

Unfair, Unsustainable, and Under the Radar

How Corporations Use Global Investment Rules to
Undermine a Sustainable Future

Written by
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the democracycenter



About the Publication

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The Organisations



Founded in San Francisco in 1992, The Democracy Center works globally to help citizens understand and influence the public decisions that impact their lives. Through a combination of investigation and reporting, advocacy training, and leading international citizen campaigns, we have worked with social and environmental justice activists in more than three-dozen countries on five continents. As The Democracy Center begins its third decade, a special emphasis of our work is strengthening citizen action on the global climate crisis and helping citizens challenge the power of corporations.



The Democracy Center has partnered with the Institute for Policy Studies, based in Washington D.C., to create the Network for Justice in Global Investment, which aims to advance new rules and institutions to govern investment and finance, in ways that support fairness, justice, and environmental sustainability.

For more information in Spanish and English, see: www.justinvestment.org

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Foreword

As Thomas Mc Donagh writes in this report, one of the fundamental global challenges that we face in this century is how to do two things simultaneously. One is enable billions of people across the world to lift themselves from the sufferings of poverty and the other is avoid pushing the planet off a cliff toward dangerous and irreversible environmental changes. Under any circumstances doing both these things would be difficult, but there is also a set of powerful forces at work that make what is difficult and urgent almost impossible. These forces are the powerful international corporations that seem set to autopilot on a course that wreaks havoc on our environment.

These corporations – oil conglomerates, coal companies, mining operations, and others – are directed by people and backed by sources of capital that shift and change by the hour. But what remains permanent is the set of programmed commands that drive their decision-making: to maximise the earnings of their shareholders and executives even if that comes at the expense of irreversible damage to the planet. To be sure, there are thousands of honest businesses in the world that do not operate in just this way, but in the behaviour of some of the largest it is easy to see exactly this kind of profit-seeking programming run amok.

This report is about one of the most important yet little understood weapons that these corporations have constructed to defend themselves from challenge: a vast global web of international trade and investment agreements and a corporate-friendly tribunal system designed to enforce the rights that those agreements grant to corporations.

Consider this scenario: as you pull up to a traffic light two police officers on motorcycles stop on either side of you. One officer commands you to go on the green light. The officer on the other side calls out for you to go on the red. Which one do you listen to? Today many governments are caught in just this position in debates over how to steer their nation's economic and social development. From one side comes the demand from citizens, social movements and international agreements to adopt a course of "sustainable development" – an approach based on protecting the earth for future generations. From the other side come global corporations demanding unhindered access to mineral and metal mining, private control of water, nuclear development, and other profit-making ventures.

The power balance between the two, however, could hardly be more lopsided. In the end advocates for sustainable development policies can do little more than advocate, and the international agreements that back them have no actual authority or teeth. International corporations, on the other hand, can force governments before international investment tribunals and compel them to hand over hundreds of millions of dollars in compensation. In short, the police officer on one side can do little more than yell, but the other can write a very expensive ticket.

The result is a system that undermines democracy and poses a very serious threat to the future.

For more than two decades the Democracy Center has worked with citizen activists across the world to help them understand

the public issues that impact their lives and to have an influence on those public decisions. Our work on international investment rules began when one of the most significant cases brought under this system – the Bechtel Corporation's \$50 million suit against Bolivians after the Cochabamba Water Revolt – happened on our doorstep. The Democracy Center helped lead the global effort that forced Bechtel to drop the case. That experience underscored how some of the threats to our democracy are carefully disguised in complexity and it is in these cases that better citizen understanding is especially urgent.

The report you are about to read examines this conflict between sustainable development and international investment rules. At the Democracy Center we believe deeply in the potential power that activist democracy always offers us to shape our world. We hope this report moves and inspires others to join the effort to dismantle a system that is designed to keep that activist democracy out of some of the most important decisions of our time.

Jim Shultz
Executive Director
The Democracy Center

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The Democracy Center is deeply indebted to its partners around the world who have contributed ideas not only to this report but to our thinking over many years. This includes our close colleagues at the Institute for Policy Studies and the Transnational Institute, including Manuel Perez Rocha, Sarah Anderson, Cecilia Olivet and Pietje Vervest. We would also like to express our appreciation to Gina Lucarelli at the United Nations Development Program and Cynthia Williams from the University of Illinois who gave us some guidance regarding the current publication.

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Alexandra Flores, and to Alberto Villarreal from REDES, Friends of the Earth Uruguay.

Like most Democracy Center projects, this one was very much a team effort. I would like to express my gratitude to all of the Democracy Center staff for their support. To our design whizz Anders Vang Nielsen for his creativity, commitment and energy. To our communications director Maddy Ryle for her discerning eye for detail and general wise counsel. To Leny Olivera Rojas and Sian Cowman for their wealth of ideas and general support. To Rebecca Hollender for her contribution to our section on 'Vivir Bien'. To Aldo Orellana Lopez for his research support, his contribution to 'Vivir Bien' and his accompaniment every step of the way on this project - gracias compañero! And to Democracy Center director Jim Shultz for sharing his analytical clarity,

his editorial flare and invaluable grace and good humour over countless coffee conversations, this project owes him a great debt of gratitude.

And of course to the communities and campaigners in Latin America and around the world at the frontline of the struggles featured in this report, to whom we express our most humble admiration and solidarity.

Thomas Mc Donagh
Author

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Introduction

“Trade and investment agreements allow these corporations to be above our national sovereignty and even our country’s constitution.”

- *Francisco Pineda*
Goldman Prize 2011

ACROSS THE WORLD the natural systems that have supported human life on the planet are being stretched, some to breaking point¹. What science has been telling us for decades is now making itself felt in the most unmistakable ways. From record land and sea temperatures to unprecedented [Arctic ice-cap](#) and glacier melt²; from accelerated biodiversity loss to the depletion of fish stocks³; and from deforestation to extreme weather conditions⁴, what was once presented to us on charts and graphs can now be felt in the daily lives of millions of people across the world⁵. And as the evidence accumulates, the message becomes ever clearer: the patterns of production and consumption that have dominated economic development, especially in the global North, are incompatible with the earth’s natural boundaries and must change urgently.

Simultaneously, levels of poverty and inequality persist in many parts of the world alongside ever-greater demand for the social and economic development that will allow people to meet their needs and fulfil their potential. Fitting these two realities together is the challenge of the 21st Century, and one

that some activists and policy makers have been grappling with for many years.

Over the last three decades a consensus has slowly emerged around a set of basic first principles upon which to base responses to this challenge: recognition and respect for the earth’s natural boundaries; incorporating environmental and social concerns into what were previously purely economic decisions; and meeting the needs of the present without compromising the ability of future generations to meet their own needs. Taken together these principles form the foundation of “sustainable development”.

However, the movement to steer public policy in the direction of sustainable and inclusive development faces significant winds blowing in precisely the opposite direction. Attempts to implement policies based on these principles are limited by the constraints of international economic systems and regulations. One of the least understood but most powerful of these is the system of international investment rules and the arbitration tribunals that enforce them.

