



## Obstacles to confronting transnational power in Latin America and the Caribbean

By Friends of the Earth Latin America and the Caribbean (ATALC)  
December 2022

### 1. Introduction

This report gives continuity to the analysis developed by Friends of the Earth Latin America and the Caribbean (ATALC for its acronym in Spanish) in the last years as a contribution to confronting the growing power and impunity of transnational corporations (TNCs) and the resulting rights violations and aggravation of systemic crises in the region. With the aim of supporting the struggles of social movements and organisations in diverse territories and countries as well as at the regional level, we summarise our critical analysis of the tools and strategies used by TNCs to increase their power and impunity. We seek to expose the obstacles that we must overcome in order to effectively address the socioecological crises that threaten the sustainability of life and to advance in the construction of peoples' sovereignty alongside allied movements and organisations in the region.

The report begins with a review of what the neoliberal model has meant for the region. Calling attention to the corporate control of the agrifood and energy systems, we highlight experiences in a few countries in order to reveal and exemplify the strategies TNCs deploy in those sectors. We then explore the use of trade liberalisation and investment protection as tools to continue promoting the control of public policies and territories. Further on, we look at criminalisation as a mechanism that benefits TNCs in different scenarios in the region. Finally, we look back at one of the cases of historical injustice in Latin America – Chevron's crimes in Ecuador – to discuss an element that enables the continuity of impunity: how TNCs constantly evade justice due to the absence of binding instruments to hold them accountable for their actions.

### 2. Transnational control of the energy and agrifood systems<sup>1</sup>

ATALC's regional research process conducted over the last years to identify the strategies and tools that TNCs use to increase their power included a set of national assessments of the energy and agriculture sectors. These assessments provide insights on some of the existing obstacles to confronting transnational power at the regional level, with differentiated elements based on the specific situation in each country.

Below are some of the common elements we identified in the region:

- Most regulatory frameworks for energy and agricultural policies were imposed in anti-democratic scenarios that deny social participation and the rights of peoples, including contexts of militarisation and the criminalisation and persecution of social movements. These anti-democratic processes have affected certain sectors more than others – in particular, Indigenous Peoples, peasants, Afro-descendent people, the working classes, and women.

- TNCs are leading a strong offensive to control territories. Through lobbying and political pressure, TNCs have induced governments aligned with the neoliberal model to broaden the

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<sup>1</sup> The information in this section comes from the national assessments developed by ATALC organisations in 2021; analysis per country can be further expanded on in the national assessments and in the report, *Resisting the Growing Power of Transnational Corporations in Latin America and the Caribbean. Compilation and Summary of National Assessments*. ATALC. 2021. Available at <https://atalc.org/2022/02/10/resistencia-al-aumento-del-poder-de-las-transnacionales-en-america-latina-y-el-caribe/>

agricultural frontier and expand monoculture plantations, as well as to push forward hugely destructive energy mega-projects.

- Neoliberalism and the power exercised by TNCs have materialised in governmental programs to reform the State, public policies, and regulations – with multiple adverse effects on territories and peoples that are further exacerbated by trade and investment liberalisation treaties.

- All cases examined surfaced direct impacts on women, with a marked emphasis on the lack of access to land and means to sustain livelihoods. Violence against women is of particular concern, especially as it has become more severe due to militarisation and regulatory changes that undermine women's rights.

- Dispossession, forced displacements, and the precariousness of life in rural areas have intensified through policy and regulatory changes, as well as with violence and persecution. Land tenure and territorial conflicts go hand in hand with the criminalisation of defenders.<sup>2</sup>

Looking backwards, the 1990s brought a series of political reforms in different Latin America and Caribbean countries, contextualised within so-called State modernisation or restructuring. The results were economic liberalisation and the creation of conditions that enabled the imposition of the neoliberal model. Constitutional and regulatory changes paved the way for the privatisation and commodification of common goods, opening the door for private companies and TNCs to participate in the provision of public services, among other sectors. The arrival of public-private partnerships ushered in broader participation of TNCs.

Meanwhile, the implementation of Free Trade Agreements (FTAs) created territorial conflicts and facilitated the accumulation of capital through the transnational occupation of national territories.

In the countries analysed, governmental energy and agricultural programmes favoured TNC participation, and such programmes remain as obstacles to confronting transnational power.

