TPP TRIBUNAL PERMANENTE DE LOS PUEBLOS

LA UNIÓN EUROPEA Y LAS EMPRESAS TRANSNACIONALES EN AMÉRICA LATINA: POLÍTICAS, INSTRUMENTOS Y ACTORES CÓMPLICES DE LAS VIOLACIONES DE LOS DERECHOS DE LOS PUEBLOS

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Enlazando Alternativas

Contents

Telefónica Chile

EXECUTIVE SUMMARY

The Telefónica Chile case is being presented at the Permanent People's Tribunal in Madrid. This Spanish owned transnational company is accused of direct responsibility for the violation of freedom of association and of violation of the basic right to work and to decent work. The practices of this transnational company go against the international agreements established by the ILO and ratified by Chile.

Telefónica Chile is a subsidiary of *Telefónica S.A.* (Telefónica Group Spain) which owns 97,89% of the company's shares in our country. Telefónica S.A. is also a consortium that is part of *Inversiones Telefónica Internacional Holding Limitada*.

Telefónica Chile's operations have had an impact on the basic right to work and labour rights. This company has been accused of direct responsibility for the violation of freedom of association as a basic right to work.

The practise of prosecuting trade union leaders has created a repertory of actions used by the transnational company against workers who unite to confront the restructuring operations planned by the company as a way of adapting to the national market. For three consecutive years 2006, 2007 and 2008 it was sanctioned by the Labour Department for the trade union prosecutions carried out.

Telefónica Chile has been present in the country since 1990, when the country's national telecom market and public services were privatised. The structural adjustment policies carried out by Pinochet's dictatorship and imposed by the World Bank and the International Monetary Fund on the Latin American economy, assisted by the United States, were taken advantage of by the Spanish transnational companies who led the Foreign Direct Investment (FDI) in Chile and Latin America. The State played a fundamental role in the clean-up of companies' debts, it fired workers, fragmented trade unions, and thus punished the labour force.

Telefónica Chile, as a subsidiary of Telefónica de España, was backed by the Spanish government when establishing itself in the country, through political and trade agreements with the governments of the Consortium with whom they shared a neoliberal positioning, one that validated its business practice. The relationship between the Spanish State and the transnational company allowed the investments to be made with full economic and legal guaranties. This was when Telefónica established itself and began to dominate the telecom sector, giving rise to a monopolization of the sector.

The arrival of this investment in the nineties had a great impact on the labour relationships within the company, which were neither strengthened nor improved, quite the opposite in fact. The company, by means of various restructuring

manoeuvres of production, labour and trade dynamics, was able to instigate substantial flexibility in production conditions, increasing its profits in exchange for an increased externalization of functions, which basically meant greater stability for the company's profits. These, for the first trimester of 2009, reached a figure of 11,553 million pesos[1], which compared to the same date of the preceding year, showed an increase of 17.1% profit, in the middle of the economic crisis. These restructuring operations were carried out in response to the regulations imposed on them by the State through tariff control or to influences created by the market.

The Spanish companies behave like Rights-holders and this factor allows them to make demands directly to the states, without the intervention of public power. This is how the board of Directors of Telefónica CTC Chile was able to ask the Chilean State for compensation for financial damages caused, seeking action for any civil and criminal responsibilities that might have existed on the part of the authorities at that time.

Chile was in favour of the transnational companies' investment, adapting its economy to that of the free market and its legislation to that same logic. The economic policies implemented over the last thirty years and the initiatives that privileged the trade agreements with the United States and the European Union have basically transformed foreign investment. President Ricardo Lagos (2004) declared that Chile should become a gateway for EU investments in other countries in Latin America. This is what happened with Telefónica España, which continued its expansion towards Argentina (1990), Venezuela (1991), Puerto Rico, Colombia (1993), Perú, El Salvador and Guatemala (1994), Brazil (1996, 1998) and Mexico (2001).

The liberalization of the Chilean economy has not brought about the results promised by the Free trade agreements; technologies have not improved, employment has not grown and the internal market has not expanded. The agreements function unevenly and in only one direction, that in which only the European Transnational companies benefit. The workers are affected by the actions of these companies, who as rights-holders influence national and international regulations without respecting labour rights or human rights.

[1] Taken from company statements published by the Business to business Union for Professional Workers CTC S.A., web page http://www.sitp.cl/index.php?option=com_content&task=view&id=53&Itemid=40

Pescanova Case

Executive Summary

Accusations against Pescanova

We, of the Nicaraguan social movement Another World is Possible, the Hemispheric Social Alliance and Jubilee South America, bring a complaint concerning the transnational corporation PESCANOVA and those who collaborated with it (in this case the government of Nicaragua) before the Permanent Peoples' Tribunal. The complaint relates to breaches of legal, institutional and constitutional framework and international legislation.

1. **PESCANOVA is accused of:**

    1. **Damages and threats to the socio-economic development of nearby populations**.

By carrying out its operations, premature specimens – which have not yet reached the reproductive stage – are killed, and this brings about the extinction of species. When species gradually become extinct, this brings on immediate consequences, such as:

- Degradation of the way of life of fishers, who, having to travel greater distances, are exposed to harsh winds, and this has already resulted in the loss and death of fishers from these areas.

- The disappearance of mangrove swamps, which threatens these peoples' very means of subsistence. This is because these people are mostly non-industrial fishers and they gather the shellfish and crustaceans that make up part of this ecosystem. The disappearance of mangrove swamps therefore threatens these fishers' source of food security and means of supporting their family.

    2. **Crimes against the environment**

In addition to the point we made regarding the breakdown of cooperatives – these cooperatives being responsible for the designation of contaminated waters – and regarding the disappearance of young fish specimens, there is another issue of the utmost concern. This is related to the fierce expansion practices that the transnational has begun to engage in: due to these rapid expansions, the mangrove is becoming extinct.

This species plays an absolutely vital role in conserving the environment, because:

- Mangroves act as stabilisers of potential climate change not only because they are fixatives of CO_2, but also because the mangrove swamps trap large quantities of sediments that are rich in organic matter.

PESCANOVA currently has a licence to operate in 5000 hectares of the marsh zone. This zone represents almost 30% of this sector's total area and it is the very processes of mass expansion and of water pollution that are resulting in the total extinction of mangrove in this zone.

3. **Violations of their workers' labour rights**

1. Labour rights of workers have been ignored, through the systematic implementation of a labour flexibility policy.

2. Actions and negligence have been a factor in the deterioration of workers' living conditions and in the deterioration of their physical, mental and emotional health. There have been systematic breaches of the labour code – examples of which are the absence of any workers' union, the deduction of taxes from workers' overtime accounts and requirements to undertake working days of 12 hours or greater.

2. The government of Nicaragua is accused of:

1. Failing to meet the obligations conferred upon it by its Political Constitution and National Laws, and by International Human Rights Laws, to guarantee to all of the country's inhabitants those human rights recognized by such laws, in addition to the Labour Agreements set out by the ILO, to which Nicaragua subscribes.

2. Neglecting its obligation to provide its people with appropriate information regarding its subscription to the Conventions and Agreements with International Financial Organizations and Transnational Corporations, which affect the daily lives of the people, thereby breaching their human rights.

3. Guaranteeing PESCANOVA a free zone regime, meaning that the raw materials and goods needed by companies are imported duty-free and free from tariffs.

4. Neglecting to provide the necessary means to halt the continuing process of Mangrove Deforestation in the area, in spite of the level of Deforestation taking place and the crime against the environment that this Deforestation represents.

3. The government of Spain:

(in which the transnational corporation Unión FENOSA is based):

Has allowed said legal entity to neglect, in its operations, the international standards of human rights which in its own country it would be obliged to respect.

We propose the following course of action to the Permanent Peoples' Tribunal.

Our recommendations are:

That the transnational corporation PESCANOVA should be sentenced for its repeated violations of its workers' human rights and those of the members of local communities;

That the transnational corporation should be held criminally responsible and held to account for the damage and harm to its workers, and for breaches of their contracts, and breaches of national laws and rules concerning workers' rights;

That the transnational corporation should be held criminally responsible and held to account for the damage and harm it has caused to the environment, which represents an environmental debt that the corporation owes the country;
That the State of Nicaragua should undertake an audit of the contract and practices of the transnational corporation;

That the government of Nicaragua should promote, monitor and advocate total compliance with human rights, and that said rights prevail over the growth and enrichment of the transnational corporation. This compliance should be pursued by legal and administrative means, in addition to any other necessary means;

That the government of Nicaragua should ensure appropriate compliance with and application of the above, taking into consideration the social, economic and cultural realities of the affected areas, through of government policies that safeguard the development of local communities.

CANAL DE ISABEL II

EXECUTIVE SUMMARY

COMPANIES ACCUSED:

In Spain: CANAL DE ISABEL II (CYII), a company that is 100% publicly owned, and its **INASSA** business group in Latin America, whose parent company is the **CANAL EXTENSIA** corporation, 75% owned by **CYII** and 25% owned by **TECVASA** (a consortium of Valencian companies and the savings bank Caja de Ahorros del Mediterráneo).

In Colombia: **TRIPLE A in BARRANQUILLA and UTE AA SANTAMARTA => METROAGUA.**

BASIS OF THE ACCUSATION:

I.- With a complete absence of transparency, CYII is participating in shareholding operations in Latin America, running unknown risks for CAM citizens and distorting the concept of a *public services company*, helping to evade control and public supervision of the services provided and thereby contributing to the democratic, institutional and "public" sector deficit that affects many Third World countries.

II.- In its business practices as a transnational, together with its business group *Grupo Empresarial INASSA*, CYII is allowing its companies to act in ways that infringe the rights of local communities, service users and workers, through business practices that raise the price of public services, undermine their universality, foster a lack of transparency in the management of these services, increase job insecurity for workers, discredit and harm the trade union movement, pollute the environment, damage indigenous communities and reduce the assets publicly owned by citizens.

III.- CYII is fomenting and feeding fear among those who assert that the public enterprise is being broken up, so that it too will have to undergo the process of privatisation, deregulation and monopolisation that is already under way and spreading in Latin America.

IV.- CYII enjoys the complicity of public financial institutions (IMF, World Bank, etc), the European Union and the governments of its member states, as well as business associations, chambers of commerce, etc, through their actions or omissions.

V.- CYII has participated directly and irresponsibly in activities that violate the rights of local people in its areas of operation. In the case of water and basic sanitation services, this conflict is expressed in the difficulty or impossibility of accessing the

service, the costs and irregularities in service charges, the company's lack of interest in ensuring that proper infrastructure is in place, the appropriation of pipes installed by the community itself, the break-up of the territory and damage to the landscape.

VI.- Taking advantage of its prestige in Spain as a public enterprise whose main objective is to benefit society by providing its services, CYII and its business group INASSA are acting like a privately owned multinational corporation in pursuit of profit.

VII.- The area of operations, function and objectives of CYII are limited to the Community of Madrid. This gives rise to a total absence of transparency and public control over its investments in Colombia and other countries.

VIII.- The operations of CYII not only lack transparency when it acts as a "private multinational" company. This is also the case in its operations as a public enterprise, because the superimposed companies it uses cannot be subjected to public control by the Community of Madrid. CYII is participating in shareholding operations in Latin America, running unknown risks for CAM citizens.

IX.- Those worst affected by the activities of CYII are people with low incomes in the areas where its subsidiary companies are operating, who have seen their bills for water and sanitation services rise by more than ONE THOUSAND PER CENT between 1991 and 2006, as a result of a privatisation process viewed as the plundering and loss of control of public enterprises.

X.- Workers and the trade union movement have also been very negatively affected. Democracy has been socially and politically annulled as workers have effectively been denied their right to speak in public. The company's depoliticised management discourse comes across as neutral and its restructuring of processes and standards seeks to suppress public debate about the impact of commercialising the provision of public services to people's homes.

XI.- Likewise, the increase in the coverage of water, sewerage and sanitation services in cities such as Barranquilla has been done at the cost of diminishing public assets, with international loans that have placed a heavy burden on the municipality.

XII.- Through its business group GRUPO EMPRESARIAL INASSA, CYII has imposed a highly standardised and bureaucratic management model that depersonalises services and keeps citizens further away than ever from the management of the public service. Under this management model, there is clearly an abuse of the company's dominant, monopoly position.

XIII.- As a result of this management model, the amounts charged for water and sanitation services by the companies that belong to the Grupo Empresarial INASSA in Colombia have increased by more than ONE THOUSAND PER CENT between 1991 and 2006, affecting all sectors of society but hitting the poorest people hardest.

XIV.- No environmental impact studies have been carried out on the activities of CYII through the GRUPO EMPRESARIAL INASSA. As a result, the integrity of ancestral indigenous territories has been damaged and there will be major repercussions on the environment and the health of local people.

AGUAS DE BARCELONA – SUEZ, SALTILLO, MEXICO

EXECUTIVE SUMMARY

In the two previous sessions of the Permanent People's Tribunal we have presented the case of “The citizens of Saltillo versus Aguas de Barcelona”. Although these accusations have been condemned many times at a local level, the number and seriousness of every kind of violations continues to grow.

Saltillo, capital of the state of Coahuila, is a city of 750,000 inhabitants, located in the North East of Mexico. In mid-2001, the local government approved the sale of 49% of shares in the water system, leaving its management in the hands of the transnational corporation Aguas de Barcelona. The company Aguas de Saltillo (Agsal) was created, and a public service became a commodity for the benefit of its public and private share holders.

After 8 ½ years of management by Agsal, the following technical problems have become evident:

1. Over exploitation of the phreatic water, which will eventually lead to a water scarcity. Nevertheless, Agsal cancelled the conservation and water-saving campaigns to their users and continues to over-exploit the same wells, and water levels in the wells continue to fall. This will eventually lead to serious problems with supply.

2. Deterioration in the quality of drinking water (as a result of overexploitation): Agsal has not obtained the “Sanitary Quality Certificate for Drinking Water” required by the Health Secretary, and the consumption of bottled water is high among the population of Saltillo (more than 60%); furthermore, it is well known that salt contents rise in wells that have been exploited for more than ten years.

3. Dreadful condition of the distribution system: Despite the fact that at the start of their management the directors Agsal indicated that the Saltillo water system was in a state of ill repair, in their 8 ½ years of management, Agsal has changed less than 5% of the pipes, and water loss through leakage is around 40%. Although this high percentage of leaks is responsible, to a large extent, for the problems of over exploitation mentioned in point 1, the company has shown no intention of rectifying it. The current director stated recently in the local paper *Vanguardia* that “it will be very difficult to reduce… the levels of wastage that Agsal has sustained for years.” In October 2009, this same senior official suggested that the company does not have the economic resources to make the necessary investments.

The domestic users classed as “popular” or of “social interest” (92% of the total), are the ones who have most resented the negative aspects of management by the company, which has increased its profit by:

1. Various increases in water rates over and above the rate of inflation, contravening what is established in the company contract.

2. Excessive connection charges for water and sewage services (which have increased by up to eight times in 8 ½ years), and violation of the established conventions between the company and the municipality to charge lower rates in the poorer areas.

3. Systematic cutting off of water supplies to users who cannot pay the rates (approximately 30% each year), and charging fines for reconnection above the maximum stipulated by the State Water Law for non-social users.

4. Charging users for changing domestic intake units (in violation of the State Water Law); and for changing meters (despite having increased water rates by 5% since 2002, in order to have a reserve fund for paying this).

5. Excessive charges for water supplied to irregular settlements using communal water points. Agsal charges each family using the water point for ten cubic metres, despite the fact that consumption barely passes two per family. When some families cannot pay the quotas, the respective cuts to services and reconnection fines are applied.

6. Reduction of the discount given to pensioners and people over 60, for consumption of water and drainage (20%, instead of the 50% established by the State Water Law).

7. The signing of agreements for payment in instalments, with high interest rates, with users who cannot pay the company's charges in one payment. In many cases the accumulated debt becomes impossible to pay, and Agsal cuts off the service.

Furthermore, Agsal stands accused of:

1. Violations of the Mexican Constitution; various laws; federal and state regulations covering water, health, transparency and consumer protection; and the Coahuila municipal code. The company has acted with total impunity, protected by its majority shareholder, the Municipality of Saltillo.

2. Lack of attention given to complaints, which are not always recorded in the company files, and a despotic and vulgar treatment of their users.

3. Lack of transparency: In their responses to information requests, Agsal on many occasions “reserves” the right to the information. This has obliged several members of the Association of Users of Agua de Saltillo (AUAS) to present “review appeals”, which have been resolved by the Coahuila Insititute for Access to Information (ICAI) in the claimants favour. Nevertheless, the final responses from the company to those appeals, and the information that appears on their web page or in the public documentation are false, incomplete or incongruous. Agsal charges $0.40 per page for any written or electronic information, in violation of the Access to Information Law which states that such charges may not exceed the cost of the materials. The council of the Coahuila Insititute for Access to Information took the decision at their meeting

session of 22nd April 2010, to “include in the agenda for the next session finding a way to bring an end to Aguas de Saltillo's reticence and ensure that they provide citizens with information about their types of operation, wells they are currently exploiting, and studies of the quality of the water being consumed by the people of Saltillo.

HOLCIM CASE

EXECUTIVE SUMMARY

PETITION BY FRIENDS OF THE EARTH LATIN AMERICA AND THE CARIBBEAN AGAINST SWISS TRANSNATIONAL COMPANY HOLCIM

HOLCIM is a leading company in strip mining, which basically consists of the extraction of minerals for the production of cement and aggregates, their distribution, the extraction of alluvial material, sand, limestone, gravel and ready-mix concrete. Presently, this transnational company produces over 40 million tons of cement, around 10 percent of which are produced in Mexico.

Countries where the transnational develops its operations:
In Latin America, HOLCIM operates in 16 countries: Argentina, Brazil, Chile, Colombia, Costa Rica, Curacao, Ecuador, El Salvador, Guatemala, the French Guyana, Honduras, Mexico, Nicaragua, Peru, the Dominican Republic and Venezuela. In the rest of the world it is present in: Germany, Australia, Austria, Azerbaijan, Bangladesh, Belgium, Bulgaria, Canada, China, Croatia, Cyprus, the Czech Republic, Egypt, the United States, Fiji, the Philippines, France, Guinea, Hungary, India, Indonesia, Iran, Italy, the Ivory Coast, Lebanon, Madagascar, Malaysia, Mauritius, Morocco, Namibia, the Netherlands, New Caledonia, New Zealand, Nigeria, Norway, the United Kingdom, Russia, Reunion, Rumania, Serbia, Singapore, Slovakia, South Africa, Spain, Sri Lanka, Switzerland, Tanzania, Thailand, Vietnam, and Yemen.

In Colombia it has been present since the 1990s and has, ever since, acquired small cement manufacturing companies in Bogotá and in the departments of Cundinamarca, Boyacá and Valle del Cauca.

In Guatemala, due to the high demand for stone materials, a process for the construction of a cement plant begins in 1971; in 1978 is founded Cementos Progreso S. A; in 1996 starts the construction of another cement plant in the country; the transnational is established in 1998 and in the same year HOLCIM becomes a stakeholder in company Cementos Novela (a Guatemalan company owned by the Novela family).[1] Later, HOLCIM acquires a 20-percent stake in company Cementos Progreso.

In Mexico it has been present since 1964, when Swiss group HOLCIM (formerly Holderbank) acquired a controlling stake. In the 1970s and 1980s HOLCIM Apasco acquired Cementos Veracruz, giving rise to the ready-mix concrete division, and began operations in the Macuspana, Tabasco cement plant. In the 1990s, Apasco acquired Cementos Acapulco and

began operations in the Ramos Arizpe, Coahuila and Tecomán, Colima cement plants, and started to operate the Concrete Technology Center in the state of Toluca.

In Colombia, Guatemala and Mexico not only is HOLCIM present with its corporate name, but also participates in other cement companies, this enjoying a double condition (as a domestic and international company) and obtaining double advantages: as a transnational company it benefits from the legal safety these countries afford. In the case of Colombia, President Uribe guaranteed the company a 20-year, 15-percent tax relief, while as a national company it benefits from another 30%. As a national company, through its actions, it benefits from the Kyoto Protocol more flexible rules as regards lower contaminating rights for national companies.[2]

Transnational Corporation HOLCIM is responsible for a great environmental and social debt, either due to its own actions or by omission, direct and indirect (through its subsidiaries) on account of the damages caused by its mining activity in the city of Bogotá, Colombia, in the municipality of San Juan Sacatepéquez, Guatemala, and in the municipality of Atotonilco de Tula, Hidalgo, Mexico.

The petition contains the violation of the right of the peoples of Bogotá, San Juan de Sacatepéquez and Atotonilco de Tula to a healthy environment, in connection with the fundamental right to health, a decent life, and freedom of recreation, leisure and expression.

Is it possible to think of cities and fields that are pleasant and that solve the acute socioeconomic and environmental plight of its inhabitants when, amid the present ecologic disaster we are witnessing, communities survive –already an overstatement- while a few get rich from economic activities, mining among others?

How much do the environmental liabilities and the ecologic debt, broadly speaking, left by the extraction activities in territories amount to? How much are the sacrificed water sources and productive soils of these places worth?

Many are the socioeconomic and cultural negative consequences for the inhabitants of Bogotá, San Juan de Sacatepéquez and Atotonilco de Tula, which include the direct and indirect loss of life (and lives) and the negative consequences/disappearance of water basins. In this case, we are speaking of rural communities that have managed to live and coexist with their natural environs for decades, yet now are faced by the industrial model set in place forcefully, and of other urban communities that struggle to exist amid poverty and exclusion.