Over the course of more than thirty years national governments around the world have bound their nations to thousands of complex bilateral and multilateral trade and

FIGURE 1.1

Term: Sustainable Development

In this paper we use the term sustainable development to mean a set of approaches to development based on the values of respect for the natural boundaries of the planet; a balance between economic, social and environmental priorities; and the prevention of a legacy of diminishment of nature for future generations. We use the term because it has become the accepted terminology by a wide range of actors for those values. However, we are aware that precisely because the term ‘sustainable development’ has become so widely accepted, there is an effort under way by corporations and others to co-opt it and use the cover of its legitimacy to create an image of sustainability for practices that are anything but sustainable.

investment agreements. The aim of these has been to open up new markets for international investors, often to provide access to raw materials, and usually accompanied by a weakening of the labour, health and environmental protections that lie at the heart of sustainable development policies.

This expanding web of international trade and investment agreements has enshrined into international law a collection of powerful corporate rights and an unaccountable, undemocratic system of international arbitration tribunals to enforce those rights. When the investments or profit opportunities of corporations are affected by a gov-

ernment policy, even if these policies are in complete accordance with national laws and the national constitution, corporations can take legal action against governments for hundreds of millions of dollars in these international tribunals. The number of these cases has exploded in recent years. The result is not only huge transfers of public resources from already strained treasuries (mostly from developing countries) to private corporations, but also a dangerous freezing effect on the willingness of policy makers to implement policies in the public interest for fear of costly international arbitration cases.

As we approach a set of ominous tipping points in terms of many of the earth's natural systems, there has never been a more urgent time for activists, academics, development workers and others to understand the structural pressures that work against the implementation of social and environmental policies that prioritise human rights while respecting nature's boundaries. This paper aims to shed an urgent public light on one of those constraints: the system of international investment rules and arbitration tribunals, and how it is being used to resist and attack sustainable development efforts.



Sustainable Development and Corporate Power - The Inherent Conflict

"It's like a quiet, slow-moving coup d'état."

Lori Wallach

*Director of the Global Trade Watch
division of Public Citizen*

SOCIAL AND ECONOMIC development that respects nature's boundaries and incorporates the broad interests of all citizens is in direct conflict with the interests of global corporations and the conflict is not an accident. That conflict is one of the most urgent reasons why, despite the growing sustainability consensus, so little progress has been made and so many initiatives and policies have been stymied.

Sustainable development: the wise consensus

The contradictions inherent in the relentless consumption of natural resources and unrestrained economic growth on a finite planet have gradually evolved from being an obscure interest of environmentalists and aca-

demics in the 1970s to becoming a central plank of international debate today.

In early landmark publications such as *The Limits to Growth*⁶ (1972) the consequences of unchecked economic growth with finite resources were predicted. The message was simple but compelling: if the human ecological footprint (our resource use plus our pollution) continues to grow beyond the earth's physical limitations (capacity to renew natural resources and absorb pollution), natural systems will begin to collapse. In 1998 the UN-commissioned Brundtland Report⁷ (also known as "Our Common Future") synthesised many of the emerging sustainability-related concepts into a definition of sustainable development that would gradually become embedded in public policy discourse and

the popular imagination: “development that meets the needs of the present without compromising the ability of future generations to meet their own needs”. The report raised the profile of social and environmental sustainability in development debates and helped to push concepts such as intergenerational equity (the injustice of leaving depleted or exhausted natural systems behind for future generations), global interdependence (one planet, interconnected and therefore interdependent), the dependence of economics on the environment, (sustainable environmental stewardship = sustainable economy) and the triple bottom line (our natural environment and societies should not be sacrificed for short-term economic interests) from the margins to the centre of the global debate.

Given that many of the issues in question when discussing sustainable development - from climate change to cross border pollution to international energy networks - require cooperation between states, an intergovernmental negotiation process was initiated in an attempt to reach a commonly agreed upon policy framework.

After several international gatherings in the 1970s and 80s, negotiations began in earnest twenty years ago at the well-known Rio Earth Summit in Rio de Janeiro in 1992. In Rio that year governments formally recognised the need to begin to adopt patterns of production and consumption that were in harmony with nature when they signed up to the Rio Principles⁸, and most of them undertook commitments to begin moving in that direction by signing the Convention on Biological Diversity, the Convention on Climate Change, and Agenda 21ⁱ.

ⁱ Agenda 21 is an action agenda for sustainability committed to at the Rio Earth summit in 1992. It includes a range of objectives, policy recommendations and budget estimates to

The Green Economy: an important debate

In global development circles around the world a term of growing prevalence is the notion of ‘green economics’, but what it precisely means and its implications are subject to fierce debate. As used by many organisations, primarily in the global North, green economics refers to a set of policies aimed at capturing market forces in the service of environmental interests. Policies such as subsidies for renewable energy, investment in research and development, and sustainable public procurement to stimulate demand for green products are examples of these. However other forces, again primarily from the North, are pushing green economics as an overall system to turn essential resources and functions of nature into commodities and tradable markets by putting a price value on them. It’s this latter definition of green economics that has many in the global South up in arms. These concerns were in stark relief at the Rio+20 Summit, where civil society and social movements in the global South rejected green economics with its focus on payments for ecosystem services as an effort at “turning nature and its functions into market commodities to be bought and sold by investors” and “privatisation of the last remaining commons” which it is feared will inevitably end up contributing to their exploitation and destruction.

These commitments would be renewed ten years later at the Summit on Sustainable Development in Johannesburg in 2002 with the signing of the Johannesburg Plan of Implementation (JPOI)⁹, and again at the Rio+20 meeting in Rio de Janeiro in 2012, on the twenty year anniversary of the first Earth Summit.

The introduction to the outcome document signed by governments at the Rio+20 summit states:

We therefore acknowledge the need to further mainstream sustainable development at all levels integrating economic, social and environmental aspects...We recognize that...changing unsustainable and promoting sustainable patterns of consumption and production...are overar-

assist government policy making for sustainable development. <http://www.un.org/esa/dsd/agenda21/index.shtml>

*ching objectives of, and essential requirements for, sustainable development.*¹⁰

One of the proposals emerging from the Rio+20 conference was for the establishment of a set of sustainable development goals (SDGs) to help to mainstream environmental sustainability in international development planning. Worldwide consultations began in 2013 on these goals and they are likely to become a centrepiece of the policy framework for international development that will replace the Millennium Development Goals (MDGs) when they expire in 2015.

Serious progress on sustainable development remains dangerously stalled

The world suffers no shortage of formal declarations and recognitions in relation to sustainable development principles and objectives. If declarations were all that is needed to make them a reality we wouldn’t be facing the numerous interrelated crises that we do today. Two decades after the first Rio

Vivir Bien

As part of the international debate on alternatives for a sustainable future, proposals from civil society have been as many and varied as the civil society movements themselves. But one that is getting a lot of attention in Bolivia and Latin America more widely is 'Vivir Bien' ('living well'). The concept has its origins in the worldview of the indigenous peoples of South America and relates to the creation of a new relationship between humanity and the natural environment.

The philosophy of Vivir Bien is a response to the structural causes of environmental, social and economic crises around the world. [It seeks proposals](#) to combat these interrelated crises based on the principles of equilibrium with Nature, respect for Human Rights, and a redefinition of our relationship with the market. It calls into question the very concept of development and advocates a move away from the use of economic growth as a synonym, mechanism and indicator of development towards an acceptance of the reality and physical limitations of our planet's ecosystems and the finite quality of natural resources. It recognises that diversity isn't only important in Nature, but

also in our societies and cultures, and because of this, [Vivir Bien allows](#) for the flexibility to construct alternatives at the local and regional levels.

