies Culpability over Bonga Oil Spill. Real News Magazine. February 17. <http://realnewsmagazine.net/oil-gas/shell-denies-culpability-over-bonga-oil-spill/>
- 48 I. Okonta, I and Douglas, O. (2001). Where Vultures Feast: Forty Years of Shell in the Niger Delta. Environmental Rights Group/ Friends of the Earth Nigeria, page 99.
- 49 Ibid., page 119.
- 50 Redford, K. (2012). Kiobel v. Shell Tests Corporate Personhood. Huffington Post. 28 February. http://www.huffingtonpost.com/katie-redford/kiobel-v-shell_b_1305805.html
- 51 Boele, R., Fabig, H. and Wheeler, D. (2001). Shell, Nigeria and Theogoni. A Study In Unsustainable Development: I. The story of Shell, Nigeria and the Ogoni people – Environment, economy, relationships: conflict and prospects for resolution. Sustainable Development, 9, page 79.
- 52 Okonta, I. (2003). Soul of Ogoni Campaigner Marches on in oil killing fields. Times Hire Education. 7 November. <http://www.timeshighereducation.co.uk/features/soul-of-ogoni-campaigner-marches-on-in-oil-killing-fields/184749.article>
- 53 Boele, R., Fabig, H. and Wheeler, D. (2001), op. cit., page 81.
- 54 Project Underground (1997), op. cit.
- 55 Ibid.
- 56 World Council of Churches. (1997). WCC Ogoni Report: Ogoni- the struggle continues. <http://archive.wfn.org/1997/01/msg00066.html>
- 57 Center For Constitutional Rights. Factsheet: Shell's Environmental Devastation in Nigeria. <http://ccrjustice.org/learn-more/faqs/shell%2526%2523039%3Bs-environmental-devastation-nigeria>
- 58 ERA/FoE Nigeria (2009). Building a Post Petroleum Nigeria (Leave new oil in the soil). 25 November. <http://eration.org/publications/presentations/leaveoilproposal.pdf>
- 59 Temper, L., Fonseca, S. and Coelho, R. (2012). A New EJOLT Report: Towards a Post-Oil Civilization. Yasunization and Other Initiatives to Leave Fossil Fuels in the Soil. e-cadernos ces [Online], 17. <http://eces.revues.org/1231>
- 60 Akinbobola, Y. (2014). There's no need for more oil wells in Nigeria. Africa Renewal. April, page 26. <http://www.un.org/africarenewal/magazine/april-2014/there%E2%80%99s-no-need-more-oil-wells-nigeria>.
- 61 UNEP (2011), op. cit.
- 62 ERA/FoEN (2012). UNEP Environmental Assessment Report: On Ogoniland, One Year of Inaction. ERA/ FoEN Newsletter.
- 63 Akioye, S. (2014). Three years after UNEP Report, Ogoniland mourns inaction. The Nation. 8 August. <http://thenationonlineng.net/new/three-years-after-unep-report-ogoniland-mourns-inaction/>
- 64 Permanent Peoples Tribunal (2014). Declaration: Hearing of the Permanent Peoples Tribunal. Geneva. 23 June. <http://www.stopcorporateimpunity.org/?p=5875>

The Historic Struggle for Justice of the Coalition of the Communities Affected by Chevron in the Ecuadorian Amazon¹

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In 26 years of oil exploration in the Ecuadorian Amazon, Chevron² polluted over 480,000 hectares of land in one of the most biodiverse areas of the world and destroyed its inhabitants' ways of life and livelihoods. In their struggle for justice, 30,000 affected men and women (from indigenous and peasant communities) engaged in legal battles against the transnational corporation for over 20 years before obtaining a court decision in their favour in 2011. The ruling ordered Chevron to pay more than 9.5 billion dollars in order to finance comprehensive reparation measures for the damage it caused. These include a program to provide health care for cancer victims, as well as measures to decontaminate the soil and water, restore the flora and fauna and revive indigenous culture, in as much as possible. However, Chevron not only refuses to comply with the court order, but also has set out on a campaign to discredit the affected peoples, the government and the legal system of Ecuador. To confront this situation, the affected communities decided to globalise their social struggle. It is our understanding that if this ends well for the affected people, it will establish a major precedent that all of the peoples around the world who have suffered and continue to suffer abuses similar to the ones experienced by the more than 30,000 indigenous peoples and peasants in the Amazon in Ecuador must take advantage of. We now have the support of an international solidarity network, which drives us to continue demanding justice in all possible and viable institutions.

* Revised by Pablo Bertinat, the Observatory of Energy and Sustainable Development.

Chevron in Ecuador: a long history of violations and impunity

On 5 March 1964, the military junta governing Ecuador granted a concession for over one and a half million hectares of land in the Amazon region to the Texaco Gulf consortium.³ Although the concession was later reduced, the area in which Texaco conducted its operations exceeded 480,000 hectares (in the provinces of Orellana and Sucumbíos). The original concession contract, and the successive agreements that modified it, established that Texaco was the sole company in charge of carrying out all of the technical planning and work in the field. This arrangement was maintained, thereby making Texaco the one and only company authorised to operate in the entire area for the duration of the contract, which ended in June 1990.⁴

Texaco carried out exploration and oil drilling in jungle regions inhabited by various Ecuadorean indigenous communities. In 1964, when the Texaco oil corporation began the hydrocarbon exploration phase in the northern Amazon region of Ecuador, the area was inhabited by the Siekopai, Sionas, Waorani, Cofán and Tetete nations. After the exploration phase was complete,⁵ which included the use of explosives and the drilling of numerous rudimentary boreholes, Texaco opened up more than 356 wells.⁶ The drilling of each one of these wells produced a huge amount of toxic waste known as “drilling mud”, which is a mixture of various chemical products used to lubricate the drill bits utilised to perforate the ground.⁷ This mixture is made of several heavy metals and other toxic or carcinogenic products, such as chromium VI. Due to its known toxicity, this waste must be stored in adequate containers and dealt with responsibly. Far from this, Texaco dug nearly 880 holes in the ground as simple open pits without any sort of coating to prevent their content from filtrating through their walls or spills. The corporation deposited raw toxic waste in the holes. It is impossible to determine what was worse: the leakage of these products into the environment or the flames produced by the oil company’s deliberate burning of them.⁸

Later, the pits were used to stock formation water and other dangerous residue from its extractive operations. Using the pits as “pools” instead of installing steel tanks as it should have allowed the company to make considerable savings, at the expense of the environment and the local peoples. The oil corporation’s irresponsibility did not, however, end there. Despite all the legal⁹ and contractual¹⁰ prohibitions, all of the content of these “pools” were dumped into the rivers and marshes in the area. To guarantee this, Texaco installed in each “pool” a rudimentary drainage system called a “goose neck”, which systematically drained the pool’s content into the nearest river. Even though Texaco was aware of the harmful effects of its activities¹¹ and had techniques and technology that would have prevented – or at least considerably reduced – the damage caused by releasing these toxic substances into the environment,¹² it never implemented this technology while it operated in Ecuador.¹³ Obviously, the Chevron

oil corporation (previously Texaco) was aware of the damage it was causing and of the negative impacts it was having on the ecosystem and the peoples' health, but in order to increase its profits, it decided not to implement any environmental controls or measures to reduce the environmental impacts it was generating.¹⁴

While the region was once known for its vast biodiversity and the abundant resources available to its inhabitants, today, these resources have disappeared or have been altered by the water and soil contamination by hydrocarbons, which threatens the peoples' right to food and health. The people who lived off what the jungle used to provide them by hunting, gathering and fishing suddenly found themselves deprived of their source of food, which fled frightened by the noise and pollution. The human right to health may have been seriously affected by the environmental damages generated by Texaco's operations. There has been an increase in the incidence of cancer caused by exposure to oil and the toxic chemicals used to exploit it. Numerous studies demonstrate a relation of cause and effect between exposure to oil and the increase in cancer. This is consistent with the testimonies of dozens of people whose accounts of the suffering caused by the pollution corroborated one another. Several peoples who had been living in the zone since time immemorial have disappeared or been displaced. The Cofán people were reduced from 5,000 to less than 800 inhabitants, as they were forced off their land by pressure from all participants in the oil exploitation process. The Tetete people were completely exterminated.¹⁵

When we examine the laboratory analyses carried out by Chevron's experts in the area where the company operated, we find a high concentration of total petroleum hydrocarbons (TPHs) in the ground, which indicates that the presence of hydrocarbons is generalised. What is more, in videos filmed by Chevron employees between 2004 and 2007, one can see that they found it impossible to find a site that was not contaminated.¹⁶ The analyses also confirm the presence of other carcinogenic elements such as benzene, toluene, polycyclic aromatic hydrocarbons (PAHs) and heavy metals and/or anti-corrosion agents, such as chromium IV and mercury. These elements are recognised as carcinogenic by various governmental and international health agencies, such as the United States Agency for Toxic Substances and Disease Registry, the International Agency for Research on Cancer, the World Health Organisation, etc. It has been established then, beyond any doubt, that the presence of these elements in areas where Texaco operated have their origin in the company's oil exploitation operations.¹⁷

As for the contamination of surface water, we have the confession of Texaco's legal representative who admitted in an open letter to the public to having dumped more than 60.6 billion litres of wastewater into rivers in the Amazon.¹⁸ All of these toxic substances are present in the environment even today, and have caused skin illnesses, vaginal and intestinal infections and other respiratory, reproductive and circulatory

system problems, as well as several types of cancer (throat, stomach, kidney, skin and brain) that have led to the death of many people. The effects on the health of Amazon forest inhabitants exposed to oil pollution was documented in the YanaCuri Report, which compared the health of populations living near oil wells and production facilities with the health of individuals who had not been exposed to the same conditions. Similarly, the study “Cancer in the Amazon Region of Ecuador” also presents the results of a comparison between exposed and non-exposed populations. These studies found much higher rates of cancer here than in other regions of Ecuador where hydrocarbon extraction activities were non-existent.¹⁹

In 26 years of exploiting oil in the Ecuadorian amazon, Chevron (previously Texaco) polluted more than 480,000 hectares in one of the most biodiverse areas of the world, destroyed the living conditions and livelihoods of the region’s inhabitants, and caused the death of hundreds of people and a sudden increase in the incidence of cancer and other serious health problems. It has been calculated that more than 60.6 billion litres of toxic water were poured into the rivers, 880 pits for dumping hydrocarbon waste were dug and more than 6.7 billion cubic meters of natural gas were burned.²⁰



The Guanta community’s reflection in an oil pit abandoned by Texaco, October 2005/ UDAPT

The peoples affected by Chevron fight for access to justice

The struggle of affected peoples to demand their rights began well before the lawsuit was filed. They presented complaints both to the oil corporation's directors and the respective state authorities. In general, these complaints were not addressed.

The lawsuit against Texaco was first filed in New York City, which is where Texaco Inc.'s global headquarters were located at the time, on 3 November 1993 – only one year after Texaco had left the country. Approximately 30,000 Ecuadorians – indigenous people and settlers – directly or indirectly affected by Texaco's operations in their territories submitted the lawsuit.

After nine years of litigation, in 2002, without having even discussed the pollution, but debating instead questions of legal jurisdiction, the United States courts accepted Chevron's argument (which had already merged with Texaco) and finally decided not to hear the Ecuadorians' case on the basis of *forum non conveniens*.²¹ According to the US courts, Ecuador was the most appropriate place for the case to be heard. Supposedly the US judges "guaranteed" the victims' right to trial by imposing on Chevron the obligation to subject itself to the Ecuadorian justice system and abide by whatever adverse ruling it may hand down. To free itself from the US jurisdiction, Chevron agreed and committed to complying with the ruling in Ecuador. The victims quickly realised, however, that this was no guarantee.

Therefore, pursuing their quest for justice and keeping with the orders of the US court, the people affected by Chevron's operations returned to Ecuador and filed a complaint against the corporation on 7 May 2003. The complaint alleged that Chevron caused harm to the environment by using obsolete and polluting technology and practices that violated Ecuador's laws, which specifically require the operator to avoid damages to the ecosystem and use "modern and efficient" technology. Despite the ruling of the US court, Chevron contested the jurisdiction of the Ecuadorian judges, arguing that Chevron had never operated in Ecuador and that it was not the company that succeeded Texaco because there had not been any merger.²²

During the first few years of the trial in Ecuador, the plaintiffs were persecuted by Ecuador's Armed Forces, which held contracts for intelligence and security services with Chevron.²³ This relation even made the falsification of a military intelligence report and the suspension of a legal inspection possible.²⁴ Chevron also elaborated a master plan called a "playbook"²⁵, which was designed to ensure that experts would only find clean samples. To guarantee that the plan worked, it also set up companies in the hands of third persons to create an image of impartiality in the handling of the laboratory samples. Even so, the results still showed traces of pollution. Chevron thus induced its experts to compare the pollution found with limits 100 times higher than those accepted in the US.

This is how scientists hired by Chevron were able to come to the conclusion that there were no health risks. Fortunately, Ecuadorian judges dismissed the experts' "conclusions" and assessed the samples' results for themselves.

A legal victory for the affected peoples, but their fight for justice continues

On 14 February 2011, the Court of Sucumbíos ruled against Chevron, condemning it to pay over 9 billion dollars. It also ordered Chevron to pay punitive damages, imposed as a sanction, for having minimised the extent of the damages and the misconduct of its lawyers throughout the trial.²⁶ This ruling was ratified again by an appeal court on 3 January 2012 and later submitted for review to the National Court of Ecuador, the highest instance of the Ecuadorian justice system. On 12 November 2012, the Court confirmed the legality of the ruling and ratified all of the lower instances' findings in relation to environmental damages. It let the order to pay punitive damages stand, however.²⁷

After 21 years of complex legal proceedings, the plaintiffs overcame numerous obstacles and finally succeeded in obtaining justice, but they have not received compensation for the harm caused. Even though Chevron lost before the courts of its choice, the corporation refuses to acknowledge the ruling against it. Instead of using the substantial economic resources at its disposal to fulfil its obligations, it decided to undertake an international campaign of slander and attacks against the plaintiffs, their lawyers, representatives and anyone who collaborates with this cause, and even against the Ecuadorian state. The victims' lawyers are facing charges of extortion in the United States²⁸ and accusations in the media (and not legal ones) in Ecuador. The goal of this attack is to intimidate them and deprive the victims of their right to a lawyer. Apparently, what Chevron is seeking to do is to reverse the roles, giving itself the role of the victim.

In October 2008, Chevron activated an action plan that included: legal actions against lawyers and scientists who support the plaintiffs, legal actions against the state of Ecuador, media actions to destroy the image of the lawyers who defend the victims in court and media actions to destroy the image of the Ecuadorian state, by linking it to the activities of irregular groups, namely in Colombia.²⁹

Similarly, Chevron has engaged in a systematic attack against all sources of income of the affected people in resistance in an attempt to deprive them of the possibility of continuing the fight.³⁰ Chevron also hired and paid 15 million dollars to a company named KROLL³¹ to monitor the activities of anyone who supported the victims or was interested in the case. Furthermore, Chevron paid over 300,000 dollars to an Ecuadorian judge³²,



Protest, October 2003/ UDAPT



Secoya elders march towards the Supreme Court of Justice, October 2003/ UDAPT

disbarred for corruption, in exchange for his testimony against the affected peoples of Ecuador in US courts.³³ Thus, the same US courts that refused to hear the complaint filed by Chevron's victims in Ecuador and give them access to justice are now prosecuting the victims as if they were criminals trying to extort funds from an innocent company. To this, one must add attempts to bribe previous governments in Ecuador and the persistent political and media campaign the corporation has launched against President Correa's government, which consists of claims brought before arbitration tribunals (see box), international lobbying and measures to discredit the country's justice system. In light of this, the victims are up against a giant that has been unleashed and that not only poisoned the local peoples' land, but also wants to crush the victims who dare complain. As for its lobbying activities, Chevron has spent millions of dollars on a campaign to tarnish Ecuador's image, discredit its courts, eliminate tariff preferences, have international sanctions imposed, etc. in an attempt to pressure the government to halt the legal proceedings its citizens have undertaken.³⁴

Living up to its title as the most opaque corporation in the world,³⁵ during the 20 years of litigation in both the United States and Ecuador, Chevron disposed of all the assets it had in Ecuador. At the time when the ruling was to be implemented, the plaintiffs, via the Court of Sucumbíos, asked all the banks in Ecuador to certify whether the corporation had assets or money in the country. It was found that in 2012, Chevron, via Texaco, only had one bank account with less than 350 dollars in Ecuador.³⁶ It no longer had any investments or assets. This is why the affected communities are obliged to resort to tribunals abroad, where Chevron's assets are located, to try to have the ruling enforced by way of the exequatur procedure.³⁷ This means that for the affected peoples of Ecuador, there is still a long road of legal battles ahead that Chevron forces them to travel. In each jurisdiction, they come up against various difficulties ranging from lawyers' fees to jurisdiction problems related to having the ruling recognised by a foreign court or even political interference. In Argentina in particular, it has become clear that the conditions Chevron imposed in order to invest in the unconventional hydrocarbons reserves called the Vaca Muerta, allowed it to get the executive branch to change its position and have the legally decreed embargo on Chevron's assets in the country lifted.³⁸ Heeding what the state attorney had determined, the Supreme Court of Argentina decided that Chevron Argentina was not obliged to assume the obligations of its parent company Chevron Corp., as the latter had not been subject to legal action in Ecuador. This is not true, however, as in the legal proceedings in Ecuador, the complaint was filed against Chevron Corporation. Also, in the trial in Argentina, it was shown that Chevron Argentina was wholly owned by the Chevron Corporation and that all of the money invested came from the Chevron Corporation. Even the parent corporation itself, Chevron Corporation, recognised and admitted in the United States that it has full ownership of Chevron Argentina. Moreover, the court order handed down by the judge in Ecuador was addressed to the parent company and its different subsidiaries.³⁹

The court decision in Argentina set a terrible precedent for all complaints against corporations that hide their assets by using a system of subsidiaries, as according to the court's ruling, plaintiffs would have to file complaints against all the subsidiaries to target the assets of the parent company. Needless to say, it would be impossible to do so.

Mechanisms for building and maintaining corporate power

Ever since Chevron was sentenced to pay 9.5 billion dollars to the affected peoples from Ecuador, the transnational corporation has not wavered in its efforts to avoid complying with the ruling. One of the first strategies it used was to pressure the US embassy in Ecuador to try to get the case dismissed. These meetings were documented in various diplomatic messages revealed by WikiLeaks.

In March 2006,⁴⁰ the US ambassador in Quito met with Jaime Varela, Chevron's representative in Ecuador, to discuss the various legal disputes in which the company was involved. Among the many issues discussed, Varela informed the US ambassador of Chevron's intention to file a complaint against Ecuador in an international arbitration tribunal by using the bilateral treaty between the Latin American country and the United States. However, he also clarified that the corporation would not go public with the request for arbitration so that the plaintiffs in the Lago Agrio case would not be able to argue that Chevron was trying to pressure the jury. The leaked text also affirms that even though in this case, Varela did not explicitly request the US government to intervene, other representatives in the past had indeed asked the government to pressure Ecuador so that it would assume responsibility for the pollution – something that was unlikely, according to the embassy itself, since the total could amount to billions of dollars.

Another message, this time in 2008,⁴¹ confirmed that Chevron had explored with officials of the government of Ecuador the possibility of implementing a series of social projects to guarantee local authorities' support in order to put an end to one of the ongoing cases. However, again, the embassy recognised that this was unlikely to work due to the high costs of the environmental damage. Other messages^{42,43} from a later dated showed that Chevron and embassy representatives maintained contact throughout the entire legal proceedings and that the embassy was informed of the company's main moves in advance.

Jorge San Vicente, Transnational Institute (TNI)

Despite all of the obstacles Chevron has created to stop its victims from gaining access to justice, the plaintiffs hope that their cases will be successful in the courts of Canada, Brazil and the Second Circuit of New York. Last December in Canada, the Ontario Court of Appeal ruled in favour of the Ecuadorian plaintiffs. The affected peoples are currently awaiting a response from the Supreme Court of Canada. Similarly, they are waiting to receive the response of the Brazilian Supreme Federal Court, to which they presented the second exequatur action or demand to have the ruling recognised so it could subsequently be executed.

In the meantime, the plaintiffs continue to look for jurisdictions from other latitudes of the planet where Chevron's assets are located. The affected peoples' mission is to pursue the corporation's assets until it pays the fine stipulated by the court ruling and the damage done is repaired.

After 21 years of court battles, Chevron continues to act with impunity, while the victims of its activities in Ecuador continue to wait for justice and compensation. The important work carried out by the *Unión de Afectados por las Operaciones de Texaco en el Ecuador* coalition includes preparing the 30,000 affected men and women to collectively manage in the near future the compensation that is legally and ethically due to them.



Protest in the streets of Lago Agrio, July 2007 / UDAPT

Notes

- 1 An earlier version of this document was presented as a declaration to the United Nations Human Rights Council by the Europe-Third World Centre (CETIM), which was registered as document number A/HRC/26/NGO/3. Laurent Gaberell's contributions were fundamental during the elaboration of the said version.
- 2 In 1999, the process to merge Chevron Corporation with Texaco Inc. was launched and on 9 October 2001, the merger was finalized. It was at that time that the new corporation adopted the name of Chevron-Texaco Corporation. Later, in 2005, it eliminated "Texaco" from its name and kept only the Chevron Corporation. In the article, we will use Texaco to refer indiscriminately to Texaco Inc. or Texaco Petroleum Company, its subsidiary in Ecuador. When referring to facts that occurred after Texaco and Chevron's merger was final, we use "Chevron" to refer to the Chevron-Texaco Corporation or the Chevron Corporation.
- 3 See the second "considering" of the authorisation to conclude the contract for the exploration and exploitation of hydrocarbons, published in Official Registry (Registro Oficial) no. 370 on 16 August 1973.
- 4 On 1 January 1965, the Texaco and Gulf companies signed a joint operating agreement. The said contract established that Texaco was the operating company. However, the other companies – that is, Gulf and later CEPE – had the right to operate in the area and could do so for a two-year period. In practice, neither Gulf nor CEPE exercised this right and therefore, up until 6 June 1990, the only operating company acting exclusively in the entire area was Texaco. It is worth noting that the Ecuadorian state enterprise CEPE, which is now called Petroecuador, only acquired 25% of shares in early 1974, as authorised by clause 52.1 of the contract signed on 16 August 1973 and published in Official Registry no. 370.
- 5 The exploration phase is the first phase of activities that oil corporations carry out in extraction zones. During this phase, a corporation conducts geophysical surveys to determine if oil exists or not. It later drills exploratory holes to determine the quality and the quantity of hydrocarbons in the reservoir. In this case, there was no clearly defined time period for this phase, as the corporation continued to expand into new areas in search for more oil. However, the most intense period of the exploration phase was between 1965 and 1970.
- 6 See page 181 of the first instance ruling handed down by Judge Nicolás Zambrano on 14 February 2011.
- 7 Ibidem, page 101.
- 8 This was recognised by the trial judge on page 181 of the first instance ruling and was later ratified by the Sucumbíos appellate court and the National Court of Justice of Ecuador.
- 9 For example, Article 12 of the health code, in effect since 1971, stipulates: "Nobody shall release into the air, the soil or the water solid, liquid or gaseous residues without having first treated them in order to render them harmless to health." See also Article 22 of the law on water, in effect since 1972, which stipulates that "All water contamination that affects human health or the development of the flora and fauna is prohibited".
- 10 In clause 46.1 of the contract signed between Texaco and the state of Ecuador on 16 August 1973, published in Official Record no. 370, Texaco committed to implementing the best techniques to avoid affecting the ecosystem, contaminating water and affecting the flora and fauna.

- 11 In 1962, T. Brink, an engineer working for Texaco Inc., wrote about the risks of formation water in a book entitled *Principles of the Oil and Gas Industry* published by the American Petroleum Institute. In this book, the dangers of dumping formation water into sources of water for human consumption – as Texaco did in Ecuador – were discussed.
- 12 Already back in 1974, Texaco was working on several patents for improved re-injection equipment that if used in Ecuador, would have prevented 60.5 billion litres of waste water from being dumped into the rivers of the Ecuadorian Amazon region.
- 13 The earliest re-injection equipment to arrive in Ecuador was in 1998, well after Texaco had left the country. Before that, the system designed and used by Texaco dumped all waste water directly into the streams.
- 14 Correspondence from 25 June 1980 signed by Texaco's superintendent in the Ecuadorian Amazon addressed to Rene Bucaram, Texaco's representative in Ecuador at the time. In this correspondence, Texaco analysed the problem of the pools, but came to the conclusion that implementing a system to install geomembranes to prevent chemicals from leaking would cost the corporation more than 4 million dollars and so, to avoid spending the money, they decided to continue operating using the pools with no protective coating lining.
- 15 In relation to this, there are publications in the *El Comercio de Ecuador* newspaper in 1966 that tell of the existence of this indigenous group. In several photographs, people from this ethnic group can be seen with Catholic missionaries. Other publications also exist, such as, for example, *Los Huaoranis* by Miguel Angel Cabodevilla and other missionaries who confirm the disappearance of this indigenous group.
- 16 This was taken from a series of videos recorded by Chevron workers as part of the pre-trial inspections in Ecuador's northern amazon in 2004-2007. The video tapes were later anonymously delivered to Amazon Watch. See: <http://amazonwatch.org/news/2015/0408-the-chevron-tapes>
- 17 During the court trial in Ecuador, with the help of several experts, more than 80,000 physical and chemical analyses of the water, soil and sediments were carried out. In the absolute majority of these samples, elements such as benzene, chromium VI, toluene and others were found. All of this information is part of the trial record or ruling in Ecuador.
- 18 Open letter from Dr. Rodrigo Pérez Pallares, Texaco Petroleum Company's legal counsel, to the director of the *Vistazo* magazine on 5 March 2007, published in the *El Comercio* newspaper on 16 March 2007, first section, page 6.
- 19 SAN SEBASTIAN, M. (2000). *Informe Vana Curi: Impacto de la actividad petrolera en la salud de poblaciones rurales de la Amazonia Ecuatoriana*. Edit. Icaria. Barcelona, Spain.
- 20 See Richard Cabrera's expert report submitted to the Court of Sucumbíos on 1 April 2008, namely annexes F, J and M.
- 21 *Forum non conveniens* is a legal doctrine in the United States according to which either party can plead to claim that the case is not convenient in territorial terms. It also means that judges in a given jurisdiction are not knowledgeable about and do not have the jurisdiction to resolve a dispute.
- 22 See the third section of the trial record presented to the Court of Sucumbíos in Ecuador.
- 23 The contracts are not available to the public, but it is publicly known that the president of the Republic of Ecuador, Rafael Correa, has denounced the consequences of one contract signed a decade ago by a company of the

- Armed Forces to provide security and intelligence services to the transnational oil company Chevron. See www.andes.info.ec/es/actualidad/presidente-correa-denunciacontrato-empresa-militar-ecuatoriana-brinda-servicios.
- 24 See page 53 of the ruling of the first instance handed down by Judge Nicolás Zambrano on 14 February 2011.
- 25 These documents were not available to the victims during the trial against Chevron. They were obtained by the Republic of Ecuador through discovery. A copy of the documents are now part of the plaintiffs' dossier against Chevron in Ecuador.
- 26 In the fourteenth item of the first instance ruling handed down by Judge Nicolás Zambrano, on pages 184 and 185, the judge ordered the oil company to give a public apology as a reparation measure.
- 27 See the National Court of Justice's ruling on 13 November 2013, in trial no. 174-2012.
- 28 Chevron filed a lawsuit under the Racketeer Influenced and Corrupt Organization Act (RICO) on 1 February 2011 against those who signed the complaint against it and their lawyers and experts. It accused all of the people of having created an illegal association to extort money from the corporation. The corporation's lawsuit has advanced, especially in relation to the legal team.
- 29 The plan was written by Mr. Sam Singer, a famous US consultant, and sent to Mr. Kent Robertson, senior director of the Chevron Corporation in San Francisco, California. The plaintiffs obtained this document through discovery in the United States of America.
- 30 Chevron filed various lawsuits in the United States and Gibraltar against all of the people and companies that, in one way or another, have invested some funds in this cause. To ensure that its strategy worked, it hired dozens of lawyers in every jurisdiction to prosecute funders. After a certain amount of time, it forces funders to sign an agreement in which the funder says that the case is a fraud and commits to no longer funding the cause in favour of the affected people of Ecuador. For examples of this, see what happened to Mr. Russ Deleon on 15 February 2015 (<http://fortune.com/2015/02/16/keyfunderecuadorians-suit-vs-chevron-quits>), or with the British firm Woodsford Litigation Funding on 5 May 2015 (<http://www.telegrafo.com.ec/politica/tag/Woodsford%20Litigation%20Funding%20Limited.html>)
- 31 Testimony given under oath on 10 June 2013 by Mr. Daniel Karson, representing Kroll Inc., during the Chevron Corp. versus Steven Donziger, et. al. trial, 1:11-cv-00691-LAK-JCF.
- 32 Testimony given under oath on 17 November 2012 before a public notary in Chicago, Illinois, United States, by Mr. Alberto Guerra Bastidas, former judge disbarred for corruption.
- 33 The lawsuit against the victims was filed under the Racketeer Influenced and Corrupt Organization Act. In March 2014, New York judge Lewis Kaplan ruled in Chevron's favour and forbid the Ecuadorean victims of Chevron to serve their sentences in the United States. For a brief description of Chevron's misconduct during the trial, see document N° 1850, pp. 11-20 of the RICO case. See also: <http://www.earthrights.org/es/blog/una-verdad-innecesaria-reflexiones-sobre-lo-que-nunca-se-conto-en-el-caso-rico>
- 34 On 14 October 2008, Mr. Sam Singer sent a complete plan to one of Chevron's directors, Kent Robertson, which describes a systematic attack launched against the Ecuadorian state and the plaintiffs in order to avoid paying the legal fine. The message is part of the plaintiffs' dossier.
- 35 In 2011, in a publication written and edited by Nick Mathiason from Publish What you pay Norway, Chevron was identified as one of the most opaque corporations in the world.