The imminent economic displacement stemming from the pressure generated by HOLCIM's mining activities, on the inhabitants, who, under ever precarious conditions, become workers, and on the ecosystems, which are reduced to [areas] for the exploitation of construction materials, transforms the territory in all its complexity into an uninhabitable place where, besides losing its economic vocation and cultural tradition, some (ancestral) riches are lost and natural goods are appropriated and mercantilized by capital to enrich the pockets of a handful, without any benefits for the region, nor for the State.

The devastating nature of mining has been illustrated by many investigators and women and men leaders in their communities, in which not only are highlighted its impacts on rural areas, but also on urban areas, given its harmful environmental effects and on the health of the communities, the risk [it poses] for life and the disruption of the territorial order.

Hanes Brands Inc.

Executive summary

The Honduran Women's Collective, **Codemuh** representing the women workers who have made accusations due to the damage they have suffered to their health caused by the work they carry out. **(1)Carmen Araceli Vasquez Sanchez (2)Edelsa Muñoz Nuñez (3)Rosa Adelia Sorto Lara (4)Luisa del Carmen Alfaro Campos** and 42 other female workers from the clothing industry for the brand/label **HANES BRANDS INC.** working in the plants **HANES CHOLOMA HBI**, **JASPER HBI**, **JOGBRA HBI** which are based in the municipalities of Choloma and Villanueva respectively, we respectfully appear before you (the tribunal) asking that in the session of Permanent Tribunal of the People, the transnational **HANES BRAND INC** is publically condemned as the principal party responsible, and that the **European Investment Bank** (BEI) and the **State of Honduras** are also condemned for their complicity and whichever other person/entity who are found responsible for the crime of violating working rights relating to health and occupational safety and the social security of HBI workers and the crime of bribery.

The accusation is based on the following facts, omissions and legal principles:

We accuse the transnational **HANES BRANDS INCORPORATED, HBI** of having direct responsibility for the systematic violation of the free exercise and full enjoyment of the right to health and occupational security of the workers who are accusing the company in their clothing assembly plants; moreover the enjoyment of social security benefits; **European Investment Bank, BEI** and to the **State of Honduras** for their complicity in these crimes. They are also accused of bribery and perversion of the course of justice, in that political clientelism has permitted these crimes to be carried out, through the free transit of goods and the facilities given over for the installation of their factories, their political influence in the corridors of power that have had a bearing on adjustments in salaries, promulgation of laws and inefficient organisation of work and the scarcity of inspections of the work centres by the authorities from the Labour Department and Social Provision (STSS) and the Honduran Institute of Social Security (IHSS)[2].

First: Details in writing the accusations relating to the sewing operations these women perform, their years of service and the production target they are obliged to do:

Name	Years of service	Production Target	Operation
Carmen Araceli Vásquez Sanchez	6 years	18 (sets of 12) per hour (p/h)	close and attach sleeves

[2] **STSS-** (Secretaria del Trabajo y Seguridad Social) and **IHSS-** (Instituto Hondureño de Seguridad Social

Edelsa Muñoz Nuñez	15 years	25 (sets of 12) p/ h	make sleeves
Rosa Adelia Sorto Lara	14 years	15 (sets of 12) p/ h	attach sleeves
Luisa del Carmen Alfaro Campos	6 years	12 (sets of 12) p/h	sew together sides of sweatshirts

Second: The organisation of work in the manufacturing factories of HBI is done in production teams or cells of 16 or more operators. Each cell has a collective daily production target, for some this is to be completed in 9 working hours per day, for others in 11 and a half working hours per day. Although the targets may vary, they still represent the completion of 6000 or more repetitive daily movements of the joints, tendons, muscles and bones of the workers. Some production plants operate under a system referred to as 4 X 3, which consists of a weekly schedule of 44 working hours completed in 4 working days (instead of 6).

Third: Some reforms to the Social Security Law permits that the companies employ doctors to attend to the workers in the production plants, however the health of workers is still put in danger as it is common that the medical system in the company prevents the workers receiving medical attention in the specialised clinics of the Honduran Institute for Social Security (IHSS).
This has happened because the IHSS replaced the health services provided to workers under the Company Medical System (SME). This decision has meant that workers can only attend IHSS clinics if they are first referred by the factory doctor, who is under the pay of the factory owner.
This has resulted in the damages to health caused by the forced postures and repetitive movements of the neck, back, waist, shoulders, arms and hands, not being treated in time and in the majority of cases being irreversible.

Four: The European Investment Bank (BEI) is complicit for having given a credit of 20 million Euros to the Central American Bank for Economic Integration (CABEI) to support the investment in the construction of the 100km motorway in Honduras which connects the Atlantic with the Pacific coast. This investment is aimed at connecting the Export Processing Zones o maquilas of Valle del Sula with the aim of promoting the increase of exports-imports with Europe and the rest of America. The sanctioning of this loan facilitates the free transit of merchandise, goods and people in the Central American region. The only thing that matters for the approval of this credit is the infrastructure and all the conditions for the production, importation and exportation necessary for free trade agreements, the misleadingly named Acuerdos de Asociación (Association Agreements). This fails to take into account that the women and men who generate the production and the wealth are working under conditions of modern day slavery.

Five: The Honduran State is complicit in the violations of workers' rights for having promoted special laws for the installation and running of transnational companies. Through these laws referred to as *Regimenes Especiales* for exportation, companies are not subject to any taxies or contributions to the central and local/municipal government.

The textile industry enjoys governmental protection and this affords it impunity with regards to human rights violations, as it is treated as an enclave/ (i.e. separate from the rest of the country). The companies are effectively islands which the Institutions of State are not permitted to control or keep watch over in order to protect the workers. On the subject of occupational health, the lack of effective protection/tutelage should be addressed by the STSS and IHSS. These bodies have a constitutional mandate to watch over the working rights and health of the workers. The STSS exercises very little vigilance and inspection over working conditions. Finally, as it is mentioned above, the IHSS replaced the health services provided to workers under the Company Medical System (SME).

The organisation of work in the textile or maquila industry is not supervised by either the inspectorate of the STSS or that of the IHSS; therefore, these authorities do not oblige the companies to undergo ergonomic studies of the work centres in order to adjust them to the capacities and physiologies of their workers.

The Honduran state is responsible for the transnational companies' impunity; the institutions charged with watching over the rights of workers are negligent and ineffective. Government bodies do not have adequate resources at their disposal and they are under the influence of representatives of the bosses, inspectors, directors, councillors and procurators. Political corruption is the norm. The workers find themselves in a helpless position and the majority of those affected do not bother turning to these bodies due to the lack of confidence they have in the authorities, the high costs for legal representation and processing as well as the amount of time which needs to be invested to carry out legal proceedings.
Particularly in the case of the transnational HBI, the Honduran state acts in compliance with the representatives of these companies through its silence in the face of the demands presented. The institutional weakness, the lack of government protection, political corruption, political clientelism and the socio-economic conditions of the workers allow a systematic violation of their working rights as has been explained in the previous paragraphs.

The extent of the physical, emotional and hereditary damage to the workers of the clothing industry through the violations of their working rights specifically their health, occupational and social security are incalculable, because we are talking about their health, their lives and how these damages also impact negatively on their community and result in the greater impoverishment of themselves and their families.

The damage to health previously referred to can have consequences which are either partially or totally permanent, in the latter case, workers are left totally incapacitated, unable to carry out any working or domestic activity meaning that the responsibility falls on their children to provide for their households.

The cases highlighted by this accusation are a reflection of the magnitude of the damages being inflicted on a young generation of women in their productive and reproductive prime and make up approximately 70% of the workforce in the textile o maquila industry.

LOUIS DREYFUS COMMODITIES

EXECUTIVE SUMMARY

Organizations: Pastoral Land Commission (CPT) and Social Network of Justice and Human Rights

DENOUNCED: LOUIS DREYFUS COMMODITIES (LDSAS)

ACCUSATION BEFORE THE PERMANENT PEOPLE´S TRIBUNAL IN MADRID

Since 2005, Louis Dreyfus has taken over the Cresciumal (Sao Paulo) and Luciancia (Minas Gerais) mills. Subsequently, the company has expanded into other states, mainly in the Midwest, reaching the Cerrado (a savanna region) and indigenous territories in Mato Grosso do Sul. The Cerrado is known as the "father of waters", as it supplies the major basins of the country. The fauna and flora are rich and hold many endangered species.

In October 2009, Louis Dreyfus Commodities has announced the purchase of five plants from Santelisa, in Ribeirão Preto, to increase its production of sugarcane in Brazil. The merger created the group LDC-SEV Bioenergy, becoming the world's second largest producer of sugar and ethanol. The group intends to produce 40 million tons of sugarcane per year and has equity interests from wealthy families such as Biaggi and Junqueira, Brazil's National Development Bank (BNDES) and Goldman Sachs.

The French company Louis Dreyfus cultivates over 50 hectares of sugar cane. There is also share participation from other foreign companies such as BASF, Bayer and Syngenta that have developed "appropriate products to the Midwest and North regions, towards the new frontiers of cane." [1]

While the companies celebrate the massive amount of land available for sugarcane monoculture, the violence against the Guarani Kaiowá people is on the rise. They live confined with no right to their territory. The Federal Prosecutor's Office estimates that the Guarani-Kaiowá population in Mato Grosso do Sul reaches 47,000 people, representing the largest indigenous population in the country. They live in an area of up to 20,000 hectares.

The expansion of sugarcane monoculture exacerbates the conflict over land in the state. According to the Indigenous Missionary Council (CIMI), the Guarani-Kaiowa people live in extremely precarious conditions and the lack of land gives rise to serious social problems such as child mortality from malnutrition, suicides (mainly by young people between 12 and 18 years), alcoholism and murder. These people have been target of violence from landowners, with cases of murder and forced labour in the sugarcane fields. According to the a CIMI report from 2007, "four cases of murder have been recorded occurring within the accommodation facilities of the mills" [2]

The rural lobby presses the government against the demarcation of indigenous territories, which exacerbates the conflict situation in the state. The state government

intends to go as far as changing the law to allow new plants to settle in Pantanal, the region between the basins of the Paraguay and Parana Rivers. The project could further aggravate the conflict over land, as well as increasing the destruction of the Cerrado landscape, contaminating rivers and underground water sources, including the Guarani Aquifer. According to Alessandro Menezes, from Ecology and Action, "The sugarcane monoculture can alter large areas of the savanna, affecting the biodiversity and disfiguring the environment of Pantanal, an area declared a World Heritage Site by UNESCO. [3]

The plants in the region have a long history of slavery and killings of workers. Most sugarcane cutters are migrants and indigenous people. The Ministry of Labour estimates that about 7,000 indigenous people work in the sugarcane harvest in Mato Grosso do Sul

The French company acquired another plant in Minas Gerais and expanded the sugarcane monoculture destined for ethanol production. The effects are devastating. On the farm of Mr. Antonio Luciano, the Sao Francisco River has been diverted to facilitate the production transport flow. This has been carried out with no environmental licenses or technical studies. Both during the initial deployment of the cane, as in this recent stage, the monoculture has replaced crops and livestock areas, as well as destroying the native forest reserves and riparian vegetation. During the establishing of the plantations, the companies make illegal burning of native forests at night and buried the trees to escape surveillance.

The expansion process is intense. The sugar cane cultivation reaches up to the Buffer Zone of the Serra da Canastra National Park, considered by the Atlas of Biodiversity in Ontario as being of extreme biological importance.

[A] Pastoral Land Commission, *The sugarcane expansion in Mato Grosso do Sul* by Mieceslau Kudlavicz Grasiéli Mota and Juliana Bueno, June 2007.

[2] Jornal Pequeno, *Sugarcane mills degrade Indians in Mato Grosso do Sul,* 15/04 / 08, http://www.jornalpequeno.com.br/2008/4/15/Pagina76789.htm

[3] Instituto Socio Ambiental, *Government of Mato Grosso do Sul plans to allow mills by the Pantanal,* 15.07.2008, http://www.brasiloeste.com.br/noticia/1623/usinas-pantanal

Agrenco Group Case

EXECUTIVE SUMMARY

We accuse Agrenco Group, a European company headquartered in the Netherlands, of violating the rights of tribal/indigenous peoples for its soy-producing activities in the state of Mato Grosso, Brazil. In particular, we accuse its subsidiary Agrenco do Brasil S.A.

We accuse the European Union of co-responsibility in these human rights violations. Firstly, its internal mandatory targets have enormous influence on the demand for agrofuels on the world market and, secondly, incentives established in support of producer companies favor the expansion of production without setting sufficient sustainability requirements. Finally, bilateral and bi-regional agreements favor the entry of European companies in countries of the South and award preferential treatment to the products coming from these regions.

Enterprise Agrenco do Brasil S.A. is a subsidiary of Agrenco Group, which is funded, in great part, by European banks. It is "active internationally and specializes in supplying integrated solutions customized for clients and partners in the agribusiness sector. The Group serves the full cycle from production to consumption for agricultural products with financing for growers and consumers, origination, tracing, storage, logistics, port operations, charter freight, export and distribution."

The European Union has enabled Agrenco activities to be developed in a favorable setting through different cooperation agreements with Brazil and the MERCOSUR. Among these it is worth noting the 1992 'Framework Agreement between the European Economic Community and the Federative Republic of Brazil' and the 1995 'Interregional Framework Cooperation Agreement between the European Community and MERCOSUR. These agreements favor market liberalization in the member countries (Parties), particularly in terms of energy. In addition to agreements, the E.U. has unilaterally influenced the production of agrofuels. The '2003/30/EC Directive on the Promotion of the use of biofuels and other renewable fuels for transport', the '2003/96/EC Directive restructuring the Community framework for the taxation of energy products and electricity' and Communication 20/2006 'External Action: Thematic Programme For Environment and Sustainable Management of Natural Resources including Energy' establish a favorable framework for the production of agrofuels, setting targets to be met on the European Union territory (by December 2010, the use of 5.75 % of biofuels in blended transport-related fossil fuels).

The problem is that that much cannot be produced on the EEC territory, imports will be necessary, and in that sense the E.U. is co-responsible for Agrenco's activities. Moreover, these documents set forth that certain sustainability aspects be taken into account in the use of said agrofuels. Yet these aspects do not consider the social dimension of sustainability, only the environmental dimension; they do not protect human rights.

Furthermore, Agrenco benefited from different programs stipulated by Brazil's federal and Mato Grosso state governments. Indeed, the Agrenco subsidiary has taken advantage of fiscal incentives set forth in the National Plan for the Programmed Production and Use of Biofuels and the Mato Grosso Industrial and Commercial Development Program (PRODEIC). Also, the Mato Grosso regional context is favorable to companies in the biofuels' production

industry, since the state's governor, Blairo Maggi, is the owner of Amaggi, one of the largest producers in the world.

At the international level, the production of biofuels is also being favored within the framework of the Clean Development Mechanism (CDM), established as part of the Kyoto Protocol, whereby polluting companies in countries of the North are able to "offset" their GHG emissions by funding projects in the global South that supposedly sequester carbon. The inclusion in 2009 of energy-producing agricultural products –soy, palm oil and jatropha, in this case- in the funding mechanism, ensures subsequent advantages to companies that, actually, are contaminating the lands and violating the fundamental rights of local communities. By not taking into account these outcomes in the production of agrofuels, the CDM will stimulate more deforestation and the destruction of other ecosystems, thus more climate change. Save the Rainforest has reported the role of Agrenco Group in requesting the approval of this decision by the CDM executive board.

Likewise, the Inter-American Development Bank has invested in the production of biofuels via different financing programs.

The production of biofuels and, particularly, of soy in Mato Grosso has impacts that result in violations of the rights of the tribal/indigenous peoples. Such rights are included in the International Pact of Civil and Political Rights, the 1996 International Pact of Economic, Social and Cultural Rights, in the 1989 ILO Convention 169 and in the 2007 United Nations Declaration on the Rights of Indigenous Peoples. These rights are violated inasmuch as the aforementioned production is destroying the environment of the region where these tribal/indigenous peoples live. The environment is the basis for the survival of these persons as peoples. Deforestation, soil and water contamination (stemming from the soy monoculture) violate the right to food, the right to water, the right to a healthy environment, the right to health, the right to free determination, the right to keep their culture, the right of these peoples to be consulted in a manner that is free, previous and informed. But foremost it violates their right to the land, given that the territories they have traditionally occupied are occupied by soy fields and either these peoples are displaced or, by means of "cooperation agreements", are obliged to "lease their lands".

For all that, we ask the Peoples' Permanent Tribunal to adhere to the call made by several civil society organizations to adopt a moratorium on the European Union's incentives for the biofuels and bioenergy produced in large-scale monocultures; and to transmit to the European Commission and Parliament its [the Tribunal's] conclusions in relation to the biofuels case, stressing the violations of human rights stemming from the production of biofuels, especially in countries of the south of the world.

Continental AG Case

EXECUTIVE SUMMARY

To the Permanent People's Tribunal

The following is a summary of the charges against Continental AG in Mexico by the Sindicato Nacioal Revolucionario de Trabajadores de la Compañía Hulera Euzkadi (the Hulera Euzkadi Company's National Revolutionary Labor Union, henceforth SNRTE).

EXECUTIVE SUMMARY

On December 16th 2001, Continental AG unilaterally closed a plant belonging to Compañía Hulera Euzkadi, S.A. de C.V. (one of its two Mexican subsidiaries), illegally firing 1,164 workers, including salaried personnel, out of a total of 975 union members. This action was in violation of Article 434 (Annex 1) and subsequent articles of Mexico's Federal Labor Law (LFT) that clearly indicate that a company may only be closed following a hearing before the Federal Council on Conciliation and Arbitration (JFCA) where labor representatives have the chance to present whatever elements are at their disposal in their defense. And the company may only legally close only once the JFCA has given a ruling.

Continental never summoned a hearing and did not give SNRTE's representatives prior notice of the company's closing. They simply declared the company closed on the date indicated above by written notice to its workers, warning them to collect their severance pay at the JFCA, where these payments had already been deposited.

Since the plant's closing was unilateral, Continental completely violated the collective agreement, which in this case was the contract for rubber transformation industry which protects all of the industry's workers in that country. For this reason, SNRTE chose to declare a strike in response to contract violations, a right established in the aforementioned LFT. This strike broke out on February 22nd, 2002.

Once a strike breaks out, the JFCA has 48 hours to qualify whether it is legal, existing or non-existing. However, in March 2002, the JFCA qualified the strike as "unfounded", a label that does not exist under the LFT. This shows the Mexican government's full complicity with the German transnational company's actions, since it in fact refused to legally recognize the strike, as is clearly established in the LFT.

In addition, in a clear move to put pressure on the workers, they used this deceptive qualification of the strike in order to illegally deprive the workers and their families of Social Security services, as the Mexican legislation protects workers who are on strike. All told, 4 of our comrades lost their lives due to the lack of medical services resulting from this illegal measure.

The foregoing violates ILO conventions with respect to independent organized labor unions, and is also in violation of the OECD's guidelines. That is why SNRTE presented a claim to the OECD's contact point in Mexico in mid-2002. No response was ever made to this claim, which further confirms the Mexican authorities' complicity in these violations.

We likewise presented this claim to the OECD's Contact Point in Germany, to the German Ministry of Economics, who argued that they did not have any jurisdiction in the matter, as it was their Mexican counterpart that did.

Continental Tire is an old, successful and powerful transnational company funded by German capital. In its country of origin, people refer to it familiarly as "Conti".

In its offensive against workers, the company even resorted to sending threatening letters directly to the workers' homes, with the goal of worrying their families, as these letters clearly threatened to take punitive measures against anyone who did not accept the severance pay the company was "offering".

This dispute has manifestly revealed the complicity of the Mexican government, of the OECD, of the European Commission, and of the German government in this violation of SNRTE's workers' social, human and economic rights.

Petition to the Tribunal

Euzkadi's case was finally resolved after the transnational conceded to participating in a negotiation process in order to solve the conflict: half of the property over the factory located in El Salto (Jalisco) was handed over in payment of the workers' unpaid salaries.

The National Workers' Union at General Tire (the company's other subsidiary) is currently organizing an international campaign against Continental for having cut the staff by half almost a year ago, illegally firing 112 workers and cutting back salaries by 20%, in addition to hiring professional thugs to intimidate the workers.

Furthermore, workers at Continental's subsidiary in Ecuador (located in La Cuenca) have seen all their union leaders fired in reprisal for having dared to protest against this transnational company's policies. This was repeated in the case of workers at the Clairoix plant in France, which the company intended to close unilaterally, firing over 1,200 workers.

For this reason, we hereby request that the declarations of our colleagues from Mexico's General Tire be heard so as to reaffirm the German transnational company's predatory nature, as Continental is continuing with their systematic policy of violating workers' labor rights. We make this request in the hope that the situation SNRTE was forced to deal with during the three years, one month and 10 days that the strike lasted was not in vain and in order to collaborate with our comrades' current international protest campaign.

EU Pharmaceuticals Case

Executive Summary

HUMAN RIGHTS VIOLATIONS IN LATIN AMERICA: SEIZURES OF GENERIC DRUGS AT EUROPEAN UNION PORTS

PRELIMINARY INFORMATION

According to World Health Organization (WHO) data, some 2 million people worldwide lack access to essential medications. A considerable part of these people live in Latin America. Lack of or poor treatment has serious consequences: pain, fear, loss of dignity, and death. Several reasons are given to justify the lack of treatments, one of them being difficulty of access due to the high prices of medications, especially those protected by patent rights. A pharmaceutical patent right gives its holder a monopoly over the production and selling of the product, in addition to allowing the patent holder to set prices at very high levels, maximizing the profits of the pharmaceutical corporations to the detriment to the right to health of the populations in the developing or less developed countries. The World Trade Organization (WTO), responding to the interests of these companies, gave twenty years of protection to patents and made it mandatory to accord pharmaceutical patent rights in all of its member countries through the signing of the TRIPS agreement. Indeed, going beyond the protection awarded by the TRIPS agreement, some States have acted as the *longa manus* ('the long hand') of the pharmaceutical industry by establishing public policies that benefit private interests and hinder human rights, especially those of the most vulnerable populations.