Two countries in Latin America, Bolivia and Ecuador, have included the concept of Vivir Bien in their Constitutions. While this is an exciting legal precedent, many contradictions remain between those Constitutions and what governments are actually doing on the ground. Nonetheless social movements, indigenous peoples, and conscientious communities in Bolivia, Ecuador and other countries in Latin America and around the world are putting into practice alternatives that fall into the framework of Vivir Bien. Among these alternatives exist models for the local management of natural resources, models for local/regional production and consumption of organic foods, the revaluation and use of traditional and ancestral knowledge, non-monetary barter, community networks of mutual support based on local needs and the provision of basic services (education, health, etc.), the formation of community cooperatives for industry and financial services, etc.

conference the unfortunate conclusion is that governments haven't made anywhere near the progress needed on sustainable development, as the planet hurtles towards a series of ominous environmental tipping points. The UN system itself has [recognised this](#) and Millennium Development Goal 7 – ensuring environmental sustainability - is nowhere near being achieved by 2015¹¹.

The hard fact is that economic inequality and environmental degradation persist, while the dominant patterns of production and consumption that have brought many of our natural support systems to the verge of collapse continue unabated. The lack of real progress at climate change negotiations is another disappointing and dangerous indicator of overall (lack of) progress.

Corporate interests - the powerful pressure from the other direction

The push towards global sustainable development policies is about moving in a new direction in terms of how our economies interact with our societies and the natural environment. Yet at the same time there is another set of forces pushing hard in exactly the opposite direction: global corporations whose entire business plans and futures are based on the existing model of converting natural resources into profits today, regardless of the environmental impacts now and in the future. To ignore this conflict is to act as if the move toward sustainable development exists in a happy fairytale with no powerful actors in opposition.

Any careful look at the last thirty years of global policymaking reveals the construction

of two parallel and contradictory movements to shape the course of development policy. One is the global drive towards sustainable development policies discussed above, much of which aims directly at the environmental and social abuses of international corporations. The other has been the decades-long effort to force developing economies to implement policies designed to attract foreign corporations and the foreign investment prescribed as the key to economic health.

These policies aimed at promoting foreign investment have been explicitly designed to remove the limits on what those foreign corporations are allowed to do once they take up local residence. Across the world many governments have adhered to an economic view that growth in the economy (and the retention of their political power) depends

on attracting foreign investment, regardless of the strings and costs that come with it. As a result, governments often go to extreme measuresⁱⁱ (see Stabilization Clauses and Human Rights below) to attract such investment and are then unwilling to fully regulate investments to ensure that they contribute towards sustainable development policy goals.

“Current international investment rules encourage governments to attract foreign investment by any means necessary – regardless of the costs for long-term sustainability and democracy.”

- Sarah Anderson,
Global Economy Project Director,
Institute for Policy Studies

Of the 100 largest economies in the world today, 41 are not countries they [are corporations](#) and there is little question as to the immense impact that they have over our lives.

These incredibly powerful institutions can put our health at risk, determine our well-being at work, and define the hazards we face as consumers and those which affect the natural environment in which we live. When we combine this with the ways in which their colossal financial resources allow them to shape key parts of our politics and our culture, we get a sense of the threat that they pose. In many ways we are impacted more deeply by the actions of corporations than we are by the actions of our own gov-

ernments. As in the legend of Doctor Frankenstein, the creations really have become more powerful than their creators.

As corporations wield this power over our lives, what criteria do they employ? Three fundamental rules guide much of corporate decision-making:

- Legal and fiduciary obligations that press corporations to maximise shareholder profit;
- When shares are publicly traded, demands from the marketplace for corporations to perform well in the stock exchange, especially in relatively short time-frames;
- The special influence of large, influential activist-shareholders (often other corporations) and of corporate executives who are often major shareholders themselves.

Taken together these criteria operate on the modern corporation much the same way as a program operates on a computer, driving its actions without attention to other considerations or the personal morality of individual corporate leaders. In the case of modern corporations what often gets left out of that operating program is any serious (as opposed to tokenistic) consideration of the well-being of communities and the environment. It should come as no surprise, then, that in country after country and with corporation after corporation we see mineral extraction that decimates local communities and water sources; land grabbing and evictions that destroy food and land sovereignty; and the rampant dumping of carbon into the atmosphere

FIGURE 2.3

**The true value of Foreign Direct Investment (FDI)
– an emerging debate**

That FDI is an essential part of any country's development future has become almost a truism, but increasingly that assumption is being questioned. Evaluating investment through the lens of sustainable development, where one looks at the short- and long-term economic, social and environmental costs and benefits of investment, often reveals a picture that contrasts sharply with the dominant one-dimensional narrative on investment. A recent [Tufts University study on the Marlin Mine project in Guatemala](#), for example, showed that although the mine provides 160 jobs for locals, the pollution from the mine has undermined the 40,000 people in the area who rely on subsistence agriculture for economic security. The study found that 'when juxtaposed against the long-term and uncertain environmental risk, the economic benefits of the mine to Guatemala and especially to local communities under a business-as-usual scenario are meager and short-lived.' The study also warns that 'economic benefits drop off sharply when the mine closes because jobs will end and because there has been little investment in building sustainable industry and enterprise.'

ii [Stabilization Clauses and Human Rights](#), a 2009 study by the offices of the then Special Representative to the UN Secretary General on Business and Human Rights in collaboration with the International Finance Corporation at the World Bank looked at the nature and ex-

tent of current 'stabilization clauses'- contracts signed between governments and foreign investors that offer investors exemptions from all new environmental and social laws or offer them compensation for costs of compliance. Of the 75 contracts and model contracts from non

OECD (Organisation for Economic Cooperation and Development) countries studied, 44 (59%) offered such exemptions and/or compensation to corporations for compliance with all new laws.

which has brought us to a breaking point in terms of climate change.

In the face of any conflict as clear as that between sustainable development and corporate interests, the essential arbiter must be the democratic process. Public policies – be they local, national or international – set

the rules. It is in these arenas that citizens have waged battles to make sustainable development and concern for the environment and future generations a priority. Across the world grassroots movements have gained power and forced their governments to act – on public control over water in Bolivia, blocking contaminating gold mines in El Salvador,

opposition to nuclear power in Germany. It is in the face of such citizen movements and victories that corporations have developed their defence system against democracy: the global web of international investment rules.

FIGURE 2.4

Sustainable Development vs. Corporate Interests - Two Key Current Conflicts

Action on the Climate Crisis. Of the ten largest corporations in the world, eight are oil and gas corporations. Not only do these oil and gas giants exercise their power and influence using the same criteria as outlined above, but they also have near infinite political and legal war chests at their disposal to promote their interests. The conflict between these interests and real action on the climate crisis could not be clearer. As leading climate campaigner Bill McKibben noted in a [recent Rolling Stone article](#), the carbon emissions represented by their current reserves are five times more than what the atmosphere can take if we are to remain within a 2 degree Celsius temperature increase. However, until their power is curbed and they are made to pay for the environmental costs of their operations, they will continue to sell and burn their reserves.