- 36 All of the bank certificates have been included in the dossier submitted to the judge in Sucumbíos. The plaintiffs have a copy of the dossier.
- 37 "Exequatur" is a universally accepted legal procedure through which a party in a case, if necessary, has the legal option to appeal to a court in a foreign country and carry out the procedure to obtain recognition for the ruling in a state that is different from the one in which the ruling was handed down. A judge that is familiar with the exequatur procedure must assess whether the ruling is compatible with the laws of the country where the demand for recognition has been filed. This refers especially to ensuring that the ruling does not contain any element that is contrary to the legislation nor the jurisdiction of the country where the claim has been laid. It also requires that the party against whom the ruling has been made be duly notified and that the ruling is being enforced according to the laws of the state where it was handed down.
- 38 In view of the absence of the oil corporation's assets in Ecuador, the plaintiffs appealed to the Argentine justice system and succeeded in having an Argentine judge order an embargo on Chevron's assets and in favour of the plaintiffs from Ecuador. On 4 June 2013, the Supreme Court of Argentine lifted the embargo that the plaintiffs from Ecuador had legally obtained in first and second-level courts in Argentina. On 15 July 2013, Chevron's CEO Mr. Watson met with the President of Argentina in the Casa Rosada to sign the contract for the company's investment in the Vaca Muerta reservoir. See the press release published in the El Mundo newspaper: <http://www.elmundo.es/america/2013/07/17/argentina/1374023986.html>
- 39 See the ruling handed down by the Ecuadorian judge on 15 October 2012, which was ratified on 25 October of the same year. In the ruling, the judge ordered the embargo to be imposed in Argentina and Colombia.
- 40 Wikileaks (2006). Cable 06QUITO705: Chevron close to filing BIT notice. 21 March <https://wikileaks.org/cable/2006/03/06QUITO705.html>
- 41 Wikileaks (2008). Cable 08QUITO323: Chevron disputes report by Ecuadorian environmental expert. 4 July <https://wikileaks.org/cable/2008/04/08QUITO323.html>
- 42 Wikileaks (2009). Cable 09QUITO795, GOE response to Chevron Tapes. 2 September. <https://wikileaks.org/cable/2009/09/09QUITO795.html>
- 43 Wikileaks (2009). Cable 09QUITO860, Chevron Tapes Backlash. 10 September. <https://wikileaks.org/cable/2009/09/09QUITO860.html>

The Pacific Rim-OceanaGold Case against El Salvador: impunity and violations of human rights, democracy and national sovereignty¹

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The Pacific Rim Mining Corporation versus El Salvador case

The Vancouver-based Pacific Rim mining corporation has been trying to gain access to gold deposits in northern El Salvador for close to a decade. In 2009, Pacific Rim launched a multi-million dollar lawsuit against the government of El Salvador at the World Bank arbitration tribunal, the International Centre for Settlement of Investment Disputes (ICSID). In its complaint, Pacific Rim claimed that the Salvadoran government had refused to grant it a license to begin exploitation activities for its El Dorado mining project. In November 2013, the Australian-Canadian mining corporation OceanaGold² acquired Pacific Rim to save it from near bankruptcy. If OceanaGold is unable to come to an agreement with the Salvadoran government, it will continue to pursue the lawsuit. Yet, OceanaGold is hedging its bets based on shaky ground. Pacific Rim never fulfilled all of the necessary requirements established by El Salvador's mining law to obtain its permit. Furthermore, communities in the Department of Cabañas, where the mine is to be located - and most Salvadorans in general - do not want mining in their country. As the smallest and most densely populated country in Latin America, where signs of water stress are already evident, Salvadorans are unwilling to face the risks involved in industrial metal mining. The corporation's lawsuit aims to undermine public debate and limit democratic policy-making in the country.

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Violations of environmental rights and public consultations in El Salvador

According to Pacific Rim, its mining operations will not affect El Salvador's water supply.³ However, it has never undertaken the studies needed to determine the potential impacts of the El Dorado project, much less identify how to mitigate them. Local residents in Cabañas reported negative impacts brought on by Pacific Rim's exploration activities, which included reduced access to drinking water, contaminated water, impacts on livestock and adverse health effects.⁴ Rather than responding adequately to the population's concerns about the use of cyanide for gold processing and other effects of mining activities, Pacific Rim launched a "green mining" campaign.⁵ As part of this campaign, company representatives held public meetings in Cabañas, during which they went so far as to attempt to convince residents that cyanide was safe enough to drink.⁶ In 2012, Salvadoran researchers from the Instituto de Vulcanología de la Universidad de El Salvador (Institute of Volcanology of the University of El Salvador) and the Association for Economic and Social Development of Santa Marta (ADES, for its acronym in Spanish) found in the sediment of two rivers in the area where Pacific Rim was operating concentrations of arsenic that were above permissible levels according to Canadian standards.⁷ Whether this finding is due to natural phenomena or is the result of recent mining activity, it raises more questions regarding the impacts that the project has already had, or could have if allowed to advance in the future.

Experiences elsewhere in El Salvador, such as the Commerce Group case involving water pollution, also fuel local scepticism.⁸ Instead of taking responsibility for the damage it caused, Commerce Group filed a complaint at the ICSID against the government of El Salvador for having suspended its mining permits due to these environmental concerns. However, due to its lack of liquidity, Commerce Group lost the case.⁹

Society's response

Movements fighting to defend the environment and water in El Salvador have waged one of the most successful social struggles in recent years, making it the first country in the hemisphere to halt metal mining activities. Pacific Rim accuses some "rogue" or "anti-development" NGOs of being behind the campaign against mining,¹⁰ when in fact, as a recent survey shows,¹¹ opposition to mining in El Salvador is broad-based and even extends to the highest ranks of the Catholic Church.

Local opposition emerged to support the communities' resistance to Pacific Rim in Cabañas and eventually gave rise to a nation-wide movement against mining.¹² The National

Coalition against Mining (Mesa Nacional Frente a la Minería Metálica, known as “La Mesa”) brings together hundreds of communities and thousands of people throughout the country. Many respected environmental and grassroots organizations participate in the Mesa, which has earned strong international recognition.¹³ The International Allies against Mining in El Salvador network coordinated a month of solidarity with the struggle of the Salvadoran peoples in September 2014, during which support actions and protests were staged in front of World Bank offices in Australia, Canada, the Philippines, the United States and El Salvador itself. These actions aimed to show solidarity with the Salvadoran movement during the case hearing at the ICSID, which was ironically held on September 15th – El Salvador’s Independence Day.

Cancellation of the exploitation permit by El Salvador’s government and Pacific Rim’s accusations on corruption

Pacific Rim has stated plainly and simply that the El Dorado mine did not receive a permit because the company refused to bribe ex-president Tony Saca. According to Tom Shrake, President and CEO of Pacific Rim Mining Corp, “I think it’s all about corruption. I think we were being squeezed by Saca. Certainly, he has that history. We don’t pay to play.”¹⁴ Also, according to Catherine McLeod-Seltzer, Chairman of the Pacific Rim Board of Directors, “We invested money under their laws and they didn’t follow their laws. It’s very simple. They have a mining code, we followed it...[but] we didn’t offer to line their pockets”.¹⁵

In reality, though, in 2008 and 2009, both Salvadoran presidents - former and current - publicly committed to not approving any mining project during their terms, and to not extending Pacific Rim’s exploitation permit, as Pacific Rim had not fulfilled all the necessary requirements for obtaining a mining permit. First, it never completed nor submitted a feasibility study.¹⁶ Second, it did not confirm that it had purchased or obtained authorization to work on the land on which it aimed to develop the proposed mine.¹⁷ Furthermore, the company’s environmental impact assessment and environmental permit were never approved, both of which are necessary to apply for an exploitation permit.¹⁸

Violence in Cabañas and attacks on environmental activists

As local opposition to the mine in Cabañas emerged, local community organizations, priests, and journalists came into direct conflict with local politicians who supported Pacific Rim.¹⁹ Conservationist Richard Steiner noted in a report that substantial amounts of company funds were used for “local initiatives aimed at winning local consent for the project”.²⁰ Discord in Cabañas brought Steiner to conclude that the company’s activities

Demonstration in El Salvador
against Metallic Mining, 2014



San José Las Flores,
Popular consultation
on Metallic Mining, 2014



led to the creation of “corrosive communities,” in which “an intense sociopolitical polarity has developed between proponents and opponents of mining, which lead to social tensions, emotional stress, disintegration of civil society, political turmoil, and violence.”²¹

Since 2006, there have been reports on threats against environmental and human rights activists,²² which materialized in the years that followed.²³ In June 2009, the body of community leader and environmental activist Marcelo Rivera was found in a well, with signs of torture, two weeks after he disappeared.²⁴ Immediately after that, threats were issued against local activists such as Father Luis Quintanilla, who was attacked twice in July 2009.²⁵ Reporters at the community-based radio station, Radio Victoria, constantly receive threats.²⁶ In December 2009, Ramiro Rivera Gómez, vice-president of the Cabañas Environmental Committee, was shot to death.²⁷ Six days later, activist Dora Alicia Recinos Sorto and her unborn child were murdered.²⁸ In late 2010 and early 2011, two gang members with information about Marcelo Rivera’s murder were killed.²⁹ In June 2011, Juan Francisco Durán Ayala, a volunteer at the Cabañas Environmental Committee (Comité Ambiental de Cabañas), was also assassinated.³⁰ Shortly after the murders of Marcelo Rivera and Dora Alicia Sorto in 2009, the deputy director of investigation for the Salvadoran National Civil Police Howard Cotto remarked, “Even if we suggest that the motive of all the crimes have to do with mining or not... what is clear is that in all the areas where Pacific Rim began mining exploration, high levels of conflict occurred.”³¹ The Salvadoran Human Rights Ombudsman has also stated that the acts of violence “are related to each other, which enables us to infer that they are also linked to the victims’ work to defend the environment”.³² Immediately after the murder of Juan Francisco Durán in 2011, Salvadoran President Mauricio Funes called for a full investigation and offered “more security to the environmental movement, because its efforts and demands are just.”³³ However, the justice system has not caught the intellectual, and in some cases material, authors of these crimes.³⁴

Pacific Rim vs. El Salvador: a paradigmatic case of investor-State arbitration

As we mentioned earlier, Pacific Rim is using the rules of investor-State arbitration to subvert the democratic and national debate on mining in El Salvador – a matter that should not be decided by the World Bank’s ICSID, as over 300 organizations from around the world declared in a letter to World Bank’s President.³⁵ In an attempt to take advantage of a procedure of the Dominican Republic-Central America Free Trade Agreement (CAFTA-DR) to file a complaint against El Salvador at the ICSID, Pacific Rim engaged in “forum shopping”³⁶ and moved its subsidiary from the Cayman Islands to Nevada, United States. The manoeuvre failed. Even so, the ICSID permitted the company to proceed with

the case under El Salvador's law on investment, which allowed corporations to resort to international tribunals.³⁷ The wide range of Salvadoran organisations opposed to mining in their country do not have a voice in this tribunal's legal proceedings. Arbitrators only consider whether investment protection laws have been violated or not. The company is demanding \$301 million.³⁸ The money El Salvador has already spent on its defence could have been put to much better use. For instance, it could have provided compensation for the communities affected by the impacts of the corporation's activities.

The OceanaGold consortium, which acquired Pacific Rim, is betting on obtaining a verdict in its favor and collecting from El Salvador's Treasury the profits that Pacific Rim claims it did not receive since the government did not grant it an operating license for the El Dorado mine in Cabañas. This case illustrates the need to address one of the most anti-democratic aspects of the world economic order: the rules governing international investment. As Vidalina Morales, representative of the Mesa, pointed out,

*"Pacific Rim did not comply with regulations and environmental laws; its exploration activities caused major ecological damage, economic losses, social conflicts and corruption. In other words, they wronged the country and, therefore, they must be judged. But it's the complete opposite. The company is the one that is suing the Salvadoran State. The roles are reversed: the assailant is suing the victim."*³⁹

It is this inversion of justice that makes Pacific Rim's case against El Salvador so paradigmatic. It demonstrates how, in a context marked by the unbridled pursuit for natural resources at the global level, the governments of countries that seek to ensure that their peoples benefit justly from and do not suffer due to extractivist projects' harmful effects on the environment are increasingly forced to come up against transnational corporations. In this struggle over rights and the benefits of natural resources, transnational corporations are increasingly resorting to international arbitration tribunals to sue governments directly by using the rules of 'free-trade' agreements (FTAs) and thousands of bilateral investment treaties (BITs).⁴⁰ Transnational corporations have at their disposal an institutional framework that allows them to extract exorbitant profits via the international arbitration tribunals. A growing number of this kind of lawsuits is being launched by corporations involved in the oil, mining and gas industry, and in Latin America in particular. Up until March 2013, there were 169 investor-State cases at the most frequently used investment dispute settlement institution: the World Bank's ICSID. Of these cases, 60 (35.7 per cent) are related to disputes over oil, mining or gas. In 2000, there were only three pending cases at the ICSID in relation to these issues. In 2012 alone, 48 new cases were registered with the ICSID; 17 of them (35 per cent) are related to extractive industries and all are against developing countries.



Campaign material of the Salvadoran and Latinamerican campaign against Mining

In the end, who are the profits from mining really for?

One of the most common arguments to justify mining projects is that they will bring “development”, jobs and economic benefits. According to Barbara Henderson, Pacific Rim’s Corporate Secretary and Vice President for Investor Relations,

“El Dorado is a rare opportunity for El Salvador and her citizens. To turn its back on a ready, willing and eager investor that wants to build an environmentally safe operation in one of the poorest regions of the country is mind-boggling. Are you aware that the El Dorado mine would be by far the biggest taxpayer in the country, and employ several hundred people with 4-5 times that many gaining in employment in spin-off jobs? El Dorado is a win-win proposal. I assure you, our conscience is very clear.”⁴¹

In relation to these affirmations, we have documented that, in fact, any earnings generated by the El Dorado project would be repatriated to the corporation’s headquarters and shareholders. Pacific Rim structured its company in a way that helps it avoid paying taxes. It originally set up a subsidiary to manage its project in El Salvador in the Cayman Islands, as a way of avoiding paying taxes on any revenues generated by the El Dorado mine in both El Salvador and the United States. It was not until 2007 that Pacific Rim moved its headquarters to the United States, which it did in order to take advantage of the free trade agreement between the US and Central American countries to file the litigation at the ICSID.

Up until now, the lawsuit has cost El Salvador five million dollars – an amount that could very well have been spent on benefits for the country’s population in need. Five million dollars would be enough to offer literacy classes for 140,000 adults for a year, or to feed 60,570 families housed in temporary shelters for two weeks during a natural disaster.⁴² It is predicted that the lawsuit will cost each side at least US\$12 million in the end.

Conclusions

1. Pacific Rim’s activities in the department of Cabañas have generated conflicts and exacerbated divisions, which have led to a series of threats, acts of intimidation and violence. These acts have not yet been fully investigated, and those who directly and indirectly perpetuated the crimes continue to go unpunished. An international body with the power to provide an effective remedy to the victims is therefore vitally needed, as is an impartial and exhaustive investigation into how transnational corporations use political pressure and local patronage to further their interests, thereby fueling corruption and violence, rather than meeting regulatory requirements and respecting the decisions of affected communities.
2. An international agreement that obligates transnational companies to present environmental and social impact assessments in order to obtain approval for investment projects and establishes mechanisms to monitor compliance with this requirement is necessary.
3. In light of the fallacies in promises that mining will generate economic benefits for all, an international agreement that clarifies how wealth generated by such activities may or may not benefit local communities or how this wealth will be shared with the said population is required.
4. The Pacific Rim *versus* El Salvador case confirms the urgent need for a binding agreement on transnational corporations to ensure effective compensation for the victims of human rights violations and to address the imbalance in the international legal order caused by the excessive rights that “free” trade and investment treaties bestow on foreign investors.

Notes

- 1 This article is based on: Moore, J.; Broad, R.; Cavanagh, J.; et. al. (2014). Debunking Eight Falsehoods by the Pacific Rim / OceanaGold in El Salvador. http://www.ips-dc.org/reports/debunking_eight_falsehoods_by_pacific_rim_mining
- 2 See Blair, A. (2013). OceanaGold bails out Pacific Rim Mining, but El Salvador is not for sale. 2 December. <http://politicsofpoverty.oxfamamerica.org/2013/12/oceanagold-bails-out-pacific-rim-mining-but-el-salvador-is-not-for-sale>
- 3 According to Catherine McLeod-Seltzer, Chairman of the Pacific Rim Board of Directors, "The rivers and water are chemical laden. Why are they asking all these environmental things of us when they don't have them in their own economy? Our process would actually end up with cleaner water ... These people purport to be environmentalists, but they're not. They are anti-development. They are not pro-environment, if they were, they would support this mine." Wells, K. (2013). High Stakes Poker. The Sunday Edition. Canadian Broadcasting Corporation. 11 January. <http://www.cbc.ca/player/Radio/The+Sunday+Edition/Full+Episodes/ID/2324862711>
- 4 Center for International Environmental Law (CIEL) (2011). Presentation of the Amicus Curiae Report to Pac Rim Cayman LLC v. Republic of El Salvador, ICSID Case No. ARB / 09/12. 20 May.
- 5 Wallach, J. (2009). Pacific Rim Silent in Wake of Violence against Anti-Mining Protesters in Cabañas, El Salvador. Upside Down World. 5 August. <http://upsidedownworld.org/main/el-salvador-archives-74/2037-pacific-rim-silent?format=pdf>
- 6 Broad, R. and Cavanagh, J. (2011). Like Water for Gold in El Salvador. The Nation. 1-8 August. <http://www.thenation.com/article/162009/water-gold-el-salvador>
- 7 See: ADES, Ingeniería Sin Fronteras, Agencia Española de Cooperación Internacional (AECID) and Agencia Catalana de Cooperación al Desenvolupament (ACCD). (2012). Sedimentos en el Río Titihuapa, in Plan Director de Calidad y Cantidad en la subcuenca del Río Titihuapa. 28 July.
- 8 See Ventura Cortés, C. and Díaz de Quitanilla, C. (2011). Caracterización de la Mortalidad Vinculada a Impactos Ambientales en los Pobladores que Viven en los Alrededores de la Mina San Sebastián, Santa Rosa de Lima, Departamento de la Unión; and Ministry of Environment and Natural Resources (MARN). (2012). MARN confirma presencia de cianuro y hierro en Río San Sebastián. La Unión. 15 July. http://www.marn.gob.sv/index.php?option=com_content&view=article&id=1462%25marn.confirma-presencia-decianuro-yhierro-en-río-san-sebastian-launión&catid=1%25noticias-ciudadano&Itemid=77
- 9 Commerce Group Corporation (2009). Notice of Arbitration to the International Centre of Settlements for Investment Disputes, July 2. <http://www.commercegrouppcorp.com/images/cafta/002.07.02.09.Notice.of.Arbitration%5B1%5D.pdf>
- 10 Catherine McLeod-Seltzer, from Pacific Rim's Board also stated, "anti-development NGOs fomented anti-mining opposition by spreading lies. [I'm talking about groups like] OXFAM. They have factions in some of these areas that are very anti-development. Church groups ... I do not think they control their people on the ground. I think these are probably rogues that size upon an opportunity." Wells, K. (2013), op. cit.
- 11 In 2008, the Universidad Centroamericana (Central American University, or UCA for its acronym in Spanish) released the results of a survey in which 62.4 per cent of the population in the areas affected by mining was opposed

- to mining. The Salvadoran Episcopal Conference is one of the groups that publicly voiced their opposition to mining in El Salvador. According to Archbishop Fernando Saenz Lacalle (Archbishop from 1995 to 2008), "It is not right to risk the population's health only for the few who do not live here can take 97 per cent of the juicy profits and leave us with 100 per cent of the cyanide." The citation is from Moore, J.; Broad, R.; Cavanagh, J.; et. al. (2014), op. cit., page 6. Also see the website of the Archdiocese of San Salvador: <http://www.arzobispadosan-salvador.org/index.php/sobre-nosotros>
- 12 In addition to concerns about the aforementioned impacts on the water, during exploration drilling, employees of Pacific Rim trespassed on local residents' private property. A series of confrontations with a range of negative effects led the owners to refuse to sell their land to the corporation, and contributed to the emergence of local and national opposition. See Moore, J.; Broad, R.; Cavanagh, J.; et al (2014), op. cit.
- 13 In 2009, the coalition received the prestigious, international Letelier Moffitt Human Rights Award from the Institute for Policy Studies in Washington, D.C. (see: http://www.ips-dc.org/events/letelier-moffitt_awards/). In 2011, over 260 international organizations, including the International Trade Union Confederation (ITUC), joined with the La Mesa in the call for the World Bank's ICSID to dismiss the lawsuit filed by Pacific Rim (see: http://www.ips-dc.org/articles/open_letter_to_world_bank_officials_on_pacific_rim-el_salvador_case). Also in 2011, Salvadoran activist Francisco Pineda of the Comité Ambiental de Cabañas (Cabañas Environmental Committee) won the prestigious Goldman Environmental Prize for having been among those who "led a citizen's movement that stopped a gold mine from destroying El Salvador's dwindling water resources and the livelihoods of rural communities" across the country. See: <http://www.goldmanprize.org/2011/southcentralamerica>.
- 14 Wells, K. (2013), op. cit.
- 15 Ibid.
- 16 Steiner, R. (2010). El Salvador – Gold, Guns, and Choice: the El Dorado gold mine, violence in Cabañas, CAFTA claims, and the national effort to ban mining. <http://www.walkingwithelsalvador.org/Steiner%20Salvador%20Mining%20Report.pdf>
- 17 Center for International Environmental Law (CIEL) (2011), op. cit.
- 18 Steiner, R. (2010), op. cit.
- 19 The right-wing ARENA party has controlled the majority of local governments in Cabañas since, at least, the time when environmental and human rights activists began to receive threats. Details on the 2006 election results for the department of Cabañas, during which the ARENA party won six of nine municipalities, can be seen on the interactive map at: <http://www.elsalvador.com/especiales/2006/elecciones/home/index.asp>
- 20 Steiner, R. (2010), op. cit., page 21. This report indicated that several payments were made directly to several mayors in the region and were used for local things such as "projects, parties and significant discretionary funding". Furthermore, local mayors would be responsible for managing the royalties from the mine, had it began to operate.
- 21 Ibid., page 19.
- 22 Doctors for Global Health (2012). Radio Victoria: chronology of threats and actions. http://www.dghonline.org/files/page_attachments/RADIO-VICTORIA-CHRONOLOGY-2011.pdf
- 23 Washington Office on Latin America (2011). Alarming Series of Violent Acts in Cabañas, El Salvador. 8 February. http://www.wola.org/publications/alarming_series_of_violent_acts_in_cabanass_el_salvador
- 24 Berríos, H. (2009). Ramiro Rivera Shot to Death in Cabañas. Upside Down World. 21 December.

- 25 Wallach, J. (2009), op. cit.
- 26 El Mercurio Digital (2011). El Salvador: Radio comunitaria en la mira. 12 July. <http://www.elmercuriodigital.net/2011/07/el-salvador-radio-comunitaria-en-la.html>; and Berríos, H. (2009), op. cit.
- 27 Steiner, R. (2010), op. cit.
- 28 See: <http://www.fidh.org/es/americas/El-Salvador/Asesinato-de-la-Sra-Dora-Alicia>
- 29 Voices on the Border (2011). Another Wave of Violence in Cabañas. 5 January. <http://voiceselsalvador.wordpress.com/2011/01/05/another-wave-of-violence-in-cabanas>
- 30 SHARE Foundation (2011). President Funes condemns murder of anti-mining activist. 7 July.
- 31 Ayala, E. (2010). "Activists Murdered". Latin America Press. 4 February. <http://lapress.org/articles.asp?art=6050>
- 32 CIEL (2011), op. cit.
- 33 SHARE Foundation (2011), op. cit.
- 34 In fact, according to the Minister of Security, "Impunity in homicides reaches 96%." See Labrador, G. and Sanz, J. L. (2012). La impunidad en los homicidios alcanza el 96%, según ministro de Seguridad. El Faro. 22 February. <http://www.elfaro.net/es/201202/noticias/7669>
- 35 See: <http://www.stopesmining.org/jj25/index.php/campaigns/letter-to-the-world-bank>
- 36 "Forum" or "venue shopping" is the informal name given to the practice adopted by some litigants to have their legal case heard in the court thought most likely to provide a favorable judgment.
- 37 Since then, this law was amended to stop transnational corporations from bypassing Salvadoran courts and taking cases directly to the ICSID. See Cornejo, E. (2013). Consenso para reformar Solución de Controversias de la Ley de Inversiones. La Asamblea Legislativa de la República de El Salvador. 9 de julio. <http://www.asamblea.gob.sv/noticias/archivo-de-noticias/consenso-para-reformar-solucion-de-controversias-de-la-ley-de-inversiones#.UdyTHr6-dzg.facebook>
- 38 See: http://www.minec.gob.sv/index.php?option=com_phoca_download&view=category&id=26:otrosdocumentos&Itemid=122
- 39 This quote from Vidalina Morales is taken from the acceptance speech she made on behalf of the National Coalition against Mining during the Letelier Moffitt Human Rights Award event held in Washington, DC on 17 October 2009. <http://www.youtube.com/watch?v=zlsFnps0mqg>
- 40 Anderson, S. and Perez Rocha, M. (2013). Mining for Profits in International Tribunals: lessons for the Trans-Pacific Partnership. Institute for Policy Studies. <http://www.ips-dc.org/wp-content/uploads/2013/05/Mining-for-Profits-2013-ENGLISH.pdf>
- 41 Early, A. and Morrill, J. (2012). 'Environmentally Responsible?': 'Rogue NGOs' tackle Pacific Rim in El Salvador. MRZine. 7 November. <http://mrzine.monthlyreview.org/2012/em071112.html>
- 42 FESPAD (2012). The Costs of ICSID Arbitration and the Consequences for the Enjoyment of Social Rights in El Salvador. February. <http://justinvestment.org/2012/02/the-costs-of-icsid-arbitration-and-the-consequences-for-the-enjoyment-of-social-rights-in-el-salvador-1>

Glencore and Mining in Peru: avoiding responsibility

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Two years ago, in *Impunity Inc.: Reflections on the “super-rights” and “super-powers” of corporate capital*,¹ we dedicated an entire chapter to the Anglo-Swiss corporation Glencore. We delved into Europe’s social metabolism to explore the European Union’s substantial dependency on increasingly strategic raw materials, the large majority of which are located in impoverished countries in Latin America and Africa. More specifically, we highlighted how Glencore, a commodities giant specialised in exploiting them, benefits from this dependency. We also brought light to how exports to Europe maintain these regions in a primary commodity exporter model, and thus in poverty, while grave social and environmental impacts are generated locally for which neither the corporation nor its affiliates assume responsibility. Cases of mining in Colombia (El Cerrejón and Prodeco), Bolivia (Sinchi Wayra) and the Democratic Republic of Congo (several in the province of Katanga) were examined, as was agribusiness’ evolution in MERCOSUR countries. It was shown how the signing of “free trade” agreements and treaties between the EU and various countries and regional blocks favours the operations of transnational corporations such as Glencore. Finally, we discussed the corporation’s activities in other areas of the economy, namely its role in financial speculation on raw material commodities. In this article, we take up the subject again, this time exploring the generation of socio-environmental conflicts in Peru in order to further our reflection on the complex architecture of impunity that provides protection for this kind of company.