In a context of difficult-to-access treatment and high prices, generic drugs play an extremely important role in reducing the number of those neglected. The impediment and/or the creation of access barriers to these drugs violate the human right to health, conceived as the right of every person to enjoy the highest level possible of physical and mental health. The WHO and the United Nations (UN) have pronounced themselves in favor of holding, within the scope of the right to health, developed countries responsible for helping developing countries guarantee such rights. However, as we shall see in this case, the European Union (EU) contributes to increase the monopoly power of and the benefits to transnational companies and to widen the gap between generic drugs and those most in need.

THE ACCUSATION

European Council Regulation (EC) No 1383/2003 – concerning customs action against goods suspected of infringing certain intellectual property rights and the measures to be taken against goods found to have infringed such rights– allows customs authorities of EU member countries to seize generic drugs in transit through European ports under the accusation of violating European patents. The Regulation establishes, among other measures, the possibility of destroying the cargo seized.

Compliance with this Regulation led to the seizure, at European ports, of at least 18 legitimate generic drugs consignments, coming mostly from India and headed for developing countries, mostly Latin American. Nonetheless, the drugs seized were in perfect compliance with the

laws of the producer/exporting and importing countries, as well as with the multilateral agreements that regulate international trade and intellectual property rights. The seizures are being carried out, therefore, under unfounded legal claims, by holding generics producing countries responsible for infringing patents rights when actually, these drugs are protected by patents in European countries but not in the countries of origin or destination. As there was no possibility that the drugs seized would enter the European market, no trade damage could possibly be caused to the pharmaceutical companies in the countries where their patents are recognized. Thus, the EU is trying to impose patent rights of pharmaceutical transnational companies accorded nationally within member countries on the legislation of foreign countries in which these products are not under patent protection. With this attitude, the European Union violates international rules to favor the private interests of European companies to the detriment to the human rights of persons in the countries affected by the seizures.

Additionally to these unjustified seizures, the EU contributes to disseminate a deliberate misconception regarding the distinction between counterfeit drugs and generic drugs. This misconception, besides being harmful from the point of view of the end consumer, guarantees more profits to brand-name pharmaceutical companies, because it eliminates the competition promoted by generic drugs by treating them as pirate goods that are harmful to health.

THE PETITION

Based on the foregoing arguments, the civil society of Brazil, Peru, Colombia and Ecuador, countries affected by the seizure of generic drugs at European ports, request the Permanent Peoples' Tribunal to:

1. DECLARE THE EUROPEAN UNION GUILTY OF violating the human right to health and life of the populations of the countries affected, rights that are widely recognized in international treaties regarding the theme and the national laws of the countries involved, by creating hurdles, illegitimate and illegal, to access to the generic drugs used in the treatment of several diseases affecting these populations.

2. DEMAND THAT THE EUROPEAN UNION

a) immediately halt the seizures of generic drugs in transit through ports of the EU and declare the inapplicability of Regulation (EC) No 1383/2003, on generic medications in transit through ports of the member countries;

b) abstain from promoting the deliberate confusion over the concepts of generic drug and counterfeit drug and abstain from pressing for and including in every sphere of activity the adoption of customs measures provisions, similar to the Regulation (EC) No 1383/2003 rules, in the negotiations of multilateral and bilateral treaties, and compliance with intellectual property rights lists;

c) adopt all adequate measures to ensure that the countries affected by the seizures on account of Regulation (EC) No 1383/2003 can claim for compensation, including the release of informative material explaining the difference between generic and counterfeit medications, with the aim of informing patients.

[1] Brazilian Interdisciplinary AIDS Association, Grupo de Incentivo a Vida, Prevention of AIDS Support Group-SP, Prevention of AIDS Support Group -RS, GESTOS – Serum positiveness, Communication and Gender, Asa Branca Resistance Group, Grupo Pela Vida-SP, Brazilian Institute for Consumer Defense (IDEC), Conectas Human Rights, National Network of People Living with HIV+ Maranhão, National Federation of Pharmacists, Doctors Without Borders (MSF).

Syngenta Case

Executive Summary

Representatives of La Terra de Direitos, a human rights organization, and the Via Campesina Brasil, a popular organization in Brazil, come to this Tribunal, to present a formal complaint against:

Syngenta, the European Union and the World Trade Organization

Syngenta is a repeat offender against human rights in Brazil. Its actions are violating the right to life and physical and moral integrity, through the hiring of militia, contamination of the land with agricultural toxins, criminalization of social protests and contamination of agricultural biodiversity with transgenic seeds, among other offenses.

Syngenta produces, distributes and gives incentives for the use of transgenic seeds and agricultural chemicals. The multinational, along with others, acts to privatize rights to the free use of of agricultural biodiversity and, through this, have a commercial monopoly on the world's agricultural production. They want to turn into business what is today a human right.

Syngenta, a Swiss multinational company based in the city of Basilea and created through mergers in 2002, is active in the sectors of agricultural business and bio-technologies. The multinational, through its predecessors Novartis and Zęneca, has been active in Brazil since 1970, being a precursor of the Brazilian green revolution.

The European Union and the WTO have direct responsibility and complicity in these cases of offenses against human rights and therefore also stand accused in front of the Permanent People’s Tribunal.

The accusation is made against the European Union, in particular the EU Commission, for the following reasons: 1) It is a consumer of transgenic products produced in Latin America, thereby contributing to the increase in the production of transgenics. 2) The European Commission has insistently adopted positions that promote the interests of the multinational companies in the biotechnology sector.

The WTO is responsible for these human rights violations because of the impositions derived from international agreements on the patents. Brazil, by adhering to the WTO, has regulated into law the interests of the multinational companies in the sector, at the same time that it limited the rights of the small country farmers to use, store, exchange and sell seeds and other materials related to plant reproduction.

Transgenic Maize (Sweetcorn) of Syngenta (Bt 11) was tested for production, commercialization and consumption in Brazil in 2007. This was passed without requiring more indepth studies on impacts that affect diverse and interdependent aspects of life.

The genetic contamination shown by the use of the transgenics represents abuses against the rights of the small country farmers to the free choice of production method or technology and against the consumers of the information about the origin of the product, this also representing irreversible damage to the country's biological diversity and loss of characteristics and varieties of maize (sweetcorn) which had been improved over time through history.

Professor Fábio dal Soglio, member of the CTBio , noted a lot of inconsistency in the commercial liberation of transgenics in Brazil. In his vote against the liberation of Syngenta's maize (sweetcorn), he recognized that:

"The recent public conference about the commercial liberation of transgenic varieties of maize (sweetcorn) showed that there are many questions about bio-security that were still not decisively answered by the interested parties and that the evidence of actual risks is strong, so, though this is stated with caution, with the mechanism of Brazilian law, all the liberations already complete in Brazil could be suspended."

In the process of liberation of the maize BT 11, it could be seen that studies were not carried out into the impact of the genetic contamination of conventional maize (sweetcorn), or the native maize (sweetcorn) and the effects of pollination with other transgenic maize (sweetcorn) varieties. There were no questions regarding allergies or toxicity to animals and people, and nor have studies been carried out on the nutritional level of the transgenic crop, among other technical aspects noted by scientists whose objectivity is not compromised by having interests in multinationals' operations.

It is therefore clear that the commercial liberation did not comply with the relevant Brazilian or international legislation. The liberation was carried out because of pressure and lobbying by Syngenta in CTNBio. The fact that there are no studies on the elements already noted is in itself sufficient to accuse Syngenta of human rights violations.

The main impacts of the intensive use of agricultural chemicals are on farmers and rural workers, the environment in general, as they cause water, soil and air pollution, the consequent increase in resistance to the use of agricultural chemicals, difficulties in working in agriculture without using agricultural chemicals, unwanted contamination in the surrounding area caused by use of these products by one small farmer, and in the poisoning of the population that consume the products, often without their knowledge.

This is not only a technological effrontery, but is above all economic and cultural. It threatens everyone, directly or indirectly. Commercializing the rights farmers, peasant farmers, traditional and indigenous peoples have to their seeds is like commercializing culture and human rights.

To affirm the rights of the small farmers to the free use of agricultural biodiversity, and to a culture free from transgenics and agricultural toxins means not only carrying out agricultural and technological decentralization, but also affirming human rights to biological diversity, foodstuffs and nutrition.

We hope that the Tribunal can contribute to this fight against multinationals, the governments and international organizations that play a part, directly or indirectly, in human rights abuses. This condemnation, although not yet juridical, is public, moral and ethical.

In this concrete case, it would be very important for the Tribunal to pronounce specifically on this issue, analyzing the points presented and in giving its public verdict. The decision could be taken to Brazil, where the results of this process will be used in the fight already underway. An international condemnation strengthens public struggles and weakens, even if only a little, the power and influence of the multinational business.

Stora Enso Case

Executive Summaries

Eucalyptus in the south, headquarters in the north

HANNA NIKKANEN

The Finnish-Swedish forest industry giant Stora Enso is conquering Brazil with high speed. This has not happened without problems, but neither the shareholders nor the consumers seem to care what is happening in the pulp plantations. Will South America remain a Wild West for the eucalyptus-craving paper industry?

About a decade ago, the exotic eucalyptus was the magnet to draw the Western forest and paper
industry giants into the heat of land quarrels, corruption and environmental crime accusations in South America and Far East in their hope of gaining quick profits.

When the production moves quickly to the south but the headquarters remain in the distant north, it is hard to maintain the control of every link in the production chain. There will be blind spots. The information about problems in the southern plantations won't reach European activists or media, or when it does, the lack of context makes it difficult to take necessary actions. Yet the northern media can have an enormous influence on what happens in the south: it is what the politicians, shareholders and the majority of consumers rely on when forming their idea of the situation.

Because of this disconnection, the south was the Wild West for forest industry companies for a whole decade. When laws were broken or local tensions escalated into conflicts, there was no threat of corporate dethronings or consumer boycotts.

The Finnish-Swedish Stora Enso is one of the many big companies that went south in their search of cheap raw material. It is also one of the big companies that have to face the fact that the Wild West times will soon be over: Brazilian, Finnish and Swedish non-governmental organizations and media are creating lines of communication and are on their way to gain at least some level of public control over the company's dealings. The company has replied with an aggressive greenwash campaign.

As the pulp plantations are growing and growing, it is unlikely that the disputes between the forest industry corporations and landowners are going to calm down. However, during this decade these quarrels will not take place only in the south or at the headquarters in the north. Instead, the disputed space exists between these two: who gets to define the northern media's approach to what happens in the southern plantations?

Storalandia, Brazil

In southern Brazil, the forest company is the king of the hill. Plantation deals, governor elections and violence against small farmers are all threads in the same pattern.

International Women's Day 2008. Tarumã, State of Rio Grande do Sul, Brazil.

Local plantation workers demonstrate against Stora Enso's eucalyptus plantations. According to the Landless Workers' Movement MST, the company has been going around the country's laws in order to purchase vast areas of land for its pulp plantations. Through these straw purchases, two local leaders of the company are, with their properties combined, the biggest landowner in the state: through a false company, they own 45 000 hectares of land Stora Enso could not legally buy.

The demonstration ends in an attack by military police in which almost a hundred women landworkers get wounded by rubber bullets and explosives. The operation is led by subcommandante Lauro Binsfeld, the henchman of the state governor Yeda Crusius.

The incident hits the news in Europe. Stora Enso expresses its apologies in the Finnish media, but remains silent in Brazil.

August 2009. São Gabriel, State of Rio Grande do Sul, Brazil.

At least thirty squatters get hurt in an attack by military police. There have been such cases in the area before, but this time the violence is exceptionally brutal. Those arrested tell the military police gave them electric shocks with stun guns and made them run the gauntlet. Many of the arrested have broken bones when they are released.

The operation, just like the one in Tarumã year before, was conducted by Lauro Binsfeld, the henchman of the state governor.

March 2010. Costa Dourada, the southern part of Bahia State, Brazil.

Pulp company Fibria's armed security force team opens fire at two small farmers collecting firewood. Henrique de Souza Perera, age 24, dies and his father Osvaldo Pereira Bezerra ends up with broken arm.

Fibria is Stora Enso's partner in South Bahia.

As the eucalyptus plantations grow, many neighbouring small farmers end up collecting firewood in the lands owned by pulp companies. In its press release about the death of the farmer, Fibria expresses its concerns to the state authorities about the increase of "stealing of wood" in the area and demands actions to restrain these illegal activities.

Yeda Crusius, the governor of Rio Grande do Sul, is known as the right-hand woman of the mega-companies; she keeps the landless workers' protest movements in the area at bay. It is certain that in Tarumã Lauro Binsfeld got his order to attack from Crusius and it is very likely this was the case in São Gabriel as well.

The situation in the state is inflammable: unemployment runs high and an estimated 2500 families live in tent encampments. At the same time the land purchases of the large companies are shrinking the amount of farmland used for food production.

According to activists, these straw purchases are illegal. The company claims the purchases are merely a necessary phase while permit applications are still in process.

The pulp factories that Stora Enso, Finnish UPM and their partner companies are planning to build in Brazil, Uruguay and Paraguay border areas will need immense amounts of eucalyptus. The companies hold great economical influence in the area and are constantly lobbying for law changes that promote land owning and plantations. From this point of view, a willing politician such as Crusius is worth her weight in gold.

A concrete example of this is the fact that during year 2006 Stora Enso and its partner company Aracruz donated to Crusius, according to her own reports, a total of 114 000 euros.

Yeda Crusius is just one of the many Brazilian politicians supported by Stora Enso. According to the official data from the High Electoral Court of Brazil, Stora Enso, Aracruz and Veracel – a pulp company owned by the latter two – donated over 440 000 euros to support the election campaigns of Brazilian politicians in 2006. Stora Enso and Aracruz concentrated their donations in the Rio Grande do Sul state. Veracel in turn supported Bahian politicians, Bahia being the state where Veracel was sued for environmental crimes. One of the recipients was Bahia's governor Jacques Wagner, who later toured the Nordic countries lobbying for stronger business ties. (Later on, Veracel was found guilty of illegal logging in the area. Now it is being accused of corruption related to the case.)

(A news story about the case by Brasil de Fato newspaper [pt].)

In 2009, the ethics of Stora Enso's donations for Brazilian politicians were finally questioned in the company's northern home countries. This seemed particularly embarrassing in Finland, as the country was facing its own election funding scandal at the same time. What made the situation even more uncomfortable was the fact that the Finnish State is the main shareholder of Stora Enso – it owns 30 per cent of the company.

So it was the scandal in Nordic countries that succeeded in what the years of criticism by Brazilian protest movements had failed. Stora Enso announced it will put a moratorium on its election donations in Brazil.

Yeda Crusius continues as the governor of the Rio Grande do Sul state, and so does Jacques Wagner in Bahia.

 See the lists on the election campaign donations made by Stora Enso and its partner companies during 2006: Stora Enso, Veracel, Aracruz. (For totals, see column "valor", the sums are in Brazilian reals. 1 BRL = 0,38 EUR.)

Forests, lies and audio tapes

Only a couple of years ago, Stora Enso was a conservative and clumsy forest industry giant whose corporate responsibility strategy was to remain silent. That seems to have changed now. The media circus last autumn between the company and Brazilian non-governmental organizations tells a story not only of an aggressive greenwash campaign but also of European journalists and their corporate blind spots.

August 2009. Helsingin Sanomat, the leading newspaper in Finland, publishes an extensive article about Stora Enso's actions in Brazil in its Sunday pages. The reporters have done a good job. However, there's something that takes me by surprise.

The article cites João Paulo Rodrigues, the representant for MST, as he met the Stora Enso's Head of Sustainability Eija Pitkänen in São Paulo in the previous month. "If Stora Enso proceeds with its project, MST will provoke more conflicts, violence and even deaths, which will cause negative worldwide publicity for the company", Helsingin Sanomat quotes Rodrigues.

My own experiences of MST's activists don't match this image. Threats of provoking conflicts and sacrificing their own people? It doesn't sound like anything I have heard from them before. What on earth got Rodrigues to talk like this?

During the next weeks, Stora Enso frequently uses the quote in its public statements. When the company gets criticism for its actions in Brazil, it refers to the threats of violence by its opponents. Helsingin Sanomat publishes a reply by Stora Enso Chief Executive Officer Jouko Karvinen, in which Karvinen attacks the credibility of a critical Finnish researcher for fraternizing with these violence-prone Brazilian activists.

Until this, the Finns have not had a clear idea of what MST is, but now the movement is rapidly gaining a bad reputation. It's starting to sound like a terrorist organization.

A couple of weeks later I get a message from Brazil. The news about the sudden media attention has reached the MST activists. The writer of the message can't understand where Helsingin Sanomat got the quote from: he says Rodrigues said nothing like it during the meeting.

Out of mutual mistrust, both MST and Stora Enso brought hidden sound recorders to the meeting. Both parties had given their promises that there would be no recorders and the content of the discussions would be entirely confidential.

As the pledges of silence have already been broken, I ask MST and Stora Enso to give me their recordings – that way the truth could easily be checked.

MST immediately sends me an audio file. Stora Enso refuses to do the same.

The Stora Enso Head of Corporate Communications Lauri Peltonen is a new man in his post. He was recruited in spring 2009 to a company badly suffering from recent negative publicity: the moving of pulp production to China and Brazil had evoked hard criticism in both ends of the process. The crisis communications of the company

had been poor all along the process and so Stora Enso put its hopes on Peltonen, expecting radical reformations.

Peltonen does his work well. Later I see him speak in a communications seminar; his presentation is titled “Stora Enso – one of the most responsible companies in the world”. The audience consists of his colleagues, whose open admiration occasionally crosses the line to embarrassing.

After Peltola came to the company, two things have gone through a drastic change. The first change is the dramatic increase in attention for ethics and ecology: the old Stora Enso didn’t bother too much about such things. Peltola got the previously distant CEO Karvinen to fly to China and have a photo opportunity chat with plantation workers' families. Peltonen’s influence was visible even when Karvinen was seen celebrating the agreement on the protection of forests in Lapland together with Greenpeace activists. The PR victory didn’t require much effort – it was just a question of turning bad news about closing factories and increasing unemployment in the area into happy green news about forest conservation.

The second change is the increasing aggressiveness of the company’s crisis communications. The audio tape incident is a good example of this.

“We are a listed company”, Peltola says, when I ask him to give me the audio recording of the meeting in São Paulo in order to check whether the Helsingin Sanomat quote had been correct. “A listed company can’t lie. However, our opponents don’t have such restrictions.”

Peltola can be a nice fellow, but on the phone he sounds surprisingly aggressive. This must be one of Peltola's special qualities that they talk so much about. I’ve crossed him and suddenly he sounds more like a dedicated collecting agent than a company head of communications.

If I wasn’t fairly convinced that I was on the right track, I would probably give in at this point. Peltola's self-confidence is convincing.

I’m not allowed to hear the tape. Peltola's excuse seems poor: He says the tape is in Brazil and would have to be shipped to Finland. I manage to keep myself from saying something clever about modern technology and its presence even in the Southern Hemisphere, even though at the same moment I receive an email containing an mp3 file of the MST recording.

MST's recording is long, but I manage to find the part that was turned into the threatening quote published in Helsingin Sanomat.

It seems pretty clear. Rodrigues says nothing about MST “provoking more conflicts”. He only asks for a time-out: if the company agreed to delay its plans of quadrupling their plantation sizes, there would be more time to solve the already existing land disputes and environmental problems. Otherwise it is likely the situation gets worse, Rodrigues says.

“The conflict in Rio Grande do Sul has nothing to do with the military police, the conflict is all about eucalyptus”, Rodrigues says on the tape. “It will have serious environmental consequences.”

We publish the tapes and translations of the main points during the same day. During the next weeks the tape is listened by Helsingin Sanomat and Stora Enso. Both parties publish their own translation of the extract. No one is able to find Rodrigues saying anything about provoking violence towards anyone.

Stora Enso does not admit that it lied. In its press release, the company accuses all the other parties of lying, but doesn’t define these accusations any further.

Later the Helsingin Sanomat reporters admit they actually had not heard the tapes before writing the article. They had relied on Lauri Peltonen’s description of the conversation between Pitkänen and Rodrigues.

This is to say that the paper published a quote they had acquired from Peltola, without mentioning they had not heard the actual conversation and without mentioning that the source of the quote is clearly disqualified to make declarations about MST's motivations. After its first publication, the fabricated quote was repeatedly cited on the pages of the same paper until the Finnish debate finally reached the ears of a Brazilian activist.

This is very alarming for two reasons.

First of all: Are we witnessing a darker side of greenwash? When the company headquarters are in the Nordic countries and unpleasant conflicts take place in South Brazil, it must be cheaper to denigrate the Brazilian opponents in the Nordic media than to give up disputed but profitable projects. It is hard to imagine a more unbalanced fight: What can a landless worker from Rio Grande do to clean his reputation in Europe, when he has to face the entire PR machinery of a massive multinational company?

And the second reason: Is the European media so uncritical with these corporate spin doctors that such a shameless strategy can actually work?