Attacks on Food and Land Sovereignty. A handful of food and biotech corporations – Monsanto, Cargill and Archer Daniels Midland among them – are using their economic and [polit-](#)

[ical power](#) to spread a model of agriculture based on intensive chemical use and patented and genetically modified seeds. This has resulted in dependence and debt (and consequent [waves of suicide](#) in the global South) on the part of small farmers, as well as environmental degradation and the control over our food system being concentrated in ever fewer hands. And while land reform and supports for peasant agriculture are seen as essential for sustainable food security, corporate and financial interests are promoting [land-grabs](#) in developing countries to gain access to land to produce industrial export crops and bio-fuels (described by former UN special rapporteur on the Right to Food Jean Ziegler as a [crime against humanity](#)). Efforts to regulate investment to guarantee food and land sovereignty and challenge this corporate capture of our food system are constrained by the current international investment rules regime. (See *Cargill vs. Mexico* below)



International Investment Rules And Arbitration Tribunals – The New Corporate Weapon Threatening Sustainable Development

“When I wake up at night and think about arbitration, it never ceases to amaze me that sovereign states have agreed to investment arbitration at all [...] Three private individuals are entrusted with the power to review, without any restriction or appeal procedure, all actions of the government, all decisions of the courts, and all laws and regulations emanating from parliament.”

*- [Fernández-Armesto](#)
arbitrator from Spain.*

MUCH OF THE attention paid to sustainable and inclusive development focuses on the actions that governments must take to promote it. Some more progressive governments are openly supportive of this important policy shift, other governments are openly hostile to it. But in all cases governments are under enormous political pressure from corporations to keep their profit-making interests safe from the incursion of environmental protections and other policies and rules that threaten them. In order to protect their interests in this inevitable conflict corporations are able to deploy a series of complex international economic rules. One of these is the ever-expanding system of trade and investment agreements and the secretive tribunals empowered to enforce the rights that they grant to corporations – institutions that can force the hand of governments and block democracy.

The international investment rules regime

The nations of the world today are covered by an expanding webⁱⁱⁱ of over [three thousand bilateral](#) and multilateral trade and investment agreements. A key provision in many of these agreements is the right of corporations to take legal action against govern-

ments when their public policies affect those corporations’ profit opportunities. Under the current investment rules regime, public policies such as the denial of a mining permit or stronger public health warnings on cigarettes can give corporations grounds to take legal action against governments, not only based on what they invested in the country, but based on what they claim they could have potentially earned on that investment over years, even decades.

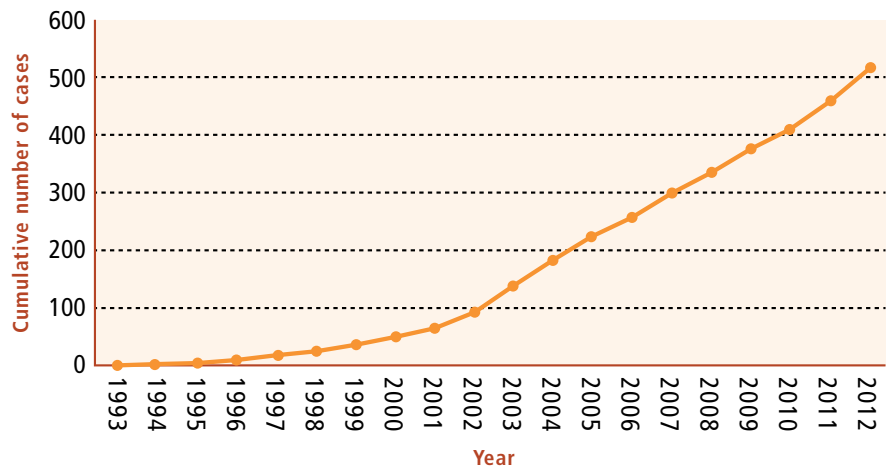
An example of this system in action can be seen [in El Salvador](#), where rural communities were concerned about the contamination of their local rivers and water supplies with chemicals such as arsenic by a Canadian gold mining enterprise (Pacific Rim). Organising against great odds and in face of clear danger (three activists were murdered), the communities of Las Cabañas successfully pressured the Salvadoran national government to refuse the necessary permits for the mine. For all concerned this was considered a huge step forward for sustainable water management in the country, preserving the country’s water for future generations and putting the right to water before the profit making interests of a mining corporation.

In retaliation however, Pacific Rim charged that the government’s refusal to grant the permit was a violation of its right to “fair and equitable treatment” and is now suing the Salvadoran people for \$315 million in the

ⁱⁱⁱ According to UNCTAD new investment agreements have been concluded at a rate of more than one per week for the past few years.

World Bank's trade court. The corporation is demanding compensation for profits that it will no longer earn. Regardless of whether the government wins the case or not, it is spending millions of dollars defending itself, money that could otherwise have gone on teachers and doctors in a country [where 42.5%](#) of the population lives below the poverty line. If the tribunal rules in favour of the corporation, as they [did in 70%](#) of rulings in 2012, the money diverted from the public treasury can easily amount to tens or hundreds of millions of dollars, which in this case would end up going to a Canadian mining corporation and a few wealthy corporate lawyers.

Known Investor-State Cases



Source: UNCTAD

The El Salvador case is just one of hundreds of such cases that corporations have brought against governments around the world. At

the most commonly used tribunal system ICSID (the World Bank's International Centre for the Settlement of Investment Disputes) the number of cases [has increased from 26](#) in 1990 to over 400 cases today. In 2012, 62 new cases were initiated, constituting the highest number of disputes ever filed in one year¹². And these are the known cases - most other arbitration forums do not maintain a public registry of claims, so the actual number is most likely considerably higher.

Described by [leading law academics](#) as lacking fairness and balance, including basic requirements of openness and judicial independence, the investor-state dispute arbitration system effectively operates as a privatised justice system for global corporations. Unlike civil cases brought in local courts, where proceedings are generally held in public and geographically close to the people impacted, investor-state arbitration cases take place in distant international institutions where affected communities are completely removed and where who testifies and what they say remains secret. The cases are argued behind closed doors by a handful of lawyers, mostly from North America and Europe, with most respondents being governments from the global South. As well as failing to satisfy basic requirements of procedural fair-

FIGURE 3.1

'The elite club of lawyers behind the scenes'

Behind the scenes of the investor-state tribunal system rests a secretive network of law firms, lawyers and financial speculators that is fuelling an investment arbitration boom at the expense of taxpayers and public interest policymaking. A recent publication by the Transnational Institute and the Corporate Europe Observatory, [Profiting from Injustice](#), looked at the principal actors and beneficiaries of the international arbitration 'industry'. Among the report's findings were that

- Just 15 arbitrators, nearly all from Europe, the US or Canada, have decided 55% of all known investment-treaty disputes.
- Legal and arbitration costs average over US\$8 million per investor-state dispute, exceeding US\$30 million in some cases. Elite law firms charge as much as US\$1,000 per hour, per lawyer – with whole teams handling cases.
- Several prominent arbitrators have been members of the board of major multinational corporations, including those which have filed cases against developing nations.
- Law firms with specialised arbitration departments seek out every opportunity to sue countries – encouraging lawsuits against governments in crisis, most recently Greece and Libya, and promoting use of multiple investment treaties to secure the best advantages for corporations.

The report concludes with a series of recommendations that can be read [here](#).