For example, economic policy changes in Costa Rica drastically affected the agriculture sector. The harms and impacts came from the Structural Adjustment Programmes implemented between 1985 and 1991; the 2007 approval of the Free Trade Agreement between the United States, the Dominican Republic and Central America (DR-CAFTA); and Costa Rica's entry in to the Organisation for Economic Co-Operation and Development (OECD) Committee for Agriculture in 2020. Agricultural policies in recent decades have thus favoured an agro-export model that focuses on the promotion of monocultures, causing profound economic, social, and ecological imbalances. On average, 61% of the country's staple crops comes from external markets: 34% of rice is imported, as is 69% of maize and 73% of beans.<sup>3</sup>

In Mexico, policies to open up trade have undermined peasants' rights. Of particular importance was the negotiation and subsequent implementation of the North American Free Trade Agreement (NAFTA). Since NAFTA's entry into force [in 1994], Mexican governments pushed through reforms of different State entities that dealt with peasants and producers, and with rural development. This led to the disappearance of several key institutions promoting agricultural production, distribution and food sovereignty, gradually orienting the country towards an agro-export model in relation to the United States.

The neoliberal policies implemented by President Peña Nieto's administration led to a significant increase in the profits of large agribusiness corporations such as Grupo Gruma (Maseca) and Grupo

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<sup>2</sup> Ibid.

<sup>3</sup> INEC (2014). VI Censo Nacional Agropecuario. <https://www.inec.cr/censos/censo-agropecuario-2014>.

Bimbo, which increased their earnings to the detriment of peasant and independent producers.<sup>4</sup> These companies focus on large-scale production and national and international markets; they were able to increase their presence thanks to models of distribution and sales that weakened and eliminated small retailers and independent producers.

An immediate consequence of the neoliberal model imposed in El Salvador was the severe damage to agriculture, accompanied by the falsehood that the State should not have a national production policy because the market would facilitate the import of affordable food. This led to the dismantling and disappearance of institutions that supported peasant agriculture, including programmes that, despite the civil war, had enabled El Salvador to have a good agricultural yield. These changes caused a decline in the agricultural sector's share of the Gross Domestic Product (GDP), an acceleration of migration from the countryside to cities and abroad, and an increase in dependence on imported food.

El Salvador's trade policy is largely determined by its commitments within the Central American Common Market (CACM) and those arising from the Free Trade Agreement between the United States, Central America, and the Dominican Republic (DR-CAFTA). The increase and expansion of sugar cane production can be viewed as a consequence of the national commitments made within the FTAs like DR-CAFTA and the Association Agreement between Central America and the European Union, which set sugar export quotas that end up benefiting the corporations that control the market.

In Colombia, the economic opening in the 1990s and the FTA with the United States led national producers to bankruptcy; dismantled institutions that supported peasants and small-scale producers; and installed regulations that favour public-private partnerships. With the support of the United States, the policies were accompanied by the militarisation of the country, using the development aid doctrine as a counterinsurgency strategy implemented through Plan Colombia and, later (in the first decade of the 2000s), under the pernicious democratic security doctrine. TNCs benefitted from military-paramilitary control that ensured their functioning outside of the law and with economic gains based on laws adopted under various forms of corporate capture.

In Argentina, the Bilateral Investment Treaties (BITs) have strongly favoured TNCs. These treaties were primarily signed during Carlos Menem's first neoliberal government between 1990 and 1995, during which a wave of foreign investments in the country primarily focused on the privatisation of public services and transfers of shares within the private sector.

The privatisation wave of the 1990s was followed by numerous lawsuits in international Investor-State Dispute Settlement (ISDS) tribunals. Argentina was the country in the region most frequently sued by TNCs, especially after the 2001 crisis, and was heavily penalised by the tribunals.

The scenario in Brazil became terrifying after Jair Bolsonaro was elected president of the country in 2018, marking the extreme right's ascent to power. His political platform included austerity policies; liberalisation and deregulation of the economy; privatisation and increased exploitation of mining resources; and the expansion of agribusiness.

The Bolsonaro government imposed far-reaching changes that threatened territories and the rights of peoples. Among other aspects of his political programme was the weakening and dismantling of spaces for democratic participation, cutting the budgets and eliminating the autonomy of civil society participation bodies such as the National Human Rights Council and the National Environment Council. His iron-fisted anti-indigenous policy was expressed in multiple ways, for

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<sup>4</sup> Suárez, V. 2013. *El Campo en tiempos de Peña Nieto*. La Jornada del Campo (21 December 2013). [https://issuu.com/la\\_jornada\\_del\\_campo/docs/jornada\\_del\\_campo\\_75\\_web/4](https://issuu.com/la_jornada_del_campo/docs/jornada_del_campo_75_web/4)

example cutting the budget of the National Indian Foundation (Fundação Nacional do Índio – FUNAI),<sup>5</sup> while negotiating and authorising the entry of illegal miners and loggers onto indigenous lands.