 João Paulo Rodrigues ’ speech in Portuguese in the meeting in São Paulo (4 min).

The Landless Workers' Movement: Stora Enso feeds media lies

The expanding eucalyptus plantations of the Nordic forestry industry giant Stora Enso have got the company into a serious conflict in Brazil with local organizations, environmental activists and small farmers. Especially the Landless Workers' Movement has become tired of Stora Enso's duplicity. Finnish public institutions own considerable share of Stora Enso shares (1), but Finnish government refuses to

intervene in operations of Stora Enso, though controls 35 % of votes in the meetings of corporation.

Mika Rönkkö

”Lying is what Stora Enso does the best”, João Pedro Stédile states at the headquarters of the Brazilian Landless Workers' Movement MST in São Paulo.

Stédile, a 56-year-old economist, is one of the most hated men in Brazil and the best-known leader and a founding member of MST.

MST is with its 1,5 million members one of the largest social movements in the world and defends poor small farmers' rights to own land. Brazil has one of the most unjust land distribution patterns in the world: one per cent of the population owns approximately half of the farming land. Due to the stagnation of the official land reform program, the landless workers' movement occupies land from the big landowners.

The big landowners are enraged about the land invasions, which is reflected by the mainstream media. The landless workers' movement is accused of terrorism and in some places it has been criminalized.

”Strora Enso has adopted the opinions and methods of the Brazilian elite”, Stédile says.

”The company twists our words on purpose” João Paulo Rodrigues, the coordinator of MST continues.

Rodrigues belongs to the new generation that was born into the fight over land. He was raised in a MST settlement, being in a way a living evidence of the radical land reform.

According to the estimations of MST, 380 000 families have been settled on unfarmed land. They have obtained land for farming and have been able to send their children to school, mainly through collective action organized by MST.

However, there are still 97 000 families waiting for their plot of land in the MST encampments, living in shacks on a roadside.

Stora Enso has become the scapegoat for slowing the land reform – it is also considered the main suspect by environmental organizations. According to João Paulo Rodrigues, the company is fighting over the same farming lands as the people in the roadside encampments, the poorest people in Brazil.

”In 10 years, the Landless Workers' Movement has obtained 80 000 hectares of land through mass action and intensive pressing of the big landowners, whereas Stora Enso has acquired hundreds of hectares of land in only three years. This is unbearable.”

Despite all this, Stora Enso and the social movements agreed to meet each other in

June. The movements wanted to inform the Finnish representatives of the company about the cases of abuse in Brazil. They were eager to settle disagreements.

”We were expecting to solve issues by discussing the conflicts with these rational Swedish and Finnish company leaders” João Paulo Rodrigues says.

“However, all our expectations were let down as the company attacked us publicly instead of aiming to settle the conflicts and change its methods.”

Stora Enso head of communications Lauri Peltola claimed in biggest daily in Finland, Helsingin Sanomat, in August that Rodrigues had threatened the company with violence if the company wouldn’t retreat from Brazil.(2) Another Stora Enso leader recalled in the paper how during a squatting of a plantation, women from the landless workers' movement had hit the police with their sickles. The chief executive officer Jorma Karvinen repeated these accusations one week later in the same paper.

“All lies” João Paulo Rodrigues states. “What I really said was quite the opposite, that is, that the landless will suffer violence and even death because of the actions of Stora Enso.”

The Brazilian land registry system is confusing and the notaries corrupt. Land disputes are common and often violent. It is usually the landless and social movement activists who suffer the most in these conflicts. According to the Pastoral Land Commission in Brazil, over 1 300 activists of rural social movements have been murdered in land disputes during the last two decades.

“The Stora Enso’s land hoarding adds to the violence in the countryside. When the landless demand more lands to be included to the land reform, including those owned by Stora Enso, they become victims of the military police and the landowners”, João Paulo Rodrigues says.

According to Stédile, Stora Enso deliberately feeds lies to the media. “According to Brazilian papers, the company has a special permission for its plantations in the Brazilian border. Finnish papers write about threats of violence by MST. We have no trust left for the company.”

Stora Enso’s good reputation in Brazil has been lost for good. Local prosecutors have brought numerous lawsuits against Stora Enso, varying from accusations of bribery to illegal land purchases.

According to environmental organizations, the monoculture eucalyptus plantations are harmful for the environment. The disadvantages include depletion of groundwater resources, deterioration of soil, and the environmental problems caused by pesticides and herbicides.

However, according to MST it is the social problems that are the worst. The large plantations eat up the smaller ones. The employment possibilities in the countryside deteriorate and less land is available for local food production. The extensive plantations also slow down the land reform when there is no farming land left for distribution.

A new page was turned in Brazilian politics 2002, when Luiz Inácio Lula da Silva from the Workers' Party PT was inaugurated as president of Brazil. Social movements formed the basis of the party, MST and small farmer unions were its main supporters in the countryside.
The social movements hoped PT would initiate a social revolution. They were let down. The Lula government has achieved some social reforms, but only through political logrolling. The Lula government and PT have become detached from the social movements.

"The second Lula government has slowed down the land reform. During his first government there was a goal of settling 100 000 families, but during the last years it has been taken down to 20 000 families per year. It is also unfortunate that most of the new settlements are concentrated in the Amazonas area that should be protected rather than populated", Rodrigues says.

The conflict between Stora Enso and the landless workers' movement is about a collision of two models of development. "We are not against Stora Enso or the paper industry, but against the exploiting model of economy it represents, where the land is owned by a small elite", Rodrigues says.

For the landless, Stora Enso symbolizes the large scale agriculture that threatens to replace small farming.

"It's based on large farm sizes, big investments and tax cuts. It takes up all the farming land and groundwater resources and pollutes the environment with pesticides", Rodrigues says.

"We want another kind of development that encourages and supports sustainable food production and promotes employment in the countryside."

João Pedro Stédile says it is possible to grow eucalyptus also on small farms, in a sustainable way.

"A small farmer could grow, say 2 hectares of eucalyptus on a ten hectare plot" Stédile gives an example.

"But the pulp companies won't settle for this, because the profits are too small. They always aim for bigger profits and maximum value, ignoring the environmental and social consequences."

Stédile has nothing nice to say about Stora Enso: "Stora Enso ships the pulp produced by its Bahia pulp mill to Finland as unfinished raw material, the Brazilians profit nothing from it. Our previous exploiters, the Brazilian pulp companies at least processed part of it into paper here in Brazil.
Stora Enso acts illegally, many serious lawsuits have been brought against it, it has also got involved in corruption. Nevertheless, it gains phenomenal profits from these actions."

"What difference does it make if the company pays here tens of millions in taxes

when it ships hundreds of millions to Finland? Isn't the Finnish State, the major owner of the company, even the least bit ashamed of this neo-imperialistic operation?”(2)

Finnish Minister of Defense Jyri Häkämies (National Coalition Party), whose portfolio also covers matters relating to the ownership steering of state-owned companies, has reassure in several occasions that the government will not intervene in Stora Enso’s operations, as demanded in Finnish parliament. Echoing his minister, CEO of the state company Solidium that deals with state corporate ownership, Kari Järvinen sees no necessity to take any action due the criminal charges in Brazil.(3)

Jyri Häkämies has admitted publicly that the situation at Stora Enso puts the state ownership in a public company in a bad light.(4) Anyhow, Häkämies, the strong man in the right wing party in power, has emphasized that the responsibility of the state is to create a favorable environment for businesses to operate in and not to intervene in their day-to-day operations: “No government has ever made any decisions on production matters, regardless of its orientation; nor will it begin to do so.”(5)

Caso de Santander e Banif & GDF-SUEZ

HYDROELECTRIC COMPLEX

EXECUTIVE SUMMARY

MADERA RIVER (AMAZON - BRAZIL-BOLIVIA

INDICTMENT:

The Movement of People Affected by Dams - MAB, popular movement (Brazil) BOLIVIAN FORUM ON ENVIRONMENT AND DEVELOPMENT - FOBOMADE, organization (Bolivia) and SETEM, nongovernmental organization (Spain), come to **condemn:**

- The companies **GDF-SUEZ**[1], and the **French State** (which owns 35% of shares from this company**); BANIF** [2] and **SANTANDER** [3] , **for disrespecting human rights.** Even before being concluded, the Santo Antonio and Jirau dams are causing countless human rights violations as well as social, environmental, cultural and economic impacts over the affected population in Brazil and Bolivia (which has occurred without any type impact survey);

- *The States of* **Brazil, France, Spain and Portugal, for failing to protect victims against human rights abuses committed by these firms;**
- *The States of* **France, Portugal and Spain and the European Union for imposing** (through IMF loans) **changes in the Brazilian legislation to allow the privatization of banks and energy** companies, so that the accused corporations could make investments and settle in the country.
- ***The EU and the United Nations*** **for failing to provide effective solutions for victims against human rights violations** and not respecting the legal protection of human rights defenders framework.

BANIF Bank is a shareholder (10%) whereas Santander Bank was a shareholder and agent of *St. Antonio Energy Consortium,* responsible for impacts involving the construction of the Santo Antonio hydroelectric plant.

GDF-SUEZ Company and the French **State** are shareholders (50.10%) of the *Sustainable Energy Consortium of Brazil,* responsible for impacts involving the construction of the Jirau hydroelectric plant.

We accuse the companies GDF-SUEZ, the French State, the BANIF and SANTANDER banks, for being responsible to the following social and environmental impacts caused by the two dams in **Brazil and Bolivia:**

a) A demographic explosion in the area of Porto Velho with an estimated migration flow of up to 100,000 people looking for work;

b) The flooding of seasonal farmland (on the banks of rivers) and loss of grazing land;

c) The increase of malaria, mercury contamination, yellow fever, dengue and leishmaniasis; detrimental to the public health;

d) The manifestation of mercury pollution factors and the loss of river water purity;

e) The expulsion and migration of indigenous peoples and farmers from formally owned land and progressive economic infeasibility of thousands of people affected by these works;

f) Destruction of the environment, flora and fauna, including the loss of living conditions for chestnut trees (the base of the economy for Amazonian Indians and peasants from the Department of Pando), loss of native birds habitats, elimination of

natural barriers for river dolphins (a endangered species both in Pando and Beni), loss of regional fishing and direct effects over fish spawning;

g) Interference in archaeological sites.

The Madera River, where both dams are being built, covers an area including the territory of Brazil, Bolivia and Peru. It is the Amazon's second largest river, considered as a biodiversity heaven, home for more than 750 fish species, 800 bird species and many others, several of those endangered, as well as unknown species.

INDICTMENT AGAINST THE EU AND THE OTHER STATES

(FRANCE, SPAIN, BELGIUM, PORTUGAL AND BRAZIL)

The States of France, Belgium, Spain and Portugal, and the European Union in general, has forced Brazil to privatize its energy and banking sectors, as well as changing its legislation in order to benefit the investment of multinational companies. The pressure came through IMF loans (International Monetary Fund) back in the 1990s.

The accused companies, namely SANTANDER, BANIF and GDF-SUEZ, have made investments and settled in Brazil during this period, gathering the benefits from changes imposed by the European countries. This is an illustrative case of "anti-cooperation" from the European Union, which has caused severe distortions in the Brazilian law as to benefit European companies, to the point that they made any attempt of bilateral investment agreements totally unnecessary.

The companies SANTANDER, BANIF and GDF-SUEZ, have raked the benefits from such measures as follows: the former Tractebel Energy (today GDF-SUEZ) have entered the Brazilian market in 1998 taking part in the privatization process and buying GERASUL, a state-owned power company (with an installed capacity to generate 3.719MW).

Both SANTANDER and BANIF were able to settle in Brazil after the liberal measures adopted by the Brazilian government and encouraged by the IMF and the European Union. Only after these legislative changes, the foreign capital was allowed to acquire shares through the privatization of state-owned banks. Subsequently, they were able to become majority shareholders in any financial institution, something forbidden until then.

Santander acquired the Banespa state-owned bank in 2000, in another privatization process. Both SANTANDER and BANIF were also beneficiaries from the constitutional amendment no. 40, which modified the Brazilian federal constitution in 2003, altering the article that limited bank's interest rates at 12% per year. Today, Brazil has one of the highest interest rates in the world.

PETITIONS

We request to the Permanent People's Tribunal to acknowledge the following:

- *That the companies* GDF-SUEZ, BANIF and SANTANDER do not respect human rights;
- *The States of Brazil, France, Spain and Portugal,* are not protecting the victims of the Santo Antonio and Jirau dams against human rights abuses committed by these companies;
- *The EU and United Nations are* not providing effective remedies for the victims affected by the dams as to confront human rights violations;
- *The EU and the European Community is responsible for interfering in Brazil, aiming to develop* their businesses;
- The people and communities affected by human rights violations committed by these companies, particularly MAB and FOBOMADE, have the right to resist against such violations.

We also make a request to the Tribunal urging organizations and governments to create global intergovernmental human rights standards for businesses in order to strengthen the protection of such rights.

[1] **GDF Suez Inc. (France).** The French State owns 35% of shares from this firm which is the second largest energy company in the world (200,000 workers).

[2] **BANIF SGPS Inc. - Banco Internacional do Funchal (Portugal).** One of the 400 most valuable financial brands in the world (4,600 workers).

[3] **Santander Bank Inc (Spain)** has three million shareholders (84.63% European). It is the major financial institution in the euro area considering the stock market capitalization (170,000 workers).

GoldCorp Case

Executive Summary

Accusation against the transnational mining corporation GOLDCORP INC, owner of Montana Exploradora de Guatemala SA and the project to extract gold and silver from the Marlin I Mine (mining license LEXT-541, awarded on 29 November 2003).

With the acquiescence of the Guatemalan state and the complicity of the following European pension funds that are GoldCorp Inc shareholders:

First, third, fourth and seventh Swedish pension funds, with investments of 21.1 million Euros or US$31.2 million.

Norway's SPU state pension fund, with investments of 61.5 million Euros or US$86.6 million.

Ireland's National Pension Reserve Fund (NPRF), with investments of 2.1 million Euros or US$3 million.

(Amounts calculated on 31.12.08 using Euro/USD/SEK/NOK exchange rates at www.oanda.com)

The Marlin project has violated the following rights in the municipalities of San Miguel Ixtahuacán and Sipakapa, San Marcos:

- The right of indigenous peoples to be consulted (ILO Convention 169, ratified by the Guatemalan Congress in 1997, and the United Nations Declaration on the Rights of Indigenous Peoples).
- The right to self-determination
- The right to municipal autonomy (Guatemalan constitution, through the municipal government code, the decentralisation law, and the law on urban and rural development councils).
- The right to own, possess, use and manage land and territory (United Nations Declaration on the Rights of Indigenous Peoples, Articles 29 and 31).
- The right to health
- The right to environmental protection (UN Declaration on the Rights of Indigenous Peoples, Articles 4, 5 and 6 on protecting and improving the environment).
- The right to have access to water
- The right to citizen and social participation (criminalisation of social mobilisation and protest through 18 lawsuits brought against the rural population of San Miguel Ixtahuacán).

GoldCorp Inc's Marlin Mine is in the Department of San Marcos in the western highlands of Guatemala, about 300 km north-west of Guatemala City. The mine covers an area of about 5 square km. 85% of this area is in the municipality of SMI and 15% in the municipality of Sipakapa.

There has been continuous conflict between GoldCorp Inc/Montana Exploradora de Guatemala SA and the indigenous communities of San Miguel Ixtahuacán and Sipakapa since 1999, when the company started to acquire the land where the mineral it is interested in is located, through the company Peridot SA. The mine has become a symbol of corporate aggression that has led to the emergence of a powerful indigenous and rural movement against mining in Guatemala. Despite protesting for many years, the communities are still being ignored. Community members and local health workers are denouncing an increase in health problems, including rashes, hair loss and other diseases. They believe that these are related to the pollution of water sources by the mine. The communities and NGOs that have expressed these concerns have been repressed and intimidated. Despite the opposition of the affected communities and pressure from Guatemalan and international civil society, GoldCorp is continuing to expand the mine.

The Guatemalan government has acted in support of the company's interests:

- It has set up a legal framework that benefits private enterprises (Decree 48-97)

- It neither informed nor consulted the people living in Sipakapa and San Miguel before awarding the mining permit (in violation of ILO Convention 169).

- It has deployed the security forces

- It has used the justice system to criminalise social protest

- It has not addressed the complaints made by the affected communities

- It has not responded to the recommendations made by the ILO, which asked for the Marin mine to be closed.

The World Bank (IFC and IBRD) are financing road building and electricity grid extension for the mine to operate, without holding the consultations mandated by the United Nations and ILO Convention 169. Furthermore, the World Bank and the IMF put pressure on the Guatemalan government to develop a new legal framework to attract foreign investment, especially in the mining sector (signing of Decree 48-97). As World Bank members and donors, European states are therefore complicit in the rights violations.

GoldCorp shareholders are a mixture of private and public funds whose mandate makes them complicit in the company's operations as well as the main beneficiaries.

The pension funds in Sweden, Norway and Ireland that have invested in GoldCorp provide legitimacy to the other investments in GoldCorp and its operations. Pension funds manage money that belongs to citizens in these countries; they are regulated and their aim should be to ensure that their investments abide by ethical principles. They should therefore take swift and effective action in response to accusations made by communities and civil society organisations. In this case they have been very slow to act or have not acted at all.

The Swedish pension funds are the only ones that have launched an investigation, but unfortunately this is aimed only at shareholders and the company. The investigation is accused of failing to involve the communities and being driven by the interests of GoldCorp and its partners. According to the first terms of reference for the Human Rights Impact Assessment (HRIA) study, the main objective of the mining project was to ensure that the mine continued to operate profitably.

Meanwhile, citizens in Sweden, Norway and Ireland are accumulating wealth at the cost of human suffering and environmental degradation in Guatemala, as well as legitimating unethical investments and impunity in that country.

We demand:

I. That the European Parliament require Sweden, Ireland and Norway – its member states and partners – to oblige their pension fund administrators to act swiftly and effectively in response to accusations made by communities and civil society organisations. The pension funds should address the demands coming from the communities or otherwise sell their shares.

II. Pressure on the Guatemalan state to respect ILO recommendations and close the Marlin mine.

III. Respect for community demands and compensation for the communities whose rights have been violated through land purchases or the damage caused to homes, land, water, health, etc.

IV. A halt to the criminalisation of social mobilisation and protest.

V. Respect for community demands and a halt to investment in states that do not respect the fundamental rights of indigenous peoples as set out in the United Nations declaration and ILO Convention 169.

VI. That the European Parliament should require its member states to influence World Bank policies so that they cease to exert pressure in the form of fiscal incentives and investments in infrastructure that benefit the extractive industries with the complicity of states.

VII. The development of effective mechanisms to oversee pension funds and public investment in countries vulnerable to the pillaging of their resources.

VIII. That EU governments cease to ignore human and environmental rights violations for reasons of economic interest, and that all investments of European funds should respect these rights. A common set of EU ethical standards should be developed for this purpose.

IX. That the policy of intervention in other states – in this case for economic purposes – should be guided by ethical principles and respect for people's dignity, decisions and aspirations.

X. THAT THE GUIDING PRINCIPLE SHOULD BE RESPECT FOR LIFE

REPSOL-Gas Natural-Fenosa and the Mexican Government

Executive Summary

Permanent Peoples' Tribunal

INDICTMENT

The Mexican Union of Electricians (SME), accuses the World Bank, the transnational corporations Iberdrola, Repsol-Gas Natural-Fenosa and the Mexican government (for acting as an accomplice and as a tool) for "crimes against humanity". This was perpetrated through the instigation of the former and the latter, the unconstitutional disolution of the public electricity company Luz y Fuerza, the occupation of its facilities using extreme violence involving the army and the security forces, violating human and labor rights of its 43,720 laid off workers, leaving without social security 22,256 pensioners and trying to eliminate the Mexican Union of Electricians.

We also accuse them for undertaking this attack with no other purpose but to promote an unconstitutional, illegal and corrupt privatization of the energy industry and its national fiber-optic and dark telecommunications networks. This was unconstitutional because Paragraph 6, Article 27 of the Constitution of the United States of Mexico expressly prohibits the involvement of private entities within any area of the electrical sector (Generation, Transmission, Distribution or Supply). It was illegal because the creation of the position of "Independent Power Producer (IPP)" through a secondary law (the Public Service of Electricity Act - LSPEE - which contradicts the constitutional paragraphs mentioned earlier) to reform and make compatible the Constitution with that instance - had been repeatedly rejected by both the Congress and the Supreme Court's Office. It was corrupt because operation contracts were established giving multinational companies full benefits at no risk. The firms involved won twice: first, through investment schemes known as Pidiregas (Deferred Impact Projects in the Expenses Registry) where the Mexican state assumes investments risk and guarantees the fuel supply which ends up repaying the initial investment. It also pays for onerous interest rates and contracts that ensure the sale of one hundred percent of its generating capacity. Not to mention that Mexico had enough infra-structure capacity to meet its present and future needs. Finally, due to this scandalous privatization policy, the country had to close and reduce the capacity of its generating plants.

The consequences of this outrage are several other crimes against humanity and the environment. It has led two public energy companies to financial and technical breakdown, caused major floods in the states of Tabasco (2008), Mexico and Federal District (April 2010). Additionally, a disproportionate rates' increase caused many social conflicts, repression and imprisonment of opposition leaders.

Finally they are also liable for the deaths of more than 25 workers. Due to a criminal lack of training on such a risky trade, workers with no previous knowledge on LFC installations were hired to carry out electric services.