An Effective International Bill of Rights for Corporations

Although initially designed to protect international investors against the physical seizure of their property and assets, the 'rights' now afforded to global corporations are so expansive and so broadly interpreted that they expose governments to legal attacks in a range of policy areas. Adapted from the [Institute for Policy Studies' list](#) of the legal 'protections' for corporations now enshrined in international law, the following are some of the provisions most commonly included in bilateral investment treaties and in the investment chapters of free trade agreements:

1. *The right to bypass domestic courts:* Private foreign investors can bypass domestic courts to sue governments directly in international tribunals, a right not given to domestic businesses.
2. *The right to demand compensation for "Indirect" Expropriation:* Whereas expropriation in the past applied to physical takings of property, current rules also protect investors from "indirect" expropriation, interpreted to mean regulations and other government actions that significantly reduce the value of a foreign investment. Hence corporations can sue over environmental, health, and other public interest laws developed through a democratic process. While the tribunals cannot force a government to repeal such laws, the threat of massive damages awards can put a "chilling effect" on responsible policy-making.
3. *The right to "Fair and Equitable Treatment" (FET) Standards:* These terms have no definable meaning and are inherently subjective, allowing arbitrators to apply their own, often broad interpretations to government actions in countries with diverse histories, cultures and value systems. Out of the twelve investor-state cases in which state liability was found in 2012, [six involved](#) a violation of the FET provision. Of the cases summarised below, breaches of FET featured in the [Metalclad vs. Mexico](#) case in 2000 and is currently being used as the basis for *Doe Run vs. Peru*.
4. *The right to "National Treatment" and "Most Favoured Nation Treatment":* Governments must treat foreign investors and their investments at least as favorably as domestic investors and those from any third country. While this is touted as a basic principle of fairness, it strips the power of governments to pursue national development strategies used in the past by nearly every successful economy. Moreover, a regulatory action that applies to all corporations but has a disproportionate impact on a foreign investor could be targeted as a national treatment violation. The recent UNCTAD (United Nations Conference on Trade and Development) [report](#) on 2012 investor-state cases raised the mounting concerns regarding the "significant divergence between different tribunals and among arbitrators sitting on the same tribunal" as to how these provisions affect jurisdiction.
5. *The right to avoid Capital Controls:* Governments are banned from applying restrictions on the flows of capital, even though such controls helped some countries escape the worst of the global financial crisis of the late 1990s. Even the IMF has stopped demanding that governments lift controls on capital flows.
6. *The right to avoid Performance Requirements:* Governments are prohibited from requiring foreign investors to use a certain percentage of local inputs in production, transfer technology, and other conditions used in the past as responsible economic development tools.

ness, serious questions have been raised as to the impartiality of the lawyers involved in this system. Many of them will switch from being (supposedly impartial) arbiters in one case, to being corporate lawyers in the next, and many also double as both corporate and government advisers. This small network of

global investment lawyers maintains a huge vested interest in perpetuating and expanding the current system. The overall impact of this system is to afford multinational corporations an effective 'Bill of Rights' that supercedes government policies in a broad range of areas (see Figure 3.2).

These rights afforded to corporations give them the power to undermine public interest laws and regulations, but come with no new corresponding obligations to support public welfare or the environment, and no corresponding recourse for governments if a corporation commits human rights abuses or

breaks environmental regulations. It really is a case of 'heads I win, tails you lose'.

The result of the expansion of investor-state cases under this international investment rules system has not only been to drain public treasuries but, even more dangerously, to dampen the willingness of governments to act in the public's defence for fear of costly international arbitration cases. The system effectively puts a straitjacket on governments in terms of their ability to implement public interest policies.

In a recent case the South Korean government planned to introduce a low-carbon incentive system in the auto industry as part of a government project to reduce national greenhouse gas emissions. That move, however, has been stalled because of fears that the law would breach a provision in the US-South Korea free trade agreement. If the plan were to go forward the government would be exposing itself to attacks in international arbitration tribunals, and so it has been shelved. In a current case in Costa Rica In-finito Gold, a Canadian mining corporation, has threatened to take the state to international arbitration seeking \$1 billion in compensation for breach of the Canada-Costa Rica bilateral investment treaty (BIT) after the country's Supreme Court denied permission for an open pit gold mine not far from one of the country's major river systems. The fear of such cases results in a chilling effect on the willingness of governments around the world to pursue sustainable development policy initiatives precisely at the time when they are so badly needed.

International investment cases — the current battlefield

The El Salvador - Pacific Rim case featured above is emblematic of dozens of dangerous legal actions that have been taken by corporations against governments on issues rang-

ing from mining to water to nuclear power. The one-sided rights afforded to corporations and the tribunal system that enforces them are being used by corporations to subvert national regulations and laws on a whole range of sustainable development-related issues. Other notable cases include:

Bechtel vs. Bolivia: In 2000, following overnight water rate increases averaging more than 50%, the people of Cochabamba, Bolivia rebelled and forced the reversal of government and World Bank policy to privatise their water system. Using a bilateral investment treaty signed in 1992 between Holland and Bolivia Bechtel, one of the wealthiest corporations in the world, was able to bring a legal action against Bolivia for \$50 million for loss of future earnings, having invested just \$1 million. Under enormous pressure from [a global action campaign](#), Bechtel forfeited the case in 2006 for a token payment of .30 US cents.

Metalclad vs. Mexico: When Mexico denied the U.S.-based corporation Metalclad the permit to operate a toxic waste site and instead declared the area a natural reserve to protect the environment, Metalclad retaliated by launching a lawsuit for \$90 million. The corporation used chapter 11 investor protections in the North American Free Trade Agreement (NAFTA) to demand compensation for damages and loss of future earnings. In August 2000 Metalclad was awarded \$16.7 million by an ICSID arbitration panel, later reduced to \$15.6 million in the courts of British Columbia.

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 Swed-

ish energy company Vattenfall took legal action against Germany in ICSID for breaching its legal obligations in the Energy Charter Treaty, demanding €700 million in compensation.

Chemtura vs. Canada: Following a successful advocacy campaign by Canadian farmers, the Canadian Pesticide Regulation Agency banned agricultural pesticide Lindane in the early 2000s on health and environmental grounds. Agrochemical firm Chemtura lobbied unsuccessfully against the ban, then attempted to challenge it in the Federal Court of Canada, and finally brought a legal action against Canada under the NAFTA Chapter 11 investor protections. Although the Canadian government eventually defeated this case, the [Canadian legal costs](#) were upward of \$3 million, money from the national budget that was spent defending a public interest decision made by a democratically elected government.

'Fracking' in Quebec: The Quebec regional government's moratorium on unconventional gas extraction through hydraulic fracturing or 'fracking' is coming under increased pressure as affected oil and gas corporations threaten to bring legal action under NAFTA chapter 11 investment protections. One such corporation, Lone Pine Resources Inc., is using the investor rights chapter in NAFTA to challenge the Quebec moratorium and demand US\$250 million (€191 million) in compensation. The [company is claiming](#) that the Quebec moratorium is an "arbitrary, capricious, and illegal revocation of [its] valuable right to mine for oil and gas"

Doe Run vs. Peru: La Oroya, a town in southern Peru, was named by [the Blacksmith Institute](#) in 2006 as one of the top ten most polluted sites in the world. Doe Run Peru, a subsidiary of the Renco Group, took over a lead smelting plant there in 1997. The com-

pany consistently failed to meet an environmental cleanup commitment undertaken as a condition of sale. Citing economic difficulties as its reason for not meeting its promises, the company was eventually moved into bankruptcy. Renco is now [suing the Peruvian](#) people for \$800 million.

