

DANGEROUS WEAPONS

How International Investment Rules Undermine Social and Environmental Justice

Believe me, it is in the interest of your country to wear this jacket!



Introduction

Across the world, citizens and social movements are mounting strong and effective campaigns to fight the environmental and social abuses of transnational corporations. People have fought to defend control over their water, to block contaminating mining projects, to hold oil companies accountable for their environmental destruction, and more. These actions have often been successful in forcing governments to act in defense of their people.

In response, corporations and their political allies have assembled a powerful arsenal of legal weapons in their defense. Among the most dangerous is the growing global web of international investment agreements (IIAs) and the international tribunals empowered to enforce them. These agreements, tribunals and other legal tools form the architecture of impunity that allows transnational corporations to bypass local and national legal systems.

Today the nations of the world are covered by a web of nearly three thousand bilateral and multinational trade and investment agreements. A key provision in many of these allows corporations to sue governments over public interest policies and actions that reduce the value of their investments. The number of these 'investor-state' legal actions has exploded in recent years. In just one of the tribunal systems, the World Bank's International Center for the Settlement of Investment Disputes (ICSID), the number of cases has jumped by more than 400% since 2000.

In cases argued by a handful of lawyers behind closed doors, and where the people affected are unable to speak, countries have been ordered to pay transnational corporations hundreds of millions of dollars, not just for damages but for the supposed future profits they have lost. The aim is not just to drain public treasuries but also to chill the willingness of governments to act in the public's defense.

There is only one way to challenge and dismantle this system of dangerous weapons being deployed against social justice and the health of the planet.

That is to get informed and to join together across movements and national boundaries to challenge the international investment regime.

The following set of cases shows the system in action and how it is impacting the issues we care about. The final section highlights what needs to be done to change the system and how you can get involved.



Power Corporation
Source: TNI

June, 2012



One key battleground where transnational corporations have used the investment rules and tribunals system to flex their legal muscle has been in the global battle for control over water. A handful of global conglomerates are eager to take control of public water systems and people across the world have fought back, only to find themselves the target of an international legal attack.

- **Bechtel Vs. Bolivia:** In 2000, following overnight water rate increases of more than 50%, the people of Cochabamba, Bolivia rebelled and forced the reversal of government and World Bank policy to privatize their water system. The corporation involved, led by Bechtel, one of the wealthiest corporations in the world, was able to use the system to sue the state for \$ 50million for loss of future earnings having invested just \$ 1million. Under enormous pressure from a global action campaign, Bechtel and its allies withdrew the case in 2006.



'Water for the People'

Source: www.notenoughgood.com



Water War, 2000

Source: Tom Kruse

- **Biwater vs. Tanzania:** In the early 2000s, the government of Tanzania privatized water and sanitation services in Dar El Salaam as conditionality for World Bank debt relief. In 2005, when debts owed by Biwater to the government went unpaid and poor neighborhoods were excluded from services, the government decided to cancel the contract. Biwater responded with an ICSID lawsuit for \$ 25million.



Informal water vendors pull small carts with jugs full of water

Source: Institute for Policy Studies

Extractive Industries and Environmental Protection



With high prices for natural resources pushing governments to cash in on their resource wealth by making deals with foreign investors, efforts to strike a balance between social, economic and environmental concerns are being compromised by the investor-state system.

Mining

- **Pacific Rim vs. El Salvador:** In response to the mobilization and actions of communities concerned about contamination of their water, the government of El Salvador refused the necessary environmental permit to Canadian mining company, Pacific Rim. In retaliation the company struck back with a \$77 million demand at ICSID, which the tribunal formally allowed to move forward in June of 2012.



Source: *The El Salvador Metallic Mining Round Table*

- **Churchill Mining vs. Indoensia:** In recent years, Indonesia introduced new regulations for the mining industry including export taxes, a ban on unprocessed metals exports and changes to rules on foreign ownership. Indonesia has one of the world's biggest undeveloped coal reserves. In 2010, Indonesian authorities cancelled the licenses of UK mining company, Churchill, to start extraction of coal reserves. In response, in May 2012, the company filed a \$2 billion ICSID compensation claim.