In Peru, the third largest zinc and copper producer in the world,² Glencore controls or participates in six mega-mining complexes. Visiting the company’s webpage on its activities in this country is like browsing the website of UNICEF or some development NGO. However, as is the case in the majority of countries where the corporation operates, the economic figures and highly publicised corporate social responsibility policies contrast with the socio-environmental conflicts it generates.³ Populations that are vulnerable from a socioeconomic point of view – peasant and indigenous communities and low-skilled workers – are particularly affected. It is important to remember that in

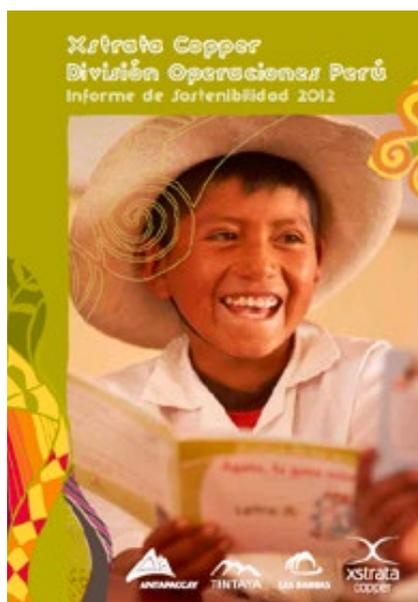
* Reviewed by Stephan Suhner, coordinator of the Swiss-Colombian Working Group (ASK).

Some recent developments on the corporation

After its merger with the fourth largest mining company in the world,⁴ Xstrata, and its acquisition of Canadian agribusiness giant Viterro, Glencore became one of the biggest corporations in the raw materials trade. It currently produces and trades 90 commodities (minerals and metals, fossil fuels and agricultural commodities). It operates in 50 countries and declares that it employs nearly 181,000 people. Glencore CEO Ivan Glasenberg continues to play a predominant role, as he owns 8.43% of the company. Other institutional shareholders include Qatar Investment Authority (8.99%), Norway's Government Pension Fund Global (GPF) (1.92%), BlackRock Investment Management (UK) Ltd. (1.62%) and The Vanguard Group, Inc. (1.52%).⁵

In 2014, the company declared 224 billion dollars in revenues,⁶ which puts it in ninth place on Forbes magazine's ranking of companies with the highest sales volumes in the world.⁷ Its EBIT (earnings before interest and taxes) amounted to 6.7 billion dollars and its net income, 4.3 billion.⁸ The energy raw materials sector (essentially coal and oil) and the agricultural products sector each represent 14% of its earnings.⁹ In the latter, Glencore is active in the production and processing of wheat, soybean and sunflower. According to recent estimates, the company owns or leases 180,000 hectares of land.¹⁰

Glencore earns more than 70% of its profits from the extraction, processing and commercialisation of minerals and metals (copper, zinc, nickel, aluminium, iron ore, gold, silver, cobalt, ferrochrome, platinum, palladium, rhodium and vanadium). Among the minerals and metals that generate major profits for Glencore, copper and zinc stand out in particular, as sales reached 25 billion dollars in 2014. On the global level, the corporation claims that it is, in fact, the number one supplier and third largest producer of copper. That same year, it sold 2.8 million tonnes and produced 1.5 million.¹¹ Practically one third of the money obtained from this metal came from South America (Chile, Peru and Argentina) and 20% from African mines located in the Democratic Republic of Congo (Katanga, Mutanda) and Zambia (Mopani). Its zinc production (1.38 million tonnes) enabled it to make another 7 billion dollars in sales and represented, in terms of volume, 10% of the world's zinc production.¹²



Front cover of Glencore's 2012 Sustainability Report in Peru

the three regions where the company is operating – Cusco, Lima and Ancash – high and very high levels of food insecurity have been found.¹³ In recent years, human development indexes have even fallen in cases such as the one in Ancash. Some recent examples of socio-environmental conflicts follow below.¹⁴

In the province of **Espinar** (Cusco), where Glencore's Tintaya, Coroccohuayco and Antapaccay¹⁵ mining complexes are located, there have been complaints and denunciations from local communities on pollution that puts their own health and that of their livestock at great risk.¹⁶ In 2014, the corporation was fined 83,000 dollars for contamination from a copper concentrate spill, which exceeded acceptable levels according to environmental standards by 3,000%.¹⁷ There have been other cases of contamination, however, where the company does not recognise the damage caused, nor has it been fined for it. This is particularly grave when we consider that the mine is located in a region where farming and livestock raising employs half of the economically active population.¹⁸ In 2011, the Front for the Defence of the Interests of Espinar (Frente de Defensa de los Intereses de Espinar), together with the province's mayor, filed a complaint against the corporation. They based their case on two separate independent studies on the water and health, which confirmed, respectively, that the water was contaminated by heavy metals in doses that are harmful to health, and the presence of highly dangerous concentrations of arsenic, lead, chromium and mercury in the inhabitants' blood. The company denied the results of both studies¹⁹ and the conflict escalated in 2012, when police repression of the communities left three people dead and a hundred injured. The company's premises were then used as a camp to detain prisoners, who denounced having suffered abuse and torture.²⁰ One year later, the Peruvian government produced a new report talking more carefully of environmental pollution associated with Xstrata Tintaya's mining activities.²¹ Glencore continued to state that its operations did not harm the environment in the area. In late 2014, a doctor and co-researcher of the National Health Institute revealed that a key piece of information had been kept from the population: traces of another eleven metals, including uranium, were found in the samples.²² While the company has not made a statement on this last issue, it published a response to the *Corporate Conquistadores*²³ report on the Espinar case in January 2015. It continues to deny the pollution, attributing it to the 'natural mineralisation in the region'. It also admits having an agreement with the police for surveillance services and defends its voluntary corporate social responsibility policies as being exemplary. In sum, it considers that the protests and the criticisms of its operations are unjustified.²⁴

Antamina, the third largest zinc and the eighth largest copper mine in the world,²⁵ offers another example of Glencore's behaviour in terms of socio-environmental responsibility.²⁶ In 2012, a pipeline valve exploded, causing the spill of 45 tonnes of a liquid copper concentrate. As the cloud of toxic gas expanded, the inhabitants of Santa Rosa suffered nausea, dizziness, nosebleeds and fainting. As a result, 200 people had to undergo treatment

and one of them even died. One year later, the National Health Institute proved that the region was still contaminated by heavy metals and one third of the 919 people examined had excessively high levels of copper, lead and arsenic in their blood. According to inhabitants, the number of people affected was significantly higher. The company continued denying its responsibility, arguing once again that the contamination is due to the natural presence of minerals in the area.²⁷

In Peru, Glencore's operations have also generated a substantial number of labour disputes and in several cases, the corporation has attempted to block trade union organising. In 2008, while the process to create a new national metalworkers union, SINTRAMIN (Sindicato Nacional de Trabajadores Metalúrgicos), was underway at the Rosaura mine, of which Glencore owns 85%, Glencore subsidiary Perubar suddenly announced the mine's closure and the firing of 500 workers. It claimed that this was because of losses it incurred from the decline in international prices. The mine was sold to Los Quenuales, another company controlled by Glencore. In spite of these circumstances, workers succeeded in founding SINTRAMIN, through which they filed a suit against the corporation at Peru's Labour Tribunal and Supreme Court. They are also considering the possibility of taking their case to the Inter-American Court of Human Rights. Here is another example: in December 2013, 35 workers of the Tintaya Antapaccay mine were fired. They all belonged to a newly formed trade union. The corporation's lawyer proposed their return to work, but on the condition that they renounce their union membership. In February 2014, a Peruvian Ministry of Labour inspector confirmed that through its hostile actions in this case, the corporation had violated trade union rights.²⁸



Protest against Glencore in Espinar, Peru

Some particularly asymmetrical relations, but before increasingly global resistance

In recent years, Peru has been the stage for the growing criminalisation of people who defend human rights and the community members affected by megaprojects. This occurs in the majority of socio-environmental conflicts generated by large mining complexes in Peru. Vásquez (2013) points out that “a series of legislative reforms [have been adopted] in order to neutralise social protest, but the majority are in the field of criminal law – that is, the objective is clearly to associate social protest with criminal acts”. The fact that the Law on Police allows the Director General of Police to sign agreements with private or public companies “for the provision of extraordinary services that are complementary to police work” is also reason for concern. Vásquez notes that, with this, the police becomes “a security force for private entities, such as the mining companies that are in conflict with the population”. What is worse, we find ourselves before a “militarisation of social conflicts due to the major presence and protagonism of the Armed Forces and the nature of their intervention”.²⁹

This phenomenon does not affect only a handful of cases. According to the Office of the Ombudsman, the number of socio-environmental conflicts has risen from 14 to 148 between 2005 and 2012.³⁰ In 2014, this type of conflict represented 70% of all social conflicts. The regions with the most conflicts are precisely the ones where mining has expanded considerably. It is striking that the increase in conflicts runs parallel to the evolution of the granting of mining concessions in the country, which now occupy 26 million hectares of land.³¹ 70% of socio-environmental conflicts are associated with this trend.³² For example, Ancash is one of the regions with the highest number of social conflicts in the country and there, the 12 conflicts identified by the Ombudsman’s Office are in the area surrounding the Antamina mine (Glencore) and the Barrick Misquichilca mine.³³ In 2015, the most critical conflict, which has yet to be resolved, is the one at the Tía María mine operated by the Mexican-US-based Southern Copper Corporation.³⁴

The case of mega-mining in Peru, especially when transnational corporations such as Glencore are in charge, illustrate well the legal asymmetry that characterises relations between affected communities and corporations. As we have seen, affected peoples do not usually obtain the justice they demand. Yet, this case also reveals the asymmetrical power relations between states like the Peruvian state and this kind of company, which has the solid protection of what Hernández Zubizarreta (2009) calls the *Lex Mercatoria* – that is, the architecture that guarantees the impunity of transnational corporations at the international level.³⁵

Peru versus Glencore: under the magnifying glass of BITs and trade relations

In addition to having signed “free trade” agreements with the United States and the European Union, Peru is participating in the negotiations of two of the most aggressive trade agreements from a liberalisation point of view: the Trans-Pacific Strategic Economic Partnership Agreement (TPP)³⁶ and the Trade in Services Agreement (TiSA).³⁷ These agreements alone already provide a relatively solid shield for the interests of foreign corporations, but do not oblige them to respect human rights or the environment in exchange.

To add to this, like the majority of South American countries in the 1990s, during the peak of neoliberalism and the privatisation of the most strategic state enterprises, Peru signed 29 bilateral investment protection treaties (BITs).³⁸ Among these BITs are the ones signed with Glencore’s countries of “origin”: Switzerland and the United Kingdom. Like the large majority of this kind of treaty, these BITs only include investors’ rights and not their responsibilities.³⁹ The treaty with Switzerland stipulates that if a conflict arises between a company from one country and the government of the other, first, a dialogue between both governments must be initiated. If no results are obtained, the corporation must take its complaint to the national court of the country where the investment has been made. If the court does not pass a ruling within an 18-month period or if the company does not agree with its ruling, it can appeal directly to an *ad hoc* tribunal formed by the International Centre for Settlement of Investment Disputes (ICSID).⁴⁰ As for the BIT with the United Kingdom, the time period is three months and the company can take its case directly to the arbitration body of its choice. The ICSID is not specifically mentioned in the agreement because an *ad hoc* tribunal in other framework can be adopted. Currently, the Peruvian government is facing three important cases filed by mining corporations at the ICSID: Bear Creek Mining Corporation (Canada), The Renco Group, Inc. (United States) and Compagnie Minière Internationale Or S.A. (France).⁴¹ It is worth remembering that in recent years, although Latin American countries are the minority at the ICSID (only 14%), they have been the target for half of the lawsuits involving extractive industries brought before the institution.⁴²

Confronted with a corporation like Glencore, Peru is not only tied by BITs and dispute settlement mechanisms, but also by its own trade relations. As a primary exporter, the third main destination for its exports is the countries of the European Union, which represent 16.4% of its exports. Switzerland comes in fourth place with 7.2%.⁴³

Even so, in parallel to Glencore's impunity, coordination among affected groups and communities is growing; in recent years, they coordinate their efforts through the "Shadow Network".⁴⁴ At the international level, they have also directed their demands for compensation directly to the corporation's shareholders both in the United Kingdom and in Switzerland. In 2014, for the second time since 2008, the corporation was a candidate for the Public Eye Award⁴⁵ – a prize given to corporations for their bad practices, human and labour rights violations, environmental destruction and corruption. That year, the Swiss organisation Multiwatch, member of the Shadow Network, published the *Billions from the Exploitation of Raw Materials – the Swiss multinational corporation, Glencore Xstrata* report.⁴⁶ The report bothered the transnational corporation so much that it pressured them to change the title of the publication and suspend the network's blog, which was campaigning to get Glencore nominated for the Public Eye Award.

Furthermore, different groups from Zambia, Colombia, Peru, the Democratic Republic of Congo and the Philippines denounced the corporation at the Permanent Peoples' Tribunal (PPT) hearing in Geneva (June 2014). The PPT's declaration cited the operations of Glencore subsidiaries in the Philippines: Xstrata Copper, Indophil Resources NL and Sagittarius Mines.⁴⁷ Concretely, the corporation was accused of deception, property damage, desecrating burial grounds and sacred sites, being linked to unlawful arrests, killings and other human rights violations. These violations were perpetuated in order to foster the Tampakan Copper-Gold mining project, which affected the territory of indigenous peoples, especially that of the Bla'an people. In relation to Peru, the Espinar case mentioned above was also presented. As for Colombia, witnesses made accusations against Glencore for its operations via its subsidiaries Prodeco and Carbones del Cerrejón LLC, and its participation in Fenoco. In this case, it was noted that the corporation was responsible for defrauding the public treasury through unpaid royalties; tax evasion; failure to comply with legal obligations related to mitigation, prevention and compensation for pollution; the deterioration in local communities' quality of life; generating social conflicts that have led to militarisation; restrictions on land use; and forced displacements due to pollution. In regards to the Democratic Republic of Congo, the case of the Kolwezi mining area (Katanga), where Glencore subsidiary the Kamato Copper Company operated, was denounced. The company was held responsible for child labour, the exploitation of migrant workers, fraud, corruption, tax evasion, abuses and being linked to the violation of the human rights of people who protest against its activities. Finally, in Zambia, the case of Glencore subsidiary Mopani Copper Mines was denounced because of pollution that produced grave impacts on local communities, and for falsifying accounts to avoid paying taxes and thus diverting profits out of the country.

The jury at the Tribunal's hearing listened attentively to the testimonies and ruled on the need for a new juridical order to regulate the activities of transnational corporations with the goal of putting an end to the extreme impunity with which they act. Therefore, it



Permanent Peoples Tribunal Hearing, Geneva, June 2014 / Víctor Barro, Friends of the Earth Spain

recommended that the United Nations Human Rights Council elaborate a binding treaty on the control of transnational corporations and approve the creation of an international court on transnational corporations and human rights, as well as a public centre in charge of analysing these companies' practices. Some of these recommendations were taken up by the Human Rights Council a few days later as the result of immense pressure from over 500 social organisations all over the planet, as well as the Global Campaign to Dismantle Corporate Power.⁴⁸ In its recommendations, the Permanent Peoples Tribunal jury also referred to states and international organisations in the sense that they must guarantee the rights of people affected by transnational corporations as well as their access to justice and right to compensation and reparation. It also noted the need for states to strengthen their own national tribunals and to stop accepting international arbitration tribunals. At the same time, the jury also mentioned the importance of recognizing the extraterritorial responsibility of states in accordance with the Maastricht Principles on Extraterritorial Obligations regarding economic, social and cultural rights.

Several Swiss civil society organisations appeared to have taken up the gauntlet on this last recommendation. In fact, in 2015, they launched an initiative that opens up the possibility of Switzerland adopting binding norms for transnational corporations under which affected peoples could file lawsuits against them in Swiss courts.⁴⁹ If the initiative is successful, we will find ourselves before another important step forward in the struggle against the impunity of transnational corporations. On the contrary, it will have created a precedent and, in any case, can be replicated and adapted to different contexts in other countries where the corporations are located. What is important here is that this work must always be linked to and coordinated with popular resistance struggles that continue to unmask transnational corporations with dignity.

Notes

- 1 Vargas, M. and Brennan, B., org. (2013). Impunity Inc.: Reflections on the “super-rights” and “super-powers” of corporate capital. Observatory on Debt in Globalisation (ODG) and Transnational Institute. <http://www.tni.org/briefing/impunity-inc>
- 2 See: <http://minerals.usgs.gov/minerals/pubs/commodity/copper/mcs-2015-coppe.pdf>
- 3 See, for example: Multiwatch (2014). Billions from the Exploitation of Raw Materials – the Swiss multinational corporation, Glencore Xstrata. http://www.multiwatch.ch/cm_data/20150505_GlencoreBookMultiWatch.pdf; Vargas, M. and Brennan, B., org. (2013), op. cit.; and Observadores Glencore. Perú, Espinar. <http://observadoresglencore.com/peru>
- 4 See Déclaration de Berne (2012). Swiss Trading S.A. La Suisse, le négoce et la malédiction des matières premières. Lausanne: Éditions d’En bas, page 143.
- 5 Sources: <http://www.4-traders.com/GLENCORE-PLC-8017494/company>; <http://markets.ft.com/research/Markets/Tearsheets/Business-profile?s=GLLEN:LSE>, http://www.nbim.no/en/holdingsdata/fi_2014_country.pdf
- 6 See Glencore’s own fact sheet at: http://www.glencore.com/assets/investors/doc/reports_and_results/2014/2014-Factsheet-Full-Year.pdf
- 7 See Forbes’ profile on Glencore at: <http://www.forbes.com/companies/glencore-international>
- 8 See: Glencore (2015a). Annual Report 2014. http://www.glencore.com/assets/investors/doc/reports_and_results/2014/GLEN-2014-Annual-Report.pdf
- 9 Glencore (2015a), op. cit.
- 10 Riseborough, J. and Blas, J. (2015). For Glencore’s Next Move, Watch Agriculture Rather than Iron. Bloomberg. 19 March. <http://www.bloomberg.com/news/articles/2015-03-20/for-glencore-s-next-move-watch-agriculture-rather-than-iron-ore>. 44% of land controlled by Glencore (80,000 hectares) is located in the Ukraine. See: Oakland Institute (2014). The Corporate Takeover of Ukrainian Agriculture. <http://www.oaklandinstitute.org/corporate-takeover-ukrainian-agriculture>.
- 11 For information purposes, the global copper production in 2014 amounted to 18.1 million tonnes. See ICSG (2014). The World Copper Factbook 2014. <http://www.icsg.org/index.php/component/jdownloads/finish/170/1997>
- 12 See Glencore (2015a), op. cit., pages 48 and 51; and <http://minerals.usgs.gov/minerals/pubs/commodity/zinc/mcs-2015-zinc.pdf>
- 13 See: Ministerio de Desarrollo e Inclusión Social. Perú – Distritos. Mapa de la Vulnerabilidad a la Inseguridad Alimentaria, 2012. http://www.observatorioseguridadalimentaria.org/sites/default/files/Per%C3%BA_Mapa%20Nacional_VulnerabilidadInseguridadAlimentaria%20por%20distritos_MIDIS%27.pdf
- 14 See PNUD (2013). Informe sobre Desarrollo Humano Perú 2013. Cambio climático y territorio: Desafíos y respuestas para un futuro sostenible; and Maquet, P. (2013). Mitos y realidades de la minería en el Perú: Guía para desmontar el imaginario extractivista. Lima: PDTG, page 39.
- 15 See: <http://www.antapaccay.com.pe>. It is worth noting that Tintaya is an open pit mine, in operation since 1985 and controlled by Glencore since 2006. Since its reserves are about to be depleted, they are expanding the production area with new complexes – Coroccohuayco and Antapaccay, located nearby. Multiwatch (2014), op. cit., page 43.

- 16 On this issue, see also: De Boissière, P., et al. (2014). Corporate Conquistadores: The many ways multinationals both drive and profit from climate destruction. TNI, CEO and The Democracy Center. http://www.tni.org/sites/www.tni.org/files/download/corporate_conquistadors-en-web-0912.pdf
- 17 Multiwatch (2014), op. cit., page 41.
- 18 Borda, J. (2013). Espinar y la minería: entre movilizaciones, proceso de diálogo y lecciones de resistencia social. In: Hoetmer, R., Castro, M., Daza, M., De Echave, J., y Ruiza, C. Minería y movimientos sociales en el Perú. Lima: PDTG, Cooperación, Acsur las Segovias and Entrepueblos, page 319.
- 19 Multiwatch (2014), op. cit., page 41.
- 20 Multiwatch (2014), op. cit., page 69.
- 21 Multiwatch (2014), op. cit., pages 40-41.
- 22 Prado, E. (2014). Ocultaron a Comuneros de Espinar que Tienen 11 Metales en el Cuerpo. La República.pe. <http://www.larepublica.pe/26-12-2014/ocultaron-a-comuneros-de-espinar-que-tienen-11-metales-en-el-cuerpo>
- 23 De Boissière, P. et al. (2014), op. cit.
- 24 See Glencore (2015b). Glencore's response to the 'Corporate Conquistadors' report, published by The Democracy Center, TNI and CEO. <http://www.glencore.com/assets/public-positions/doc/Glencores-response-to-the-Corporate-Conquistadors-report.pdf>
- 25 Glencore controls one third of Antamina. See: <http://www.antamina.com/en>
- 26 More information on the pollution in Antamina and a "restoration" project launched by the corporation are available in: Cabello, J., and Gilbertson, T. (2014). A Tree for a Fish: The (il)logic behind selling biodiversity. http://www.carbonradewatch.org/downloads/publications/CTW_A_Tree_for_a_Fish-EN.pdf.
- 27 Multiwatch (2014), op. cit., page 42. Also see: Muqui (2013). Áncash: población de Cajacay denuncia que aún sufre enfermedades por fuga de cobre. 13 August. <http://muqui.org/component/content/article/90-ultimas-noticias/ultimas-noticias/5650-ancash-poblacion-de-cajacay-denuncia-que-aun-sufre-enfermedades-por-fuga-de-cobre>
- 28 Multiwatch (2014), op. cit., pages 30-31.
- 29 Vásquez, M. (2013). La criminalización de la protesta social como estrategia de desarticulación del movimiento social en el Perú. In: Hoetmer, R., Castro, M., Daza, M., De Echave, J., and Ruiza, C. (2013). Minería y movimientos sociales en el Perú. Lima: PDTG, Cooperación, Acsur las Segovias and Entrepueblos, pages 424-427. In relation to Swiss public and private responsibility in the repression of mining conflicts in Peru, one can also consult: Derechos Humanos sin Fronteras, GRUFIDES, la Coordinadora Nacional de Derechos Humanos and Society for Threatened Peoples (2013). Police in the Pay of Mining Companies. https://ia601903.us.archive.org/14/items/InformeSobreConveniosEntre-LaPnpYLasEmpresasMineras_441/Inf_ConvPNP_eng.pdf
- 30 Maquet (2013), op. cit., page 12.
- 31 Ibid.
- 32 Observatorio de conflictos mineros en el Perú (2014). Informe número 15, para el segundo semestre de 2014. December. <http://www.conflictosmineros.org.pe/reportes/13/02/2015/15-observatorio-de-conflictos-mineros-en-el>
- 33 Observatorio de conflictos mineros en el Perú (2014), op. cit., page 12.
- 34 TeleSur (2015). Protestos por proyecto minero sacuden a Perú. 25 April. Available at: <http://omal.info/spip.php?article6971>. More information and a database on mining conflicts in Latin America are available at: <http://www.conflictosmineros.net>

- 35 Hernández Zubizarreta, J. (2009). Las empresas transnacionales frente a los Derechos Humanos: historia de una asimetría normativa. Bilbao: Hegoa. http://publicaciones.hegoa.ehu.es/assets/pdfs/203/Empresas_transnacionales_frente_a_los_derechos_humanos.pdf?1309420757
- 36 See Bilaterals.org's webpage on the TPP: <http://www.bilaterals.org/?-tpp->
- 37 See the European Commission's webpage on the TiSA at: <http://ec.europa.eu/trade/policy/in-focus/tisa>
- 38 See: http://www.sice.oas.org/ctyindex/PER/PERBITS_e.asp
- 39 It is always good to remember that the essence of these agreements lies in the defence of private corporations' interests by the government of the home country, as if they were public enterprises. However, if the affected communities bring their complaints to the government of the home country, the most common response is that it is not in its remit since the company is a private one. Two in-depth reflections on which actors benefit from the arbitration system can be found in Eberhardt, P. and Olivet, C. (2012). Profiting from Justice. CEO & TNI. <http://www.tni.org/sites/www.tni.org/files/download/profitfrominjustice.pdf>; and TNI and ALAI (2013). Tratados de inversión: Estados en la cuerda floja. http://www.tni.org/sites/www.tni.org/files/download/tratados_de_inversion_estados_en_la_cuerda_floja.pdf
- 40 The Peru-Swiss Treaty can be consulted online: http://www.sice.oas.org/Investment/BITSbyCountry/BITs/PER_Switzerland_s.pdf
- 41 This group of cases can be consulted online at: <https://icsid.worldbank.org/apps/ICSIDWEB/cases/Pages/AdvancedSearch.aspx?gE=s&rspndnt=Peru>
- 42 See Pérez Rocha, M. (2013). Compañías mineras, El Salvador y la defensa del agua. El Oro o la vida, page 23, in TNI and ALAI (2013), op. cit.
- 43 See the World Trade Organisation's database and statistics on Peru <http://stat.wto.org/CountryProfile/WSDBCountryPFView.aspx?Language=E&Country=PE>
- 44 For more information on the Shadow Network, see: <http://observadoresglencore.com/sobre-nosotros>
- 45 See the Public Eye Award page on Glencore at: <http://publiceye.ch/case/glencore>
- 46 Multiwatch (2014), op. cit.
- 47 See the final declaration of the Permanent Peoples Tribunal's hearing at: http://www.stopcorporateimpunity.org/wp-content/uploads/2014/07/Final_Statement_PPT.pdf
- 48 For more information on the Campaign, see: <http://www.stopcorporateimpunity.org>
- 49 For more information, see the initiative's website: <http://konzern-initiative.ch/de-quoi-il-s-agit/texte-initiative/?lang=fr>

Iberdrola is Not Green: The hypocrisy of a transnational energy corporation that painted itself green

Martin Mantxo, Ekologistak Martxan*

Iberdrola is the second largest producer of electricity in the Spanish state and the first energy corporation on the Spanish stock market.¹ In 2012, it was the second largest energy corporation in Europe, with 2.8 billion euros in revenues, at a time when the country was suffering from the crisis for the fourth consecutive year and new concepts like “energy poverty” were appearing.²

The corporation emerged in 1992 from the merger of Hidrola (Hidroeléctrica Española) and Iberduero. Both date back to the beginning of the local energy supply in Euskal Herria (Basque Country) and the electrification process, in a region that had attracted the earliest forms of industrialisation in the Spanish state. During the Franco regime (1937-1975), Iberduero was one of the first Spanish energy companies created. These companies served as the basis of Franco’s new model for large infrastructure works – hydroelectric, coal and nuclear power stations – that were responsible for electrification, but also major social conflicts.