The economic liberalisation that swept through the region in the 1990s enabled changes in national policies to favour private sector participation in the different areas of national economies. This facilitated the entry of transnational actors in the agriculture and energy sectors and in the provision of public services. Policy changes, along with the signing of FTAs and BITs, imposed new conditions on the agriculture and energy sectors, adversely affecting public services and leading to territorial conflicts; violations of the rights to food, water and energy; and the dispossession and plunder inherent in the transnational occupation of territories.

### **3. Instruments for neoliberal control**

Peoples in Latin America have struggled and achieved some successes in reversing the advance of the neoliberal model that swept through Latin America and the Caribbean in the last decade aided by pro-corporate right-wing governments that often reached power through coups d'état, institutional and para-State violence, disinformation and manipulation of information. Nevertheless, the framework for dominating the region remains in force, with regimes focused on attracting, promoting and protecting transnational investments, as well as free trade agreements that promote privatisation, commodification and financialization. This framework has been spreading across diverse territories, led by TNCs. A broad review of the contents of the EU-Mercosur Free Trade Agreement and the impacts of Investor-State Dispute Settlement systems clauses included in Bilateral Investment Treaties serve to illustrate how these instruments function.

#### *3.1 EU-Mercosur Free Trade Agreement*

The association agreements between Latin American and Caribbean countries and the European Union are emblematic examples of the obstacles that prevent peoples from confronting the power of TNCs and the expansion of their destructive activities and ability to control diverse sectors and territories. We focus here on the FTA between the European Union and Mercosur [the South American trading block made up of Argentina, Brazil, Paraguay and Uruguay], which has not been ratified yet.

It is worth noting that the spaces for negotiating and agreeing on FTAs are not open for public participation; organised peoples and their social movements have no say in the process. The EU-Mercosur Association Agreement is no exception; the process was marked by a lack of transparency in its procedures and negotiations.

Indigenous Peoples in Brazil, Argentina and Paraguay – among other countries – have been historically attacked by authoritarian governments, such as that of Jair Bolsonaro in Brazil. These governments have grabbed Indigenous Peoples' territories through territorial displacement and dispossession, wilfully ignoring their customary rights to land and territory. The EU-Mercosur Agreement will facilitate the expansion of this dispossession anchored on the logic of large-scale agricultural production that will lead to a higher concentration of land held by wealthy landowners and TNCs. So far, it is not known whether the negotiations have included processes of free, prior and informed consent as guaranteed by ILO Convention 169, or whether the rulings of the Inter-American Court of Human Rights on the right to land have been complied with, which constitutes a flagrant violation of the rights of Indigenous Peoples.

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<sup>5</sup> Justica Global et. al. The Impact of Covid-19 on the Defence of Human Rights in Brazil. Geneva: FIDH. 2021.

As the Transnational Institute (TNI) states, the agreement will subject key sectors to “...uneven competition with big European transnational corporations in sectors such as industrial goods, fisheries and maritime transport, insurance, environmental services (including water and sanitation), financial services and telecommunications, government procurement. The agreement also proposes tougher rules on intellectual property rights (IPRs) that will hinder the transfer of technologies and facilitate bio-piracy and an illegitimate appropriation of knowledge associated with biodiversity use and additional legal guarantees for European investors...”<sup>6</sup>

Pharmaceutical, agricultural, energy, mining, automobile and service companies in the EU will hugely benefit from the agreement, while in Mercosur, large agribusiness exporters will be the biggest winners. For example, TNCs in the meat sector linked to deforestation of the Amazonian rainforest – BRF, Marfrig, JBS, among others – will benefit from lower tariffs. Exports of Brazilian sugar cane ethanol will also increase, with extremely harmful effects such as the exacerbation of the climate, biodiversity and food crises; land and territory grabbing; and increased deforestation linked to the expansion of the agricultural frontier, with associated threats to peoples’ rights.

By tying Mercosur countries to the primary productive and extractive model of agribusiness, and by preventing the diversification of production matrices, the agreement will have adverse impacts on climate, forests and biodiversity through increased pressure on territories, thus leading to an increase in rights violations. Another effect of the growing power of TNCs in the agriculture sector will be an exacerbated use of toxic agrochemicals, which – as we have mentioned in other reports – threatens the health of peoples and territories, biodiversity, the right to water and healthy food.

The agreement will also affect employment and labour rights in the Mercosur countries, limiting them to exporting raw materials and importing the EU’s industrialised products, which will lead to further deindustrialisation in Mercosur. This in turn will result in a loss of decent industrial and service jobs – even if there may be an increase in agricultural and mining jobs, which are known for being precarious work.