AGGRESSION BY THE MEXICAN GOVERNMENT AGAINST THE SME

The SME, which still represents more than 18,000 workers, has reported serious human rights violations, that have continued since then, by the Mexican State. The same culprits are transgressors of the "democratic clause" inserted in the Association Agreement signed with the former European Community, which demands appropriate investigations and argues for a unilateral suspension of the commitments made by the current European Union, under the terms of Article 58 of such agreement.

To that effect, by the end of 2009, the SME lodged a complaint against the Mexican state for such violations before the European Parliament but until this date no satisfactory response has been received. It is completely unacceptable that the European Community which, supposedly, respects human and labor rights throughout the world, ignores the serious violations mentioned above and actually is doing business with an offender State.

On the night of October 10th, at 10 pm, the Federal Preventive Police occupied, using extreme force, the facilities of the company Luz y Fuerza del Centro, acting under a presidential decree published in the Official Journal of the Federation on October 11th, after midnight. The decree contains irregularities that violate the Mexican Constitution by eliminating the jobs of 44,000 electricians without a legal basis (Article 5: "No one shall be deprived of the fruits of its labor except by judicial decision"); preventing a due process to workers (Articles 14 and 16) which is a fundamental right; the decree was executed, before it was officially published, through the invasion of the workplace by the Army and Federal Police, without a lawful authorization (arts. 14, 16 and 17); by "extinguishing" a public company without the authority to do so (arts. 72 and 73 section F, frac. X) as is considered to be a strategic energy company protected by the Constitution (articles 25, 27 and 28); by invading a sphere of competence of the Congress, such as the reform of the Public Service of Electricity Act in its provisional article 4 that created the company and changed it without permission from the National Development Plan and the Energy Sector Programme (art. 26); by violating the rights and principles of employment stability and freedom of association (arts. 9 and 123); by attempting against the rights of integrity and the dignity of each worker and the "human right to have a project of life" that was suddenly broken up by stripping them of their employment, although the source of income had not disappeared.

Consequently, the Mexican Executive Power breached Article 128 of the Constitution, which establishes its obligation to respect, observe, uphold and enforce the Constitution of the United States of Mexico and the laws emanating therefrom.

The international rights were also violated in full national effect on employment, basic human range, as well as the right for a due process, protection of justice and the respect for freedom of association guaranteed by the Universal Declaration of Human Rights , the Inter-American Court of Human Rights, the International Labor Organization (ILO) among other UN and OAS conventions.

A PERVERSE COMPLICITY

The privatization process has even murkier aspects and, why not mention it, the involvement of the mafia. From the outset there was a clear tendency to favor Spanish corporations in the power generation and gas industry. Particularly the group Repsol-Natural Gas-Fenosa that, together with Iberdrola, concentrate 70% of generation, which amounts to a "de facto" monopoly.

We accuse Felipe Calderón, during his term as energy secretary and chairman of the Board of Directors of PEMEX (September 2003 to May 2004), for awarding a contract of US$2,4 billion to Repsol of Spain with no other company involved in the bidding for the operation of the gas in the Burgos Basin. This has resulted in complete failure at the expense of the public finances. In addition, during this time, he has sold the shares PEMEX had in Repsol below its market value, causing a property damage of US$ 655 million. Finally, in 2007, when he was usurping the presidency, Calderon awarded a new contract to Repsol of Spain for 21 billion dollars for the purchase of gas from Peru. This character was put in place by the mafia through the Presidency of the Republic election fraud.

Finally, the SME requests a ruling from this Honorable Court in order to condemn the unconstitutional, illegal, illegitimate and corrupt privatization of the Mexican electricity industry. We blame the Mexican government for the breakdown and aggression against the constitutional order. We call for the promotion of solidarity from all social movements, linked to this instance, to this cause.

Mexico City, May 5, 2010

THE CASE OF UNION FENOSA IN GUATEMALA

EXECUTIVE SUMMARY

Produced by:
CEIBA FRIENDS OF THE EARTH GUATEMALA
Associació d'Amistat amb el Poble de Guatemala

Union Fenosa in Guatemala forms part of a number of companies, in which it holds the following share: 90.83% of DEOCSA (Distribuidora de Electricidad de Oriente, S.A.), 92.84% of DEORSA (Distribuidora de Electricidad de Oriente, S.A.), both public services companies, 100% of GUATEMEL, an electricity sales company, and 100% of DECSA, which in turn holds 90% of RECSA (Central American Electrical Grids), an electricity transport company, all of which are public limited companies. Subsidiaries DEOCSA and DEORSA in Guatemala and their relationship with Union Fenosa: DEOCSA (90.83%) and DEORSA (92.84%).The Union Fenosa – DEOCSA - DEORSA shop floor at the end of 2007 was 971 employees, of whom 965 were locals, and 6 expatriates from Spain.

Companies such as Union Fenosa and Iberdrola have been the driving force behind a state policy of accelerated privatisation of the production of national energy, with the aggravating factor that they aim to install and putting into operation power plants, that will operate using carbon-mineral raw materials, with all the economic, environmental, social and cultural damage that will result from this.

In this way, Union FENOSA appropriates functions, the execution of which is an obligation of the State and its institutions, that can neither be renounced nor delegated. By 2015, four or five coal power plants will be built or start operation, capable of producing far more energy than the country needs, and also capable of poisoning an area larger than Guatemala itself with the toxic residues produced. All that so that Duke Energy, Jaguar Energy, Teco Energy, Union Fenosa and Iberdrola can increase their capital and accumulate more profits.

According to the study by CEIBA, Spain became the principal global investor in Latin America in 1999, when it concentrated 66% of its foreign investments in the region. Eight companies (BBVA, Santander, Endesa, Iberdrola, Union Fenosa, Gas Natural, Telefonica and Repsol-YPF) monopolise around 80% of all Spanish investments made in the region.

When Union Fenosa bought a majority share in the National Institute of Electrification (INDE by its Spanish acronym), the international financial institutions once again intervened. A decisive intervention was that by the Multilateral Investment Guarantee Agency (MIGA). Union Fenosa acquired the shares for US$ 101 million, and the agency gave a guarantee of US$ 96,6 million in 2001 for Union Fenosa Internacional S.A. of Spain for their investment in the shares and the loan for DEOCSA and DEORSA. The guarantee protects the project against the risks of transfer restrictions, expropriation, war or civil unrest.

The acquisition of DEOCSA-DEORSA by Union Fenosa was closely linked to the execution of the Rural Electrification Programme (PER by its Spanish initials). The

PER relied on IDB finance: the Government of Guatemala set up a Trust for the execution of the PER with resources coming from the sale of 80% of the shares in DEORSA and DEOCSA (101 million dollars), additional contributions from the Government of Guetemala and a loan of 90 million dollars from the Inter-American Development Bank (IDB).
The interweaving of interests between the Governments of Spain and Guatemala and the Spanish Transnational Corporations is openly recognised in the following fragment that appears in a document produced by the Office of Economy and Trade of the Spanish Embassy in Guatemala about the visit of Álvaro Colom to Spain shortly after his election as president: "One of his first meetings following the election was with José Luis Rodríguez Zapatero, announcing support for Spanish investment in Guatemala, fundamentally for Iberdrola, Telefonica and Union FENOSA.".
Since 22nd October 2007 the European Union, the Central American countries and Panama are negotiating a Free Trade Agreement, known as an Association Agreement (AA). On every possible occasion the European Union stresses that the AA is not an FTA, because it goes further, including issues of political dialogue and economic cooperation. Nevertheless, in the case of two out of the three pillars of the talks, there is not much scope for negotiation. The strategies and available budget for economic cooperation that the European Union is offering Central America were set before negotiations began.
The European Union wants to revive the content of the Agreements for the Promotion and Protection of Investments (APPI) which a number of European countries have already signed with Central American countries. The APPIs aim to improve access to the market for investors, through the inclusion of the obligations of National and Most Favoured Nation treatment and the prohibition of the inclusion of performance requirements. Furthermore they try to regulate insurances and guarantees for investors, by including mechanisms for the resolution of disputes.
Another objective linked to the protection of investments is the issue of the protection of intellectual property rights (IPRs), in which the European Union wants to reach an agreement similar to the one the United States were able to secure in the region, which goes beyond the agreement reached at the WTO. "This issue is of particular importance as crosses a number of other issues, especially in terms of services related to brands, corporate functioning, know how, registration, patents, etc.".

Particularly in the case of mega-projects that require considerable capitalization (infrastructure, facilities, equipment, etc.), it is difficult for national companies to compete with European companies for tenders. Services are considered by the European Commission to be "the cornerstone of the European economy", representing 77% of GDP and employment, as well as being an "area in which Europe possesses a comparative advantage, with the greatest potential for growth of exports from the European Union". The European Union has particular interest in the telecommunications and electrical energy sectors, where it has already invested large sums of money.

PETITIONS:

In the pursuit of company responsibility we come up against the precarious or non-existent international legal framework to legally link the transnational corporations with violations of Human Rights, in contrast to the enormous body of national and international laws created in their favour. It is worth asking ourselves whether voluntary codes of conduct, private controls and social labeling, are able to resolve

problems of the magnitude presented by systematic violations of Human Rights. Experience shows that they are not. So, given the extent of the charges levelled against Union Fenosa in Colombia, and the urgent need for national and international pressure to ensure that companies are held legally and politically responsible for their actions, it is opportune to be able to use this case as an example of their abuses and violations.

- **Other petitions from local communities and social organisations in Guatemala.**

- Respect for and application of ILO Convention No.169, articles 2,3,4,7 and others, ratified by Guatemala on 10th April 1996. Guatemala is a multicultural and multi-ethnic country, with 22 distinct ethnic groups. In 1982 its indigenous population was more than 80%. Nevertheless, statistically from the 1980s to date only 42% of the original peoples remain. The indigenous peoples have existed for hundreds of years, yet the State and its public administration only apply generalised laws that totally fail to recognise the identity, traditions and languages of the indigenous peoples of Guatemala.

- The incorporation of the United Nations Declaration on the Rights of Indigenous Peoples, as the basis for trade negotiations between the Guatemalan government and the EU. On behalf of the indigenous communities of Guatemala it is also demanded that Álvaro Colom's government assume responsibility for establishing this Declaration in the public administration of State institutions, to protect and guard the rights of indigenous peoples in accordance with international law.

- In addition to this national and international petition, in the case of Guatemala, the United Nations Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural rights, the Convention on Biological Diversity with the application of article 8, and the ratification of international environmental conventions such as the Kyoto Protocol, should be integrated into the responsibilities of the State of Guatemala. There should be international condemnation of failure to comply with these agreements.

- Guatemalan civil society demands that the National Congress of the Republic of Guatemala review and modify the General Electricity Law (Resolution 08-98) of the National Electrical Energy Commission, for which international pressure is needed, and that the failure to incorporate the participation of indigenous peoples in the direct consultation process – recognized by international agreements – be condemned.

- The constitutional review by the Court of Guatemala of its ruling in favour of Union Fenosa in November 2004, given the violations of the Human Rights of the communities affected.

- That consideration be given to the ruling of the Central American hearing of the Permanent People's Tribunal, which took place as part of the Social Forum of the Americas in October 2008 in Guatemala.

- That consideration be given to the ruling of the International Court of Human Rights in the Hague about the crimes perpetrated in San Marcos Guatemala by European transnationals, specifically Union Fenosa and Álvaro Colom's government, for their impunity for their intellectual liabilities and their actions.

UNIÓN FENOSA, ÉLECTRICITÉ DE FRANCE, ACCIONA, PRENEAL, ENDESA, GAMESA & IBERDROLA – MEXICO

EXECUTIVE SUMMARY

THE CENTRE FOR HUMAN RIGHTS OF THE TEPEYAC OF THE TEHUANTEPEC ISTMO, A. C.

TEHUANTEPEC DIOCESE

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The Istmus of Tehuantepec, located in the state of Oaxaca, Mexico, is considered a strategic zone in geographical terms because of its high potential for the generation of electrical energy from the force of the wind: more than 30 thousand megawatts of wind energy can be generated there.

Since 1994, a mega wind power project has been under construction, and has resulted in a wide range of social, cultural and ecological impacts in the area. It is necessary to evaluate the impact of this mega-project at a local, regional and global level. Fourteen years into the project's construction and execution, it has not contributed to the development of the region and has only served to leave the country and with it our communities further into debt, generating an ecological debt, among others, with environmental costs that will bring new problems to the region in the short, medium and long term.

Ecological debt is defined as the accumulation of historical and current debts, principally owed by the countries of the Global North, and their financial institutions and corporations, to the peoples of the Global South, for the plunder, exploitation,

impoverishment, destruction and devastation of natural resources. Ecological debt is also the responsibility of the industrialised countries for current conditions on the planet: the policies of consumption and making everything “disposable” are the principal causes of the acceleration of climate change. This model is promoted by the countries of the North and imposed across the globe. This debt is one that the Southern countries have been accumulating since their colonisation, as it is thanks to the exploitation of colonised natural resources that Europe was able to accumulate the riches that have maintained it as an industrialised continent, and which sustain its expansionist and exploitative conduct.

In the Transnational Mega project in the Tehuantepec Isthmus, European and

particularly Spanish transnational corporations, intimately linked to International

Financial Institutions such as the Inter-American Development Bank, the World Bank

or the International Monetary Fund, are profiting or plan to profit from the energy

produced by the project.

The construction of this Mega-project involves wind-power companies such as IBERDROLA, UNIÓN FENOSA, ÉLECTRICITÉ DE FRANCE, ACCIONA, PRENEAL, ENDESA, GAMESA, etc. who ply the Indigenous Peoples and Communities of our Isthmus region with false promises. They say that this project is a great development and that the communities themselves will be the owners. There is an endless list of promises, such as assurances that the communities will no longer pay such high prices for electricity. On the contrary, they say that they are the partners of the companies, as members of the cooperatives and communities will rent their lands, earning extra money to economically support their families. It is worth mentioning that this is done through the representatives of the Community ownership and Cooperative ownership, and even civil authorities from the three levels of government. It represents a violation of food sovereignty, as they make them sign rental contracts for 30 years, automatically extendible for an additional 30 years, on lands where they have sewn crops and pastured their livestock for thousands of years and which are now at risk of being lost completely to the corporations.

It is fundamental that this failure to recognise the rights of indigenous peoples is condemned. In the case of development of the mega-projects, we are talking about one of the most important, if not the most important, of these rights, which is widely recognised from the ILO Convention No.169, and the Universal Declaration of the Rights of Indigenous Peoples: THE RIGHT TO PRIOR AND INFORMED CONSENT.

The federal, state and municipal governments are aware of this, as they are informed of everything the companies do. They are therefore in violation of the Universal Declaration of the Rights of Indigenous Peoples, the International Covenant on Economic, Social, Cultural and Environmental Rights, ILO Convention No.169, the Oaxaca State Law for the Rights of Indigenous Peoples and Communities and, above all, our Magna Carta. All this in the interests of the companies, leaving the Indigenous peoples and communities undefended.

Determining the negative impacts of the mega wind-power project in the Isthmus of Tehuantepec, as well as establishing who stands to benefit from the project, will help us to understand and provide a basis for assessing the appropriateness of this kind of project. By considering the ecological debt, not only can we see how devastating the mega-projects are, but also recognise the need to find alternatives to solutions that contribute to increasing an illegitimate debt and through the environmental costs that they imply, to an ecological debt that may, in many cases prove unrepairable.

UNION FENOSA - Nicaragua Case

Executive Summary

ACCUSATION AGAINST UNION FENOSA

1. The entry of Union Fenosa in Nicaragua

In 1990, Nicaragua's external debt amounted to US$10.745 billion, making it one of the most indebted countries in the world. The debt service for 1995 represented 38.1% of exports, which made the situation unsustainable. The different elected governments (Chamorro, German and Bolaños) were subjected to the constraints imposed by International Financial Institutions (IFIs) in the form of neoliberal economic policies packages.

The administration of Violeta Barrios de Chamorro was the first to pave the way for privatization through the Organic Law reform of the Nicaraguan Energy Institute (INE) - namely, Executive Decree 25/92 of April 1992 - as to allow the private sector entry. In 1998, the Arnoldo German administration entered the ESAF II, in which one of the conditions required to achieve the completion point, was the existence of a clear privatization strategy. That same year, the international firm *PricewaterhouseCoopers* had completed a study commissioned by the government recommending the segmentation of the Nicaraguan Electricity Company (ENEL) in seven parts: two for distribution, one for transmission and four for generation. From that moment on, the legal instruments of the energy sector were reformed and, with funding from the Inter-American Development Bank (IDB), ENEL´s Restructuring Unit was created, being responsible for carrying out the privatization process.

Also during this period, the privatization of an important part of the generating plants took place. They passed into the hands of the Nicaraguan oligarchy and to American capital. The IDB once again supported the privatization process and the concession of generation contracts to private investors under the terms and conditions of a Power Purchase Agreement (PPA), usually comprising a fifteen-year duration and in dollars. The PPA between ENEL and the private generating companies produced revenue in two ways: capacity payments (fixed) and energy payments (variable). As the PPA guarantees to the generator the purchase of heat production, there aren’t any incentives to invest in renewable energy. Whereas, by not making any kind of control over the fixed capacity contract, it may be recurrent that the actual capacity is below the nominal one.

In parallel to the privatization momentum and foreign capital inflows, public investments on power generation were negative at that time. To such a degree that, in the early 90s, the International Financial Institutions (IFIs), particularly the World Bank (WB) and the Inter-American Development Bank (IDB) suspended funding for public investment in energy infrastructure. In the past, these institutions were the largest sponsors on this sector. In addition, in order to curb investment, a policy was established making investments in the energy sector fundamentally dependent on foreign investments, especially through the privatization of state-owned companies and through the granting of concessions.

1.1 The privatization of Dissur and Disnorte

Following the BID´s study recommendations, the state-owned energy company was segmented, leaving two companies in charge of the distribution process: Dissur and Disnorte.

Being Enrique Bolaños the president of ENEL's board, Union Fenosa bought the two companies responsible for the country's power distribution for US$ 115 million. The purchase process was somehow dubious: Union Fenosa was the only company to submit a bid for the acquisition. As well as acquiring Dissur and Disnorte - therefore having the distribution monopoly under concession for a period of thirty years - the sale included a large amount of ENEL´s assets such as networks, substations, real estate, calibration laboratories, among many others.

Two journalistic sources in Nicaragua, the engineer Gabriel Pasos (President of the Chamber of Industries of Nicaragua) and Roger Cerda (expert on energy issues), agreed that the value of the electric segment sold to Union Fenosa's could easily be worth over US$ 200 million.

UNION FENOSA VIOLATIONS

Union Fenosa is a Spanish transnational with a 90-year guaranteed monopoly on electricity distribution. In the course of its business, the company has systematically violated human rights in Nicaragua as follows:

- Arguing losses (as the auditing demonstrated), the company committed irregularities by not paying the generating firms for a long period of time. These, in turn, have failed to provide electricity and together opted for leaving people **without power,** as a means of blackmailing the Bolaños administration and thereafter the Ortega government, regardless of its impacts on the population and economy that it may have caused.

- Among the **impacts caused by rationing**, it is important to take notice of: the psychological effects on the population, which had to change their work schedules based on power availability; family breakdowns; health problems due to the lack of fresh food coolers for both retail and homes; crisis of anxiety for the elderly for not having electricity in their homes; serious problems of public safety at night; problems with health care (delayed day care, diagnosis and interventions); for many communities the lack of power supply also causes a water shortage; class disruptions in schools, colleges and universities as well as curriculum delays; high cost increases for businesses, shops and markets, regardless of the amount, caused by reducing working hours and having to supplement the lack of energy with portable generators; additionally to these, there were impacts on the health of workers in businesses

and markets; hearing and respiratory problems due to the use of generators; effects for the local media which were forced to broadcast only when energy was available.

- There were countless losses to the public as intense power surges provoked damages to electrical equipment. The company never took responsibility or refunded such damages.

- Union Fenosa implemented a rationing by zones for strategic reasons. Hospitals, military zones, enterprise areas, government buildings and so on were not affected. In effect, according to many accounts, there was a **rationing discrimination** beyond the country's strategic reasons. On low-income rural areas and settlements of Managua and other major cities, times of rationing were much longer than what was announced (the suspension of energy in these areas still persist in Nicaragua) and whenever the Union Fenosa customer hotline was used, the operators justified that people in the neighborhood weren't paying their bills.

- **Did not meet the commitment of investing in the maintenance of the electricity distribution network,** causing **loss of human life** (e.g. a family was electrocuted after a power line had fallen over their house in Managua, after power had returned, both father and his two sons were electrocuted while grooming) and **continuous minor damages that leave users without electricity** (in rural areas a little rain or wind are enough factors to cut the electricity supply to the public).

- Following the same logic, the company complains of energy theft but, at the same time, **land settlers who have been asking for years to be legalized, are not covered** by the company. The extraction of electricity in the settlements corresponds to 6% of total technical losses, which are 30%, according to information supplied by the vice president of Union Fenosa in Nicaragua.

- Do not invest in the maintenance of **public lighting** although this is charged on the bills.

- Unjustified bills increases above the rates regulated by INE such as: improper extra fees (for street lighting where none exists, unjustified charges for late payments, connection fees for mistaken energy cuts); errors in meter readings (closely linked to precariousness of employment and contracts, which will be explained further on); not leaving tags on the readings even though this is required by law; modifications on meters that double the consumption.