Iberdrola’s expansionism: the cases of Brazil and Mexico

Iberdrola’s expansion in Latin America in the late 1990s took place at a time when neoliberalism was at its peak. The requirement to pay back their debt allowed the International Monetary Fund (IMF) to impose structural adjustment plans and led to the privatisation and liberalisation of the most strategic sectors of the Latin American economy, including the energy sector.

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As part of its internationalisation strategy, Iberdrola set up in several Latin American countries (Brazil, Mexico, Colombia, Chile) at first. In some cases, however, it was forced to leave due to poor management and abuses (Bolivia and Guatemala).³ Its operations are currently concentrated in Brazil and Mexico, as well as the United States, Greece and the United Kingdom (where it absorbed Scottish Power), and another thirty countries.⁴ In recent years, its business abroad has grown considerably. In 2012, for example, its operations in the Spanish state only represented 25% of its net profits (2.8 billion euros),⁵ and the bulk of its investments were expected to be concentrated in the United Kingdom (41% of the total), Latin America (namely Mexico, with 23%) and the United States (17%).⁶

Iberdrola has become one of Spain's four main energy groups.⁷ These groups can be considered an oligopoly, as together they share companies, dictate policies, run lobby groups and employ the same energy model. Iberdrola is also one of the world's largest electricity corporations, with 31.7 million clients around the globe, and ranks 133 on the Forbes list of the biggest transnational corporations in the world.⁸

Its business abroad has been so profitable that in 2014, during its conflict with the Spanish government over the electricity reform the latter had proposed, Iberdrola President José Ignacio Sánchez Galán announced that the corporation would not invest in the Spanish state and would only do so in countries offering favourable conditions.⁹ It justified its opting for the Latin American giants by arguing that both have "predictable and stable regulations", but also due to their favourable production conditions.¹⁰

The contrast between Iberdrola's greenwashing and its wager on thermal power plants and large dams

Just as the energy system was being brought into question by climate change, Iberdrola began to implement an aggressive "greenwashing" policy.¹¹ It launched a major publicity campaign consisting of advertisements that associate its operations with images of pristine nature, forests, and streams or waterfalls filling – for example – a green cube of water, all tinted green. This strategy includes the use of a new logo (a leaf, a drop of water and a sun) to convey the idea that the corporation only produces renewable energy. It also created a new affiliate dedicated exclusively to renewable energy, Iberdrola Renovables, which it later reabsorbed in 2011.

With the creation of this logo, all publicity was focused on this subsidiary, meaning that Iberdrola's name became associated solely with this kind of energy. The reality, however, is quite different. Iberdrola continues to operate thermal power plants run on coal and fuel oil, as well as new combined cycle and nuclear plants, and large hydroelectric dams. As indicated on Iberdrola's electricity bills, in 2013, depending on the time of year, between only 8.9% and 11.3% of the energy comes from renewable resources.¹²

Iberdrola in Brazil

Iberdrola's good relations with the Brazilian government could be seen at the energy corporation's shareholder meeting held in March 2014, to which Brazilian ex-president Luiz Inácio 'Lula' da Silva had been invited. Lula, who stated that Iberdrola's participation in the Brazilian economy was crucial, facilitated the entry of Iberdrola and other transnational corporations into Brazil, despite the fears his election raised among transnationals due to his affiliation to the PT (Partido dos Trabalhadores, or Workers' Party) and his trade unionist past.¹³ In 1997, Iberdrola acquired 39% of Neoenergia and, in 2011, took control of Elektro, the sixth largest electricity distribution company in the country. By doing so, it became the largest distributor of electricity in Brazil, with over 40 million consumers, which is 20% of the country's population.

Structural adjustment programs forced Brazil – a country where the energy system was entirely publicly owned – to put its state enterprises up for sale, often at much lower prices than what they were actually worth and with the active support of the Brazilian National Development Bank (Banco Nacional de Desenvolvimento Econômico y Social, or BNDES). The Brazilian government played a fundamental role in this process, as it introduced a series of laws and constitutional changes that, among other things, put an end to the distinction between national and foreign companies and eliminated the cap on ownership by foreign capital. Furthermore, state enterprises were prohibited from receiving loans from the government and being the majority shareholder of investment projects. The federal government also created several agencies to favour energy corporations.¹⁴ The BNDES itself served as the vehicle for investing public funds in these private energy companies, including Iberdrola's subsidiaries. In 2009, the BNDES disbursed around 54 million euros, of which 75% were allocated to large corporations from the energy sector.¹⁵

One of the most important resources that the Brazilian government has put at the service of major transnational energy corporations is undoubtedly water. It is astonishing that in a country where hydropower represents 80% of the energy matrix and production costs are reduced (energy corporations are not charged for the use of water, for example), energy is so expensive. In fact, the inhabitants of the 60 million households in Brazil pay 25% more for electricity than people in France, where 76% of the energy matrix is from nuclear power and therefore, has higher production costs.¹⁶

In Brazil, Iberdrola owns six cogeneration plants, one combined cycle station,¹⁷ one wind farm and 11 hydroelectric dams, as well as the Baixo Igauçu, Teles Pires and Belo Monte dam projects. Iberdrola has particularly benefited from Belo Monte, which will be the third largest dam in the world. This project is an enormous social and environmental disaster, as it will affect 516 km² of forest (64.5 hectares in Permanent Preservation Areas, or APP for their acronym in Portuguese), 11 municipalities, nine indigenous territories and 30 indigenous communities. It will cause the displacement of thousands of people, including 50,000 indigenous peoples.¹⁸

Iberdrola in Mexico

Iberdrola arrived in Mexico in the early 1990s under the reforms adopted in the framework of the North American Free Trade Agreement (NAFTA) with the United States and Canada.¹⁹ The reforms included changes to the Public Electric Energy Service Law (Ley del Servicio Público de Energía Eléctrica, LSPEE) and Article 27 of the Constitution to allow for the purchase and sale of communal lands.²⁰

The first reform permitted private capital to enter the electricity generation sector and engage in activities that only the public sector had been allowed to operate since the adoption of the energy reform in 1938 by President Lázaro Cárdenas. Article 27 (paragraph 6) of the Mexican Constitution establishes that “It is exclusively a function of the Nation to generate, conduct, transform, distribute and supply electric power” and that “No concessions for this purpose will be granted to private persons”.²¹ Therefore, the reform of the LSPEE, which benefited corporations like Iberdrola, was illegal. On 20 December 2013, a reform passed by President Peña Nieto took privatisation one step further. This reform has been the object of harsh criticism: on 19 March 2014, approximately 10,000 people protested against it in Mexico City’s main square, Zócalo. Iberdrola currently has six wind farms (five in Oaxaca),²² six combined cycle stations (the last one, the Baja California II station, was authorised in January 2014), two co-generation plants and two thermal power plants in Mexico.

Iberdrola Renovables, and later Iberdrola itself, concentrated its renewable resources activities in the area of wind energy – namely large wind farms that, as we will see shortly, have been strongly questioned due to their extensive impacts on the environment, society and the landscape.

The company’s “green” image clashes with its wager on highly polluting and destructive forms of energy such as the new combined cycle plants or hydroelectric power. The former is based on liquefied natural gas that, being a new technology, is much more efficient than the conventional thermal stations in terms of emissions, but still generates large volumes of carbon dioxide and other greenhouse gases. Furthermore, it is important to keep in mind the socio-environmental impacts associated with the extraction and transportation of natural gas. They can be seen in the case of Nigeria, which is where the gas Iberdrola uses in its plants in the Basque Country (Santurtzi, Bahía de Bizkaia, Castejón) comes from. There, the extraction (of both oil and gas) has had serious and irreversible effects on the people and the environment due to repeated oil spills and gas flaring, which corporations continue to perform with total impunity.²³ This also involves the contamination of the water that the environment and thousands of people depend on.

To this, one must add the effects of hydraulic fracturing or “fracking” – an oil and gas extraction technique that causes major environmental and social impacts and has generated protest in the countries where it is being used, namely the United States where it was first introduced.²⁴ In June 2014, Iberdrola signed a contract with US-based Cheniere Energy for the purchase of liquefied natural gas (LNG). The 20-year contract is for 0.4 million annual tonnes initially, and 0.8 million as soon as a third train at its Corpus Christi Liquefaction plant in Texas is ready.²⁵

It is worth noting that these power plants benefit from emission allowances that the European Union grants to combined cycle plants for free (valued at 1.6 billion euros in 2011).²⁶ Iberdrola is the owner (or co-owner) of eight of these kinds of plants in the Spanish state, five in Mexico, seven in the United States, one in Brazil and four in the United Kingdom. Before the economic crisis erupted in 2008, the corporation had planned to build many more, but it had to desist due to the fall in demand and the burst of the real estate bubble. As in the case of its unbuilt nuclear plants, this goes to show that Iberdrola’s model (which could be called the “neoliberal energy model”) is not meant to respond to real energy needs, but rather to pure economic speculation, as the power plants, infrastructure and production are not proposed to satisfy a demand, but rather to generate profit. Perhaps the most illustrative case is that of Iberdrola’s plant in Castejón, in the Spanish state, that did not produce one single kilowatt of energy in 2013 (even though it has a 86 MW capacity and was only built in 2001).²⁷

Hydroelectric dams, of course do not require fossil fuels, but even so, cause severe environmental impacts, which arise from the entire construction and damming process, not to mention the methane emissions released by the decomposition of forests that have been submerged by a dam. Methane emissions contribute more to the greenhouse effect than carbon dioxide does. Furthermore, the dams block the river’s flow, which has obvious consequences for the environment. Large hydroelectric projects are not an energy alternative, nor an alternative to climate change.²⁸

Iberdrola strengthens gas, combats renewable energy sources

Iberdrola’s greenwashing clashes with its belligerent policy against renewable energy in the hands of small producers. In 2011, the Spanish Association for the Thermoelectric Industry Protermosolar expelled Iberdrola for acting against the interests of the thermos-solar sector.²⁹ In October 2013, Iberdrola president Ignacio Sánchez-Galán declared, “If the production of solar and photovoltaic energy was suspended, the electricity bill

would drop 10%".³⁰ In addition to these declarations, the corporation took out advertisements in several newspapers affirming how expensive renewable energy is.

That same year, Spain's Partido Popular government heeded the proposal of Iberdrola and other major energy corporations³¹ and reduced the electricity tariff deficit by 6 billion euros by eliminating subsidies for renewable energy sources, among other measures. With this cutback, renewable energy producers were unable to compete with the large electricity corporations.³² The government also introduced a regulation³³ to stop electricity generated by solar farms and domestic surplus from being fed into the power network. Until then, policies for the promotion of renewable energy sources gave priority to the entrance of this type of electricity into the grid. The reason for this change was that due to the crisis and the excessive expansion of the energy sector,³⁴ the large electricity corporations did not have an outlet for all of the electricity they produced and opted for trying to limit small renewable energy producers (50,000 solar farms in the country).

Before the crisis, Iberdrola and other major energy corporations focused on combined cycle power plants, which were presented as less polluting than other thermal stations, more efficient and based on cheap fuel: natural gas imported in optimal conditions from subjugated countries (Nigeria, Algeria, etc.). In a 10-year period, in the Spanish state, combined cycle plants with a total capacity of 27 GW were built.³⁵ In 2007, applications for 50 to 60 permits to construct combined cycle stations in the Spanish state were submitted. Obviously, due to the real estate and energy crisis, they were not built; this was the case of Iberdrola's Miranda de Ebro (800 MW) project, the expansion of Castejón (400 MW), another one in Santurtzi and it is understood that the Pasaia thermal station was to be replaced by Superpuerto, Langreo (1100 MW), etc. In 2012, half of the combined cycle stations in the Spanish state were inoperative; Iberdrola's Castejón did not produce not even one kilowatt of energy that year.³⁶ In 2014, Spain's regasification network operated at less than 30% of its capacity, and the combined cycle stations, only at 20% throughout the year. 80% of the time, they were not operating.³⁷ What is more, Iberdrola together with another 8 major European energy corporations³⁸ proposed measures to the European Parliament to increase Europe's dependency on fossil fuel and reduce renewable energy sources.³⁹

Later, due to the expensive expansion that Iberdrola and other energy corporations resorted to, Iberdrola requested the closure of its own stations – including ones that were not very old, such as the Arcos de la Frontera combined cycle station (1600 MW, from 2005) in 2013, or in 2014, one of the three groups of the Castellón (1,647 MW, from 2002, which substituted the old conventional power station) whose production had been reduced by 70% since 2011 and only operated for a few hours a day. In this context of electricity plants operating below capacity, in addition to doing away with renewable energy sources, the large electricity corporations predicted that establishments with a joint capacity of more than 5,000 megawatts could be eliminated from the Spanish power grid.⁴⁰

Mega-wind farms in Oaxaca (Mexico) and on the islands of the Aegean Sea (Greece)

In addition to presenting a more positive and “green” image to the public, wind power projects are highly profitable – not only because of the energy they produce, but also all of the economic incentives they receive for their so-called ‘contribution’ to climate change mitigation. In many cases, they are considered “Clean Development Mechanisms” (CDM) by the UN. Therefore, despite their low participation in Iberdrola’s matrix (14.99% in 2005-2012), renewable energy represents 39.95% of its total profits.⁴¹

This sector also benefits from public incentives.⁴² For example, in 2009, Iberdrola Renovables received 329 million euros in subsidies from the Spanish state and in 2010, another 743.8 million. In the United States, it received over 1 billion dollars from the government’s stimulus package for renewable energy, and in the United Kingdom, it benefited from the Renewable Energy Act. Accepting government incentives and many other benefits is contradictory to the repeated affirmation of major transnational corporations – such as Iberdrola – of the desire to minimise state intervention in their affairs.

As declared CDMs, corporations like Iberdrola obtain carbon credits, which grant them the right to pollute other places based on the theory that they can compensate for this pollution with these projects. This is the only way the wide array of wind power projects that have invaded the Isthmus of Tehuantepec can be understood: 23 farms and 2,000 wind turbines, whose numbers are predicted to grow to 5,000. Iberdrola participates in the Spanish Carbon Fund (SCF), which also decides which projects meet the necessary requirements to obtain funding. This is the case of the La Venta II farm in Oaxaca. Backed by the World Bank, the SCF has 278.6 million euros.⁴³

Despite the profits renewable energy generates for the corporation, the massive wind farms it has built in places like the Isthmus of Tehuantepec or the Aegean Islands are very far from having positive impacts on the people living nearby. In both cases, the goal is to develop large-scale production facilities geared towards foreign markets, while local inhabitants and neighbouring communities are the ones who end up being affected.

In Oaxaca,⁴⁴ Iberdrola, together with other corporations such as the Spanish construction company Acciona and with the financial support of the BBVA bank, have seized the land of indigenous peoples (Zapoteca and Ikojts).⁴⁵ This land is particularly vulnerable, as ownership is communal and therefore, there are no individual property deeds. In this Mexican state, Iberdrola’s has three wind farms (La Ventosa (102 MW), La Venta III (102 MW) and Bii Nee Stipa (26 MW), plus Gamesa’s Dos Arbolitos farm, of which it co-owns 20%)⁴⁶ on approximately 60,000 hectares of collective property. They generate 1,263 MW (only 10% of the energy generation capacity that is estimated for this region).⁴⁷

All of the windfarms together add up to 2,000 wind turbines, and the installation of some 5,000 is being considered.⁴⁸

Iberdrola together with its business partners Gamesa and Acciona will be among the ones that benefit the most from the new Mexican plan to increase wind power production by investing 12 billion euros between 2015 and 2019.⁴⁹

Iberdrola's wind project in Crete and other Aegean islands in Greece (Ios, Lesbos and Lemnos) must also be mentioned. Launched in 2004 via its Greek affiliate Rokas, the project originally included 17 wind farms. Two years later, the number of farms grew to 44, with a total capacity of 1,636 MW. The farms' locations coincide with not only archaeological sites, but also protected zones. This implies that the project's environmental impact has been underestimated, as it affects bird life and species such as the mastic tree (with its edible resin), which are essential to the local economy. These megaprojects have the additional risk of exacerbating erosion: since they are built on the islands' peaks, they involve clearing the vegetation in the area, building access roads, etc. Furthermore, the project underestimated the local communities on the islands and their economic activities, and built the wind farms close to inhabited towns and land. The communities did not have information until they held protests. These elements were denounced at the popular tribunal organised by various social organisations and jurists from the Spanish state and Latin America on 30 October 2013 in Bilbao.⁵⁰

Iberdrola's nuclear past and present

Nuclear energy was introduced in the Spanish state during the Franco regime. One of the main driving forces behind this kind of energy was Iberdrola's predecessor, Iberduero. In Euskal Herria (Basque Country), its place of origin, the company is associated with nuclear energy and with the movement fighting against it (precursor of the ecologist movement). In fact, this movement and the constant popular mobilisations succeeded in stopping a nuclear power plant from being built in Lemoniz and in paralysing three other projects.

Even so, both Iberduero and Iberdrola continued to develop this type of energy, which has been and continues to be the target of many campaigns and mobilisations. This is especially true now, as in addition to all the subsidies and moratoriums it has received, the company got the government to make changes to a law and give it 150 million euros to keep its ancient Garoña plant (43 years of existence) open.⁵¹ What is more, this authorisation to maintain the plant operating came at a time when, in addition to being so old, the plant had already accumulated a track record of numerous accidents and shutdowns. All of this is happening now despite the fact that after the Fukushima accident, many countries decided to eliminate this type of energy production.

In addition to Garoña, Iberdrola has the Almaraz, Ascó II and Vandellós II power stations (Endesa is the co-owner of all three) and Confronts (Iberdrola owns 100%). These plants soon found themselves in the same situation as Garoña, but it appears that the government is proposing to keep them operating as well. Iberdrola is also involved in plans with GDF Suez on a new nuclear station NuGeneration (NuGen) in Cumbria (United Kingdom),⁵² participates in a consortium for reactors 3 and 4 of the Cernavoda station (Romania; abandoned due to the crisis), and in nuclear engineering projects such as the modernisation of the Laguna Verde station (Mexico). It also is part of the Iter nuclear fusion reactor project.⁵³

Iberdrola: macro-profits, macro-salaries and macro-skyscrapers

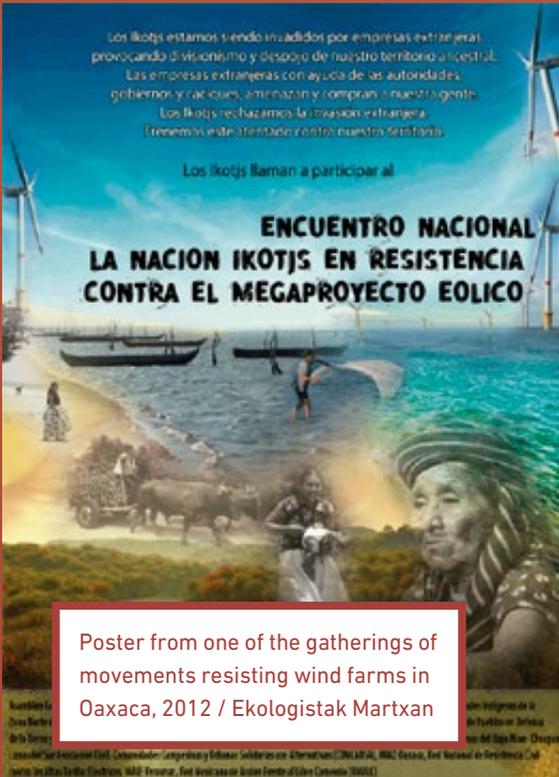
In the midst of the crisis, it is remarkable how much profit Iberdrola generated. Between 2008 and 2013, the corporation earned nearly 14 billion euros, which represents net profits of close to 3 billion euros per year.⁵⁴

This number also stands out against the results other European corporations obtained during the crisis. With a turnover of 16.5 billion euros, Iberdrola obtained 1.5 million euros in profits (a similar percentage to that of other Spanish energy corporations). Meanwhile, giants like E.ON, with 61.9 billion euros in revenues, only produced 828 million euros in profits; and French-based EDF, with a turnover of 35.6 billion euros, earned 1.8 billion euros in profits.⁵⁵

Similarly, since the beginning of the 2008 crisis, while peoples' wages fell, unemployment rose and electricity bills increased 323% (tariff) in Spain, the salary of Iberdrola president José Ignacio Sánchez Galán increased 119% from 2009 to 2012, reaching 6.2 million euros per year.⁵⁶ In the first half of 2014, Sánchez Galán earned 7.58 million euros, an average of 42,000 euros per day.⁵⁷ His astronomical wage was criticised by British parliamentarians.⁵⁸ Economics professor Roberto Centento called for the trial and imprisonment of Sánchez Galán and his 13 advisors for having salaries that were 30 times higher than those of their counterparts at Japan's third-largest electricity corporation (much bigger than Iberdrola) and five times higher than those of their colleagues at the E.ON power company.⁵⁹



Popular Tribunal against Iberdrola, Bilbao, October 2013 / Ekologistak Martxan



Poster from one of the gatherings of movements resisting wind farms in Oaxaca, 2012 / Ekologistak Martxan



Poster for a protest held to denounce Iberdrola and BBVA, Bilbao, 2013 / Ekologistak Martxan

Conclusion

Iberdrola has continued to expand abroad using the policy that has characterised the corporation since its origins as an oligopolistic company in the Spanish state, where it imposed a way of producing, distributing and commercialising energy based on maximising profits and disregard for popular sentiment and needs. When it entered Latin America and other countries, its actions were guided by the same principle, as well as the hegemonic position it was afforded by the economic situation and the way it appropriated other companies (backed by structural adjustment programs, privatisation, etc.). In this *modus operandi*, the arrogance that is typical of transnational corporations can be clearly seen. Its objective was to increase its portfolio, its expansion zone and, of course, its profits and position in the ranking of major energy corporations, without getting to know these countries, their markets and much less their people and their needs. It has caused major conflicts, which forced it to rapidly leave some countries. In the countries in which it continues to operate (Mexico and Brazil), it has obtained some very favourable conditions thanks to the invaluable collaboration of their respective governments. In both countries, its social and environmental impacts are many and severe, which has sparked mobilisations and denunciations from environmental movements, user organisations, civil society platforms and other groups. These groups are already proposing changes to billing and production, and even an alternative energy model ruled by other values, such as understanding energy as a right and not just a way to generate profit for a few, and seeing users as more than mere consumers. It is no coincidence that Iberdrola's high point as a company coincides with this expansion, which is thanks to the profits it transfers from these countries to its headquarters. More than just an appropriation of resources, this transfer is often disproportionate and abusive, and, given the impacts it causes, can be considered a new process of colonialism.