Oil and Gas

- **Occidental Petroleum vs. Ecuador:** Occidental has a long and troubled history in Ecuador. They face a range of allegations in relation to abuses of the country's human rights, social and environmental laws. So, when the government found that the corporation had breached contract terms in relation to a share transfer deal and announced its cancellation, there was broad civil society approval. However, Occidental immediately retaliated by filing a billion dollar ICSID claim.
- **Maersk Oil & Anadarko vs. Algeria:** The Algerian parliament passed a windfall tax in 2006 in an effort to retain more of the benefits of the country's oil wealth and preserve the nation's resources for future generations by slowing down oil exploration. In retaliation, the Danish corporation Maersk Oil filed an ICSID claim against the government of Algeria. Anadarko, a U.S.-based joint venture partner of Maersk, brought a similar complaint before the arbitration tribunal of the International Chamber of Commerce in February 2009.

Nuclear Power

- **Vattenfall vs. Germany:** As a response to increased public opposition to nuclear energy after the 2011 Fukushima nuclear power plant disaster in Japan, the German government decided to renounce the use of nuclear power and closed down two of its nuclear power plants. As a result, in May 2012, Swedish energy company Vattenfall sued Germany in ICSID for breaching its legal obligations in the Energy Charter Treaty demanding €700 million in compensation.



As the rapid expansion of industrial agribusiness and land-grabbing in Latin America and Africa leads to displacement of small producers and untold environmental damage, the growing web of investment rules enshrined in international trade agreements is restricting the capacity of social movements and governments to defend the rights and food sovereignty of their citizens.

- **Cargill vs. Mexico:** When the Mexican government attempted to protect local sugar producers by taxing imports of high-fructose corn syrup, the American corporation, Cargill, struck back with a \$77 million lawsuit. Mexico's appeal was subsequently rejected and the government is now under orders to pay the \$77 million plus interest and legal fees to one of the world's biggest multinational food corporations.
- **Chemtura vs. Canada:** Following a successful advocacy campaign by Canadian farmers concerned about access to overseas markets, the Canadian Pesticide Regulation Agency banned agricultural pesticide Lindane in the early 2000s on health and environmental grounds. Chemtura lobbied unsuccessfully against the ban, then attempted to challenge it in the Federal Court of Canada, and finally sued Canada under NAFTA Chapter 11 investor protections.