- Taking advantage of users: they are billed out of proportion to make payment arrangements (taking advantage of their lack of knowledge); lack of transparency (unauthorized workers come to report new rates); burglary and unauthorized change of meters; the customer hotline service frequently lies on the causes of blackouts out of rationing periods; not respecting the 15-day notice prior to the service cut; dollar rate indexing (illegal); late response on repair works (there are many examples of failures in different parts of the country not being addressed for weeks); house arrest for users who place a claim for improper charges because Union Fenosa fails to communicate with contractors to stop a energy cut when the user has opened a claim; when there's an emergency call to Union Fenosa alerting about serious flaws that may threaten the lives of people, technicians are not sent out (for this reason a child once died electrocuted in Eastern Market in May 2007); charging new users up to 3 months'

consumption when the law only allows 32 days; requiring new tenants to assume former occupants debts; non-existent debts are used by Union Fenosa to make up new customers and force them to pay for a deposit.

- It is understood that all these violations serves the cost cut policy of the company, minimizing losses. Another group that has not been oblivious to these business practices have been Union Fenosa`s workers and contractors. The company has developed a **labor flexibility** policy with over 400 layoffs since the acquisition of the distribution sector in November 2000. Labor flexibility leads workers to total job insecurity as contractors were institutionalized to carry out electricity distribution services such as reading, charging, cutting service, connecting, call center, etc. Union Fenosa has direct responsibility for the **systematic violation of the contractors' labor rights:** use of lying detectors when hiring; workers are not provided with copies of their contracts; unpaid social security contributions; salaries not covering basic needs; non-compliance with safety standards; untrained personnel perform assigned tasks; high turnover; unpaid travel expenses. This in turn leads to more expensive operating costs and a poor customer service.

- Union Fenosa **attacks unions,** making false claims to the police and bringing lawsuits against union leaders and workers

- The company has **blocked the negotiation of a labor agreement,** refusing to negotiate with workers

- There is sufficient evidence to say **that contracting companies are ¨close friends¨** that are helping Union Fenosa to "increase the actual losses" as well as falling into the inefficiencies and poor service that has been reported. This turns out evident from the number of user's complaints.

3. Complicity in the case of Nicaragua

When we discuss the energy crisis in the country, and in particular the role played by Union Fenosa in it, we find out that a number of players come into it, among them: the various Nicaraguan governments (Violeta Barrios Chamorro, Arnoldo German, Enrique Bolaños and Daniel Ortega), the International Financial Institutions (IFIs), the national business elite (linked to politics) and the Spanish cooperation. We analyze them below.

3.1 Government of Nicaragua

We must condemn the complicity of governments, beginning with Violeta Barrios Chamorro, under whose administration began the privatization of public services in the country. This policy was followed by her successors.

To clearly illustrate the government's complicity and protectionism demonstrated over the Spanish transnational, we will describe a brief timeline that reveals Union Fenosa´s blackmailing tactics and the government's complaisance:

- Due to constant human rights violations and concession contract breaches by Union Fenosa, many Nicaraguan civil society organizations promoted a day of complaint and protest to

demand the transnational concession revocation. In August 2006, the General Comptroller of the Republic of Nicaragua (CGR) revoked the concession contract awarded to Union Fenosa, pointing out the obvious failures as the reason. According to the CGR´s resolution a process of arbitration should have taken place between Union Fenosa and the government of Nicaragua.

- In December 2006, Union Fenosa threatened to sue Nicaragua before the International Centre for Settlement of Investment Disputes (ICSID), a World Bank agency, for alleged "failures" on the terms of the contract for power distribution, due to "impairment of their interests," and for being victim of "unfair and discriminatory" decisions.

- In January 2007, Union Fenosa asked the Multilateral Investment Guarantee Agency (MIGA), another World Bank agency, for a compensation payment of US$54 million as a result of the expropriation of its investment in Nicaragua. This request involved the possibility of a payment from the Nicaraguan state to Union Fenosa. To which the INE's director, David Castillo, said "to turn warranties and insurances a commitment from the State of Nicaragua, the Constitution mandates that it must be approved by the National Assembly (which has not happened).¨ He also noted that Nicaragua has not breached the concession contract.

- In June 2007, a Memorandum of Intent between the government of Nicaragua and Union Fenosa was signed in Madrid. This highlighted the commitment of Nicaragua to reform the Energy Stability Law 554 and the adoption of the Law on the Protection and Promotion of Responsible Use of Public Services (known as anti-fraud law.) Moreover, once the Understanding Binding Protocol was signed, Union Fenosa agreed to suspend the international insurance claim (MIGA) and not proceeding with the ICSID demand. On the other hand, Nicaragua would end the ongoing arbitration process as well as any other process that could hamper the understanding process underway. To achieve the signing of this Memorandum of Intent, President Daniel Ortega even called on the intercession of King Juan Carlos, due to the strong friction that had been occurring between the two negotiating groups (Government of Nicaragua and Union Fenosa).

- The reform of the Energy Stability Law would allow Union Fenosa to generate up to 20 percent of domestic power demand from non-renewable sources. It would also grant to the Spanish company the possibility to buy power from state-owned enterprises through soft loans.

- In June 2008, President Ortega signed the Memorandum of Understanding between the Government of Nicaragua and Union Fenosa. This was published as the Presidential Decree No. 1929-2008.

- Finally, on the 12th of February 2009 the Memorandum of Understanding between the Government of Nicaragua and Union Fenosa was approved in the National Assembly. Through this agreement, Union Fenosa transferred 16% of its shares to the Nicaraguan state.

In regards to the protocol of understanding signed between the State of Nicaragua and Union Fenosa, it is worth mentioning some of the human rights violations to the Nicaraguan population:

Adoption of the Law 661 (Law for the Distribution and Responsible Use of Public Electricity Service). This law has no positive tangible indicators for users, but it does have for energy distribution.

Law 661 allows the prosecution of users and do not grant ways to reverse the situation of those who are supposedly caught with an illegal connection

The memorandum of understanding has revoked or terminated 17 administrative orders, among which are fines, sanctions and penalties to the company for charging for public lighting when it doesn't exist, discounted fees, deaths due to flaws in the power lines, among other reasons.

By signing the protocol, the government annulled the decision of the Comptroller General of the Republic when the latter denounced that the concession contract was void and directed the proceedings to the Nicaraguan Energy Institute - INE (State Regulator) and the Attorney General's Office for legal action in order to cancel the contract.

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THE CASE OF UNION FENOSA/NATURAL GAS IN COLOMBIA

EXECUTIVE SUMMARY

Prepared by: *National Network of Public Services Users and the Center for the Study of Social Justice "Dignified Land"*

1. COMPANY PROFILE:

Union Fenosa generates, delivers and sells electricity. In addition, it has businesses in other energy areas such as gas (since 2000) and sector activities such as professional services and engineering. The company's expansion has been based on a bet for integrated control - from extraction to marketing - and the consolidation of its international businesses. [1] This was confirmed in early 2009: Natural Gas [2] acquired Union Fenosa [3] and thereby secured control over its 95.22% stake in it. The merger created one of the 10 largest electricity companies in Europe which, from then on, guaranteed its presence in 23 countries worldwide and a total of 20.2 million customers. [4]

1.1 COMPANY PROFILE IN COLOMBIA:

The entry in Colombia was part of a larger strategy in Latin American in the late nineties, when Union Fenosa acquired electricity distribution companies in Panama, Guatemala, Dominican Republic and Nicaragua. [5] Most cases resulted in the same dissatisfaction patterns due to price increases, billing irregularities and improper power cuts.

1.2 THE APPROPRIATION OF STATE-OWNED DISTRIBUTION COMPANIES BY UNION FENOSA HAS TURNED INTO A MONOPOLY:

Union Fenosa has ensured its electricity distribution monopoly on the Colombian Caribbean Coast, through its presence in the privatization process of former public sector companies responsible for such activities and its acquisition of majority shares across the sector. Through Acts 142 (1994) and 143 (1994), and respective decrees,

the provision of public services was re-structured in Colombia, establishing a framework for the energy sector privatization and conditions under which this would be carried out . [6] Union Fenosa came into Colombia in 2000, acquiring 70.5% and 71.6% of shares from the distribution companies Electrocosta and Electricaribe[7]. **In 2004,** Electrocosta and Electricaribe founded the Social Power Company, which is 100% owned by Union Fenosa. This company was designed for power distribution in the so-called "subnormal" [8] poor areas of the Colombian coast. [9]

2.3. GENERATION AND EXTRACTION OF NATURAL RESOURCES FOR ENERGY PRODUCTION HAS TURNED INTO A UNION FENOSA MONOPOLY:

Union Fenosa in Colombia has begun a process of appropriation of water resources in the Valle del Cauca region, which has large water reserves due to its topography and proximity to the Pacific. Recently, the company has become the majority shareholder of EPSA & CETSA owning 63.82% of its shares (the Colombian government and state-owned companies have 33.9%, and other public and private investors the remaining 2.27%). This company carries out generation, distribution and marketing of energy through the use of the Salvajina dam and the diversion of the Ovejas River, a process which has caused serious environmental impacts. [10]

2. COMPLICITY IN THE COLOMBIA CASE:

2.1 LIABILITY OF RECOMMENDATIONS FROM MULTILATERAL BANKS IN THE PRIVATIZATION PROCESS OF ENERGY COMPANIES IN COLOMBIA:

The privatization process, the elimination of state monopolies, the opening up of energy markets to encourage private investors or new regulation and tariffs' frameworks were some of the recommendations and requests to Latin American countries from multilateral banks in order to grant loans through the World Bank (WB) and International Monetary Fund (IMF). The Colombian State complied with these demands restructuring the totality of its energy sector [11]. Since then, the privatization process begun [12], from the issuing of Acts 142 (1994) and 143 (1994), and respective decrees, which have re-structured the provision of public services and established the privatization framework for the energy sector. As a consequence, Union Fenosa/Natural Gas is today the most powerful energy producer and provider in Colombia.

2.2 LIABILITY OF GOVERNMENT ELITES IN THE APPLICATION OF NORMS AND POLICIES THAT HAVE BENEFITED UNION FENOSA:

The Colombian government subsequently eased tax conditions for foreign investors through a series of fiscal measures. Union Fenosa subsidiaries received unconditional financial support from the Colombian government. A state senator has reported that between 2003 and 2006, the nation paid Union Fenosa up to US$200 million. [13] This is when, since 2006, its corporate profitability increased significantly. From losses of 8.7% in 2004, the company started to report rising earnings of 1.9% in 2008, with a simultaneous sales increase of 22.3% during this period. [14] The firm Soluziona Colombia (engineering, consulting and technology) is 100% owned by

FENOSA. This was one of the many companies that financed the first election campaign of current President Alvaro Uribe, according to the Central Electoral Board of Colombia [15] .

2.3 RESPONSIBILITY OF FOREIGN INVESTMENT POLICIES FROM THE EUROPEAN UNION HAS FAVORED UNION FENOSA:

Flows of Direct Foreign Investment (FDI) into Latin America and the Caribbean, on the other hand, arrived in 2008 by US$ 128,301 million, surpassing a 13% record high reached in the previous year. Colombia, in particular, was the third largest recipient in South America, receiving US$10,564 million with a 17% increase compared to 2007. [16] In this investment and privatization process it is clear that one of the biggest beneficiaries is the European Union as some of the 10 largest electric companies in the country - five of them European transnational corporations - are among the top 52 in the 2008 ranking. [17]

3. IMPACTS CAUSED BY UNION FENOSA IN COLOMBIA:

The impacts caused by the corporate behavior of Union Fenosa in Colombia are related to clear and serious human rights violations, as detailed below. One of the most serious impacts from the electricity provision by subsidiaries of Union Fenosa in the Colombian Caribbean region is a reported occurrence of approximately 150 [18] cases of electrocution as a result of corporate negligence. This includes (i) failures on power transformers (needed for the service provision) installed by its subsidiaries [19] , (ii) lack of adequate maintenance of electricity networks because the power distribution is done through non-secured wires or badly installed, and (iii) delayed and inadequate maintenance of the elements and mechanisms used in the provision of public electricity service. However, despite the scale of electrocutions [20] , only a small percentage of these deaths have been brought to the Colombian judicial system. Currently there is no statement from any jurisdiction (whether civil or criminal) on the company's responsibilities.

In conclusion, from this analysis we have identified five types of liability, namely:

- Responsibility for the provision of public services.

- Responsibility for the monopolization of public services.

- Environmental Responsibility (case Salvajina Valley dam) This type of liability has been verified with regards to the process of power generation from the appropriation of water resources and damage to the environment in the process of construction of hydroelectric plants (companies).

- Labor issues responsibility.

Endesa - ENEL

EXECUTIVE SUMMARY

The company HidroAysén (made up of Colbún and Endesa-Chile, the latter run by **ENDESA-**Spain and today owned by the Italian company **ENEL)** plans to build five hydroelectric mega-dams in the basins of the Baker and Pascua rivers, in Chilean Patagonia. Their goal is to produce electricity that would then be transported over 2,300 kilometres towards the north through 6,000 pylons and the biggest high voltage cable installation in the world. It plans to build two dams in the river Baker and 3 in the river Pascua, with 2.750 MW installed power capacity.

The dams would flood an area of 6,000 hectares that includes agricultural and livestock farming land, areas of huge touristic value, woodlands and endemic species, in one of the planet's last existing practically untouched ecosystems. The project would entail the irreversible destruction of an area of immense ecological and natural value and the end of regional promotional projects for development through high quality tourism. The flooding and related work would cause the extinction of species and would affect the world's third largest fresh-water reserve and the global climate.

The environments that would be lost with the flooding would affect large mammals such as the Huemel deer (in danger of extinction), as well as insects and amphibians. The aquatic mammals who use the river as a travel route would also suffer: the river otter, birds such as the Correntino or Torrent duck and native fish. Other affected species include the condor, viscacha rodents, the black woodpecker and numerous riverbank birds that live in the wetlands and stand to lose their places of feeding, nesting and shelter.

The electrical installation will cross 9 regions of Chile and 64 municipalities including, in zones such as Araucanía, land of indigenous communities and 14 protected wildlife zones. This will cause huge deforestation, the uprooting of farming and indigenous communities and separation from other communities, and will affect various national parks. During the construction of the project an estimated 5,000 workers will come to the area and no thought has been given to the potential impact of these workers coexisting with the locals, or to the potential impact on public services, the environment and other issues.

The Baker and Pascua rivers originate in the Patagonian glaciers. The rivers provide unique sceneries. This area is home to agriculture and livestock subsistence farming that would be severely affected by the project as a whole. Local tourism would also be destroyed. The inhabitants of this region are attempting a model of development

summarised by their slogan “Aysén, Life Reserve”. This will not be possible if the dams, electrical installations and related works destroy the landscapes.

Various recent academic studies have pointed out that the electricity created by this project is not only dishonest but is also unnecessary. Its objective is to supply “cheap” energy to the environmentally damaged city of Santiago, capital of Chile, as well as to mining operations situated much further north where there is the highest level of potential solar power in the world. Chile is one of the richest countries in terms of sources of non-conventional renewable energy (solar, wind, geothermal, ocean, biomass); and has a huge potential, estimated for the year 2025 at 19,000 GW/h per year, that is to say more than the potential production of the HidroAysén project. There are many reasons why Chile, a seismic and volcanic country, should develop distributed generation on a smaller scale, using in a wise, equitable and balanced manner, the energy potential of each region. The HidroAysén project would mean total inter-regional unbalance given that for technical reasons 100% of the electricity would be transported to Santiago and the north. That means that Chilean Patagonia and 9 other regions would shoulder all the costs (social, economic, environmental) with not even a single Kw. of electricity in return.

One study carried out by academics from the University of Chile estimated that the projects would represent, on top of the environmental and social damage already mentioned, a loss of 4,000 employees and of 40 million dollars a year in income due to the severe decrease in the number of tourists that would visit a Chilean Patagonia full of dams and criss-crossed with high voltage electrical cables.

The companies, on the other hand, would gain by using a national public asset - the waters and rivers that were confiscated from the Chilean people during the dictatorship- a business worth 1,200 to 1,400 million dollars per year. What is more, if the project goes ahead then
Endesa and Colbún, who currently control 74% of electrical power, would control over 90% of the Central Interconnected System (SIC). This would mean a completely monopolized concentration of water, electricity and income and a huge risk of failure (dams and electrical installations) with the potential loss of 2.750 MW in the SIC (which could happen frequently given Chile’s geographical, geological and climatic characteristics). These levels of monopolization, challenged from the outset and to no avail at the Free Competition Tribunal, also represent a solid threat to Chilean democracy as they represent a co-option of politics, the media, academia and the law courts.

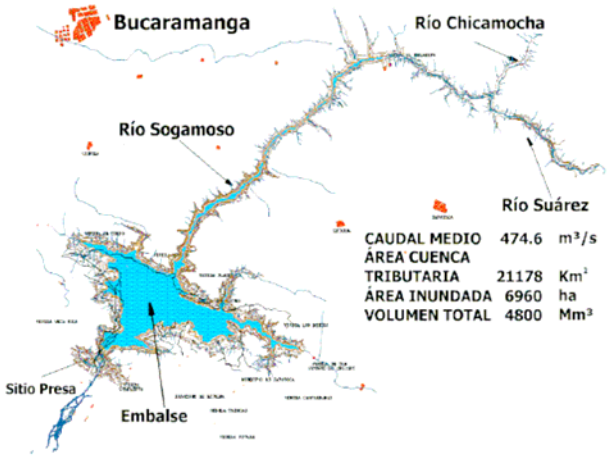
Endesa has already been involved in projects in Chile that have created strong local opposition and that despite this have still gone ahead, such as the Alto Biobío dam. The company monopolizes control of the water rights and the electricity system, and is capable of resorting to all manner of schemes in order to put their projects into action, using a combination of political pressure and lobbying, buying of loyalty, marketing and publicity in order to achieve its goals of increasing private benefits to those disguised in a halo of supposed public progress. It is now using these same tactics to try to promote its hydroelectric mega-dam projects in Patagonia- projects that will be devastating for the environment and will only perpetuate an inefficient and unsustainable model of development that is damaging for both the country and its

communities- in its quest for private benefit as ultimate goal. All this, whilst at the same time developing intensive advertising campaigns that portray them as a sustainable and responsible company, one that is concerned for the environment and committed to the future. This practise of doublespeak and, in short, cynicism must be exposed.

Impregilo Case
THE SOGAMOSO HYDROELECTRIC PROJECT

The Hydroelectric project on the Sogamoso River[3], in the Department of Santander in North Eastern Colombia, in the mountains of the Cordillera Oriental. The basic aim of the project is to generate electricity; it takes advantage of the flow of the Sogamoso River, constructing a dam across the river, and creating a reservoir. Using the pressure created by the reservoir, the waters are driven through four pressurised tunnels to the site of an underground power station, where four units will be installed to generate electrical energy. The project specifications are as follows:

Parámetros de diseño	Valor
Presa de gravas con cara de concreto	Altura de 190 m
Capacidad Instalada	820 MW
Número de Unidades	3
Energía Media	5056 GWh/año
Período de construcción	5 años
Caudal medio	474,6 m^3/s
Área de la cuenca tributaria	2`117.800 ha
Superficie del espejo de agua	6.960 ha
Volumen total	4.800 Mm^3



Inversión Total: USD 1.400 millones

[Concrete faced gravel-filled dam – Height 190m]
[Installed capacity - 820MW
Number of units - 3]
Average Energy - 5056 Gwh/year]
[Construction period - 5 years]
[Caudal Medio - 474,6 m3/s

[3] The minster for the Environment, Housing and Development (MAVDT by the Spanish acronym) processed the Environmental License for the Sogamoso Hydroelectric Project in Resolution 0476 on 17th May 2000

Area of the catchment basin - 2,117,800 ha]
[Reservoir surface area – 6,960 ha
Total Volume - 4,800 Mm3]
TOTAL INVESTMENT 1,400 million USD

The company responsible for the construction of the dam is ISAGEN SA, a mixed public services company[4], constituted as a Public Limited Company (Plc), with the principal aim of generating and commercialising of electrical energy. The total value of the project is 4.5 billion pesos which amounts to 93% of the company's shares, 3.7 times the operational income, 17.3 times the net earnings for December 2008 and around three quarters of the company's market capital. **This is the second most ambitious project in the country in terms of potential generation (820 MW)** second only to the Pescadero-Ituango project (1.800 MW). To finance the project the company must conduct operations worth 2,7 billion pesos: The Minister of Mines and Energy, Hernán Martínez, reiterated that in the case of "Hydrosogamoso" it should be clear that the economic guarantees for taking the project forward are unquestionable and there is no reason to be concerned about failures in the normal execution of the works. "If bank finance is not found, Isagén will even supply the resources from their own capital", he stated. It is worth mentioning that the government is not guaranteeing credit in the energy generation sector, which means that the multilateral bank may only provide loans through their private investment bodies. Because of this, in December 2009 the Andean Development Corporation (CAF by its Spanish acronym) approved a credit of $140 million USD to the public services company Isagen S.A., to co-finance the construction of the Sogamoso Hydroelectric Power station. On the 25/02/2010 Isagen, after having received the relevant authorisation from the Ministry for the Treasury and Public Credit, signed a bank credit with the most important financial entities in the country (Bancolombia, Banco de Bogotá, Davivienda, Banco de Occidente, Banco Popular, Banco Agrario, AV Villas, BCSC, Banco Santander and Helm Bank) on the local market for the sum of $1.54 billion USD, which is destined to finance the Sogamoso Hydroelectric Project.