Notes

- 1 Wikipedia. Iberdrola. <http://es.wikipedia.org/wiki/Iberdrola>
- 2 Iberdrola came in second behind French corporation EDF, just ahead of Endesa. Cinco Días (2013). EDF, Iberdrola y Endesa, las eléctricas europeas que más ganaron en 2012. 27 October. (http://cincodias.com/cincodias/2013/10/27/empresas/1382875892_594669.html)
- 3 In Bolivia, Iberdrola (via its subsidiary Electropaz) caused discontent in the population of El Alto due to its breach of contract, constant power outages and unjustified tariff hikes, which affected the poorest neighbourhoods and led to numerous protests in the early 2000s. In 2003, the corporation's offices were set on fire and in 2004, protests increased. In 2005, Iberdrola was forced to reimburse two million dollars to five municipalities for overcharges. In 2006, despite the introduction of the "dignity rate", the lowest income families still had difficulties paying electricity prices in El Alto, and in 2008, the Federación de Juntas Vecinales (Federation of Neighbourhood Councils) proposed that Iberdrola be expelled from Bolivia. The government nationalised Iberdrola's affiliates (Electropaz and Elfeo) in December 2012 for having denied families access to electricity. "We are forced to take this measure so that utility rates will be fair in the department of La Paz and Oruro and the quality of electricity services will be uniform in rural and urban areas", Evo Morales explained. See: El Mundo (2012). Evo Morales expropiación cuatro filiales de Iberdrola en Bolivia. 29 December. <http://www.elmundo.es/america/2012/12/29/noticias/1356790788.html> and González, E. (2013). Iberdrola en Bolivia: una actividad nada ejemplar. Diagonal Periódico. 31 January. <https://www.diagonalperiodico.net/global/iberdrola-bolivia-actividad-nada-ejemplar.html>. As for Guatemala, Iberdrola conducted activities in this country between 1998 and 2010 and controlled 70% of electricity distribution. Energy production was based on hydroelectric dams. In 2009, it filed a lawsuit against Guatemala at the International Centre for Settlement of Investment Disputes (ICSID), in which it claimed that the country's regulatory body had caused them losses by reducing the price of electricity and demanded 672 million dollars in compensation. In 2012, the ICSID ruled against Iberdrola, ordering it to pay 5.3 million dollars to the Guatemalan state to cover its legal expenses. By then, Iberdrola had already disposed of its assets in this country. See: El Mundo (2012). Iberdrola pierde una demanda contra Guatemala por 'expropiación indirecta'. 21 August. <http://www.elmundo.es/america/2012/08/20/noticias/1345495050.html>
- 4 Scottish Power (2014). Webpage. <http://www.scottishpower.com>
- 5 Ruiz, A. (2012). Iberdrola sube su beneficio un 12% gracias al negocio exterior. El Plural. 24 October. <http://www.elplural.com/2012/10/24/iberdrola-sube-su-beneficio-un-12-gracias-al-negocio-exterior>
- 6 Iberdrola (2014). Junta General de Accionistas 2015. <http://www.iberdrola.com/guiarapidadelaccionista/es/estrategia.html>
- 7 The other large electrical corporations that are active in the Spanish state are: Gas Natural Fenosa, which is the result of a merger between the two energy corporations Unión Fenosa and Gas Natural; and Endesa, which now belongs to the Italian firm Enel. We use the term "oligopoly" due to the reduced number of companies that control the energy market and that come together in several areas (rates, Spanish Nuclear Safety Council) and in many projects and power plants, and share common interests.
- 8 Forbes. Website. <http://www.forbes.com/companies/iberdrola>

- 9 The reform of the electric energy sector in 2013 in the Spanish state introduced a new price-fixing mechanism. This mechanism only affected the energy system's regulated costs, when, in fact, the very structure of the market is what makes the tolls (support toll) insufficient to cover these costs. Therefore, the reform only addressed short-term economic patterns. Energy bills began to rise again.
- 10 For more information, see: Ecologistas en Acción (2013). Una reforma eléctrica insuficiente, insostenible e ineficaz. July. <http://www.ecologistasenaccion.org/article26245.html> ; Mateu, C. (2013). La absurda reforma energética de Soria es de Iberdrola. Suelo Solar. August. <http://www.suelosolar.es/newsolares/newsol.asp?id=8546> and Martínez, V. (2014). Iberdrola carga contra la reforma regulatoria de Soria. El Mundo. 20 February. <http://www.elmundo.es/economia/2014/02/19/5304a903268e3ecb4c8b457e.html>
- 11 "Greenwashing" is the expression used for the practices of transnational corporations that have negative environmental impacts, but are presented in a way that leads one to believe they are beneficial.
- 12 Iberdrola water bill (2013).
- 13 Iberdrola (2014). Lula da Silva participa junto a Ignacio Galán en el encuentro internacional de directivos del Grupo Iberdrola. Nota de prensa. 27 March. http://www.iberdrola.es/sala-prensa/notas-prensa/nacional/2014/detalle/nota-prensa/140327_NP_01_EncuentroDirectivos.html
- 14 This was the case of the Brazilian Electricity Regulatory Agency (Agencia Nacional de Energía Eléctrica, ANEEL), the Chamber for the Commercialisation of Electric Energy (Cámara de Comercialización de Energía Eléctrica, CCEE), the Electric System National Operator (Operador Nacional do Sistema Elétrico, ONS) and the Energy Research Enterprise (Empresa de Pesquisa Energética, EPE). For more information on the privatisation of the electricity sector in Brazil, see: Nadaletti, C. (2010). Informe sobre la actuación de la empresa Iberdrola – Neoenergía en Brasil. Movimento dos Atingidos por Barragens (MAB); and Ekologistak Martxan and Uharte, L.M. (2012). Las multinacionales en el siglo XXI: Impactos múltiples. El caso de Iberdrola en México y en Brasil. Editorial 2015 y más.
- 15 Zibechi, R. (2012). Brasil potencia. Entre la integración regional y el imperialismo. Ediciones Desde Abajo. http://biblioteca.hegoa.ehu.es/system/ebooks/19560/original/Brasil_potencia.pdf?13835%2063837
- 16 Cervinski, G. (2013). El actual modelo energético brasileño. Movimento dos Atingidos por Barragens (MAB). 14 October. <http://mabnacional.org.br/noticia/el-actual-modelo-energ-tico-brasile>
- 17 Combined cycle power plants produce electricity using turbines and steam and liquefied natural gas for fuel. They are more efficient than conventional thermal power stations, but they still cause a large amount of toxic gas and greenhouse gas emissions.
- 18 See the MAB Amazônia website: <http://mabnacional.org.br/amazonia/belomonte> and the Movimento Xingu Vivo para Sempre website: <http://www.xinguvivo.org.br>. See also: <http://www.xinguvivo.org.br/2010/10/14/perguntas-frequentes/>, <http://mabnacional.org.br/video/14-mar-atingidos-por-belo-monte-exigem-seus-direitos>; <http://www.lavanguardia.com/internacional/20110820/54203028466/una-represa-amenaza-con-desplazar-a-50-000-indigenas-en-brasil.html>
- 19 This period also coincided with the presidency of Carlos Salinas de Gortari (1988-1994) and the privatisation of state companies. In fact, during that time, more than 90% of the 1,150 public enterprises were privatised. See: www.sinembargo.mx/01-10-2012/379209

- 20 The reform of this article was key for the establishment of wind power megaprojects, which we will examine shortly.
- 21 See: <http://www.metro.df.gob.mx/transparencia/imagenes/fr1/normaplicable/2014/1/lspree14012014.pdf>
- 22 The projects in Oaxaca are: La Ventosa, La Venta III, Bii Nee Stipa (I and IV) and Parques Ecológicos de México.
- 23 Nigeria-based Environmental Rights Action has rigorously monitored the impacts of the extraction of hydrocarbons in this country. See the organisation's website at : <http://www.eration.org>
- 24 For more information on fracking, see the blog of Ecologistas en Acción: <http://fractura-hidraulica.blogspot.com.es>. For more on the situation in different countries, see: Mantxo, M. (2014). Fracking: la resistencia mundial continúa. *Rebelión*. 11 October. <http://www.rebelion.org/noticia.php?id=190688> and Mantxo, M. (2011). Frack Off!!!!. *Gara*. 12 December. <http://gara.naiz.eus/paperezkoa/20111212/309141/es/Frack-Off>
- 25 No al TTIP (2014). Cheniere e Iberdrola firman un acuerdo de suministro de GNL por un período de 20 años. 30 May. <http://www.noalttip.blogspot.com.es/2014/06/cheniere-e-iberdrola-firman-un-acuerdo.html>
- 26 Greenpeace (2013). Iberdrola, empresa enemiga de las renovables. 29 May. <http://www.greenpeace.org/espana/es/Blog/iberdrola-empresa-enemiga-de-las-renovables/blog/45322>
- 27 Pérez-Nievas, F. and Montero, O. (2014). Iberdrola admite que la actividad de la central de Castejón en 2013 fue nula. *Noticias de Navarra*. 9 October. <http://www.noticiasdenavarra.com/2014/10/09/vecinos/tudela-y-ribera/iberdrola-admite-que-la-actividad-de-la-central-de-castejon-en-2013-fue-nula>
- 28 See the sizeable bibliography compiled by International Rivers on greenhouse gas emissions of large hydroelectric dams: <http://www.internationalrivers.org/resources/a-bibliography-of-key-scientific-articles-and-publications-on-greenhouse-gas-emissions>. Also see: <http://www.internationalrivers.org/problems-with-big-dams>
- 29 Energías Renovables (2011). Protermosolar echa a Iberdrola de la asociación termosolar. 31 de octubre. <http://www.energias-renovables.com/articulo/protermosolar-echa-a-iberdrola-de-la-asociacion>
- 30 Murcia, J. (2013). El Presidente de Iberdrola afirma que el precio de la luz bajaría un 10% si se eliminara la energía solar y fotovoltaica. *ABC de Sevilla*. 14 October. <http://sevilla.abc.es/economia/20131014/rc-presidente-iberdrola-afirma-precio-201310141606.html>
- 31 The large Spanish energy corporations are, in addition to Iberdrola, Gas Natural Fenosa (after the merger between Gas Natural and Unión Fenosa), Endesa (belonging to Italian ENI) and Repsol, the oil corporation. There are also small producers and distributors such as Zencer, Ecooo and Gesternova, and others such as Som Energía and Goïener that are cooperatives and committed to renewable energy.
- 32 See: http://www.iberdrola.es/sala-prensa/notas-prensa/nacional/2012/detalle/nota-prensa/121113_NP_02_GalanCongresoADP.html. Sobre el debate <http://unef.es/2013/07/una-radiografia-a-la-generacion-del-deficit-de-tarifa/>
- 33 Amendment no. 475 of the draft Law on the Electricity Sector establishes fines of up to 60 million euros for households that have a 200-watt solar panel without authorisation and authorises inspectors to revise installations put in for one's own consumption. See: http://www.congreso.es/public_oficiales/L10/CONG/BOCG/A/BOCG-10-A-65-5.PDF

- 34 This Spanish energy policy is a megalomaniac, greedy, ambitious and arrogant policy that is a reflection of unbridled urban planning and the construction of major infrastructure works (freeways, airports, high-speed trains, etc.) that generated a huge debt and consequently a major economic crisis, which was exacerbated by the international financial crisis.
- 35 See: www.nuevomodeloenergetico.org/pgs2/index.php/main-page-list/sabias-que
- 36 See: http://www.diariodenavarra.es/noticias/navarra/tudela_ribera/2013/12/29/iberdrola_ampliara_central_termica_castejon_141695_1007.html and www.fundacionsustrai.org
- 37 See: www.nuevomodeloenergetico.org/pgs2/index.php/main-page-list/sabias-que
- 38 The corporations that participated in 2013 in the Magritte Group, which pressured the European Parliament and the European Commission to eliminate policies in favour of renewable energy sources, are: Iberdrola, Gas Natural Fenosa, GDF Suez, ENI, RWE, E.ON, Enel, Gesterra and Vattenfall. Boyle, G. y Achterberg, F. (2014). Atados: Por qué las grandes eléctricas europeas quieren dejarnos enganchados a la importación de combustibles fósiles. Greenpeace. October. www.greenpeace.org/espana/Global/espana/2014/Report/cambio-climatico/Atados.pdf
- 39 Ibid.
- 40 Martínez, V. (2014). Iberdrola pide el cierre de otra central de gas al caer un 70% su producción. El Mundo. 22 November. <http://www.elmundo.es/economia/2014/11/22/546fac53268e3ea7728b456e.html>
- 41 Uharte, L. M. (2012). Las multinacionales en el siglo XXI: impactos múltiples - El caso de Iberdrola en México y en Brasil. Editorial 2015 y Más.
- 42 Iberdrola (2011). 743,8 millones en subvenciones por renovables. 14 March. <http://iberdrola.blogspot.com.es/2011/03/iberdrola-renovables-cerro-el-ejercicio.html>
- 43 Martínez, B. and Gilbertson, T. (2013). Castillos en el aire: el Estado español, los fondos públicos y el mercado de carbono de la Unión Europea. Carbon Trade Watch. http://www.carbontradewatch.org/downloads/publications/EU-ETS_SpainES-web.pdf
- 44 Hidalgo, R. (MAPDER) Parques eólicos de Iberdrola en el Istmo de Tehuantepec (Oaxaca). In: Acusaciones populares contra Iberdrola. Plaza de Arriaga, Bilbao. 30 October. http://issuu.com/ekologistakmartxanboletina/docs/iberdrola_tribunal_bilbao_declaraci. Also see <http://www.afectadosambientales.org/asamblea-de-los-pueblos-indigenas-del-istmo-de-tehuantepec-en-defensa-de-la-tierra-y-el-territorio>
- 45 See: <http://www.tierrayterritorio.wordpress.com>, <http://resistenciacontraeolicos.blogspot.com.es>, <https://www.capitalmadrid.com/2014/10/29/35795/las-empresas-espanolas-apuestan-por-mexico.html>, <http://www.alainet.org/es/active/67436>, <http://www.periodismohumano.com/economia/multinacionales-lo-que-la-energia-eolica-espanola-se-llevo.html>, www.iberica2000.org/es/Articulo.asp?Id=3403, www.ikbalam.org/modules.php?name=News&file=article&sid=10
- 46 See: www.gamesacorp.com/es/productos-servicios/parques-eolicos/presencia
- 47 SIPAZ (2013). Impactos y afectaciones de los proyectos de energía eólica en el Istmo de Tehuantepec. Informe Sipaz, Vol. XVIII (3). September. <http://www.sipaz.org/es/informes/117-informe-sipaz-vol-xviii-no-3-septiembre-de-2013/468-enfoque-impactos-y-afectaciones-de-los-proyectos-de-energia-eolica-en-el-istmo-de-tehuantepec.html>

- 48 Ekologistak Martxan (2015). Iberdrola y otras energéticas en Tehuantepec: Charla de Rosa Marina Flores Cruz (APIIDTT). Boletín 136. April. http://issuu.com/ekologistakmartxanboletina/docs/boletina_136
- 49 El Economista (2015). México lanza un plan de 12.000 millones para la eólica e invita a Iberdrola, Gamesa y Acciona. 13 January. <http://www.economista.es/economia/noticias/6386776/01/15/Mexico-lanza-un-plan-de-12000-millones-para-la-eolica-e-invita-a-iberdrola-Gamesa-y-Acciona.html#.Kku8BOJ6GH0efth>
- 50 See: Acusaciones populares contra Iberdrola. Plaza de Arriaga, Bilbao. 30 October. http://issuu.com/ekologistakmartxanboletina/docs/iberdrola_tribunal_bilbao_declaraci
- 51 Ownership of the Santa María de Garoña nuclear power plant is shared equally between Iberdrola and Endesa (each own 50% of Nuclenor's shares). See: www.nuclenor.org
- 52 Wikipedia (2014). Page on GDF Suez. http://en.wikipedia.org/wiki/GDF_Suez
- 53 Even though the project was designed in 1986, it was only launched in 2006 in Cadarache, France. It had an original budget of 14 billion euros, making it the fifth most expensive project in history. For information on opposition to this mega-project, see: <http://www.stop-iter.org> or <http://www.sortirdunucleaire.org/Stop-ITER>
- 54 Información Sensible (2014). Ganar en tiempos revueltos - Iberdrola ganó 13.911 millones de euros durante la crisis. 20 January. http://www.informacionsensible.com/news/1427/iberdrola_gan_13.911_millones_de_euros_durante_la_crisis
- 55 See: <https://www.diagonalperiodico.net/global/21208-grandes-electricas-espanolas-duplican-beneficios-europeas.html>
- 56 Información Sensible (2014), op. cit.
- 57 El Correo (2014). El presidente de Iberdrola gana casi 42.000 euros al día. 23 July. <http://www.elcorreo.com/bizkaia/economia/201407/23/sueldo-sanchez-galan-millones-20140723123214.html>
- 58 Scottish Power increased electricity prices 10% and gas, 19% in this country (June 2011), while his salary had nearly doubled (up to 12 million euros). The company was also accused of "false advertising", which was investigated by Britain's energy regulatory authority, Ofgem. <http://iberdrola.blogspot.com.es/2011/06/portada-empresas-energia-consumidores-y.html>). Véase también: <http://www.expansion.com/2011/06/18/empresas/energia/1308395538.html?af9248f65fb57e1a51782eda7ea6b43cb&t=1308556663>
- 59 Economía Zero (2013). Piden cárcel para Sánchez Galán y sus 13 consejeros de Iberdrola por cobrar 30 veces más que en Japón. <http://economiazero.com/piden-carcel-para-sanchez-galan-y-sus-13-consejeros-de-iberdrola-por-cobrar-30-veces-mas-que-en-japon>

Suez, Suez Environnement and GDF Suez

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In 1997, the merger of French corporations Compagnie Financière de Suez and Lyonnaise des Eaux created the energy, waste and water infrastructure company Suez Lyonnaise des Eaux. In 2008, after years of mergers, acquisitions and corporate realignment, the company – which by then was known simply as ‘Suez’ – was split into two separate entities: GDF SUEZ and Suez Environnement. This split was the result of Suez’s decision to merge with Gaz de France to create the energy multinational GDF Suez.¹ For the 2008 merger to take place, one of the conditions was that Suez’s water and waste division, Suez Environnement, would have to become a separate publicly traded company, in which GDF Suez would maintain 35 % of the company’s shares.² This chapter will focus on the involvement of Suez Environnement and its predecessor Suez in water privatization and will briefly explore the corruption allegations that surrounded the merger between Gaz de France and Suez.

The case studies presented below provide clear examples of how the interests of transnational corporations (TNCs) operating in the water, wastewater and energy services industries are protected by elements of the architecture of impunity, while the rights of the people are violated. As one of the largest water corporations worldwide, Suez Environnement and its predecessor have been complicit in abusive practices within its water privatization operations for years. Suez Environnement has a history of increasing water rates to unaffordable levels, not complying with contractual requirements by failing to improve or maintain water utility infrastructure, cutting off the water supply when community members cannot afford to pay high water bills and suing countries for terminating contracts or refusing to raise water tariffs to unaffordable levels. Over the years, Suez Environnement and its predecessors’ activities have caused many communities around the world to fight back. In some cases, these protests have been met with violence and further oppression by armed forces or authorities. These examples demonstrate how a corporation’s quest for profit often trump the human right to access to water and sanitation and also confirm the need to implement global standards and enforcement mechanisms to control the activities of transnational corporations.

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Water Privatization

Privatization of the water sector (especially in South America, Africa and Asia) was actively encouraged in the 1990s by international agencies, such as the World Bank and the International Monetary Fund.³ Private sector involvement in the water sector was believed to “introduce efficiencies in operations and investments” through competition and expertise.⁴ However, as a 2008 United Nations Research Institute for Social Development report on the privatization of water and sanitation services over a 15 year period concludes, “there is conflict between social development, public health, environmental concerns and poverty reduction on the one hand and the motive of profit maximizing of the private sector on the other.”⁵ Thus, providing services to the poor (who may not be able to pay for water services, but are in need of water accessibility and affordability) is not prioritized by the private sector. Instead, the private sector is more likely to target better-off consumers in low-risk urban areas in order to ensure a profit can be made, rather than expanding water and sanitation services to areas without service.⁶

The water management landscape began to change in the early 2000s when private sector investment in developing countries’ water services decreased to half of the \$120 billion⁷ level it was at in 1997.⁸ The private sector’s pull away from developing countries was due to the perception that these countries were not commercially viable, as communities were unable to pay high water costs, which increases the risks for corporations. This was highlighted in the UN’s 2006 World Water Development Report, which stated that “due to political and high-risk operations, many multinational water companies are decreasing their activities in developing countries.”⁹ The report emphasized that “those who have benefited from private water services in developing countries are predominantly those living in relatively affluent urban pockets...the very poor sections normally tend to be excluded.”¹⁰

What follows is a sample of cases that demonstrate the problematic nature of Suez Environnement and Suez’ involvement in the privatization of water services in the Global South. Many of these examples show how the company used the primary pillars of the architecture of impunity – namely the International Centre for Settlement of Investment Disputes (ICSID) (which is the World Bank’s arbitration tribunal) – to ensure that the corporation’s right to make profit trumped those of the host governments and the people of the countries where it operated.

Bolivia

In early 2005, demonstrations took place in Bolivia’s capital, La Paz to protest the privatization of water by Aguas del Illimani (Aisa), a Suez subsidiary. Aisa’s shareholders included Suez, which controlled 55 % of the firm; Bicsa (22 %); the World Bank, which

owned 8 % through its private lending arm, the International Finance Corporation (IFC); Connal (5 %); Inversora en Servicios (9 %); and the company's workers (1 %).¹¹ In 1997, Aisa was awarded a 30-year concession contract that gave it control over water and sewage services in the cities of La Paz and its El Alto suburb.¹² However, by 2005, the price of the water supply service had increased 300 %, which represented in some cases 20 % of household budgets. The large rate hikes ignited deadly protests in both cities. In 2005, five people were killed during a demonstration in La Paz, while in El Alto, a protest brought together up to 500,000 people. Partially succumbing to popular pressure, the government eventually promised to cancel the contract in 2005, but only after an audit on the company found that Aisa had failed to meet its commitment to achieve 100 % potable water coverage for both cities within five years. According to local organizations, the Suez's subsidiary had left 200,000 people in both La Paz and El Alto (one-fifth of the population of El Alto) without access to water and sanitation services.¹³

It took the government two years to finally follow through on its promise of cancelling the contract and return the utility to public control. One of the reasons for the delay was the government's concern that if it cancelled the contract, Suez would retaliate through international investment courts such as the World Bank's ICSID.¹⁴ The Bolivian government eventually paid Suez and the other Aisa shareholders US\$5.5 million for 'lost' investments. The government also assumed US\$9.5 million of the corporation's debts with international financial agencies such as the World Bank's IFC, the Inter-American Development Bank and the Andean Development Corporation.¹⁵ The water utilities were then returned to public control and renationalized under the name "EPSAS".¹⁶

Argentina

Suez Environnement's predecessors' track record in running water and sanitation services in Argentina provides another classic example of TNCs' reliance on international investment tribunals to guarantee their 'right' to profit. In 1993, after the Argentinian government decided to privatize Buenos Aires' water and wastewater services, Suez Lyonnaise des Eaux, along with a consortium of other companies, created Aguas Argentinas. A 30-year concession was ultimately granted to Aguas Argentinas after the consortium had promised to increase access to services and provide the largest reduction in water rates in comparison to its competitors (stating it would reduce rates by 26.9 %).¹⁷ Despite its promises and the fact that the concession agreement included a condition prohibiting the company from raising rates for ten years,¹⁸ the company ended up raising the price of the average water bill and failing to expand the service area significantly.¹⁹ The contract also ruled out the possibility of paying the company compensation for losses due to its own negligence or inefficiency. Disregarding what

was written in the contract, the company managed to renegotiate the agreement only eight months into the concession due to unforeseen operating costs.²⁰ The renegotiated contract authorized a rate hike of 13.5 %, paving the way for consistently higher water bills for a population that could not afford it. The new pricing system allowed the company to go from registering losses to making huge profits in its second year of operation. Average water bills went from \$14.56 in May 1993 to \$27.40 in January 2002.²¹ During the same period, the inflation rate in Argentina hovered around zero.²²

While it raised the rates, Aguas Argentinas was not fulfilling its contractual obligation to expand and invest in the services. The contract required Aguas Argentinas to invest US\$4.1 billion in the water utilities system and to connect over 4.2 million people to water and 4.8 million to sewage systems. The company failed to meet either of these requirements despite the fact that the rate hike was only granted on the condition that the company expand the city's water services to informal settlements in Buenos Aires.²³ However, the company did not follow through, blaming their bad debt, late payments by consumers and the failing Argentinian economy for their problems, even though it continued to maintain a 20 % profit margin. Furthermore, many poor Argentines had their water cut off when they were unable to pay.²⁴

The company also accumulated a huge debt by taking out loans with the IFC, the Inter-American Development Bank and the European Investment Bank (EIB). In December 1995, the EIB provided Aguas Argentinas with a 70 million-euro loan for the company's concession in Argentina.²⁵ In 1999, Aguas Argentinas renegotiated its contract with the government once again; this time, it threatened to stop investing and expanding water and sanitation services to poor neighbourhoods until a new contract was signed.²⁶ The same year, Aguas Argentinas received US\$300 million in financing from the Inter-American Development Bank, and between 1999 and 2003, another US\$150.7 million in loans from the IFC.²⁷ The World Bank not only provided loans to Aguas Argentinas, but also assumed a 7 % stake in the company and then sent a senior manager to aid in negotiating the rate increase with the Argentine government.²⁸

The company's strategy of using borrowed money to finance the concession put it in a very vulnerable position when an economic crisis hit the country at the end of 2001.²⁹ Aguas Argentinas reacted by threatening to increase its rates 42 % if the government did not allow it to repay its foreign debt at a fixed peso-dollar exchange rate.³⁰ The government refused to give in to these demands, and devalued its currency in 2002.³¹ Aguas Argentinas eventually defaulted on US\$700 million in loans.³² In response to how the Argentine government managed the crisis, the company filed a lawsuit against Argentina at the ICSID. After years of poor quality services, unfulfilled promises and the company's wrangling with state officials, in March 2006, the Argentine government rescinded the 30-year concession contract and the utility returned to public hands.



KRuHA (Peoples Coalition on the Right to Water - Indonesia), 2013



El Alto Bolivia, 2004 / Julián Pérez



Suez hoped to hold the government responsible for the losses it incurred due to the devaluation of the peso, essentially by demanding that the Argentine people compensate them for their own ill-advised financial strategy.³³ The company's wishes were granted on 30 July 2010, when the ICSID ruled in the company's favour, stating that it had the right to claim limited damages for lost revenues associated with water concessions in Argentina.³⁴ The ruling stated, "The effective devaluation of the Argentine peso meant that [Aguas Argentinas] costs increased substantially and the government's refusal to allow a revision of the tariff in these circumstances meant that [Aguas Argentinas] began to sustain losses".³⁵ Suez Environnement sought US\$1.2 billion in damages from the Argentinian government.³⁶ However, on 9 April 2015, ICSID ordered the government to pay the company \$405 million. Two days later, the government of Argentina announced that it would appeal the ICSID's ruling.³⁷

South Africa

Suez Environnement and its predecessors have been active in South Africa³⁸ since the 1970s, when its subsidiary Degrémont won a contract to design and construct water and water treatment plants. In the years that followed, Suez and its subsidiaries were awarded hundreds of contracts from the Apartheid government to supply clean water to the white minority, while the needs of the black majority were ignored.³⁹ In 1986, the company joined the South African corporation Group Five in creating Water and Sanitation Services Africa (WSSA). In 1992, WSSA was awarded a 25-year concession in Queenstown, Eastern Cape, and was also the provider of water and wastewater services to over 2 million people in the provinces of Kwa-Zulu Natal, Western Cape, Northern Province and Gauteng. In 2001, WSSA was awarded a five-year management contract to supply water and wastewater services to the 3.5 million inhabitants of Johannesburg. The contract covered the city's six municipal water and wastewater structures, and doubled the number of people living in areas managed by Suez.⁴⁰

Suez ran into controversy over a number of its contracts. For instance, between 1994 and 1999, water rates increased 300 % in three rural, low-income municipalities in the Eastern Cape: Queenstown, Stutterheim and Fort Beaufort (Nkonkobe).⁴¹ By 1996, a typical household was spending 30 % of its average US\$60 per month income on water, sewer and electricity bills.⁴² In Queenstown, since the majority of residents were unable to pay their utility bills, the municipality appointed special debt collectors and – in a clear violation of the residents' human rights – introduced very high reconnection fees. As for Nkonkobe, the assistant treasurer of the municipality reported in 2000 that "The majority of debtors against whom actions were taken are pensioners or unemployed".⁴³ By the late 1990s, resistance to high rates and ruthless tactics had turned into violent protest. The Nkonkobe municipality eventually cancelled its contract with WSSA, as it was unable to pay management fees to the company.⁴⁴

In 2000, Suez was awarded the contract to take over operations of Johannesburg Water (JW). In Orangefarm, one of Johannesburg's poorest townships, Suez installed pre-paid water meters that forced consumers to pay up front for their water; if users failed to pay, water would be automatically cut off.⁴⁵ The use of prepaid water meters in South Africa has been linked to outbreaks of cholera, due to the fact that when people run out of credit, they rely on collecting water from unsafe sources.⁴⁶ For example, in the summer of 2000, thousands of poor community members in the KwaZulu-Natal province were unable to afford water payments and had their water cut off, causing a severe cholera crisis.⁴⁷

This health crisis and the social protests that ensued led the ANC government to create a Free Basic Water (FBW) national policy in 2001, which "called for all 284 municipalities across South Africa to provide 6,000 litres (six kilolitres) of water per house-hold per month or 25 litres per person per day of free water".⁴⁸ A tariff system was to be put into place to ensure that those who use more than the basic amount of free water would pay extra in order to subsidize the free consumption block, thus promoting a progressive model of redistribution.⁴⁹ However, as there was no national regulating body, some municipalities did not comply with the FBW policy. In Johannesburg, its water services provider Johannesburg Water, managed by Suez, adopted a steep "convex tariff curve." While the tariff structure did guarantee the free amount of water to Johannesburg citizens, it made the higher water consumption brackets unaffordable for many poorer households. This led to an increase in the number of residences whose access to water services was cut off. When Suez's contract with Johannesburg expired in 2006, it was not extended.

Suez' operations in South Africa are just another example of the corporation's dismal track record in managing water and sanitation projects. It also provides more proof that privatizing water and sanitation services only benefit the corporations involved, while the people end up paying more for the service and, in many cases, are not able to pay for access to clean water. The corporation acts to guarantee its profits, yet makes no commitment to guaranteeing citizens' access to water.

Indonesia

When the city of Jakarta's water services were privatized in 1997, two 25-year concessions were awarded. One was given to Palyja, Suez Environnement's joint venture with Indonesian firm Astratel Nusantara (which own 51 % and 49 % of the company, respectively), for the management of services in the western part of Jakarta; and the second, to the British water services corporation Thames Water for the services on Jakarta's eastern side. Thames Water sold its shares in the company in 2006, which is now owned by Indonesian company Aetra Air Jakarta.

It was believed that by privatizing the service, the resources needed to improve infrastructure and expand Jakarta's water service would become available. In reality, however, the contract turned out to be costly for the residents of Jakarta, and the government as well.⁵⁰ PAM Jaya, the public company that continues to supervise both private companies, and the government have accumulated at least Rp 590 billion (US\$48.38 million) in debt after 16 years of operations.⁵¹ This debt is due to the disparity in payment mechanisms set out in the agreement between the private corporations and the government. The agreement includes a water charge, which is money PAM Jaya pays to the private operators; the amount is increased every six months. The water tariff customers pay to the provincial government, on the other hand, cannot be raised at the same frequency, as residents already face high water bills: water tariffs for individual customers have gone up 10 times in Jakarta, making it the highest rate in all of South-East Asia.⁵² This has created a situation where PAM Jaya regularly experiences huge deficits.