Occidental Petroleum vs. Ecuador: Occidental faces a [range of allegations](#) in Ecuador in relation to [abuses of](#) the country's human rights, social and environmental laws. The corporation was found to have breached contract terms in relation to a share transfer deal, as a result of which its contract was cancelled. Occidental immediately retaliated by filing a billion dollar ICSID claim. In October 2012 the Ecuadorian state was ordered to pay \$1.7 billion plus interest in compensation, the equivalent of [fifteen years worth](#) of social welfare payments for the country. The Ecuadorian government is attempting to appeal the ruling.

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. The Algerian government and state-owned company Sonatrach settled with the corporations in 2012 [in a deal worth](#) several billion dollars.

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 under investment protections of NAFTA. 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.

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 using the Switzerland-Uruguay bilateral investment treaty. As well as claiming \$2 billion in compensation, Phillip Morris is asking the government to suspend the new regulations.

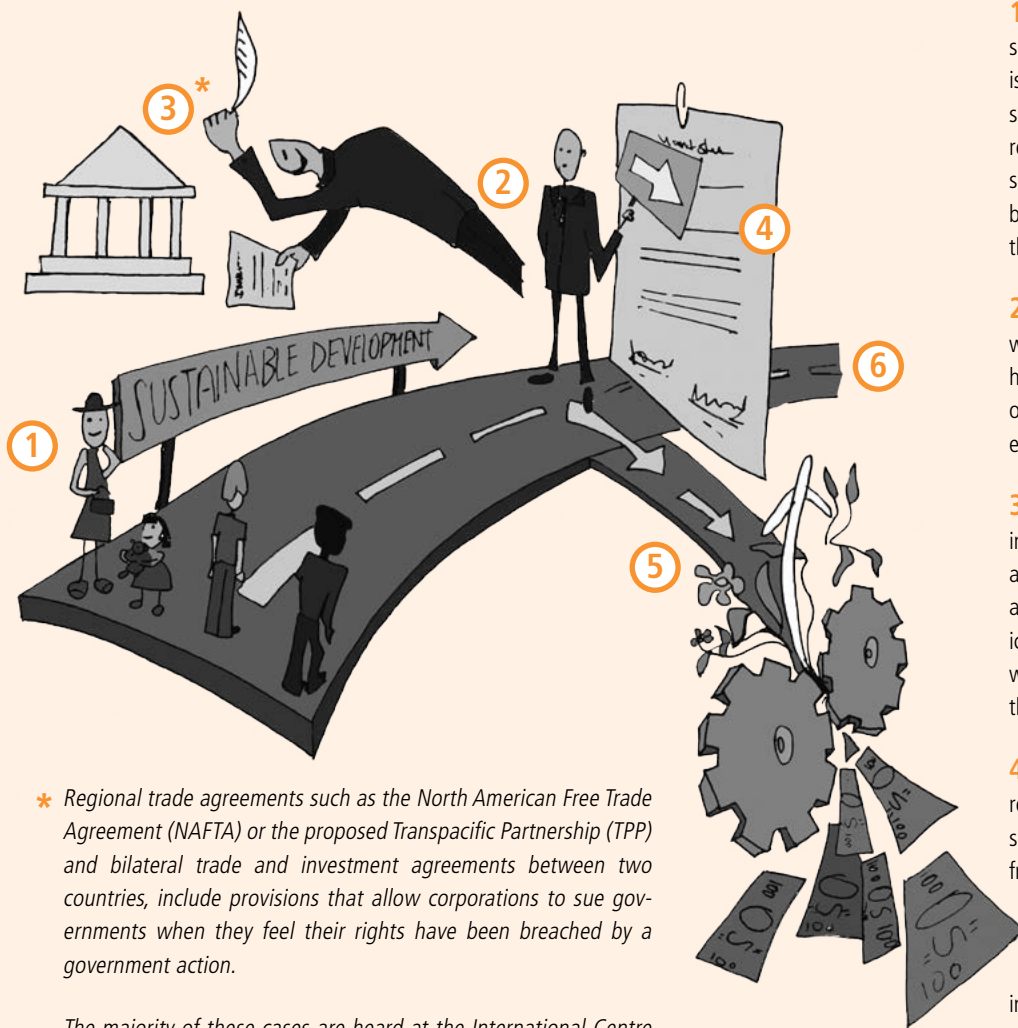
(See our [Resource Box](#) below for further reading on these and other cases)

In these cases and many others the corporate rights established in international law through trade and investment agreements and enforced by international arbitration tribunals are compromising countries' sov-

ereign right to regulate in the public good through a democratic process. This conflict underscores what makes it so difficult politically for governments to genuinely implement policies based on sustainable development principles in environmental protection, public health, natural resource management and other areas where corporate profits are at stake. The resulting reluctance among governments to create new legislation for fear of costly legal actions represents a considerable constraint on efforts to translate sustainable and inclusive development commitments into reality.

In the era of corporate power, the history of the conflict between corporations and the public interest has followed the same cycle as most other conflicts: the development of a weapon is followed by the creation of a defence mechanism, which is followed, in turn, by efforts to develop an even more sophisticated weapon to overcome that defence. So when an abuse by a corporation leads to citizen organising to demand that governments establish rules to restrict what corporations can do, corporations predictably come up with weapons that undermine that defence. Their latest weapon is this system of international investment rules and the private arbitration tribunals that enforce those rules.

'Under the Radar' - A Summary



1. Faced with a number of environmental and social crises, groups all over the world are organising to defend their natural resources and public services and many are beginning to question the relationship between economic development and social and environmental well-being. Many are beginning the move towards a future based on the values of sustainability and inclusiveness.

2. Many of these moves come into direct conflict with the interests of transnational corporations hard-wired to maximise short-term profit and pass on the environmental and social costs of their operations to others.

3. Corporations and governments have entered into a complex web of trade and investment agreements that give rights to corporations and allow them to sue governments in undemocratic, unaccountable international arbitration courts when they introduce the very policies required for this important move.

4. The proliferation of investor-state cases is resulting not only in huge transfers of public resources from already strained treasuries (mostly from developing countries) to private corporations, but also a dangerous freezing effect on the willingness of policy makers to implement policies in the public interest for fear of costly international arbitration cases.

5. The power of corporations and their use of the international investment rules system to sue governments is undermining responsible policy-making and turning what would be an extremely difficult task into an impossible one.

6. Until campaigners working on the issues affected by the investment rules system begin to realise the threat that it represents to a sustainable future, progress along the road will remain slow.

* Regional trade agreements such as the North American Free Trade Agreement (NAFTA) or the proposed Transpacific Partnership (TPP) and bilateral trade and investment agreements between two countries, include provisions that allow corporations to sue governments when they feel their rights have been breached by a government action.

The majority of these cases are heard at the International Centre for the Settlement of Investment Disputes (ICSID), an institution of the World Bank. But other courts commonly used include ad hoc tribunals established under the rules of United Nations Commission on International Trade Law (UNCITRAL) and the International Court of Arbitration at the International Chamber of Commerce (ICC).