Estructura Financiera Hidrosogamoso

	Instrumento	2009	2010	2011	2012	2013	2014	Total
Fuentes	B. Locales 7 años	$ 180	$ 200	$ 180	$ 0	$ 0	$ 0	$ 560
	B. Locales 10 años	$ 140	$ 150	$ 140	$ 0	$ 0	$ 0	$ 430
	B. Locales 15 años	$ 80	$ 100	$ 80	$ 0	$ 0	$ 0	$ 260
	Crédito Banca Local	$ 0	$ 0	$ 338	$ 450	$ 113	$ 0	$ 900
	ECA´s	$ 0	$ 40	$ 93	$ 127	$ 72	$ 0	$ 332
	A/B	$ 0	$ 0	$ 0	$ 124	$ 90	$ 30	$ 245
	Recursos propios	$ 96	$ 209	$ 217	$ 236	$ 148	$ 123	$ 1.028
	Total	**$ 496**	**$ 699**	**$ 1.047**	**$ 937**	**$ 423**	**$ 153**	**$ 3.755**

On 16/12/09 Isagen announced that the Italian firm Impregilo, hand in hand with Conalvías and Técnica Vial, two Colombian construction companies, had created the

4 One of the most significant stock sales in the Nation in 2009 was the disposal of the State's shareholding in ISAGEN S.A. This comes under the Law 226 of 1995, which regulates the disposal of these shareholdings and the constitutes the privatisation of the company following the democratisation undertaken in 2007. The Minister for Mines and Energy has been at the forefront of this process, and chose Credit Suisse-Inverlink as the investment bank responsible for the valuation and sale of the State's participation in the company.

Grupo ICT S.A.S., and won the contract to build the diversion tunnels, floodgates, and access tunnels to the underground power station, and the digging and supports for the collection pool and for the lower area of the projects outflow for a total sum of 178,120,165,301 pesos.

THE CHARGES

CONSIDERING

The murders of social and community leaders who took leading roles in the defence of natural resources and communities, such as HONORIO LLORENTE MELENDEZ[5],

That the environmental licence was awarded to the construction company working on the macro-project in an almost clandestine fashion[6] in 2000, and that the communities were not aware of it being awarded, nor were they convened as required by the regulatory framework.

That the environmental license, which should be based on serious scientific studies of the impact on the ecosystem and communities in the area, was not based on studies conducted according to the regulations.

That the company ISAGEN has never communicated the total area of the project.

That the damage to flora and fauna will be very serious and irreversible, as various species will die out as a result of the macro-project. The entire ecosystem will suffer irreparable negative effects[7].

That ISAGEN has not met with the families located within and outside the flood zone of the reservoir, to clearly communicate about how the negotiations, rehousing and works will take place.

That substantial changes to the micro-climate will affect the plantations located around the reservoir, causing yet more damage, this time to food sovereignty.

The Hydrosogamoso project is located close to the *Nido de Bucaramanga*, which is seismically the third most unstable place in the world. The most important geomorphological feature is the presence of a topographic depression in the centre of the area covered by the project, known as the *flexión del Chucurí*[8], which will increase the risk of flooding in the face of other natural phenomena such as earthquakes. “Yet the government did not order any national entity to do a socio-economic study of the megaproject, there is no evidence as to the veracity of the impact studies, the scope of the productive projects is unclear, there is no specified guarantee in terms of the potential impact of the bio-climate on the agricultural ecosystem, and it does

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5 The Social Forum of the North-East and Magdalena Medio, Censat Agua Viva, Social Movement for the Defence of the Sogamoso River, Committee for Solidarity with Political Prisoners, Corporación Guayacán, Comunal Federation of Santander, Committee of Environmentalist Organisations, Constituyente De Betulia, Magdalena Medio Integral Peace Observatory, Civil Society Peace Assembley, Workers' Human Rights Space for Magdaleno Medio, Popula Feminist Organisation, Santander and Bucaramanga Teachers' Collective, October 20th 2009.

6 Public Environmental Hearing for the citizenry – Document of 29th April 2009

7 Legal Decree 2811 of1974, in Article 28 in reference to the construction of dams and reservoirs establishes that “the license will be awarded once the execution of the works has been checked and provided the activities do not constitute an attack against the conservation of renewable natural resources”

8 INGETEC S.A. *Optimising designs for the tender and the environmental impact study of the Sogamoso hydroelectric project* rev. 0 – November 27th, 2008

not include a single study of induced seismic activity[9], among other issues. Isagen and Ingeominas should respond as to why they did not consider the variable of induced seismic activity, considering the closeness to the Bucaramanga and Suratá faults. The study is so dismissive, that they did not even include a geologists in the team of experts"[10]

Weakening or loss of the commercial networks due the land management required for the project.

Accelerated changes in the population and settlement dynamic of the Zone where works will take place, generated by possible resettlement processes, that could effect the capacity to adapt of population nuclei in that zone.[11]

The macroproject practically privatises the Sogamoso River, in the future this could become the property of any multinational that buys out ISAGEN; **in this way the perverse process of water privatisation will be further consolidated** in Santander and in the country as a whole.

The charges being brought before this Popular People's Tribunal against Impregilo SPA are:

- THE LACK OF A LEGITIMATE EVALUATION OF THE ENVIRONMENTAL AND SOCIAL RISKS PRESENTED BY THE PROJECT

- THE LACK OF RESPECT FOR INTERNATIONAL STANDARDS IN THE HANDLING OF SOCIAL AND ENVIRONMENTAL FACTORS IN THE UNDERTAKING OF THE PROJECT (E.G. OCSE AND IFC STANDARDS)

- FAILURE TO ACT AND LACK OF DUE DILIGENCE IN THE PRELIMINARY PHASE OF THE PROJECT. THIS NEGLIGENCE COULD CAUSE IREPERABLE DAMAGES AND SUFFERING.

In the case of Hydrosogamoso, the Colombian State also bears considerable responsibility for the awarding, through ISAGEN SA, of the contract for the Sogamoso project. This responsibility is aggravated, because IMPREGILO SPA's negligent conduct was already evident in Colombia during the construction of the Occidente Tunnel, which is the longest road tunnel in the country and the connection between Medellín and Urabá, guaranteeing the circulation of 4 thousand vehicles per day and the stability of the green mountains surrounding the megaproject. The last landslide to affect traffic in the Tunnel and its connecting roads, both projects completed in January 2007, literally carried away a 600 tonne viaduct.

Although Impregilo SPA has been investigated for a number of scandals at both international[12] and national[13] levels, the Italian governmental seems proud of the

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9 Seismic activity induced by reservoirs is understood as the spacial and temporal distribution of seismic phenomena whose origin could be attributed to the construction, inauguration and operation of a dam. The phenomena has been observed principally in dams with a cylinder height of greater than 100 metres and volumes of water greater than 1.000 million m3, although it is may also present with some frequency in smaller dams (Hydrosogamoso is 190 m high and has 4,000 million m3). The increase in the pressure of the water on the rocks acts as a lubricant for the faults that are under tectonic stress. Earthquakes have been related to the operation of dams in more than 70 cases,with the recording of seismic events induced by dams with a magnitude of 4 on the Richter scale. The most accepted explanation for why dams produce earthquakes is related to the extra pressure of the water on the micro-fractures and fissures of a reservoir and its surrounds.

10 Jaime Ardila Gómez, "Seismic activity, another risk of hydroelectric projects" in *la telara*, n° 13, July-September 2009

11 Ingetec S.A. *Optimising designs for the tender and the environmental impact study of the Sogamoso hydroelectric project* rev. 0 - November 27th 2008

work this company is doing and, through the unconditional support of Berlusconi in Italy, it wins the most important concessions in the country. As an example of this support we can cite the case of the FIBE – IMPREGILO company, investigated for irregularities in the case of the city garbage collection in Napoli: in this case, through the legal decree Nº 245 of 30th November2005 promulgated by Berlusconi's Cabinet, *which* provided for resolution of tender with the company Impregilo "ope legis" (by the power of law). Furthermore, on this occasion, the Prime Minister dubbed Impregilo "Heroes".
Italy is working to make agreements with Colombia[14]. Within the framework of the Assembly of the Inter-American Development Bank (IDB), the Mayoress of Milan, Letizia Moratti, highlighted the advances and transformations that have made Colombia a leading country internationally, and on 30th April the Colombian President, Uribe, said in Rome that his country is ready to receive Italian investment. Berlusconi showed interest in investments in infrastructure, tourism and agro-fuels. Uribe underlined the importance of Berlusconi's role as the then president of the G8 and member of the G20 and considered it auspicious that the Italian Prime minister favoured dialogue with between the Andean Community and the European Union.

It should not be underestimated that this monstrous project affecting 292,670 people is in the PRIOR CONSIDERATION of CDM (UNFCCC) which permits the governments of industrialised countries and companies (natural persons or legal entities, be they public or private) to sign agreements to meet targets for the reduction of greenhouse gasses. However, the dual objective of the CDM (and it would be important to have judicial reflection on this issue for which the Sogamoso could be a test case) establishes that projects should contribute to the sustainable development of the countries in which they take place, as well as reducing the emission of Greenhouse Effect Gasses (GEG). The aforementioned study and other prior studies demonstrate that this instrument contributes little to the receiving country's development. The specific impact on local communities is even more unclear and even negative. This is due to the absence of a regulatory framework or procedure for the inclusion of analysis of the CDM projects' impact on the socio-economic development of the communities inhabiting the affected area[15].

It is important to emphasise that work on the dam is starting now, so there is a possibility for this Tribunal in terms of an worldwide awareness raising campaign about the damages to human and environmental rights; and the unique opportunity to monitor the project and demand respect for international parameters.

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12 For the construction of the Highlands Water Project, in Lesotho in September 2006, Impregilo pleaded guilty to "perverting the course of justice". The company was given a fine of m$ 15 million (more than 2 million US$)

13 Such as in the High Speed Train project between Florence and Bologna for the illegal disposal of waste and serious environmental disaster.

14 The following agreements already exist between Colombia and Italy: Acuerdo de el Istituto Internazionale di Diritto allo Sviluppo Ley 230 26/12/05; General Treaty for Cooperation from Colombia and Italy – Law 502/99. And, at a European level, on 1st March 2010 Colombia concluded the conversations for advances in the signing of a Multilateral Trade Agreement with the European Union.

15 Alberto Guijarro, Julio Lumbreras, Jonathan Habert and Arantxa Guereña, Impact of the CDM on human development, Report of the Intermón Oxfam Investigation, February 2009

Carbones del Cerrejón Ltd

Executive Summary

Movimiento Fuerza de Mujeres WAYUU (Columbia);

ONIC (Columbia);

France Latin America (France).

Against

Carbones del Cerrejón Ltd.

(NIT 86006980042) CRA 13 Bro 93-40 0fc 311.

Company in the coal and energy sector, with Swiss and British capital, in association with capital from Luxemburg and Australia, implanted mainly in Columbia through the Anglo-American, BHP Billiton and Xstrata –a subsidiary of the Swiss company Glencore

The accusing organizations appear before this Court to denounce the actions of the company in the Departments of Guajira, Cesar and Antioquia, among others, in Columbia, with regard to the following elements:

• Columbia has the largest coal reserves in Latin America. Coal is the country's second most important export product, after petroleum. This coal is used in Europe for heating and producing electricity.

• This is the **largest open-air coal mine in the world.** Various EU countries- Germany, Great Britain and France, among others- are the main consumers of the coal exported by Columbia (as well as the United States).

• The transnational company has violated social, human, labour and environmental rights. We denounce the complicity between Carbones del Cerrejón Ltd and the

Columbian State, which allowed the company to take over ancestral lands of the indigenous communities and those of African descent, based on the following elements:

— Use of repression as a way of guaranteeing their exploitation processes

— Use of public forces to provide the company's security services

— Adaptation of the national legislation to serve transnational interests

— Forced displacement of people

— Serious environmental damage

- denying the local population access to water

All of this to the detriment of 3,500 workers, of whom about 800 suffer from illnesses related to working in the mine

— massacres

— Violation of the fundamental right of the Wayuu communities to consultation contemplated in the Columbian legislation, the criteria of ILO Convention no. 169 and the United Nations Declaration on the Rights of Indigenous Peoples

— Violation of the territorial ethnic rights of the indigenous communities

— Payment to illegal groups for the assassination of leaders who oppose the mining project

— Plundering the territory

a) The Columbian Government is accused of facilitating the unrestricted and unregulated operations of the ETN and the pursuit of its interests with the Mining Code and the National Plan for Mining Development 2007-2010.

b) The European companies (producers of electricity, importers and intermediaries in the international trade of Columbian coal) are accused of: making the end user an accomplice in crimes against humanity due to lack of information about the conditions in which it exploits the coal supplier; increasing their wealth thanks to paramilitary and state violence; and favouring the use of coal from Cerrejón because it is very low cost due to favourable conditions the Columbian government has granted to the supplier.

c) The Louis Dreyfus Group from France is accused of implementing a coal terminal project dedicated especially to importing coal from Columbia in the city of Cherbourg, which has the only private port in France. In addition to taking advantage of the low costs of the Columbian coal in economic terms and increasing its use in Europe, the project is going to have a serious environmental impact on the population of Cherbourg.

The IMF and WB are accused of pressuring Columbia to put adjustment programs into practice that lead to favouring the growth and profitability of these companies.

As part of this accusation, and together with the support elements and materials we provide in the annex, we ask this Court:

• to intervene to require a complete and definitive stoppage of the enlargement of the mine

• for an immediate moratorium on the coal imports coming from Columbia to Europe, as well as a moratorium on the mining plan approved by the government of that country

• for the non ratification by the European Union of the Economic Association Agreement it signed with Columbia

• for the creation of an observation and verification mission that would travel to Columbia, to our communities, to witness the problems caused by forced displacement

• to require the complete redress of the material, ecological and social damages caused by the exploitation of the mine

Monterrico Metals

Executive Summary

Monterrico Metals mining company is planning to exploit the Rio Blanco copper mine located in Piura, to the North of Peru. During the exploration stage, carried out between 2003 and 2006, tension with the native inhabitants of the area and peasant communities of Yanta and Segunda y Cajas started to grow. The communities never authorized the mining company to operate in their territories and they fear that their ecosystem will be irreparably damaged and that the mining project will affect the agricultural production of Piura and Cajamarca regions.

In view of this situation, the communities reached local authorities and civil organizations to organize themselves and claim their rights through a process of dialogue with government representatives. When the dialogue failed, the communities started to carry out peaceful actions, such as marches and assemblies, to express their position against Rio Blanco project. It is worth mentioning that in September, 2007, there was a consultation among Ayavaca, Carmen de la Frontera and Pacaipampa districts who voted massively against the mining project. This consultation was called by local authorities, since national authorities failed to carry out a free, previous and informed consultation with the communities, therefore not complying with national and international regulations.

Until May 2007, Monterrico Metals was a British company present in the AIM London Stock Exchange which carried out exploration works through its subsidiary, Majaz SA. In this period, the company and the British government were closely linked, as it is shown by the appointment of Richard Ralph (UK Ambassador to Peru between 2003 and 2006) as Monterrico Metals Executive Director.

In May, 2007, 89.9 per cent of Monterrico Metals shares were sold to Xiamen Zijin Tongguan Investment Development, a group of three large Chinese companies with private and state capitals with mining, smelting, logistic, port operations and other projects in countries such as China, Burma, Mongolia, South Africa, Vietnam, Afghanistan and Philippines. The name of the subsidiary is changed to Rio Blanco Copper SA. In September, 2007, the Zijin Group sold 10 per cent of Monterrico total shares to LS-NIKKO Copper Inc, a Korean-Japanese joint venture and member of the LG group, and thus Zijin currently controls 79.9 per cent of shares. Shortly after, in April 2008, Monterrico Metals headquarters were transferred to Hong Kong and in June, 2009, the company withdrew from the London Stock Exchange, which makes it clear that this company and the projects in Peru are in control of the Chinese owners.

The fact that they left the Stock Exchange raised concerns over the transparency of the management of Rio Blanco Project and on the possibilities of an appropriate

monitoring carried out by the population about its development and local impacts. As research for this report shows, the Zijin group does not publish any specific detail about their environmental, social and fiscal behavior. Therefore, it is difficult to know the true plans of the Zijin Group with reference to the Rio Blanco mining project. Among the impacts caused by the presence of the mining company we highlight the following, which affect particularly Ayavaca and Huancabamba communities:

Rio Blanco Copper SA´s (known before as Majaz SA) illegal occupation of the territories of peasant communities Yanta and Segunda y Cajas, who never authorized the mining company to start operating in their territory. For this reason, legal proceedings have been brought against the mining company.

Environmental damage caused by exploration works: in February, 2008, Rio Blanco Copper SA was sanctioned by the Energy and Mining Investment Supervising Agency (OSINERGMIN) with a fine of 350 thousand Nuevos Soles due to pollution of liquid effluents and for expanding the exploration area without previously approved environmental studies.

Monterrico Metals subsidiary companies currently control 35 mining concessions, covering over 28 thousand hectares. These mining concessions have been granted despite state bodies considering them natural protected areas due to their contributions to the environment. The beginning of these works would represent a threat for cloud forests, an important source of water and biodiversity.

Human Rights Violations

The mining company is risking civil, political, economic, social and cultural rights of the communities. When the communities started to claim their rights, the forces of order, instructed by the Government and the mining company, responded with violence, which has resulted in four confrontations with many deaths. In August, 2005, 29 people were kidnapped and tortured in the campsite of Majaz SA. The victims of this sad event filed a complaint against the British company to demand compensation for damages. The legal proceedings are pending in the High Court of London.

Persecution and defamation. Around 300 community members, local authorities, teachers, activists, lawyers and members of CONACAMI and other organizations who oppose and denounced Rio Blanco mining project are accused of endless crimes, such as terrorism, kidnapping, instigation of crimes and damage. With the complicity of State authorities, the denunciation of non-existent crimes were accepted, which were generally filed by parallel “social organizations” created by the mining company. The goal of this criminalization policy is to intimidate all people who oppose Rio Blanco project.

We hope that the Permanent Peoples´ Tribunal contributes to the diffusion of the “Rio Blanco Case”, since this is an emblematic case that reflects almost every vice of the mining activity in Peru (and Latin America). We expect to raise awareness on the population and generate public discussions, in addition to exert more pressure on the political decision-making spaces and the Peruvian government.

We also hope that a ruling by the PPT grants legitimacy to our arguments in the public debate about the disagreements between transnational (and national) extractive industries and indigenous communities.

PLUS PETROL CASE

EXECUTIVE SUMMARY

VIOLATION OF THE RIGHTS OF THE QUECHUA PEOPLE IN THE PASTAZA VALLEY BY THE TRANSNATIONAL COMPANY PLUS PETROL RESOURCES CORPORATION NV

OF THE CASE

1) The accusation:

We present an accusation against the company Pluspetrol Resource Corporation NV, of Argentinean origin, located in Holland, as the direct author of the unpunished contamination of the valley of the Pastaza river, in the Peruvian Amazon, with the waste water from petroleum production. In doing so, it has directly violated the following rights of the Quechua People of the Pastaza region:

- The right to the territory consecrated in the ILO Convention no. 169 and in the United Nations Declaration on the rights of Indigenous Peoples. In Peru, these instruments have been ratified and, furthermore, the Constitution recognizes the right to own land and the autonomy in its use of the native communities.

- The right to free determination consecrated in the UN declaration on the rights of Indigenous Peoples. The Quechua people have been deprived of their traditional means of existence and currently depend on the assistance of the company.

- The right to the environment, recognized by the Peruvian Constitution, the Stockholm Declaration, the Rio Declaration on the Environment and Development, and indirectly by the PIDESC, as a condition and component of the right to Health.

- The right to health, established in article 12 of the PIDESC. This is also expressly recognized by the Peruvian Constitution and by diverse infra-constitutional laws.

- The right to water, established by Observation Number 15 of the Committee on Economic, Social and Cultural Rights, in application of the Right to proper housing and health.

We present an accusation against the Peruvian government as co-author and main party responsible for all these human rights infractions, for establishing the legislative and institutional framework that has allowed the company to operate in these conditions until the year 2009, without requiring remediation of the impacts produced up until the present day.

Likewise, the Peruvian state has established a system of police control over the neighbouring indigenous communities of the area of PLUSPETROL operations, infringing the basic freedoms of the indigenous population in this area. The company PlusPetrol is the beneficiary of and direct accomplice to these policies of repression and criminalization.

We present an accusation against the country of Holland, for allowing a company that carries out these types of unacceptable contaminating activities to benefit from the tax laws in their country. With this, there is also an illegitimate transfer of resources from the south to the north, to the detriment of the less fortunate populations, whose States do not receive tax money that is necessary for the development of these populations.

2) The PLUSPETROL Group

The *Pluspetrol Resources Corporation* (from here on: **Pluspetrol Group**) is an Argentinean petroleum company that initiated its expansion in 1979, with operations in Columbia and the Ivory Coast, and continued on to Bolivia, Tunisia and Algeria, through its local affiliates. Finally, it entered the Peruvian market, where it is currently the main petroleum producer in the country.

In the year 2000, the management of the Pluspetrol Group decided to change the headquarters of the company from Buenos Aires (Argentina) to Amsterdam, capital of the Netherlands. The Pluspetrol Group in Amsterdam has no infrastructure or personnel working for it, consisting only of a “company with a postal address”, like so many others that immorally benefit from the tax advantages of the Netherlands, and allow these societies to guarantee high levels of quality of life for their population in exchange for suffering in the Southern part of the world.