As a result of this imbalance in the contract, not only are residents in Jakarta unable to pay the high water tariffs, but also the government has taken on large amounts of debt due to the regular increases in the water charges it pays to private operators. It is believed that if the 25-year contract is followed through to the end, the local government's debt with the private operators will amount to Rp \$18.2 trillion (US\$ 1.48 billion).⁵³ This situation is particularly disturbing when one looks at Palyja's 2010 financial results: the private corporation earned Rp 216 billion (\$17.6 million) in profit, while PAM Jaya's debt increased Rp 62 billion (\$5.06 million) the same year.⁵⁴

Furthermore, after years of privatisation, water infrastructure and accessibility have not improved, and only 34.8 % of residents in Jakarta have access to clean water.⁵⁵ Therefore, not only are residents and the government paying a high price for the privatization of their water, but also the companies have failed to improve the water system or expand coverage. People are demanding change, and want fair and transparent renegotiations or an end to the contract.⁵⁶ Public protests, campaigns and even a lawsuit contesting the privatization of their water have emerged.⁵⁷ In 2013, the governor of Jakarta, Joko Widodo, proposed that the city buy back Suez Environnement's shares. Since then, negotiations between the government and the company have been slow.⁵⁸

Activists in Jakarta have been calling on the government not to enter into any agreement with Suez before the lawsuit filed by the Coalition of Jakarta Residents Opposing Water Privatization (KMMSAJ) has been concluded. Filed in November 2013, KMMSAJ's lawsuit claimed that the initial privatization contract between private companies and PAM Jaya was drawn up illegally and it violated the Indonesian constitution's provisions on basic services – including access to clean water.⁵⁹ On 24 March 2015, in a major victory for local activists, the court ruled in favour of KMMSAJ and ordered the private operators to end the privatization of water in Jakarta and to return the operation of water distribution to the city-owned water operator PAM Jaya. In its ruling, the court noted that the companies

had been 'negligent' in fulfilling the human right to water for the residents of Jakarta.⁶⁰ Both companies immediately announced their intention to appeal the decision and on 1 April 2015, Aetra Air Jakarta filed its appeal of the ruling.⁶¹ On 10 April 2015, the head of Suez Environnement's international operations stated that the company will launch an appeal and that "the story is far from over".⁶²

Lobbying and Corruption

Like most TNCs, Suez Environnement, GDF Suez and their predecessors have a history of influencing elected officials in both their home and host countries. This influence can come in the form of direct lobbying of politicians and bureaucrats, or, in some cases, through corruption practices. Over the years, the companies that became GDF Suez and Suez Environnement have been involved in a number of corruption scandals. This behaviour persists to this day, and shows how a culture of corruption and impunity resides inside these companies. In a February 2014 case involving GDF Suez, charges were laid against the company after the Belgian government accused Electrabel, GDF Suez' Belgian subsidiary, of artificially reducing the amount reported as profits by at least 500 million euros in 2012. The Belgian government claims that the reduction in Electrabel's profits caused the country to lose 170 million euros in tax revenues. The case is currently being investigated by the Belgian Special Tax Inspectorate.⁶³

The track record of corruption within Suez includes bribing officials, price-fixing, tax evasion and fraudulent accounting.⁶⁴ One of the historic cases occurred between 1989 and 1996, when three corporations – Suez (then Lyonnaise des Eaux), Vivendi (now Veolia Environnement) and the French industrial group Bouygues – participated in an illegal political fundraising arrangement with government and political party officials. The scheme allowed all three corporations to divide up amongst themselves contracts to build schools in the Île-de-France region (surrounding Paris), which were worth approximately US\$500 million, while other bidders were excluded from the process. In exchange for the contracts, municipalities were to charge a 2% levy, which would then be considered as 'donations' to political parties in the region.⁶⁵ This arrangement was described in *Le Monde* as "an agreed system for the misappropriation of public funds".⁶⁶

While government officials and political parties were the ones that created this scheme to skim 2% off the top of contracts, the companies were told that if they wanted the contracts, they would have to pay. The fact that these corporations did obtain the contracts confirms their complicity. Government officials met with the companies to decide who would get contracts based, in part, on who would pay the 2%. This was done secretly before the official tendering process started. The pay-offs ended in 1996 when the scandal became public and revealed that corruption had infiltrated the highest levels of municipal and federal government.⁶⁷ Former French Prime Minister Jacques Chirac was implicated



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in the scandal, which resulted in the indictment of various public officials and corporate executives, including the former commercial director of Suez' then subsidiary Grands travaux de Marseille (GTM).⁶⁸ Only two former politicians were convicted in the scandal.⁶⁹

In addition to Suez' involvement in corruption, the company uses lobbying and close connections to elected officials to further its interests. One example of the company's close ties with government officials emerged during the negotiations for the merger of the state-owned Gaz de France and Suez. In 2006, a deputy from France's green party sent a letter to the public prosecutor in Paris detailing questionable lobbying techniques used by the private company to convince the government to approve the merger.⁷⁰ The lobbying activities in question included Suez flying twenty elected officials on Gérard Mestrallet's (Suez' Chair and CEO) chartered plane to the World Cup final in Germany in the summer of 2006, two months before the National Assembly was to discuss the proposed merger. Mestrallet also invited 300 parliamentarians to a dinner at a high priced restaurant on the Champs-Élysées before the official review of the merger was to take place.⁷¹ These two examples of lobbying by the company led one French official to state, "these practices, if they are not illegal, end up altering the practice of democracy".⁷²

Suez's close ties to the government are even more understandable when one considers GDF Suez's Board of Directors: numerous members have held high-ranking government positions. For example, GDF Suez Vice-Chairman and President Jean-François Cirelli worked first as a technical advisor, then as an economic advisor to the president of France. He was later appointed the Deputy Director of the Prime Minister's Cabinet, before going to work for Gaz de France in 2004. Another example is Edmond Alphandéry, an Independent Director at GDF Suez, who served as the Finance Minister under Prime Minister Édouard Balladur from 1993 to 1995. During his mandate as Finance Minister, Alphandéry put in place the 'privatization program', in which he oversaw the privatization of numerous state-owned companies.⁷³

The examples provided above are just a sample of the troubling behaviour of some of Europe's largest transnational corporations: GDF Suez, Suez Environnement and their predecessors. As the cases demonstrate, Suez is highly skilled at using the pillars of the architecture of impunity – such as multilateral lending institutions, including the World Bank – to finance its projects. Suez is equally accomplished at exploiting international dispute settlement mechanisms that ultimately rule in favour of TNCs when their ill-advised investments do not work out. What is more, the examples of deep-seated corruption, lobbying and influence mentioned here show how Suez did not shy away from using questionable tactics in order to achieve its business and operational goals. Suez' track record and the water privatization cases above illustrate how TNCs exploit their unprecedented power to guarantee increased profits, while, in many situations, violating the rights of vulnerable populations, and their right to clean water and sanitation.

Notes

- 1 Gaz de France (2008). 200,025,000 ordinary shares. 16 June. <http://www.gdfsuez.com/wp-content/uploads/2012/05/formulaire-f4-en.pdf>
- 2 Ibid., page 22.
- 3 Bayliss, K. (2003). Utility Privatisation in Sub-Saharan Africa: A Case Study of Water. *Journal of Modern African Studies*, 41(4), pages 507-531.
- 4 World Bank (2004). Public and Private Sector Roles in Water Supply and Sanitation Services, in Operational Guidance for World Bank Group Staff, page 7.
- 5 Prasad, N. (2006). Current issues in Private sector participation (PSP) in water services. United Nations Research Institute for Social Development (UNRISD). 22 December, page 28.
- 6 Ibid.
- 7 All dollar figures in this article are expressed in US dollars, unless otherwise specified.
- 8 Bond, P. (2010). Water, Health, and the Commodification Debate. *Review of Radical Political Economics*, 42 (4): 459.
- 9 Vidal, J. (2006). Big water companies quit poor countries. *The Guardian*. 22 March.
- 10 Ibid.
- 11 Medalla, E. (2010). Epsas to install 300,000 potable water connections by end-2011. *Business News America*. 28 October. <https://www.stopcorporateabuse.org/news/epsas-install-300000-potable-water-connections-end-2011>
- 12 Trevett, A. (2005). Regulating Public and Private Partnerships for the Poor – Case Study: Bolivia. Cranfield University. December, page 9.
- 13 Food & Water Watch (2006). Suez in Bolivia. July. <http://www.foodandwaterwatch.org/global/latin-america/bolivia/suez-in-bolivia>
- 14 Spronk, S. (2008). After the Water Wars in Bolivia: The Struggle for a ‘Social-Public’ Alternative. *Upside Down World*. 29 April.
- 15 Spronk, S. (2008), op. cit.
- 16 Ibid.
- 17 Food & Water Watch. Buenos Aires – Collapse of the Privatization Deal. <http://www.foodandwaterwatch.org/global/latin-america/argentina/buenos-aires-collapse-of-the-privatization-deal/>
- 18 Ibid.
- 19 Vilas, C. (2004). Water Privatization in Buenos Aires. *NACLA Report on the Americas*, 38 (1). July/August, page 36.
- 20 Ibid.
- 21 Ibid, p. 37
- 22 Trading Economics. Argentina Inflation Rate 1944-2015 Data. <http://www.tradingeconomics.com/argentina/inflation-cpi> ; and Vilas, C. (2004), op. cit., page 37.
- 23 Rudo, D. et al. (1998). Argentina: Aguas Argentina 1998-1999 Capital Investment Program AR-0238. Inter-American Development Bank. November, page 1.
- 24 Food & Water Watch. Buenos Aires – Collapse of the Privatization Deal, op. cit.
- 25 Agence Europe (1995). EIB Lends 70m to Argentina to Improve Environment in Buenos Aires. 5 December.
- 26 Santoro, D. (2003). The ‘aguas’ tango. The Center for Public Integrity. 6 February. <http://www.publicintegrity.org/2003/02/06/5719/aguas-tango>
- 27 Inter-American Development Bank (1999). IDB Approves \$300 Million for Water and Sanitation in Argentina. 23 June. <http://www.iadb.org/mobile/news/detail.cfm?language=English&id=222>
- 28 Brenner, A. (2006). Suez. Paper presented during the International Conference on Global Companies – Global Unions – Global Research – Global Campaigns. Cornell University.

- 29 Ibid, page 38.
- 30 Food & Water Watch. Buenos Aires – Collapse of the Privatization Deal, op. cit.
- 31 Ibid.
- 32 Vilas, C., (2004), op. cit.
- 33 Suez (2002). Press Release: SUEZ invokes procedures provided under the French-Argentine Bi-lateral Investment Treaty and books provisions to cover all its exposure in Argentina. 28 June.
- 34 Global Water Intelligence (2010). Suez seeks \$1.2bn in damages in Argentina. 11 (8). August. <http://www.globalwaterintel.com/archive/11/8/general/suez-seeks-12bn-damages-argentina.html>
- 35 International Centre for Settlement of Investment Disputes (2010). In the proceedings between Suez, Sociedad General de Aguas de Barcelona S.A., and Vivendi Universal S.A. (Claimants) and The Argentine Republic (Respondent) - ICSID Case No. ARB/03/19. July 30, page 20. <http://italaw.com/sites/default/files/case-documents/ita0826.pdf>
- 36 Mateos, I. (2010). World Bank's ICSID Rules against Argentine Government on Water Contracts. IHS Global Insight Daily Analysis, WDAN. 3 August; and Global Water Intelligence (2010), op. cit.
- 37 TeleSur (2015). Argentina Government to Appeal World Bank Court Ruling. 11 April. <http://tinyurl.com/kdlu5vm>
- 38 For more information and updates on Suez' operations in South Africa, see the Polaris Institute's website: http://www.polarisinstitute.org/polaris_project/water_lords/News/index.html
- 39 Public Citizen (2003). Suez: A Corporate Profile. August, page 9.
- 40 Suez. (2001). Press Release: Lyonnaise des Eaux Signs the Water Management Contract of Johannesburg. 14 February.
- 41 Pauw, J. (2003). Metered to Death: How Water Experiments Caused Riots and a Cholera Epidemic. The Center for Public Integrity. February. <http://www.publicintegrity.org/2003/02/05/5713/metered-death>
- 42 Ibid.
- 43 Ibid.
- 44 Public Service International Research Unit (2001). WSSA South African Water Contract Nullified. December.
- 45 Public Citizen (2003). Suez: A Corporate Profile. August, page 10. <http://www.citizen.org/documents/profilesuez.pdf>
- 46 Public Citizen (2004). Orange Farm, South Africa: The Forced Implementation of Prepaid Water Meters. June, page 11.
- 47 Bond, P. (2010). Water, Health, and the Commodification Debate. *Review of Radical Political Economics*, 42(4), page 455; and Public Citizen (2003), page 12.
- 48 Bond, P. (2010), op. cit.
- 49 Ibid.
- 50 Elyda, C. (2014a). Privatization 'violates' human rights. *The Jakarta Post*. 5 March. <http://bit.ly/O6PHZ9>
- 51 Elyda, C. (2014b). Water privatization defected in its execution: Witness. *The Jakarta Post*. 5 February, <http://bit.ly/1nfSOi2>
- 52 Zamzami, I. (2012). Jakarta Water Privatization Today: Dried Water Tap or Change. March.
- 53 Ibid.
- 54 Semarang, N. (2011). Thirteen years of privatized water in Jakarta. 11 June. <http://bit.ly/1rthAbN>.
- 55 Ibid.
- 56 Zamzami, I., op. cit.
- 57 Petit-Jean, O. (2014). Jakarta: Suez Environnement and water privatization under trial. *Multinationals Observatory*. 14 March. <http://multinationales.org/Jakarta-Suez-environnement-and>

- 58 Ibid.
- 59 Elyda, C., (2014a).
- 60 Elyda, C. (2015). Court decision ends privatization of water in Jakarta. The Jakarta Post. 24 March. <http://m.thejakartapost.com/news/2015/03/24/court-decision-ends-privatization-water-jakarta.html>
- 61 Danubrata, E., and Greenfield, C. (2015). Aetra appeals in case seen as test of Indonesia's investor climate. Reuters. 2 April. <http://www.reuters.com/article/2015/04/02/aetra-air-jkt-court-idUSL3N0WZ2JO20150402>
- 62 De Clercq, G. (2015). Suez will fight to keep its Jakarta water contract. Reuters. 10 April. <http://tinyurl.com/mppdw4l>
- 63 Singh, R. (2014). GDF Suez Investigated over tax evasion. ESG Insider. 17 February.
- 64 Brenner, A. (2006). "Suez," Paper presented during the International Conference on Global Companies – Global Unions – Global Research – Global Campaigns. Cornell University.
- 65 Ibid.
- 66 Barlow, M., and Clarke, T. (2002). Blue Gold. Stoddard Publishing. Toronto.
- 67 Pontaut, J.M. and Gaetner, G. (2005). Le scandale qui éclabousse la droite et la gauche. L'Express, March. http://www.lexpress.fr/actualite/societe/justice/le-scandale-qui-eclabousse-la-droite-et-la-gauche_486696.html
- 68 Ibid.
- 69 Agence France Presse (2005). Marchés publics d'Ile-de-France: sursis et amende pour Roussin et Giraud. 26 October.
- 70 Gaetner, G. (2006). GDF-Suez: lobbying ou corruption? L'Express. 22 December.
- 71 Ibid.
- 72 La Croix. (2006). Les pressions des lobbys peuvent nuire à la crédibilité des députés. 7 December. http://www.la-croix.com/Actualite/France/Les-pressions-des-lobbys-peuvent-nuire-a-la-credibilite-des-deputes-_NG_-2006-12-06-595509
- 73 Reuters (1994). Alphandéry – Reprise plus forte de prévu. 26 July.

Requiem for a Dream of Progress: The Political Economy of Megadams in the Brazilian Amazon

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The political economy of megadams¹ can never be reduced to issues of energy production as mainstream narratives attempt to convey to us. These major infrastructure projects trigger large-scale capital accumulation by powerful economic agents through the expropriation of territories and ways of life of traditional peoples who are the ancestral guardians of biological and cultural diversities linked to the rivers. Megadams allow capital accumulation by dispossession² in the territories where they are built for the benefit of different fractions of transnational capital (especially corporations from the energy, construction, mining, agribusiness and financial sectors). As a part and a result of this process, infrastructure projects produce a reconfiguration of space that disturbs the temporalities and ways of living that existed prior to their construction.

Traditional peoples living in the territory are not only physically dispossessed through these major investment projects; their ability to determine the notion of value attributed to the territory is also largely undermined. The dispossession process is based on the assumption that production and ways of living that are not directed towards global markets are archaic and need to be suppressed.

These processes take place in collusion with and are promoted by the state and International Financial Institutions (IFIs) that – through a myriad of discourses, policies and actions – impose and legitimize a specific model of development as growth and “progress”. The asymmetry of power and access to political resources between the actors that impose this model and the affected communities resisting dams is highly visible. Hence the conflictive nature inherent to the political economy of megadams.

The story of megadams in the Panamazonian region is no different. On the contrary, given the immensity of the Amazon basin, its exuberant biodiversity, and the cultural and linguistic diversity and vulnerability of its indigenous and riverine populations, the stories surrounding the construction of megadams in the Amazon are especially tainted with contentious politics.

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The neo-colonial pattern of megadams in the Brazilian Amazon basin

The exploitation of the Amazon basin's energy potential is rather recent, especially in comparison to other river basins in South America.³ This is probably due to the hydrological complexity of the Amazon, the difficulties of access due to the rainforest's density and, last, but definitely not the least, the historical resistance of local and transnational solidarity networks of social, environmental and indigenous movements to the numerous attempts to advance megadam projects in the region.⁴

About 7,050,000 km² in size, the Amazon basin is the largest and the most biodiverse basin in the world. It covers approximately 40% of South America and spans nine countries: Brazil, Colombia, Bolivia, Ecuador, French Guyana, Guyana, Peru, Suriname, and Venezuela. As of 2014, there were 105 dams in the Amazon basin, and another 254 under construction or in the project design phase.⁵

Dams have historically caused environmental and social degradation and conflicts in the Amazon.⁶ Deeply engrained in the development planning of authoritarian regimes, several of the current megadam projects underway in the Brazilian part of the Panamazonian region were initially planned during the country's military dictatorship, particularly in the 1970s. The landmark for the construction of the Transamazônica (Transamazon) highway – that nowadays cuts across over 4,000 km of land – was inaugurated at a ceremony attended by the then military president General Medici on 9 October 1970. The inscription on the inaugural plaque reads:

“On these banks of the Xingu River, in the Amazon jungle, the President of the Republic begins the construction of the Transamazônica highway as part of a historical push to conquer this gigantic green world.”⁷

In his speech at the ceremony, General Medici's description of the Amazonian territory to justify its “conquest” and the arrival of settlers is perhaps the most accurate expression of the logic of capitalist spatial expansion: “a land without men for men without land”. According to this logic, the women and men who inhabit that territory are conveniently “forgotten” and treated as non-existent, and the land is presented as being in need of occupation, as if the existing forms of using the territory were irrelevant. Two basic assumptions underlying the logic of capitalist spatial expansion can be seen here. The first is that a hierarchy of human beings exists, in which some are seen as inferior to others, and their ways of living, in need of “modernization”. The second is that the value produced by these ways of life and their forms of occupation of the territory are considered a waste of the potential exchange-value that must be exploited to generate capital accumulation on the global markets. In this process, large-scale, intensive capitalist exploitation of resources for global markets is glorified as “progress”. However, this leads one to ask,

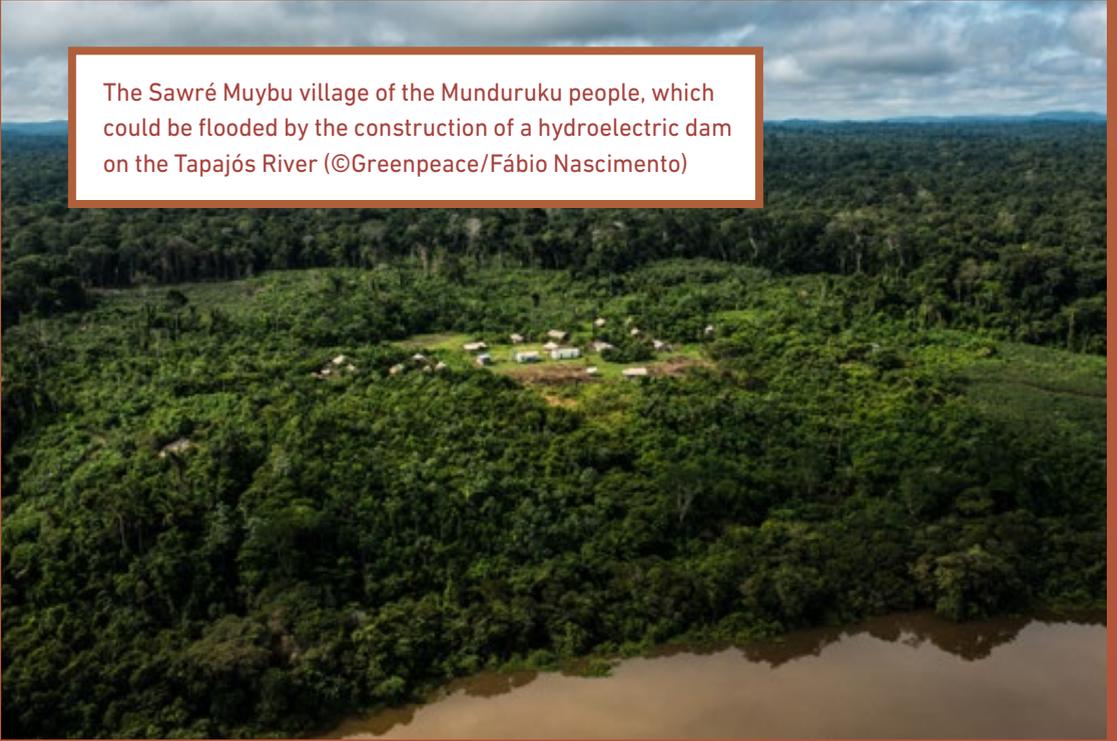
“progress for whom?” For traditional peoples, it is through this same process that their ability of determining the value attributed to the territory in which they live, often since time immemorial, is undermined.

Megadams as a proxy for the expansion of transnational capital in Brazil

Even before construction begins, the mere political intention or plan to build a megadam generates a dispute between diverse political, social and economic actors over not only the appropriation of the value contained in a territory in capitalist terms, but also the ability to determine the meaning of value attributed to that territory. For the different fractions of transnational capital interested in the appropriation of value for capital accumulation through megadams, diverse modern indexes are needed to measure the value contained in a given territory, and therefore assess the amount of natural resources to be potentially exploited and traded on global markets. The energy potential measured in megawatts is a part of this equation. The ultimate goal is not solely to produce energy for the consumption of growing middle class urban populations and to guarantee “energy security”, as defenders of megadams frequently argue. It is also the new opportunities for capital accumulation derived from the construction of dams: the billion-dollar business of megadam construction with guaranteed public financing and legal certainty; the business of energy provision, often at abusive rates for household consumption and subsidized rates for industries; the exploitation of mineral and other natural resources with a guaranteed energy supply at subsidized rates, as well as infrastructure improvements; and the establishment of waterways that integrate rivers into trade corridors geared towards global markets.

Some of the different fractions of transnational capital interested in megadam projects in Brazil include corporations from the construction, energy, mining, metallurgical and agribusiness sectors. Those from the construction sector have been especially adept at using revolving doors, electoral campaign financing and lobbying mechanisms to capture state policy-making for the energy sector. The tragic epic surrounding the construction of Belo Monte dam, only a few kilometres away from the Transamazônica landmark, is marked by several memorable moments. In February 1989, at the First Meeting of Indigenous Peoples of the Xingu, an indigenous woman threatened Muniz Lopes, the then Planning Director of Eletronorte (the subsidiary of Eletrobrás - the publicly-managed mixed capital electricity company – which is responsible for the political sub-region containing most of the Amazon territory in Brazil), with a knife. This incident seemed to be the end of plans to build dams on the Xingu River.⁸ Just over a decade later, in the early 2000s, Muniz Lopes began to work for the private sector for the “Consórcio Brasil” – a lobby consortium made up of Brazilian transnational construction companies Camargo Correa, Odebrecht and Andrade Gutierrez. For five years, Muniz Lopes lobbied the Brazilian Congress to get

The Sawré Muybu village of the Munduruku people, which could be flooded by the construction of a hydroelectric dam on the Tapajós River (©Greenpeace/Fábio Nascimento)



Construction site for the Belo Monte hydroelectric plant near Altamira in the state of Pará (©Fábio Nascimento/Greenpeace)



the Belo Monte dam back on the political agenda.⁹ With his return to the public sector as the Director of Transmission of Eletrobrás, Muniz Lopes is a typical example of the use of revolving doors to foster the interests of corporations in the billion-dollar business of hydropower exploitation. The same companies from Consórcio Brasil currently own 50% of the Consórcio Construtor Belo Monte (Belo Monte Construction Consortium - CCBM).¹⁰ These corporations are also amongst the biggest sources of campaign funding in the country, having financed the three main presidential candidates in the 2014 Brazilian elections. Reports on the corruption scandals currently under investigation (the Federal Police's "Lava-Jato" or "car wash" operation) indicate that these decisions on campaign funding are driven by attempts to secure future bids for megaproject construction.¹¹

As for the mining and metallurgical sectors, there has been major interest in the predictable energy flows provided by dams. The World Commission of Dams' report on the Tucuruí dam¹² has found that the decision to initiate its construction in 1975 was highly informed by the oil crisis, when energy costs in countries such as Japan and the United States negatively affected the profitability of energy-intensive sectors. In that context, proposals to build aluminium-processing plants put forward by Japanese capital together with the Companhia Vale do Rio Doce (CVRD)¹³, and by Alcoa-Billington were fundamental in the decision to build Tucuruí. More than half of the energy produced in Tucuruí is consumed by industries at subsidized rates.¹⁴ Tucuruí's social and environmental devastation are so widely known that in his speech during his visit to Altamira – the city closest to the Belo Monte dam construction site and the one impacted the most – in June 2010, President Lula made clear references to it by saying, "I know many well-intended people do not want the mistakes of the past in the construction of dams to be repeated. We do not want to repeat Balbina or Tucuruí."

The misrepresentation of mining and metallurgical projects as "development" opportunities for local populations was apparent in Lula's discourse later that day, in which he clearly said that Belo Monte's goal was the same as that of Tucuruí – to provide energy for the mining and metallurgical industries:

"I will be overseeing the construction of this dam [Belo Monte] because after 30 years, we managed to make it happen so that this region here will no longer be an importer of aluminium and iron ore. This region can be an industrialized region that can generate employment and income so that people can live with dignity. I will leave here and go to Marabá and I will announce the beginning of excavations for the first steel plant in the state of Pará, which will use the energy produced by Belo Monte."¹⁵

Another example of the mining sector's interest in the energy and improved infrastructure of Belo Monte is the Volta Grande project being developed by Canadian mining corporation Belo Sun.¹⁶ This project may prove to be the largest open pit gold mine in Brazil.