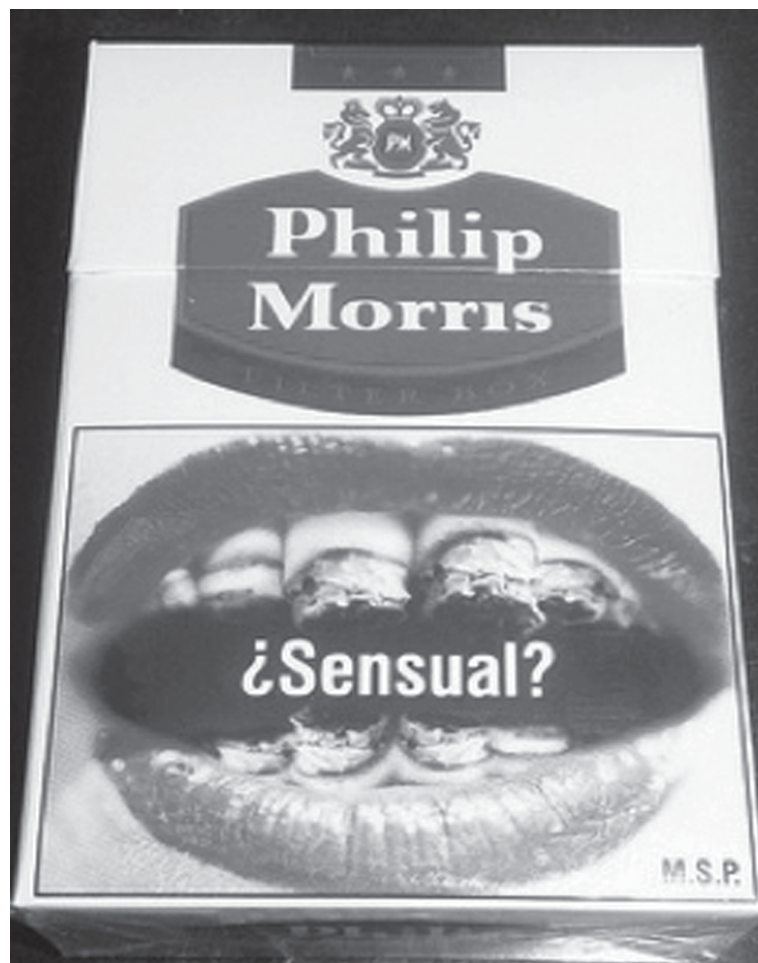


Source: REDES -Amigos de la Tierra Uruguay



One of the most fundamental responsibilities of governments is to create and implement public policies to protect the health of their people, including regulating the health-damaging activities of corporations. Here as well, corporations are deploying investment rules as a weapon.

- **Phillip Morris vs. Uruguay:** When the Uruguayan government implemented new regulations designed to protect public health, such as warnings on cigarette packages, Philip Morris, one of the largest cigarette conglomerates in the world, filed an ICSID lawsuit against them. As well as claiming damages, the company is asking the government to suspend the new regulations.



Source: Physicians for a Smoke-Free Canada

It is Time to Join Forces to Take Action

The system of international investment rules and tribunals is a threat to efforts by communities all across the world to protect their basic resources and to defend their rights. We can only challenge that system by joining together. We can work together to help directly fight these cases, as with the global citizen victory over Bechtel. We can press governments to withdraw from the tribunal system, as Bolivia, Ecuador and Venezuela have begun to do. We can also press governments to refuse to enter into any new investment agreement that grants corporations the right to sue them in global tribunals, a position now being voiced by Australia, India and South Korea.



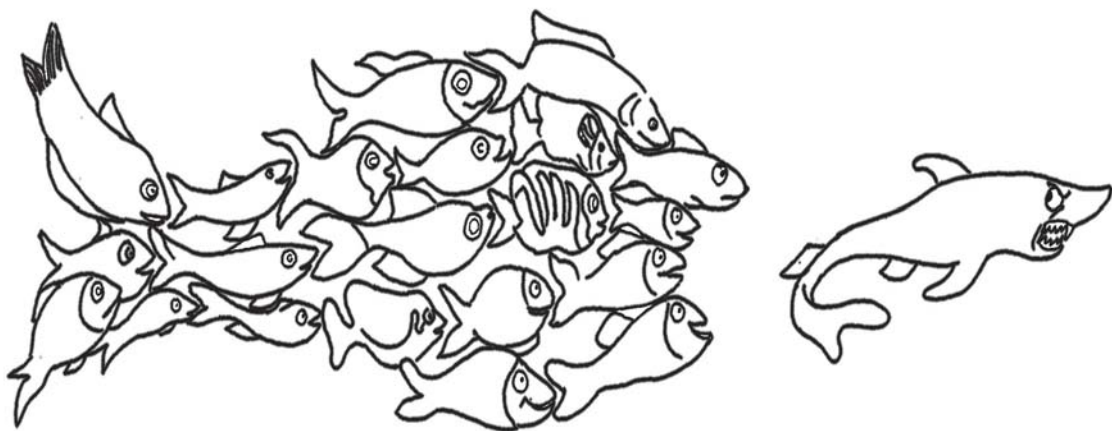
Source: TNI



Get Informed

Here are some of the organizations where you can find more information about the issue of international investment rules, current news, campaigns, and links to other materials:

- **Network for Justice in Global Investment**
(a project of the Democracy Center and the Institute for Policy Studies) [<http://justinvestment.org/>]
- **The Transnational Institute** [www.tni.org]
- **Fundación Solón** [<http://www.funsolon.org/>]
- **Redes Uruguay** [<http://www.redes.org.uy/>]
- **ATTAC Argentina** [<http://attacargentina.com.ar/>]
- **Seattle to Brussels network** [www.s2bnetwork.org]



Get Involved

Join the growing movement of people and organizations across the world working to challenge this system. We are building support, across issues and across nations, toward a set of unified global actions in 2013. Join us by sending an email to:

contact@justinvestment.org

the
democracycenter

NJGI

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in Global Investment



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