According to the public registries of the Netherlands, the Pluspetrol Resources Corporation represents a value of 3,600,000,000 Euros. As it is an *Anonymous Society,* little is known about the shareholders of this “matrix”. According to the National Supervisory Commission of Companies and Assets of Peru – CONASEV – it would be a financial corporation called Centennial Partners S.A.R.L who would control the company with 85% of all the shares. Furthermore, it names as shareholders and/or management diverse members of the Rey y Poli family of

Argentina, the American petroleum business-owner Steven Crowell and the Intertrust investment fund with its headquarters in Amsterdam, the Netherlands.

3) Facts that support the accusation

Systematic and unpunished contamination.

From the beginning of the decade of the 1970's, petroleum activities have been carried out in the ancestral lands of the indigenous Achuar, Quechua and Urarina communities. The 1-AB portion, in the high valleys of the Pastaza, Corrientes and Tigre rivers, was initially in the hands of the Occidental Petroleum Corporation of Peru (OXY), and today it is operated by Plus Petrol North. At the time the operations began, there was no legislation in Peru protecting the environment or parameters that made it possible to measure the maximum levels of contaminants in the water sources from hydrocarbon activities.

Thus, the petroleum activities in these portions of land took place without even a minimum concern for the negative impacts on people or the environment. The underground water, with high levels of contaminants, were dumped into the Corrientes, Tigre and Pastaza rivers, together with the hydrocarbons and other concentrates stemming from petroleum production. Although environmental legislation was passed in 1994 in Peru, PLUSPETROL was allowed to maintain its practices of dumping into the Pastaza river until April of 2009. The Pastaza river has been receiving contaminated water for more than 38 years, even though for the indigenous peoples it represents food, recreation and transportation.

Scenario of repression and criminalization of the protests

Due to the violations of the rights of the population, the indigenous communities organized a protest that involved taking over the petroleum installations, specifically its airport, in March of 2008. They were looking to create a situation that would force a dialogue with the company. However, the response of the state and the company was the repression and judicial persecution of the leaders involved.

Twenty-two indigenous leaders were held prisoner for weeks and months. Some of them were deprived of their freedom for up to 18 months. At the moment, all of them have been released and absolved of the charges in first instance. The Judicial sentence alludes to a policy of criminalization of the social protest and makes clear that the 169-ILO Agreement must be considered as the element for judging this conflict.

4) Petitions to the Court:

- Spread news about the case in the European public opinion
- Demand that the State of Holland investigate the actions of PLUSPETROL
- Collect information about the shareholders of the PLUSPETROL group and the economic situation of the company.

- Require that the PLUSPETROL group and the Peruvian State completely remediate the environmental impacts in the Pastaza valley and that they respect all of the individual and collective rights of the Quechua people.

ACCUSATION PRESENTED BY ATTAC-MADRID

Repsol in Argentina

Executive Summary

Repsol stand accused of operating in an unscrupulous fashion in Argentina to deliberately plunder non-renewable hydrocarbons, deny Argentinians the right to energy, violate the contracts for their concessions as well as national and international legislation and cause serious and persistent damage to the environment, life and culture of the inhabitants, particularly indigenous communities in the territories where the operate.

Repsol's principal operations in Argentina belong to their subsidiary YPF S.A. Although at the time YPF was a mere shadow of the great *Yacimientos Petrolíferos Fiscales* (Y.P.F.), it had been a world pioneering state company that developed the Argentinian energy system, and the purchase of the company by Repsol in 1998 gave them monopoly control of the strategic energy sector. For this they relied on the support of the International Credit Organisations (International Monetary Fund and the World Bank), which pushed the neoliberal policies of the Washington Consensus in Argentina and forced the State to pull out of the sector, allowing transnational corporations to take control of national energy policy.

Later Repsol expanded their dominion over the market through the purchase of other companies and the merger with Gas Natural (which had also taken advantage of the Argentinian privatisations to obtain part of the national energy grid at dumping price).

With the support of the International Credit Organisations, Repsol has obtained a position of absolute control of Argentinian energy which it has used to implement an infrastructure for the plundering of non-renewable natural resources, with no interest in or respect for national or international laws, cultural and environmental rights or the rights to life or energy.

Without making any risky investments they have extracted as much as they

can from the Argentinian oilfields as a way of generating large profits. Their irrational use of resources has meant the loss of a large part of Argentinian natural resources. The reserves of hydrocarbons (which belong to the Argentinians, and to which Repsol merely holds the concession) have degraded to unsustainable levels, victims of neglect and speculation. Despite their failure to meet obligations, Repsol is continually supported in their criminal operations by the national and provincial States, which give in to the pressure of the company's lobbying power, and that of the International Credit Organisations and the Spanish State itself.

As a consequence, instead of being punished, Repsol is given impunity to violate the law while receiving ever increasing privileges, such as the extension of the concession for their largest oilfields, financial benefiters, etc. Meanwhile, their negligent attitude to nature and the rights of the peoples that have lived for centuries in the lands being exploited continues to increase.

The case of the Lonko Puran Mapuche Community in the Province of Neuquén is presented here, how the rights enshrined in the National and Provincial Constitutions and International Agreements (UN, ILO) are systematically violated by Repsol in the oilfield at Cerro Bandera. Their culture and ancestral values and their very way of life and relationship with nature are ridden over roughshod by Repsol's operations which threaten not only the lifestyle but the very survival of the community as a result of pollution, destruction and neglect.

Despite the fact that provincial, national and international legislation recognises the “ethnic and cultural pre-existence” of all indigenous peoples, their rights to state recognition of their communities, to property and possession of “the lands that they traditionally occupy” and to “participation in the management of their natural resources and other interests that affect them”, Repsol continuously violates these rights in the case of the Mapuche people. The company has operated at will in the Community's territories, directly affecting the life of the community and leading to the persecution of community leaders and the disregard for the community whose demands are ignored.

Repsol uses its market power to control all sectors of the Argentinian energy system. Through their market and lobbying power they ensure that prices and tariffs on the Argentinian market resemble international levels, ignoring the costs and leaving large sectors of the Argentinian population with no possibility of accessing energy, increasing both petrol profits and poverty. Argentina currently pays Repsol

values considerably more than cost price for its own natural resources, for which they obtain no benefits. In this way, the right to energy is denied to many Argentinians, as the strategy of plundering and exhausting available resources puts the energy supply of future generations at risk.

BP Case

EXECUTIVE SUMMARY

THE INVOLVEMENT OF THE BRITISH MULTINATIONAL OIL COMPANY BP IN THE FORCED DISAPPEARANCE OF MANY PEOPLE IN COLOMBIA

The British transnational company BP is accused of causing major impact on the environmental, labour and social situations and in particular on human rights in the state of Casanare, in Colombia. In their exploitation zones there have been 2,653 cases of forced disappearance and 9,000 cases of murder, the oil activity has caused forced displacement and has contributed to spreading the culture of fear.

Various reports from national and international human rights organisations have concluded that the oil extraction is connected to the violation of human rights. Within the areas of exploration and exploitation conceded by the Colombian government, all kinds of criminal activities have developed and these affect the population. There are studies that document 2,653 cases of forced disappearance and 9,000 cases of murder, the oil operations have caused forced displacement and the spreading of the culture of fear. This is why for a long time the affected communities did not enforce their rights or confront the oil giant BP.

What is more, small landowners in Casanare have been forced to sell up and leave their farms by paramilitary groups. These lands have then been used by BP for oil extraction. There are even testimonies to the fact that the British company's real estate solicitor was involved.

With regard to the impact on the environment, BP has caused earthworks, the drying-up of water-bearing strata and natural wells and there have been reports of river contamination due to waste from the oil operations. There is also major sound and light pollution. This means that the development of other activities such as agricultural or livestock farming by the local populations is impossible.

Concerning impact on the labour field, right of association is not guaranteed within the multinational company since workers who join unions are vetoed and the legality and legitimacy of the trade unions are not even recognized. Women are pushed into jobs at the bottom of the salary scale and there are no training centres for young people.

BP have limited themselves to building small scale housing solutions and training and making small contributions to community actions in the implicated areas which do not benefit the wellbeing of the whole community. This company has not acknowledged

in the past or present that the social, environmental and work problems affect the whole municipality and not just their zones of operation.

Plaintiff organisations:
Corporación Social Para la Asesoría y capacitación comunitaria (COSPACC) de Colombia y Colombia Solidarity Campaign

NESTLÉ ESPIONAGE CASE

EXECUTIVE SUMMARY

THE CHARGES

Facts:

The infiltration of Attac by Securitas on behalf of Nestlé.

In Spring 2003, a few weeks before the G8 summit held in Evian, which prompted numerous demonstrations in Switzerland, Nestlé informed the cantonal police that it had infiltrated "alter-globalisation" organisations in Switzerland. It did so through Securitas, the largest surveillance firm in the country. Securitas had asked one of its agents to join Attac-Vaud's working group "Globalisation and Multinationals", which was editing a book criticising Nestlé. The agent, acting under a false name of Sara Meylan, started spying on Attac in August 2003, carrying on the work until June 2004. During that year she attended almost all of the group's meetings and wrote a report after each one. Thanks to these reports Nestlé was kept informed about all the discussions taking place at the core of the group (see below, context of infiltration). After a year the infiltrator informed her company, Securitas, that she no longer wished to work in espionage and she did not return to the Attac group again. In January 2005 she was replaced by another spy who did not leave the Attac group until September 2008, after being found out.

The infiltration was uncovered in a programme on TSR, the French Swiss TV channel, on 12th June 2008. After the programme, members of Attac who had been spied on filed a complaint against Nestlé and claimed damages in the Canton of Vaud's courts. From the start of the investigation in July 2008 the judge was in possession of part of the evidence relating to the espionage, since the first spy came forward of her own free will, admitted that she had infiltrated Attac, and presented to the judge all or part of the reports which she had written. Her testimony forced Nestlé and Securitas to recognize some of what had occurred, which enabled the judge in charge of the proceedings to declare that there was no motive to doubt that Nestlé and Securitas were acting in good faith.

Nestlé and Securitas affirmed that the espionage ended in Autumn 2005, and the judge asked for no evidence to back up this claim, despite the fact that the second spy remained at Attac until September 2008.

On 12th February 2009 the judge closed the criminal case, arguing that there was nothing to demonstrate that Swiss law had been violated, and that, even if a crime had taken place, the time-frame for conviction had already expired. The judge ruled, without any proof, that Nestlé's spying on Attac had ended in Autumn 2005, the expiry period for this crime being three years. Attac militants appealed against the decision to close the case, and the appeal was partially accepted by a tribunal in the Canton of Vaud. However, the same judge overturned the appeal, and closed the case for the second time a few months later, on 29th July 2009. After the case was shelved this second time, Attac decided not to appeal again.

The civil proceedings are still going on. Even after two years, however, the trial has made no progress.

The context of the infiltration: the fight against the privatisation and over-exploitation of water, and Nestlé's violation of trade union and labour rights.

In 2000 and 2001, Attac Neuchâtel, having mobilised public protests, managed to stop Nestlé from receiving permission to bottle water from the village of Bevaix, in the Canton of Neuchâtel.

From 2002 onwards, Attac, along with other organisations in Switzerland, supported the citizen movement's struggle against the production of Pure Life and the subsequent over-exploitation of the Water Park in the town of São Lourenço in Brazil. In 2006 Nestlé finally closed down the production of Pure Life in São Lourenço. The representative of the citizens' movement in Brazil, Franklin Frederick, is mentioned on various occasions in the reports made by the Securitas agent who infiltrated Attac, between 2003 and 2004. The Swiss police also found another report on Franklin Frederick on a laptop computer belonging to Securitas, dated 2006.

Furthermore, from 2002 onwards, Attac, along with other organisations in Switzerland, supported trade union Sinaltrainal's fight against Nestlé's violation of industrial and trade union rights in Colombia. Information concerning these struggles is also to be found in the infiltrator's reports. In 2005 the Multiwatch organisation was formed, of which Attac also became a member, and which organised a public hearing for 29th and 30th October 2005 with the “Nestlé case”, about Nestlé in Colombia (with the participation of a branch of the Permanent Peoples' Tribunal) and an international forum on Nestlé. During the whole process of preparation for the hearing the second spy in the Attac group was receiving internal information from Multiwatch on a regular basis.

The charges:

By hiring Securitas to infiltrate and procure information about people active within the Attac organisation, as well as about the content of their meetings, Nestlé illegally violated the

privacy of the people present. Due to this infringement, people both inside and outside of the country who collaborated with the working group from Attac have been affected.

The Vaud cantonal police are charged with collusion, as they were previously informed about the infiltrations. Since the police of the Canton of Vaud accepted these infiltrations, were not interested in the names of the organisations being infiltrated, and took no measures against said infiltrations, they were accomplices to the infiltration of the Attac group.

The justice system in the Canton of Vaud is charged with impunity, as they closed the criminal case after an inquiry which left many questions unanswered and accepted various contradictions without comment.

MAIN IMPACT ON HUMAN RIGHTS

The infiltration into Attac-Vaud has had direct and indirect consequences on the work of the trade-unionists and organisations who criticise multinational companies. Fear of possible infiltrators in a group and the ensuing atmosphere of mistrust complicate normally good and efficient work. Apart from this, the consequences at international level are immeasurable. It is not known what became of the information that was gathered, to whom it was passed on. If sensitive personal details were passed on, for example in Colombia, this represents a security risk for the people implicated. Even if with the infiltration they did not directly violate the right to meet and of freedom of expression, the effect of the infiltration equates to such an offence.

BRIEF PROFILE OF NESTLÉ

Nestlé S.A. is a Swiss multinational, founded in 1866, currently world market leader in the food industry. It owns 449 factories, of which 76 are in Latin America, in 83 countries spread out over all the continents of the world. In 2009, the Nestlé group's turnover was 107,000 million Swiss Francs (around 75,000 million Euros) and they made a gross profit of 10,400 million Swiss Francs (around 7,300 million Euros).

PETITIONS TO THE COURT

We hope that the Court will help to divulge the information about Nestlé's completely unacceptable practices. This disclosure is especially important in order to make aware all organisations that work on transnational companies.

We hope that the Court clearly condemns the actions of Nestlé, and that they also condemn the collusion of the police and the impunity of the justice system.

Bayer Case

Executive Summary

Tauccamarca – a small corner of the Andes

The community of Tauccamarca is three hours away from the Imperial City of Cuzco in Peru.
Some 300 people live in the community, with no electricity, water or drains in their homes.
Poverty reigns, as people survive from agriculture and livestock farming for their own consumption.

In October 1999:

- Tauccamarca was the scene of a terrible disaster.
- 44 children were poisoned by breakfast food contaminated with a highly toxic organophosphate pesticide called Parathion Ethyl, which had been banned since 1998.
- 24 of these children died and the others have been left with neurological repercussions and other serious health problems.

Tauccamarca demands justice!!!

In the Peruvian parliament:

- A subcommittee was set up in 2001 to investigate this tragic occurrence.
- On 29/05/2002, the President of the subcommittee investigating what happened in Tauccamarca sent its final report to the President of the Agrarian Commission (July 2001 – July 2002).

- Even now, the community of Tauccamarca is still waiting for the Peruvian parliament to react to this report.

In the justice system:

- In Cuzco, the First Criminal Court found Isaac Villena Nuñez, a teacher, guilty of aggravated culpable homicide. It sentenced him to provide community service and pay S/. 800.00 in civil damages to each of the injured parties. Payment of these damages was to be shared between the teacher himself and the Ministry of Education, which the court found to be jointly liable as a third party under civil law.
- On 21/10/2001, Mr. Victoriano Huarayo Torres, representing the victims' families, filed suit in the Seventh Specialist Court in Lima against the authorities at the time, including the General Directorate of Environmental Health (DIGESA/MINSA) and the National Agrarian Health Service (SENASA/MINAG), as well as the Bayer company, demanding compensation for damages.
- On 12/04/2007 the judge in the 7th Civil Court, part of the High Court of Justice in Lima, convened a conciliation hearing. This was postponed for procedural reasons, reportedly at the request of the Ministry of Agriculture.
- The judge stated that she would issue a ruling to guide the case forward and set a date for a new conciliation hearing as soon as possible, but this has still not happened.
- On 13/05/2008 the Tauccamarca victims' families and their lawyer from IDELE had a meeting with the new 7th Court judge to find out what was happening with their case. The judge said that he would take up the case again immediately.
- In March 2010 we were told that the case is still pending because the accused requested the inclusion of the teacher from the single-teacher school. According to the court, it has not been possible to find this teacher to deliver the order to attend court.

Conclusion: this case has still not been resolved in the justice system. The community hopes that their lawsuit will not run out of time, because the company is exerting constant pressure for the case to be forgotten.

ATLANTIC STEEL COMPANY (TKCSA)

EXECUTIVE SUMMARY

Companhia Siderurgica do Atlantico (TKCSA) is a steel plant with an integrated port that has a production capacity of 5.5 million tons of steel slabs a year. The company is being accused of:

- Disregarding environmental laws.
- Causing severe negative impact on public health and especially on children.
- Destroying the environmental resources of Sepetiba Bay.
- Irresponsibly storing mud contaminated with Cadmium, Arsenic and Lead which was taken from the seafloor by dredging.
- Violating the rights of workers involved in the construction of the plant, i.e. by not providing them with safety equipment.
- Criminalizing resistance, often using armed militias as a way of containing social movements opposed to the project.
- In February 2009, a fisherman had to be included in the Federal Program to Protect Human Rights Defenders due to the threats he had been receiving.
- Due to the works, the local fishermen are unable to perform their job.

About Atlantic Steel Company

Launched in 2006, TKCSA's industrial, steel and port conglomerate is a *joint venture* formed by Vale (27%) and Thyssen Krupp (73%). It will be the largest in Latin America with production capacity of 5.5 million tons of steel slabs a year, incurring in serious impacts on the environment and lives of the people of Sepetiba Bay. The conglomerate consists of a steel plant integrated to a 490 MW capacity thermoelectric plant and a port with two terminals consisting of a 3.8 kilometres-wide access bridge and a 700-meter-long pier cutting across mangroves and the ocean.

All the conglomerate production will be earmarked for exports: 2 million tons to be processed in Germany and about 3 million to the U.S., Mexico and Canada markets. The steel plate production will be exported to other ThyssenKrupp units, where they will be transformed into rolled sheets with higher added value.

The project has broad support from Brazil's municipal, state and federal governments through direct funding form the National Bank for Economic and Social Development (BNDES) as well as tax exemptions.

ThyssenKrupp is one of the largest German steel companies.

Vale is a transnational company based in Brazil. It is the second largest mining company in the world, only behind BHP Billiton.

At the time of the early protests against TKCSA, the company stated that it would compensate the fishermen and would try to reach a deal. However, nothing has been done. Subsequently, the fishermen tried to contact the company several times, using different channels. The same attempts were tried by their lawyer, Victor Mucare. But the company has always refused any type of dialogue. As the complaints persisted, the company adopted a silence approach, that is - not answering nor appearing at public hearings and dismissing the allegations as baseless. When it does make any public announcement at all, the company always states that cases of dissatisfaction regarding the plant's construction should be directed to the Brazilian government which has approved all construction stages. This was stated again in January 2010 at a public hearing in the German parliament.

As the irregularities and violations continue, various groups, organizations and social movements in Brazil and other countries, such as Germany, kept working together in order to put pressure on the corporations responsible for the project. In one of such initiatives, a group of activists and fishermen participated in a ThyssenKrupp´s Shareholders Meeting in Bochum, Germany. On this occasion, all complaints were made directly to the board of the company.

In consideration of the damage it has caused in the region and aiming to strengthen its social responsibility campaign, TKCSA intends to carry out some social investments in its area of influence. It is worth noticing that such social investments are not even comparable to the environmental and social costs (over the life of fishermen, in the region's income generation and public health) this venture has been causing. These investments will be made, especially in health, with the renovation of the Pedro II Hospital and in education, with the implementation of an educational centre in Itaguaí. It is also interesting that BNDES will sponsor these social investments with a total amount of USD$5.6 million. The company has stated on several occasions, including during its annual stockholders meeting in 2010, that it will not, under any circumstances, compensate the fishermen or other residents. We are attaching at the end of this document a table containing all of the company's social projects within Sepetina Bay. These projects include the donation of a substantial sum for FEEMA/INEA with the goal of reforming its headquarters, the donation of a brigade to the fire department and motorized patrols to the port's headquarters. It is important to underline that these organs should, under the Brazilian law, be monitoring the company's actions.

Currently, there are no treaties between EU - Brazil. The European Union, in that sense, is supporting this direction and showing complicity to the venture through its silence and omission in regards to our complaints, leaving the company free to operate with impunity.

Some statements and rights that are systematically violated by the company are: Universal Declaration of Human Rights of the United Nations; Declaration on the Right to Development, International Labour Standards (ILO), the Brazilian Federal Constitution, among others. Furthermore, the company does not operate in respect to the OECD Guidelines for international companies.

The participation of TKCSA´s case in the Permanent Peoples' Tribunal is part of our strategy to highlight these complaints and give international visibility to the case. In 2008, in Lima, we participated for the first time in the Tribunal. On that occasion, the fisherman, Luis Carlos and the environmentalist, Sergio Ricardo, made allegations of human rights violations and other irregularities committed by TKCSA in Lima, Peru. The Lima´s session of the Permanent Peoples' Tribunal in May 2008 was a milestone in the struggle of Sepetiba Bay´s fishermen against this project from Atlantic Steel Company (TKCSA), Thyssen Krupp and Vale. The final statement of the TPP in Lima in 2008 was used by fishermen's associations and supporting social movements in various legal strategies and to apply political pressure.

Now, in May 2010, we prepare to contribute towards the TPP in Madrid.