It is to be developed only a few kilometres away from the Belo Monte hydroelectric plant's construction site.¹⁷

In the case of the agribusiness sector, building the megadam complex on the Tapajós River will make the river navigable, thus turning it into a waterway. This project is a priority for the Brazilian agribusiness industry, which is heavily concentrated in the country's mid-western region (Centro-Oeste). There, the river's headwaters flow downstream to the Atlantic Ocean. The Cargill ports in the city of Santarém and the one currently under construction in the city of Itaituba - both located on the Tapajós' riverbanks - are part of the logistics to operationalise this trade corridor, which is highly strategic for the agribusiness sector.¹⁸

The architecture of impunity and state mechanisms for accumulation by dispossession

The state has a key role in the political economy of dams. It ensures financing for the projects, provides legal certainty to investors, restructures legal frameworks and their uses, establishes narratives of public legitimation and intervenes to contain conflicts, often with repressive means.

Brazil's National Development Bank (BNDES) – which provides up to three times the amount of loans the World Bank does globally¹⁹ – has been particularly instrumental to the financing of megadams. The Belo Monte dam is, up until now, the largest project in the history of the BNDES, exceeding one quarter of its total loans.²⁰ The next infrastructure project on the government's list of priorities – the São Luiz do Tapajós dam – is likely to break that record. The Brazilian bank grants loans to Brazilian corporations that execute the approved projects in Brazil and abroad. In fact, this has been the primary strategy for the transnationalisation of Brazilian capital: the financing by BNDES for the execution of capitalist projects by Brazilian corporations in different countries in Latin America and Africa.

Numerous attempts were made to block the Belo Monte dam judicially. The Federal Public Prosecutor's Office in the state of Pará has filed over 20 lawsuits questioning different aspects of the project ranging from irregularities in the environmental licensing to BNDES funding.²¹ The state's response has been to invoke a juridical provision from the military dictatorship era called "Suspensão de Segurança" (security suspension). According to this provision, projects that are considered of "public interest" will not be stopped until appeals reach the Supreme Court. Given the loose definition of "public interest" and the fact that the state is the one to judge if a project is of public interest, this juridical provision is now an instrument evoked regularly to block all legal actions opposing decisions that the state considers strategic.²²

While environmental licensing legislation and the constitutional right of indigenous and traditional affected peoples to Free, Prior and Informed Consent (FPIC) have been continuously disrespected, the state has adopted a new law to guarantee the continuity of projects. Through Presidential Decree 7.957/March 2013, the Companhia de Operações Ambientais da Força Nacional de Segurança Pública (Company of Environmental Operations of the National Public Security Force) was instituted supposedly to “increase the administrative efficiency of environmental actions of a pre-emptive and repressive nature.”²³ Since then, it has been repeatedly used by the state to repress resistance to megadams led by indigenous peoples. Some examples of this can be seen during the occupations of the Belo Monte construction site by Munduruku warriors in 2012 and 2013²⁴ and the ostensive surveillance of a meeting of Munduruku movements to discuss the FPIC process for the São Luiz do Tapajós dam in Jacaraecanga, state of Pará in August 2013.²⁵

The state has engaged in widespread actions to establish and promote narratives of legitimation that portray megadams as a clean, sustainable and socially just “solution to the energy issue”.²⁶ A common argument is that dams bring “progress” to people living without basic infrastructure. The realization of the constitutional rights of these populations is turned into a bargaining chip, which becomes attached to the megaproject and offered as compensation. Public policies are replaced by corporate-designed “social responsibility” projects that the federal government demand the consortiums implement as prerequisites for licensing. Apart for the fact that these prerequisites are often unmet,²⁷ compensation has become one of the tactics used to fragment resistance efforts.

Shortly after President Dilma’s re-election in October 2014, former Secretary-General of the Presidency of the Republic Gilberto Carvalho gave an infamous interview to BBC Brazil.²⁸ He stated that the government did not regret having used national security forces to repress indigenous movements in the past and would not hesitate to use it again in the case of the São Luiz do Tapajós dam. According to him, the government “will not give up” the project, even though its environmental licensing process had not yet been concluded. This is a clear signal of how licensing is perceived merely as a bureaucratic procedure in a project that cannot be questioned in any fundamental way.

In fact, the World Bank (WB) can be blamed for providing the basis for legitimising such a discourse. A WB 2008 report on the environmental licensing processes for dam projects in Brazil stated, “The environmental licensing of hydroelectric projects in Brazil is perceived as a major obstacle, which results in delays in the implementation of the projects.” The report thus recommends a “revision” of the environmental licensing process in Brazil to make it more “efficient” and to provide the “regulatory certainty” that is lacking.²⁹

Regulation and Brazil's role in the expansion of hydroelectric plants

The official discourse on promoting regional development in South America is based on a logic that some have called sub-imperialist.³⁰ This logic, which impacts on rivers that flow across national boundaries and nourish thousands of lives, can be seen in the trans-border energy agreements that have caused environmental injustice and ecological debt within the region since the 1980s. The Brazil-Peru Energy Agreement, signed on 26 June 2010, is a prime example of this. It established “a legal framework to promote and facilitate the development of the necessary infrastructure, in Peruvian territory, for the generation of electrical energy for its own domestic market and for exporting surpluses of power and related electricity to Brazil in order to make it feasible to interconnect the national electric systems of both parties”.³¹

The agreement was praised by the Peruvian government as a way of attracting foreign investment, including from the BNDES, to the country, and by Brazilian construction corporations as an opportunity to accumulate further through fully funded cross-border operations. Ever since negotiations on the agreement began, the Brazilian and the Peruvian ministries of mines and energy sought to mould it according to their respective interests. They excluded elements from the agreement's institutional design that interested civil society groups and other governmental actors, such as the Ministry of Environment. By the time the Brazilian and Peruvian ministries signed the Memorandum of Understanding for Energy Integration in April 2009, which legalized the operations and the financing of energy-related projects,³² the studies on the hydropower plants' energy potential in Peru – funded and developed by Brazilian civil construction consortiums – had been already published. This means that even before the negotiations on the agreement were finalized, Brazilian companies had already accessed privileged information on the areas targeted for hydroelectric exploitation in Peru. In the case of the Inambari dam, with a 2,000 MW generation capacity, the environmental impact studies were completed less than six months after the signing of the agreement. Both affected communities and the Peruvian Ministry of Environment said that the impacts identified by these studies were underestimated. According to people who continue to strongly resist the project, approximately 40,000 hectares of low basin forest will be flooded and will cause the displacement of more than 15,000 people, most of them indigenous peoples.³³ This was not enough, however, for the BNDES to suspend funding to the Brazilian construction consortium.³⁴

Gathered for three days in the Sai Cinza village, indigenous leaders from the lower, middle and high Tapajós region united forces to have their voices heard: "We do not want dams". (©Greenpeace/Eliza Capai)



Inhabitants of the area near the Inambari dam show their opposition to the project. Aldo Santos, 2010.



Battle for Rivers, War of the Worlds

On 5 May 2014, in a message posted on Facebook after a public hearing between the Secretary-General of the Presidency of Brazil and the Munduruku people on the project to build seven dams on the Tapajós and Teles Pires Rivers in the south-western part of the Amazon basin, leader of the Munduruku warriors Josias Manhuary said, “Slavery still exists nowadays. The government is enslaving humanities”.

Josias’ post needs to be put into context. He was making a statement on the Brazilian government’s failure to adequately implement Free, Prior Informed Consent (FPIC) in villages of approximately 14,000 Munduruku indigenous persons in accordance with International Labour Organization (ILO) Convention 169.³⁵ He was indeed shedding light on dynamics that appear repeatedly in relation to Environmental Impact Assessments (EIA) and Environmental Management Plans (EMP), which are both legal steps necessary for obtaining environmental licenses for infrastructure projects. These studies and assessments are usually conducted by consulting firms hired by or part of the corporate consortiums interested in both constructing and operating hydroelectric power plants in Brazil – an overlap that is at odds with all notions of impartiality. For instance, the consortium responsible for the EIA for the São Luiz do Tapajós dam, the Grupo de Estudos Tapajós, is led by Eletrobrás and composed of transnational corporations from the energy sector, including GDF-Suez and Endesa (French and Italian companies respectively), and the Brazilian-based transnational civil engineering corporation Camargo Corrêa.³⁶

Such dynamics reveal two important aspects that turn megadams into instruments of dispossession and cultural-political displacement in the Amazon region. First, there is the total disregard for the indigenous and riverine peoples’ positions and assessments on the impacts the dams will have on their lives. These views are guided by a daily way of life that is inextricably linked to the rivers’ natural flows and hydrological cycles, as well as the symbolic components they use to interpret and analyse them. Secondly, there is an intrinsic connection between the indigenous and riverine peoples’ ways of living and the maintenance and design of landscapes, which construction consortiums consider potentially exploitable and profitable. These landscapes are seen by the government as sources of development or, more profoundly, as sources of a right to development based either on energy consumption or on the consumption of energy-intensive products. Unfortunately, the government’s views end up being predominant in decisions about when, how and where megadams will be constructed, making the dams an instrument and the socioeconomic justification for dispossession.

In practice, guaranteeing economic potential and viability and the right to development are not treated as separate political goals in the institutional and legal arrangements that make the construction of megadams possible. Governments do not differentiate between megadams as a source of economic growth linked to profitability and a solution to peaks in energy consumption, on one hand, and on the other, their political determination to

operationalize the 'right to development' in areas where these projects are "fundamental to their local development".³⁷

These dynamics are guided by the extremely asymmetrical power relations governments and public and private consortiums have institutionalized when dealing with affected communities. These power relations become even more evident when one examines how governments and corporations assess the potential losses the communities will suffer due to the infrastructure project, or when one hears communities' legitimate claims on the ways viability studies should be conducted. According to ILO 169, the consultation process must include a carefully executed information sharing process and be completed before any decision on the project is made. Some affected peoples stress that the consultation process and participatory studies are part of a necessary dialogue on justice, which must be maintained throughout the process. Usually, however, time constraints

The subordination of traditional knowledge to justify megadam projects

The Belo Monte dam currently being built on the Xingu River is an example of the undemocratic and disrespectful process of territorial alienation that has become standard practice in megadam projects. In 2011, the Norte Energia consortium won the bid for both the elaboration of the environmental impact studies and the building of the dam.⁴⁰ Going against the temporal logic of when compensation should begin and blurring the line between public and private sector responsibilities, the consortium began developing projects with affected indigenous communities and conducting the environmental assessment studies before any formal consultation process could take place. In fact, according to the Public Attorney of the state of Pará and the communities, a consultation process conducted in accordance with the Brazilian Constitution and ILO Convention 169 and sponsored by the government was never held.⁴¹

Furthermore, according to Brazilian rules on environmental licensing, a license can only be emitted for a project once 40% of the compensation measures geared towards reducing impacts announced in an Environmental Management Plan (EMP) have been implemented. The Brazilian Institute of Environment and Renewable Natural Resources (IBAMA, for its acronym in Portuguese), however, created an exception to its own rules by issuing a temporary licence for the consortium's operations,⁴² even though the consortium had not yet implemented the required measures. In the opinion of the Public Attorney of the state of Pará, then, the license issued for the Belo Monte dam project was illegal, as both IBAMA and the corporation did not comply with the rules for the licensing process, nor did the consortium adequately meet the prerequisites needed to obtain the license.

and the frequently alleged urgency to build megadams in order to advance the country's modernization project – which is always framed as being in the “general public interest,³⁸ - take priority over any process of consultation and consent. What is more, in practice, the process often does not incorporate the aspect of ‘flexibility’ present in ILO 169.

In the end, the communities affirm that the developers never listen to their views, especially their evaluations and understanding of how projects would interfere with not only the land they traditionally occupy (in usufruct)³⁹, but also how the river, as a life system, would be damaged. In this sense, not only is hydro and mechanical engineering applied to megadam construction in favour of an economy of scale, which functions at an accelerated and fragmented rhythm for the purpose of production, but they also negate the communities' traditional and local knowledge and collective forms of occupation, local production and exchange. In other words, they negate local and traditional economies.

Throughout the entire process, communities affected by Belo Monte Dam drew attention to the fact that none of the conditions identified in the EMP would be enough to compensate them because their current way of living along the Xingu River and that of future generations are not something that can be negotiated as part of an agreement. Their statements were very much based on rights enshrined in the Brazilian Constitution that stress that the right to a healthy environment and to environmental justice are intergenerational and collective. It recognises indigenous peoples' right to self-determination.⁴³

Another case in the Amazon region shines light on a different stage of megadam projects that is often the source of tension and suspicion: environmental impact assessments. The assessments' shortcomings are frequently exposed when problems begin to arise, especially in projects that are undertaken in spite of local communities' warnings about their probable failures. The Jirau and Santo Antonio dams on the Madeira River provide a clear example of a typical situation where technical assessments disregarded local traditional knowledge. When the studies for the construction of these dams were still underway, many villagers who had been living for decades along the river's banks drew attention to the fact that the river's water levels would vary even more abruptly with the dam. People at the Santo Antônio fishing community, a settlement about 2 km from where one of the Santo Antonio dam's turbines was installed, said that building two big reservoirs one after the other on the river would provoke unprecedented flooding, particularly in the rainy season. With only 100 km between the two, the river's drainage process would be completely altered. In 2014, after the landscape had been totally modified by the two big reservoirs, extremely severe floods during the rainy season displaced more than 13,000 people in the department of Beni in Bolivia. In Rondônia, more than 5,000 people were displaced and the governor said nothing could be done because “it was a natural disaster”.^{44 45} In the midst of all of the processes we have described, affected communities have historically resisted and continue to resist.

Within this contradiction lies a clash of discourses. One discourse defends 'dividing up' the river into units of production to produce electricity for a population living elsewhere (such as densely populated urban centres and industrial districts). The energy produced is also for the Amazon region, where allegedly there are huge "unoccupied" areas – an idea that is part of a subtle discourse present in Brazil since the 19th century. The other discourse comes from indigenous and riverine communities that defend the constant and unstoppable flow of rivers in the Amazon because of their role as sources of life and connections between different communities. This flow is what makes the landscape what it is and, consequently, it maintains the social and biological diversity in the area. Many indigenous communities and groups affirm that preserving the river is part of their life project. Ultimately, it means continuing to live in their territories, despite the imminent threat of dispossession they face.

When the first discourse is predominant, megadam projects get approved. The initiation of their construction constitutes the moment when humanities (that is, other ways of being human) become enslaved, as stated by Josias Manhuary. This is done in the name of a right to development that does not guarantee equal access to the means to debate the projects or to eventually veto them. Democracy, taken in a profound sense, is absent from the process of deciding in the interests of whom the megadams are built. This is why local communities have been asking, "what kind of development is this, and for whom?" Through their resistance efforts, they are specifically pointing out that promoting development in this way is not only unjust, but also violent. Such an operating scheme for megadams puts the burden of the negative impacts on one region (the Amazon) and on groups of people classified as 'backward' because of their way of living.



Flooding from the Madeira River in Guayaramerin, Bolivia. March 2014. Observatorio Ambiental de la Cuenca del Río Madera.

Concluding remarks: Resistance continues

For many years, popular resistance to the construction of the Belo Monte dam has received the support of transnational solidarity networks involving researchers, activists and public opinion far beyond the Panamazonian region. In late November 2014, the Caravana em Defesa do Rio Tapajós (Caravan in Defence of the Tapajós River) – a mobilization organized to resist the Brazilian government’s plan to build a dam complex on the Tapajós River – travelled up this Amazonian river from the city of Santarém. For two days, ac-



Maria do Socorro Pinheiro Nogueira, president of the Associação Tyoporemô of the Arara ethnic group at a protest against Belo Monte in Altamira. May 2015.

tivists, researchers and journalists from various parts of Brazil and around the world joined hundreds of people from local indigenous and riverine communities on the journey on this beautiful and threatened river. Their journey culminated in a rally held in the community of São Luiz do Tapajós, where one of the seven dams is planned to be built. During the caravan, plenty of testimonies were given by indigenous and riverine leaders who deeply understood the threat to their way of living that the government’s plans to dam the Tapajós River pose in order to further the interests of transnational capital.

Those who suffer the dispossession and plundering of their own territory have an immense understanding of the situation. The excerpt below from the letter of Jairo Saw, teacher and one of the leaders of the Munduruku people, bears witness to this lucidity, which comes from an ancient and powerful world. It puts important questions to non-indigenous people:

Is the world going to allow this genocide that is being announced by the Brazilian government’s decision to build large hydroelectric dams and other large projects in the Amazon region, which will transform nature, causing irreversible impacts on all humanity, to happen? It is life on Earth that is endangered and we are willing to keep fighting, defending our forests and our rivers for the good of all humankind. How about you? Are you willing to support this struggle?”⁴⁶

This is a beautiful invitation to all those ‘humanities’ who do not feel represented by the hegemonic project of “development”. It is a call to reflect on the existing and antagonistic life projects and decide which role one wants to assume in the conflict. It is also an invitation to think about the values that guide the interactions between the humanities, ways of living and the life projects that coexist on the planet.

Notes

- 1 In this article, the concept of megadams is based on the technical definition of “large dams” adopted by the World Commission on Dams (WCD): “A dam with a height of 15m or more from the foundation. If dams are between 5-15m high and have a reservoir volume of more than 3 million m³, they are also classified as large by the International Commission on Large Dams.” World Commission on Dams (2000). *Dams and Development: a New Framework for Decision-Making*.
The choice of referring to the mentioned projects as “megadams” (and not merely “large dams”) is meant to reflect the ongoing political debate within social movement circles that questions “megaprojects” in general as infrastructure projects justified by outdated “developmentalist” arguments, which disregard the major social and environmental impacts they generate, treating them as externalities or collateral damage.
According to some estimates, “total global megaproject spending is assessed at \$6 to \$9 trillion annually, or 8% of the total global gross domestic product (GDP), which denotes the biggest investment boom in human history.” Flyvbjerg, B. (2014). What You Should Know About Megaprojects and Why: An Overview. *Project Management Journal*, 45 (2), 6–19. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2424835
- 2 Harvey, D. (2005). *The New Imperialism*. Oxford University Press.
- 3 For instance, the Uruguay, São Francisco, Paraná and Tocantins basins have, on average, more dams per 100 kilometers of river length than the Amazon basin does. For more data, see: International Rivers (2014). *The State of the World’s Rivers: Mapping the Health of the World’s Fifty Major River Basins*. <http://www.internationalrivers.org/worldsrivers>.
- 4 Sevá, O., org. (2005). Tenotã-Mô. Alertas sobre as consequências dos projetos hidrelétricos no rio Xingu. São Paulo: International Rivers Network, pages 9-12.
Also see the websites of Movimento Xingu Vivo para Sempre (<http://www.xinguvivo.org.br>) and the Movement of People Affected by Dams (Movimento dos Atingidos por Barragens, MAB): <http://www.mabnacional.org.br/>
- 5 International Rivers (2014), op. cit.
- 6 Ibid.
- 7 Our translation. The original inscription reads: “Nestas margens do Xingu, em plena selva amazônica, o Sr. Presidente da República dá início à construção da Transamazônica, numa arrancada histórica para a conquista deste gigantesco mundo verde.”
- 8 Kräutler, Dom E. (2005). Mensagem de abertura, in Sevá, O. org. (2005), op. cit., pages 9-12.
- 9 Cariello, R. (2013). A Onça e a Barragem. *Revista Piauí*, 77. February.
- 10 See the consortium’s website: <https://www.consorcioabelomonte.com.br/Publico.aspx?id=2>
- 11 Belisário, A. (2014). Quatro Irmãs: assim atua o capitalismo brasileiro. *Carta Capital*. 3 July. <http://www.cartacapital.com.br/blogs/outras-palavras/quatro-irmas-assim-atua-capitalismo-brasileiro-8489.html>
- 12 The Tucuruí dam has an installed capacity of 8,370 megawatts. See Electrobras. Tucuruí. <http://www.eln.gov.br/opencms/opencms/pilares/geracao/estados/tucuru/index.html>
- 13 At the time, CRVD was a public company. It was privatized in 1997 and is now known as Vale S.A., a major Brazilian transnational mining corporation operating in over 25 countries (see: <http://www.vale.com/brasil/en/aboutvale/across-world/pages/default.aspx>). The International Movement of People Affected by Vale (<https://atingidospelavale.wordpress.com/>) have been the primary social movement network denouncing systematic human rights violations

- committed by this TNC. For more information, see: The International Movement of the People Affected by Vale (2012). Vale 2012 Unsustainability Report. https://atingidospelavale.files.wordpress.com/2012/06/relatorio-insustentabilidade-vale-2012_en1.pdf
- 14 Comissão Mundial de Barragens (2000). Estudos de Caso: Usina Hidrelétrica de Tucuruí (Brasil). November. https://www.lima.coppe.ufrj.br/files/projetos/ema/tucurui_rel_final.pdf
- 15 Blog do Planalto Presidência da República (2010). **Usina Hidrelétrica Belo Monte será construída sem os erros do passado**. 22 June. <http://blog.planalto.gov.br/assunto/usina>
- 16 More information is available on the corporation's website: <http://www.belosun.com>
- 17 In an interview with the Brazilian newspaper Valor Econômico, the Vice-President of Exploration of Belo Sun in Brazil, Helio Diniz, said he would propose to Norte Energia (operator of the Belo Monte dam) that the two companies share the investment required to build the power transmission line that would connect the turbines of the dam to the town of Altamira in the state of Pará. BORGES, A. (2012). Canadenses vão propor parceria em Belo Monte. Valor Econômico. 24 September. For more on this case, see: <http://apublica.org/2014/08/em-busca-da-belo-sun/>
- 18 The current Minister of Agriculture, Katia Abreu – known for representing agribusiness' interests in the state apparatus – gave a speech when she was president of the Brazilian Confederation of Agriculture and Livestock (Confederação Nacional da Agricultura e Pecuária, CNA) in August 2013 saying Brazil had three unused "Mississippies" for hydroways: Tocantins, Madeira and Tapajós. See: Agrolink (2013). "Brasil tem Mississipes para hidrovias", diz Kátia Abreu em Mato Grosso. 9 August. http://www.agrolink.com.br/noticias/-brasil-tem-mississipes-para-hidrovias---diz-katia-abreu-em-mato-grosso_179462.html
- 19 Leopoldo, R. (2011). BNDES empresta 391% mais em 5 anos e supera em 3 vezes o Banco Mundial. O Estado de S. Paulo. 10 March. <http://economia.estadao.com.br/noticias/geral,bndes-empresta-391-mais-em-5-anos-e-supera-em-tres-vezes-o-banco-mundial-imp-,689817>
- 20 A total of R\$25 billion has been provided in loans for the Belo Monte dam until now. This amount does not include separate loans granted for materials and equipment provided to companies hired by the Norte Energia for individual projects. See the special series of Folha de São Paulo newspaper on Belo Monte, available at <http://arte.folha.uol.com.br/especiais/2013/12/16/belo-monte/>
- 21 Conectas. (2014). Desenvolvimento para as pessoas? O financiamento do BNDES e os direitos humanos. São Paulo: Conectas, 2014. http://www.conectas.org/arquivos/editor/files/Conectas_BNDES%20e%20Direitos%20Humanos_Miolo_Final_COMPRIMIDO.pdf
- 22 Justiça Global, Justiça nos Trilhos, Sociedade Paraense de Direitos Humanos – SDDH, Terra de Direitos, Instituto Socioambiental – ISA, Asociación Interamericana para la Defensa Del Ambiente – AIDA and International Rivers (2014). Situação do direito ao acesso à justiça e a suspensão de decisões judiciais (ação de suspensão de segurança) no Brasil. Report presented at the 150 ordinary session of the Inter-American Commission on Human Rights Commission (Washington, DC, 28 de março de 2014)
- 23 This presidential decree can be found at: www.planalto.gov.br/ccivil_03/_Ato2011-2014/2013/Decreto/D7957.htm
- 24 The stories are available at: <http://www.socioambiental.org/pt-br/noticias-socioambientais/indios-param-canteiro-de-obras-de-belo-monte-e-exigem-ser-ouvidos-pelo>. The open letter concerning the occupation of Belo Monte is available at: http://www.cimi.org.br/site/pt-br/?system=news&conteudo_id=6910&action=read

- 25 The news report is available at:
<http://www.xingu-vivo.blogspot.com.br/2013/08/intimidacao-em-jacareacanga-durante.html>.
- 26 The “energy issue” is a narrative constructed to convey a social and economic problem related to energy. This narrative is built upon the assumption that the energy supply has to grow indefinitely to sustain indefinite economic growth, which is promoted as the only way to achieve what is supposed to be “development” or “progress”.
- 27 Borges, C. (2014). Desenvolvimento para as pessoas? O financiamento do BNDES e os direitos humanos. Conectas. August. http://www.conectas.org/arquivos/editor/files/Conectas_BNDES%20e%20Direitos%20Humanos_Miolo_Final_COMPRIMIDO.pdf
- 28 Fellet, J. (2014). Dilma deixou a desejar no diálogo com a sociedade, diz ministro. BBC Brasil. 10 November. http://www.bbc.co.uk/portuguese/noticias/2014/11/141108_entrevista_gilberto_jf_fd
- 29 Banco Mundial (2008). Licenciamento Ambiental de Empreendimentos Hidrelétricos no Brasil: Uma contribuição ao debate – Volume I: Relatório Síntese. 28 March.
- 30 Fontes, V. (2010). O Brasil e o Capital-Imperialismo: Teoria e História. Rio de Janeiro: EPSJV/Fiocruz e Editora UFRJ.
- 31 Article 2, Paragraph 1 of the Brazil-Peru Energy Agreement (Acordo entre o Governo da República Federativa do Brasil e o Governo da República do Peru para Fornecimentos de Energia Elétrica ao Peru e Exportação de Excedentes ao Brasil). The treaty is available in Portuguese and Spanish at: <http://dai-mre.serpro.gov.br/atos-internacionais/bilaterais/2010/acordo-entre-o-governo-da-republica-federativa-do-brasil-e-o-governo-da-republica-do-peru-para-fornecimentos-de-energia-eletrica-ao-peru-e-exportacao-de-excedentes-ao-brasil>.
- 32 The full text for the memorandum is available in Portuguese and Spanish at: http://dai-mre.serpro.gov.br/atos-internacionais/bilaterais/1997/b_89_2011-09-01-14-10-18
- 33 Federación Nativa de Madre de Dios (2010). Indígenas de Madre de Dios rechazan construcción de hidroeléctrica de Inambari. 26 January. The manifesto is available at: <http://fenamad-indigenas.blogspot.com.br/2010/01/indigenas-de-madre-de-dios-rechazan.html>
- 34 The construction consortium was named EGASUR and was formed by Eletrobrás (29%); the Brazilian privately-owned OAS Engineering (51%); and FURNAS S.A (19,6%), a mixed capital energy supply company and Eletrobrás subsidiary. More on the inventories and the processes in which the consortium was involved in Peru can be found in Dourojeanni, M et al. (2010). Amazonía Peruana en 2021. Lima : Sociedade Peruana de Derecho Ambiental. http://www.actualidadambiental.pe/documentos/amazonia_peruana_dourojeanni.pdf
- 35 This occurred even though Brazil signed, promulgated and enacted ILO Convention no. 169 through its administrative laws (through Decree no. 5051, emitted on 19 April 2004, which is available at http://www.planalto.gov.br/ccivil_03/_ato2004-2006/2004/decreto/d5051.htm). It is also worth mentioning that throughout 2014, the Munduruku people worked on writing their own Free Prior and Informed Consent protocol. On 15 January 2014, representatives of the Munduruku people presented this document in Brasília. The protocol was drafted in consultation with representatives from all Munduruku villages during meetings held at five different hub communities living on the banks of the Tapajós River. See the protocol in English at: <http://amazonwatch.org/assets/files/2014-12-14-munduruku-consultation-protocol.pdf>.
- 36 The information the consortium as well as some of the related studies are available on the consortium’s webpage in Portuguese. See: <http://www.grupo-deestudostapajos.com.br/estudos/>.