The number of these cases has exploded in recent years, rising from less than 100 in 2000 to 518 today. In recent years corporations have begun to sue governments for all sorts of policy changes and regulations when their profit-making is affected.

Illustration: Emily Ibarra

IV.

Challenging The Investment Rules System

"...the Government does not support provisions that would confer greater legal rights on foreign businesses than those available to domestic businesses. Nor will the Government support provisions that would constrain the ability of Australian governments to make laws on social, environmental and economic matters..."

- Australian Government
[trade policy statement](#)

THE BARRIER THAT this system represents to sustainable and inclusive development and the importance of challenging it are becoming increasingly clear to a diverse range of stakeholders around the world.

Trade and investment campaigners have won important victories in this struggle in the past. In the 1990s a combination of civil society pressure and developing country opposition blocked the creation of a corporate-driven investment agreement for OECD (Organisation for Economic Cooperation and Development) countries. This Multilateral Agreement on Investment (MAI) would have made it much more difficult for governments to regulate foreign investors. Then, in Seattle in 1999 and Cancún in 2003, efforts to expand the remit of the World Trade Organization (WTO) to include investment and other issues were stymied by similar alliances. Civil society-led networks in Latin America successfully opposed the Free Trade Area of the Americas in 2005 and the more recent EU-driven free trade agreement for the region (the EU-MERCOSUR FTA).

Despite these victories the system continues to expand. Nowhere is this clearer than in the proposed trade and investment agreement for the Pacific region known as the Trans-Pacific Partnership (see *Figure 4.1*).

Current Challenges to the system

The Democracy Center in Bolivia and the Institute for Policy Studies in Washington have partnered to create the [Network for Justice in Global Investment](#) (NJGI), a project to support challenges to the current system and to facilitate a debate over a range of alter-

native policy options, including withdrawing from the current system, rewriting the rules to support sustainable development and protect national sovereignty, and replacing the system.

Fighting specific cases

As with the historic [global citizen victory over Bechtel](#), in a variety of campaigns around the world citizens are banding together to directly challenge specific cases. This includes substantial international organising efforts (as is underway in the Pacific Rim vs. El Salvador case), the filing of legal petitions, direct pressure on corporate officials and other tactics. Current cases that have drawn significant citizen action in opposition to them include Doe Run vs. Peru, Phillip Morris vs. Uruguay and Pacific Rim vs. El Salvador. (*More information and contacts are available in our [Resource Box](#) below*)

The Development of an Alternative Vision for International Investment Rules

Around the world in Latin America, Africa, Asia and elsewhere civil society organisations and policymakers are examining ways to change the current system in order to balance the need for legal security of those who make investments with the absolute right of societies to decide issues such as sustainable development policies through a democratic process.

Looking around at the alternatives to the current model being discussed, here are six fundamental principles that people are rallying around. (*See our [Resource Box](#) below for more on Alternatives*)

- 1) *Human rights first*: not allowing corporate rights to come before human rights.
- 2) *A fair dispute resolution system*: the creation of a new system of dispute resolution – including local and regional courts.
- 3) *Binding obligations on corporations*: mechanisms to ensure the accountability of corporations regarding how they impact human, economic, environmental, labour and social rights.
- 4) *Policy space for economic development*: Eliminate provisions related to National Treatment, Minimum Treatment and Most Favoured Nation (see Figure 3.2, page 9), and remove prohibitions on performance requirements to allow space for policy making for sustainable development.
- 5) *Capital controls to stem financial crisis*: The right to restrict and control speculative and destabilising international capital flows.
- 6) *Restrict the definition of investment*: Prevent broad interpretations of what constitutes an investment, eliminate the concept of “indirect expropriation” and redefine what constitutes productive and sustainable investments.

Challenges by Governments to the System

Campaigners are not the only ones challenging the investment rules regime. Governments around the world are slowly waking up to the threat that the system represents and beginning to propose alternatives.

In Latin America several countries (Venezuela, Bolivia and Ecuador so far) have withdrawn from the World Bank’s arbitration body ICSID, and begun to renounce BITs, while at the re-

The Transpacific Partnership (TPP): the latest expansion of corporate investment rules

After failing to gain approval for the Free Trade Area of the Americas in 2005 following mass public mobilisation, the focus of corporate-driven US trade policy shifted to bilateral and sub regional trade agreements. Dubbed ‘NAFTA on steroids’ by campaigners, the Transpacific Partnership (TPP) is one of the largest regional trade and investment agreements to date. The talks, which began in 2007, now involve Australia, Brunei, Canada, Chile, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam. The areas covered in negotiations include intellectual property, procurement, financial sector regulation and investor-state dispute mechanisms. Despite the wide-ranging implications for the countries involved the negotiations are closed to the public and to national parliaments, but remain open to 600 corporate lobbyists who can comment on the draft texts in real time. When the agreement’s proposed investment chapter was [leaked from negotiations](#) in 2012, one hundred legal experts from the countries involved wrote [an open letter](#) expressing their concern that the rights being proposed would override the jurisdiction of domestic legal systems. Meanwhile serious concerns exist among civil society groups that the agreement will restrict government ability to regulate in the public interest across a range of issues. Despite the Australian government’s declaration that it will not sign the agreement if it allows for international investor-state dispute arbitration, the negotiations continue apace. This latest corporate power grab has [not gone unnoticed](#), however. See our [Resource Box](#) below for more on the agreement and the organisations mobilising to challenge it.

gional level [talks](#) are underway on the creation of a UNASUR (Union of South American Nations) Centre for Investment Dispute Settlement. In April 2011, the Australian Government released a trade policy [statement](#) to the effect that it would no longer be including investor-state dispute settlement (ISDS) clauses in its future international investment agreements, including the TPP. In explaining its decision, the Government stated that such provisions “would give foreign businesses greater legal rights than domestic businesses and would constrain the Government’s public policymaking ability”¹³. And major reviews of investment policy are underway in Argentina¹⁴, South Africa¹⁵ and India¹⁶.

Preventing future free trade and investment agreements based on the current model

Another key battlefield is the challenge against future trade and investment agreements that seek to consolidate the current system. Some of these include:

Canada-EU Comprehensive Economic and Trade Agreement: Trade justice campaigners together with labour, environmental, indigenous and other groups from Europe and Canada are demanding that Canada and the EU stop negotiating an excessive and controversial investor rights chapter in the proposed Comprehensive Economic and

Trade Agreement (CETA). This [recent briefing](#) by the Transnational Institute, the Council of Canadians and the Corporate Europe Observatory revealed that the proposed investor protection clause in the agreement would grant investors the right to challenge a range of government decisions, including bans and regulations for 'fracking'. (See our [Resource Box](#) for more information on these campaigns)

Transpacific Partnership (TPP): As noted above the investor rights being proposed in the current TPP negotiations would repre-

sent a massive consolidation of the current system. Despite protests from the legal profession and from some participating governments the negotiations continue behind closed doors and away from public scrutiny, but open to industry lobbyists. For many campaigners, this is a key current battlefield.

EU-US Free Trade Agreement: US President Barack Obama, EU Council President Herman Van Rompuy and EU Commission President José Manuel Barroso committed in February 2013 to start EU-US trade and investment negotiations, which may strongly affect so-

cial, labour and environmental rights on both sides of the Atlantic and extend the current investment rules regime.