- 37 This quote - “o empreendimento é fundamental para o desenvolvimento da região” - is taken from President Dilma Rousseff’s statement during her first visit to the Belo Monte construction site on 5 August 2014 during her re-election campaign. Different parts of the statement are available at: <http://politica.estadao.com.br/noticias/geral,dilma-diz-que-fez-mais-pelo-setor-energetico-do-que-fhc,1539192>; <http://noblat.oglobo.globo.com/noticias/noticia/2011/08/dilma-volta-defender-usina-de-belo-monte-397599.html> and <http://oglobo.globo.com/brasil/dilma-vistoria-obras-faz-campanha-no-canteiro-da-usina-de-belo-monte-13493248>.
- 38 The use of “general public interest” as a political and juridical category in this process is ingenious to say the least. The Declaration of Public Interest (DUP, for its acronym in Brazil) is the legal instrument invoked when people are living in areas where a project is to be implemented refuse to move to justify juridically (and judicially) their relocation or the beginning of a negotiation process so that villagers can be displaced “in the name of the general public interest”.
- 39 This is a regime of land tenure based on land use and for how long such use has been deployed on the territory under legal scrutiny.
- 40 The Consortium is composed of several shareholders, the main ones being public energy companies belonging to the Eletrobrás group. Minor shareholders include pension funds and the Brazilian transnational mining company, Vale. See: <http://norteenergiasa.com.br/site/portugues/composicao-acionaria>.
- 41 For a detailed timeline of the litigations concerning Belo Monte, see the analysis and information provided by the Public Attorneys of the State of Pará: http://www.prpa.mpf.mp.br/news/2011/Projeto_Belo_Monte_entenda_a_polemica_atualiz-nov2011.pdf/view?searchterm=Projeto_Belo_Monte_entenda_a_polemica_atualiz-nov2011.pdf
- 42 A temporary license is an instrument the IBAMA has created to allow projects to be developed so long as certain conditions are met within a specific window of time. This license can be revised, renewed or suspended accordingly. Many legal theorists and environmental law specialists question this judicial instrument.
- 43 Environmental justice and the collective right to a healthy environment is featured in Article 225 of the Brazilian Constitution, and the right to self-determination and the legal regime and status corresponding to traditional occupation and indigenous collective organising, in Articles 231 and 232.
- 44 This statement was made during an interview that is available in the documentary “Entre a Cheia e o Vazio”. The documentary is part of the *Nova Cartografia Social da Amazônia* project. <https://www.youtube.com/watch?v=IFEputOFFqQ>.
- 45 For more details on this case, see Chapter 3 on the first volume of Vargas, M. and Brennan, B. (2013). *Impunity Inc: Reflections on the “super-rights” and “super-powers” of corporate capital*. Observatory on Debt in Globalisation (ODG) and Transnational Institute. <http://www.tni.org/briefing/impunity-inc>. The cases of the Jirau and Santo Antonio dams are presented as part of broader plan to expand the financialisation of infrastructure. This financialisation process, which depends on markets, fuel the markets themselves in the sense that in financing infrastructure works, they finance the means to reproduce the accumulation model based on the commodity export chain and territorial alienation. Megadams also boost foreign investment in improvements of project portfolios, which leads to the consequent increase in the value of the shares of the companies that are part of the investment portfolio to begin with.
- 46 Munduruku, J. S. (2014). *Munduruku escreve à sociedade brasileira e internacional*. Blog do Felipe Milanez. Carta Capital. 19 December. Available at: http://www.cartacapital.com.br/blogs/blog-do-milanez/munduruku-escreve-a-sociedade-brasileira-9298.html?utm_content=buffera02c8&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer

A Tree for a Fish: The (il)logic behind selling biodiversity

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Introduction: what are biodiversity offsets?¹

Putting a price on ecological systems has been around for several decades. However, it was especially intensified during the UN climate negotiations by the introduction of the carbon market: a system that places a monetary value on nature's carbon-cycling capacity and trades it on financial markets. The carbon market quickly became a key focus for policy-makers and multilateral agencies regarding climate change policy. Later, the 2010 UN Convention on Biological Diversity (CBD) called for "innovative financial mechanisms" to deal with biodiversity loss, making biodiversity offsets the standard buzzword within conservation debates. Pricing and trading systems in nature do come at a high cost. Communities around the world continue to resist projects that claim to compensate for biodiversity destruction, and continue to demonstrate how this concept fails to address the drivers of environmental and social damage.

Biodiversity offsets entail projects that cause destruction to biodiversity such as housing, highways or open-pit mines. These projects allow actors to 'compensate' for the destruction of habitats or ecosystems by implementing a project somewhere else, which would theoretically protect or (re)create another habitat or ecosystem. To measure the economic 'value' of biodiversity, proponents affirm that accounting units are necessary, and hence, different biodiversity types, locations, times and contexts are turned into apparently 'equivalent' numbers. The argument goes that destruction in one place is 'equivalent' to the supposed protection, or re-creation, in another place.

The Economics of Ecosystems and Biodiversity (TEEB) project, led by Pavan Sukhdev, a former economist from the Deutsche Bank, advanced the idea of incorporating an economic 'value' of biodiversity into government and corporate decision-making. Hosted by the UN Environmental Program and funded by the EU Commission, Germany, the UK, the Netherlands, Norway, Sweden, Japan, and other government agencies, TEEB also received support from consultancy firms including Pricewaterhouse Coopers, NGOs such as Conservation International and the Institute for European Environmental Policy (IEEP), among others.²

* Reviewed by Jutta Kill. Thanks to Larry Lohmann.

The UK mining company Rio Tinto has used biodiversity offsetting to justify its continued destructive practices. While Rio Tinto has more than 60 mines in over 40 countries, it claims that extractive activities such as mining can be 'sustainable'.³ As stated in Rio Tinto's 2004 Biodiversity Strategy, the aim is to "outweigh the negative effects of its operations" through biodiversity offsets, which gives it the image of having a "net positive impact" on biodiversity while meeting legal requirements⁴. Yet, Rio Tinto has an extensive record of human rights and environmental violations from Indonesia to South Africa to Brazil. This mining giant gets a green and positive image for an activity that entails thousands of hectares of deforestation and pollution from building mines, access roads, camps, water wells, etc., as well as the associated social impacts. These impacts include, in most cases, the displacement of populations, the criminalization of resistance and the devastation of local economies and livelihoods.⁵

The role of 'NGOs for conservation'

Even before 2009, companies were legitimizing their activities by using offset 'hype'. An article written by the senior advisor of the financial consultancy firm Prizma and the vice-president of the Gold Reserve Inc. mining company stated that "Without the involvement of legitimate NGOs, most BDO [biodiversity offsets] concepts may not gain credibility". They added that:

NGOs can assist in assessing and validating baselines and benchmarks, selecting appropriate "offset currency" and indicators (hectares, trees or frogs?), identifying eligible components in view of the project specific context (planting trees, capacity building or trading-up to higher biodiversity priorities?) and use of multipliers (two trees planted for each tree removed?).⁶

Major conservation NGOs including Conservation International (CI), The Nature Conservancy (TNC), World Wide Fund for Nature, (WWF), the Wildlife Conservation Society (WCS) and Flora and Fauna International (FFI) are involved in numerous forest carbon and 'biodiversity offset' projects, as well as initiatives promoting 'offsetting' as a lucrative and business-friendly scheme. Many of the conservation NGOs play a key role in advancing the concept of biodiversity offsets through lobbying and by promoting it at UN, governmental and business arenas.

Moreover, some of these big conservation groups are invested in the fossil fuel industry, the main driver of climate change. For example, researcher Naomi Klein reported that in 2010, TNC accepted nearly \$10 million in financial and land contributions from BP and associated corporations. In addition to this, BP, Chevron, ExxonMobil and Shell are among



Tropical forest, Liberia, 2014 /
Friends of the Earth Internacional

some of the members of its Business Council. Jim Rogers, CEO of Duke Energy, one of the largest US coal-burning utilities, sits on its board of directors, and it runs various 'conservation' projects claiming to 'offset' the emissions of oil, gas and coal companies.⁷

Between 2004 and 2008, CI and WCS provided support to the Secretariat of the 'Business and Biodiversity Offsets Programme' (BBOP), which is advancing biodiversity banks and offset schemes and is responsible for establishing the main set of 'principles' for the EU's strategy on biodiversity. Furthermore, NGOs on the BBOP Advisory Group include FFI, TNC, the Rainforest Alliance and WWF-UK, together with other major players from the fossil fuel and mining industry.

The Business and Biodiversity Offsets Programme (BBOP) of the market-oriented Forest Trends group is an international coalition for the development of offset methodologies and standards, which includes companies, financial institutions, governments and NGOs. BBOP has been instrumental in developing 'principles and standards' for biodiversity offsets.⁸

From carbon to biodiversity

Carbon markets have become the reference point when debating offsets. The underlying logic is based on the assumptions that: one tonne of emissions in one place is equivalent to one tonne of emissions in another place; one tonne emitted at one moment of time is equivalent to a project 'saving' emissions for up to 20 years or more; emissions from burning fossil fuels can be equivalent to emissions from deforestation; carbon dioxide can be equivalent to methane or other greenhouse gases; among many others. All of these equivalences allow one commodity to be accounted for and traded.

These assumptions hide important contradictions, as well as questions of power, territorial rights, inequalities, violence and colonial history. According to this logic, extracting oil in the Amazon, for example, results in increased pollution, deforestation and a host of environmental impacts, as well as the displacement of and violence among local populations. Therefore, offset logic allows the continuation and expansion of this high level of environmental and social destruction by simply providing carbon credits, which are often from projects with additional destructive local impacts. If the aim is to maintain and intensify the extractivist model, which is driving the crisis, then the purpose of carbon markets and the underlying logic of 'offsets' justify this model.

The widely documented experiences of more than 20 years of carbon offsets evidences the disastrous effects of this system, not only at the offset project sites and where extraction is allowed to continue, but also in the overall increase in pollution levels. Offset projects have continuously resulted in social and environmental injustices, such as dangerous local pollution, territorial grabs, repression, human rights violations, loss of livelihoods, culture, among many others.⁹ As with carbon offsets, biodiversity offsets can also lead to quicker and easier approval of destructive projects, giving another source of financial gain to the same actors that are destroying biodiversity to begin with.

Offset schemes also require large areas of land. The Colombian Foundation for the Defence of Public Interest (*Fundación para la Defensa de Interés Público* - Fundepublico) warns that companies "cannot find the land to establish the offsets," and that:

The puzzle of matching offset demand with offset supply has yet to be solved. And it's a complicated one. With over 8 million hectares under mining titles, over 130 oil and gas companies, with operations in the country over at least 1.5 million hectares, including Shell, Oxy, Chevron, ExxonMobil, and Petrobras, and thousands of kilometres of highways in the pipeline that will affect critical biodiversity hotspots, one of the key questions is where the hundreds of thousands of hectares needed in offsets are going to come from.¹⁰

Governmental institutions play a key role in providing the regulatory frameworks needed to create demand and attract investors for these markets. Proponents of biodiversity offsets suggest that 'price' alone will act as a form of regulation. However, in addition to the legislation needed to catalyse the market, as in the case of the carbon market, public funding in the form of subsidies, tax incentives and financing for pilot projects is often used in order to attract 'investments', which largely benefit the biggest corporate players. Fines and penalties are no longer needed to enforce the type of regulations that protect habitats, the environment and communities, as regulatory mechanisms become an obstacle in an offsets model.

Furthermore, the fact that each carbon credit is accepted as a 'reduction' of the equivalent of one tonne of CO₂ is based on a decision made by governments and corporate groups. However, there is no real way to verify if one tonne has been in fact 'reduced'. Even worse, as the carbon market is based on a range of assumptions attempting to 'equalize' different types of gases, time frameworks, technologies, places, among many other things, in practice, conducting any real 'verification' process is unfeasible. The same logic is followed for biodiversity 'offsets'.

Obilic coal power station, Kosovo,
2013 /Alfons Pérez/ ODG



Many more social, environmental and technical problems are involved in carrying out offset projects. However, the underlying logic is the same and the assumption that many complex and fundamentally different factors – such as fossil carbon that has been underground for thousands of years versus biotic carbon that rotates among forests, soils and oceans – can be ‘equalized’ and therefore accounted for, is fundamentally flawed. Another contradiction is that offsets *require* ecological destruction and therefore do nothing to prevent it. Offsets are conceived in such a way that the greater degree of ecological destruction there is, the more offset projects can be justified and implemented in order to sell the new commodity. Therefore, not only can polluters expand and legitimise their activities, but offsets are also inherently dependent on a destructive economic model.

Antamina: a ‘best practice’ to ‘offset’ pollution and injustice

In 2009, the Business and Biodiversity Offsets Programme (BBOP) released a set of case studies “to help developers, conservation groups, communities, governments and financial institutions that wish to consider and develop best practices related to biodiversity offsets”.¹¹ Eleven projects from around the world were selected that involved some form of compensatory conservation (not called ‘biodiversity offsets’ because the projects had been implemented before the BBOP principles were established). Among these is the “Antamina Copper and Zinc mine” (*Compañía Minera Antamina*) in Ancash, Peru, which claims to have made “a ‘positive contribution’ to biodiversity conservation”.¹²

The Antamina copper, zinc, silver and lead mine is owned by Glencore, an Anglo–Swiss multinational commodity trading and mining company headquartered in Baar, Switzerland, in partnership with BHP Billiton, Teck and the Mitsubishi Corporation.¹³ Antamina is one of the biggest open pit mines in Peru, which began operations in 2006.

In collaboration with the NGOs Conservation International and The Mountain Institute (a local NGO), Antamina aimed to ‘restore’ areas of a Polylepis forest to compensate for the mining activities. At the time the BBOP report was written, over 125 hectares had been ‘restored’, about 101 hectares of which have formal conservation status through a community agreement. This high-altitude forest comprises 20 evergreen tree species.¹⁴ It also contains three of South America’s endangered birds, including the great coloured parrots, toucans and the royal cinclodes. Andean people use the Polylepis forest for mainly medicine, food, water, construction and ritual purposes.¹⁵ The compensation project promotes the ‘conservation’ of a corridor that is a composite of landscapes including forests and highland grasslands.

However, as a person living in the affected areas said in 2013, "In Antamina, there is an environmental project, but they don't have any real interest - they can't have, it is not to their convenience... they let them pollute - the water, the soil, they are polluted. Nothing really can be done."¹⁶

The 'restoration' programme, according to the BBOP report, also aimed to "improve livelihoods, as measured by increases in income, reduced demand for fuelwood, and improvements in health".¹⁷ Benefits described in the 'conservation agreements' with communities include introducing more fuel-efficient stoves, managing improved pastures and introducing improved breeds of cattle and sheep. The programme also promotes the creation of a trust fund to provide benefits to the local communities in exchange for their continued commitment to protecting the 'restored' areas and other areas through the maintenance of fences and patrolling.

Communities, however, have been telling a different story. Protests started in 2006 due to the fast extension of the mine. After several meetings and leaks of toxic minerals, communities demanded that a health study on the impacts of the mine's operations on the local populations be carried out through the local health centre. The results, which were not accepted by the mine, showed cases with high levels of heavy metals in the blood.¹⁸ In 2009, communities filed a legal case against the mine due to rights violations. Several scientific reports conducted since 2010 established high levels of heavy metals in drinking, superficial and underground waters around the mine, severely impacting people's health and ecosystems. This is an on-going struggle with the mine.¹⁹

The community declared a general strike in early 2014 against Antamina due to the high levels of lead and the drying up of two lagoons in the area. Other communities are also in conflict with the mining company due to violations of land titles.²⁰ The main impacts have been the loss of agricultural lands, soil erosion and pollution, groundwater depletion, loss of livelihoods and traditional knowledge, increased police presence and violation of human rights. In other areas, conflicts relate to the lack of water as a result of mine operations.²¹ In addition, the pipeline that carries the minerals to the coast has leaked, leading to serious health impacts in fishing communities in Huarney.²² Despite the numerous serious violations being committed, Antamina's 'restoration' program is highlighted as a 'best practice'. The 'compensation/offset' logic not only legitimises the mining operations, but also stimulates the continuation and expansion of these destructive activities.

In addition, Glencore is currently promoting a project that aims to 'cover' 13 districts in the department of Ancash, Peru with a "green *poncho*", which is expected to produce 2 million tree saplings for each campaign.²³ The first phase, which was financed from February 2013 until March 2014 by Antamina, 'covered' over 700 hectares mainly with pine and eucalyptus, and also with alder and Tara (*Caesalpinia spinosa*) trees.²⁴ The second phase is expected to have the saplings in the ground by 2016.

“We don’t want irresponsible mines that spill their tailing and fuels like the Antamina mine always does, while it always gets away without being denounced for being responsible, because they have the power of money.”

Declaration from a representative of the Frente Regional de Huaraz (Regional Front of Huaraz), June 2012.²⁵

However, such monocultures, which use methods that imply a high use of inputs such as agrototoxic chemicals and machinery, involve a host of social and environmental problems. Confronted with industrial large-scale monocultures in their territories, local communities are largely faced with shortages of water, arable soil and other resources, contamination from pesticide spraying, and displacement from their traditional cultivation areas.²⁶

BBOP and Antamina attempt to sell this as a ‘success’ based on the amount of hectares they ‘cover’ with ‘green’, even though this ‘green’ means extensive monoculture exotic tree plantations that require the use of a host of toxic agrochemicals. At the same time, they fail to recognize the high level of soil pollution and erosion, water depletion, loss of fauna and flora, among many other impacts, the plantations cause. Furthermore, their social impacts are not taken into account.

Nevertheless, trying to ‘cover’ their destructive mining activities with a ‘green *poncho*’ was not enough for Glencore. The company, together with over 20 other mining giants operating in Peru, have taken legal actions against the Peruvian government in order to block a legal requirement that demanded that the companies pay for the potential environmental harm of their operations.²⁷ Moreover, local journalists denounced secret contracts signed between mining companies, including Glencore, and the Peruvian police force on the provision of ‘security’ services to the mining company.²⁸

Antamina’s ‘best practices’ completely ignore the local pollution and conflicts, health impacts and resistances on the ground, as well as the amount of power that extractive industries have on governmental decision-making. The so-called ‘restoration’ of ‘forests’ allows the mine to continue operating and to expand its business, while it hides the reality of the devastating social and environmental impacts behind a green façade of ‘postcard trees’.

IEEP is also a signatory to the “Wealth Accounting and Valuation of Ecosystem Services” (WAVES) initiative of the World Bank. Launched at the 2010 CBD, WAVES is a methodology used to incorporate natural capital accounting and ecosystem measurements into “national economic accounts”. One of the main objectives of the WAVES initiative is to “build international consensus around natural capital accounting.”²⁹ WAVES is currently financing such ‘nature accounting’ in Botswana, Colombia, Costa Rica, Guatemala, Indonesia, Madagascar, the Philippines and Rwanda. Countries or organisations contributing financially to the WAVES initiative include Denmark, the EU Commission, France, Germany, Japan, the Netherlands, Norway, Switzerland and the United Kingdom. Conservation NGOs are also involved. In Madagascar, for example, Conservation International (CI) is conducting a pilot study on economic valuation for WAVES³⁰.

Concluding thoughts

Reducing complex and interconnected ecosystems to a single monetary value reduces the ‘natural world’ into tradable ‘units’, largely for corporate interests. Proponents claim that biodiversity offsetting is “the only option” to get business on board. But we have heard that argument before with the adoption of the carbon market. After over ten years, we can conclude that framing the market and the financialisation of nature as the “only possible option” is a lucrative method for destructive industries and practices to continue expanding their businesses.

The idea that “price will solve biodiversity loss or pollution” has colonised peoples’ imaginations and forcibly ignored many other positions and knowledge. Offsets impose a hegemonic view on how to perceive the world – a world where nature, biodiversity, forests, and rivers can be separated and quantified into homogenous units that can be ‘re-created’, ‘replaced’, ‘moved’ or ‘restored’ according to economic and cost-related ‘values’. In this world, extractive industries, large-scale infrastructure projects and monoculture tree plantations can continue to provoke social, environmental and climatic destruction while they sell themselves as ‘green’ and ‘sustainable’.

People defending territories, biodiversities, forests, lakes, rivers and all the interconnected ecosystems with which they have co-existed for centuries are the ones ‘preserving’ and promoting real options for environmental protection and social change. The offsets (il)logic subjugates nature and its people, and forces them to become providers of ‘services’ that ‘work’ towards the accumulation of capital in the pockets of a few³¹.

Notes

- 1 This article is based on the report "A Tree for a Fish: the il(logic) behind selling biodiversity". The full version can be downloaded at: http://www.carbonradewatch.org/downloads/publications/CTW_A_Tree_for_a_Fish-EN.pdf
- 2 For more information, see the TEEB website at: <http://www.teebweb.org/about-old/partners>
- 3 For more information on Rio Tinto's main operations throughout the world, see: Rio Tinto (2012). Annual Review. Diapositiva 4. <http://www.riotinto.com/annualreview2012>
- 4 Bishop, J. (2013). The Economics of Ecosystems and Biodiversity in Business and Enterprise, TEEB study. Routledge.
- 5 Corporate Watch. Rio Tinto: Corporate Crimes. <http://corporatewatch.org/company-profiles/rio-tinto-corporate-crimes>; Corporate Watch (2001). Associating with the Wrong Company. Rio Tinto's Record and the Global Compact. 13 July. <http://www.corpwatch.org/article.php?id=623>; London Mining Network (2011). Rio Tinto: are they telling us the whole truth? <http://londonminingnetwork.org/docs/Rio-Tinto-background-information-2011.doc>
- 6 Nazari, M. and Proebstel, D. (2009). Biodiversity Offsets in Mining. January, page 43. <http://prizmablog.com/wp-content/uploads/Biodiversity-Offset-Mining.com-Jan-Mar09.pdf>
- 7 Klein, N. (2013). Time for Big Green to Go Fossil Free. The Nation. 1 May. <http://www.thenation.com/article/174143/time-big-green-go-fossil-free#>; and Klein, N. (2013). Why aren't environmental groups divesting from fossil fuels? The Nation. 2 May. <http://www.thenation.com/article/174149/why-arent-environmental-groups-divesting-energy-companies>
- 8 See the Business and Biodiversity Offsets Programme website at: http://bbop.forest-trends.org/pages/biodiversity_offsets
- 9 For more information, see: <http://ienearth.org>; <http://wrm.org.uv>, thecornerhouse.org.uk and <http://carbonradewatch.org>
- 10 Sarmiento, M. (2013). Colombia takes lead in Latin American Biodiversity Offsetting. Ecosystems Marketplace. 24 July. www.ecosystemmarketplace.com/pages/dynamic/article.page.php?page_id=9856§ion=news_articles&eod=1
- 11 BBOP. (2009). Compensatory Conservation Case Studies, page 2, http://www.forest-trends.org/documents/files/doc_3123.pdf
- 12 Idem, page 12.
- 13 See: <http://www.antamina.com/sobre-antamina/quienes-somos/nuestra-empresa/>
- 14 Blue Planet Biomes. Polylepis Forest: http://www.blueplanetbiomes.org/polylepis_forest2.htm
- 15 Ibid.
- 16 Gonzáles, J. (2013). Minería y territorialidad: un estudio comparativo en la sierra de Ancash. <http://slideplayer.es/slide/1057615/>
- 17 BBOP (2009), op. cit., page 8.
- 18 Servindi (2012). Perú: poblado de Chipta denuncia daños a la salud por actividad de Antamina, Servindi, 3 February. <http://servindi.org/actualidad/58533>. See also: SPDA Actualidad Ambiental (2013). Ancash: 285 85 pobladores de Cajacay tienen metales en la sangre y culpan a Antamina. 31 July. <http://www.actualidadambiental.pe/?p=19789>; and: European Center for Constitutional and Human Rights, Water contamination near copper mine: UN complaint against Swiss firm Glencore, Peru and Switzerland. <http://www.ecchr.de/glencore-714.html>

- 19 Servindi (2012). Perú: CIDH acepta nueve casos de denuncia contra el Estado Peruano presentados por CONACAMI, <http://servindi.org/actualidad/22768>
- 20 Servindi (2014). Áncash y Apurímac entre las regiones que registran más conflictos sociales. 17 March. <http://servindi.org/actualidad/103073>
- 21 Servindi (2012). Ronda Informativa Indígena. Voces de los pueblos originarios del Perú. August. <http://servindi.org/actualidad/111718>
- 22 Perú en conflicto (2011). ANCASH: Dan ultimatum a Antamina por contaminación ambiental. 1 September. <http://peruenconflicto.blogspot.com.br/2011/09/ancash-dan-ultimatum-antamina-por.html>
- 23 Agronoticias (2014). Poncho Verde en 13 distritos de Huari, Ancash. No. 401. June. http://www.antamina.com/images/files/antamina_agronoticias.PDF
- 24 Ibid.
- 25 Servindi (2012). Mundo: Crece apoyo a la lucha contra proyecto minero Conga en Perú y el mundo. June. <http://servindi.org/actualidad/66093>
- 26 Carbon Trade Watch. Monocultures: <http://www.carbontradewatch.org/issues/monoculture.html>
- 27 Salazar, M. (2014). Ofensiva legal de firmas mineras en Perú contra aporte ambiental. Servindi. 10 August. <http://servindi.org/actualidad/110758>
- 28 De Echave, J. (2013) Perú: policía nacional al servicio de los intereses privados. Servindi. 20 November <http://servindi.org/actualidad/96578>
- 29 See the WAVES website: <http://www.wavespartnership.org/en/about-us>
- 30 Kill, J. (2014). Valuation of Nature: The price to pay for valuation - A critical exploration. Rosa Luxemburg Foundation. <http://rosalux-europa.info/userfiles/file/Economic-Valuation-of-Nature.pdf>
- 31 For further reference, see: Bryant, B. (1996). *Twyford Down. Roads, campaigning and environmental law.* E&FN Spon: United Kingdom; Bull, J.; Suttle, B.; Gordon, A.; Singh, N.; and Milner-Gulland, J. (2012). *Biodiversity offsets in theory and practice.* Flora and Fauna International; Gilbertson, T. and Reyes, O. (2009). *Carbon Trading: how it works and why it fails.* <http://www.carbontradewatch.org/publications/carbon-trading-how-it-works-and-why-it-fails.html>; Lohmann, L. (2012). *Performative Equations and Neoliberal Commodification. The Case of Climate.* The Corner House. 15 September. <http://www.thecornerhouse.org.uk/resource/performative-equations-and-neoliberal-commodification>; Robertson, M. (2011). *Measurement and alienation: making a world of ecosystem services.* Transactions of the Institute of British Geographies. Royal Geographical Society: United Kingdom; Sullivan, S. (2012). *Financialisation, Biodiversity Conservation and Equity: Some currents and concerns.* Environment and Development Series, 16. Third World Network: Malaysia.





Violations of human rights and the rights of peoples and nature have become inherent to transnational corporations' operations and can only be equated with their growing economic and political power. What is more, these corporate violations have become systematic and corporations are certain of the impunity of their operations, which is becoming evident in an increasing number of areas of our lives, as corporations advance in the dispossession and appropriation of the commons. To confront all of this, popular resistance has become increasingly globalised and coordinated by linking up counterpowers opposing the most powerful corporations on the planet.

"Peoples Sovereignty vs. Impunity Inc.: Counterpower and Struggles for Justice" presents, in eight articles, various cases that aim to serve as tools of action for activists from different continents to use in their fight for access to justice against the systematic violation of human rights and other crimes committed by transnational corporations.

This publication has been produced in the framework of the **Global Campaign to Dismantle Corporate Power and Stop Impunity**. Its publication coincides with the first meeting of the **"Open-ended intergovernmental working group on an international legally binding instrument on transnational corporations and other business enterprises with respect to human rights"**, which is to be held in July 2015. The commencement of this group's work constitutes a milestone in the history of the struggle against the impunity of transnational corporations. The social movements and organisations that build counterpower to transnational corporations on a daily basis remain alert and vigilant to this process.