The growing resistance to the current international investment regime is clear. However despite localised victories, the system in its current form continues to grow. As the examples laid out above - such as the Transpacific Partnership and others - make clear, those who benefit most from the system continue to push for its expansion regardless of the threat that it poses to sustainable and inclusive development efforts.

V. Conclusion

“In short, the [investor-state dispute arbitration] provisions have been used to override the jurisdiction of domestic legal systems; have failed to meet accepted perceptions of the rule of law and the separation of powers; have undermined the basic principle of judicial independence; and have created a significant inequality or imbalance between foreign investors and domestic investors and producers. No sovereign, self-respecting state should accept the dispute arbitration provision in its present form.”

- Former New Zealand Court of Appeal [judge Sir Edmund Thomas](#) after leak of proposed investment chapter of TPP

IF YOU SEE a mountain in the distance that you wish to climb, you need to know before you set out if somebody has built a brick wall across your path, creating a structural barrier that will keep you from getting there. Around the world a new vision is being pieced together of how we ought to live on this planet in a way that can ensure social justice while living within the earth’s natural limits. Although the nature and emphasis of such initiatives vary, there is an undeniable thrust towards placing sustainability at the heart of development decisions. But it is very clear, as articulated in this paper, that a powerful and in some cases impenetrable barrier has been constructed across the road that takes us there. And that is the power of global corporations and the system of international investment rules described here.

The need for a whole new approach to international investment is increasingly acknowledged. The UN system itself, in the recent [UNCTAD investment policy framework for sustainable development](#), recognised that investment policy should support national industrial policy and development plans. While this is welcome, the fact remains that the huge number of existing investment agreements - and their expansion through deals such as the Transpacific Partnership - means that when governments attempt to regulate investment in the interest of national sustainable development priorities, they will face legal attacks by the corporations whose interests are affected.

So what will it actually take for civil society organisations, sympathetic governments and social movements to take down this barrier so that we can continue to move forward in the progressive way that is so imperative?

Firstly, we need to unmask the international investment rules system and begin to communicate the issue in a way that resonates with broader audiences. We need to transform the issue from a technical debate among a small handful of lawyers and advocates and move it into the mainstream, so that all of the different issues and movements affected by these rules can become fully aware of what the system is and how it operates.

We need to base our approach to that system on one very simple principle: that whatever rights corporations are granted, be they internationally or by governments, those rights are always subservient to human rights and the rights of future generations to a planet on which they can actually make a life.

And the only way we can ensure that human rights and the rights of future generations are placed above corporations is by linking together citizens working on issues ranging from the right to public control over water, to public regulation of the tobacco industry, to people opposing the contamination of a mine in their community. We have to recognise the common threat that this system represents in all of these issues and, like the Lilliputians who tied ropes to Gulliver’s limbs, begin to build power from our many separate actions.

Only in this way can we begin to dismantle this system of corporate power and the international investment rules being unleashed time and again in defence of the interests of a minority, with disastrous effects on communities and the planet.

Resource Box

- for more information

Get informed

www.justinvestment.org

www.ips-dc.org/globaleconomy

www.tni.org/work-area/trade-investment

Contact Us: contact@justinvestment.org

Sources of information on investor-state cases

International Investment Law and Sustainable Development: [Key Cases 2000-2010](#) - from the International Institute for Sustainable Development (IISD)

[Case database](#) - from the International Centre for the Settlement of Investment Disputes (ICSID)

[International Investment Arbitration and Public Policy](#) - an open-access resource for policymakers, researchers and journalists

Fighting specific cases

Some current investor-state cases that are drawing significant citizen action in opposition to them include:

Doe Run vs. Peru: Find out [more](#) on the [campaign](#) by communities affected by Doe Run's operations in La Oroya in southern Peru, and how the corporation is using the investment rules system to avoid accountability to the Peruvian people.

Phillip Morris vs. Uruguay: For more on the campaign against the tobacco industry's use of the investment rules system to attack public health legislation in Uruguay, see [REDES](#) and [Just Investment](#).

Pacific Rim vs. El Salvador: Find out more on the [international action](#) campaigns and [local](#) initiatives in El Salvador to protect the country's water sources from Canadian mining interests and how Pacific Rim is using the investment rules system against the Salvadoran people.

Alternatives

Examples of previous alternative proposals on international investment rules include:

- the [work](#) on Alternatives for the Americas by the Hemispheric Social Alliance
- International Institute for Sustainable Development's [model International Agreement](#) on Investment for Sustainable Development.
- this [statement](#) by dozens of academics on the international investment regime.
- the [joint proposal](#) by several U.S. environmental, consumer and other groups.
- this [letter](#) signed by more than 250 economists calling for trade reforms to allow capital controls.

Campaigns against future agreements

Below are some links to the campaigns and how to get involved.

Canada-EU Comprehensive Economic and Trade Agreement: More information here from [Canadian trade justice](#) campaigners, the [Council of Canadians](#) and the [Seattle2Brussels Network](#) on the risks represented by this expansion of the current trade and investment regime and the struggle to prevent it. See also this [recent briefing](#) by the Transnational Institute, the Council of Canadians and the Corporate Europe Observatory regarding the implications of the agreement's proposed investor protection clause on governments' decisions to ban and regulate 'fracking'.

Transpacific Partnership (TPP): Groups involved in the emerging campaign to block this trade and investment agreement for the Pacific region include: [Citizen Trade Campaign](#), the [Council of Canadians](#), [Friends of the Earth US](#) and the [Network for Justice in Global Investment](#).

EU-US Free Trade Agreement: Some background here from the [Seattle2Brussels Network](#) on the campaign against this planned trade and investment agreement between the European Union and the United States.

Endnotes

- 1 Johan Rockstrom and others, "A safe operating space for humanity" Nature, vol. 461, No. 7263, pp. 472-475 (September 2009).
- 2 <http://www.erbol.com.bo/noticia.php?identificador=2147483963413>
- 3 <http://www.millenniumassessment.org/documents/document.429.aspx.pdf>
- 4 International Disaster Database <http://www.emdat.be/>
- 5 International Union for the Conservation of Nature, "Extinction crisis continues apace", press release, 3 November 2009, available from www.iucn.org.
- 6 <http://www.clubofrome.org/?p=326>
- 7 <http://www.un-documents.net/wced-ocf.htm>
- 8 <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=78&articleid=1163>
- 9 http://www.un.org/esa/sustdev/documents/WSSD_POI_PD/English/POIToc.htm
- 10 Rio+20 summit outcome document 'The Future We Want'
<http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N11/476/10/PDF/N1147610.pdf?OpenElement>
- 11 <http://mdgs.un.org/unsd/mdg/Resources/Static/Products/Progress2012/English2012.pdf>
- 12 http://unctad.org/en/PublicationsLibrary/webdiaepcb2013d3_en.pdf
- 13 <http://www.unctad-docs.org/files/UNCTAD-WIR2012-Chapter-III-en.pdf> p.87
- 14 <http://en.mercopress.com/2012/11/28/argentina-faces-65bn-dollars-in-claims-plans-to-abandon-international-...>
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- 16 <http://justinvestment.org/2012/06/india-plans-to-exclude-arbitration-clauses-from-bits>