*“The FTA establishes that all public services are subject to the general provisions of the agreement. In other words, public services provided by the State in competition with private providers should be subject to free market rules and managed on a purely commercial basis. In this way, public services cease to be human rights guaranteed by the State and become commodities accessible only to those who can pay.”*<sup>7</sup> Thus, the privatisation of public services are expected to expand, affecting achievements made in some countries in defence of these services. National companies will have to compete with TNCs for the provision of services, and experience has shown that TNCs have ample advantages thanks to the economic architecture put in place for this purpose through the corporate capture of public policy.

The chapter on public procurement subjects State purchases to the logic and rules of the free market, setting limits on the use of this instrument to promote the diversification of the production matrix, just transition and food sovereignty.

*“The EU also negotiates trademarks, industrial designs, geographic designations, patents, protection of undisclosed information [or trade secrets], plant varieties,”*<sup>8</sup> thus strengthening the power and control exercised by large transnational corporations. Furthermore, it promotes accession to the Patent Cooperation Treaty.

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6 [https://www.tni.org/my/node/10515?content\\_language=en](https://www.tni.org/my/node/10515?content_language=en)

7 <https://www.redes.org.uy/2021/03/15/10-razones-para-rechazar-tlc-entre-ue-mercosur/> [Own translation.]

8 Ibid. [Own translation.]

Although the FTA includes a section on sustainability, it is framed within the neoliberal doctrine and its main goal is to favour the interests of big business; this undermines the fulfilment of environmental, social, economic and gender justice principles, leaving it to the will of businesses to take voluntary action to reduce or avoid social and environmental impacts.

*“European leaders are using legitimate public concern about the environmental impacts of the agreement to ‘greenwash’ the text”* and thus unblock the final process of signature and ratification. *“One solution proposed by the EU is to require Mercosur countries’ compliance with the Paris Agreement on climate change and commitments to curb deforestation be subject to the dispute settlement mechanism of the FTA between the two regions.”*<sup>9</sup> The EU’s proposal is a false solution to serious problems that it claims to want to solve, such as the climate crisis and deforestation. There is also a risk that these proposals will lead to an expansion of market mechanisms and TNC greenwashing, for example agribusiness greenwashing through climate-smart agriculture or sustainable intensification, among others. This is why we reject the notion that the protection of human and environmental rights should be subjected to the rules and enforcement mechanisms of the free market.

To further strengthen corporate power, the FTA also includes a chapter on Transparency that reduces the State’s ability to adopt and implement regulations in the public interest, going so far as to create mechanisms for companies to directly influence the development of public policies and regulatory frameworks. Under the agreement, States must promote a transparent and predictable regulatory environment for economic operators. In this line, countries will be required to publish in advance draft laws or regulations providing details of their objectives and rationales, and provide foreign investors or corporations a reasonable timeline to comment. Additionally, countries must endeavour to take into consideration the comments received.<sup>10</sup>

Given the above, we affirm that the FTA between the European Union and Mercosur attacks peoples’ sovereignty and fails to seek any kind of solidarity-based integration between the countries of the North and the South. Furthermore, the instrument will facilitate the growing power of TNCs and will provide continuity to the violation of rights with high levels of territorial dispossession and plundering of peoples in the South. It will not guarantee environmental sustainability or labour rights, and, on the contrary, will lead to greater land concentration and deforestation to favour the advance of agribusiness, attacking the construction of food sovereignty and intensifying conditions that enable violations of the rights to land, water, food and health. It is not, therefore, an agreement that integrates any of the precepts of environmental and social justice, instead it presents an obstacle to its realisation and to confronting the power of TNCs in Latin America.

### 3.2 *Investor-State Dispute Settlement (ISDS)*

Investor-State Dispute Settlement systems (ISDS) are part of investment promotion and protection regimes and treaties that have the stated objective of attracting investment to countries by guaranteeing investors a predictable and reliable business environment.

But in reality, the inclusion of ISDS in free trade and investment agreements responds purely and exclusively to the interests of large TNCs. These corporations acquire unprecedented power and the right to sue States through private international arbitration tribunals if they believe a public policy or legislation democratically adopted by the State receiving the investment affects their current or future profits, directly or indirectly. The definition of investment is also very broad, and includes – for example – intellectual property.

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9 Ibid. [Own translation.]

10 [https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc\\_158167.%20Transparency.pdf](https://trade.ec.europa.eu/doclib/docs/2019/july/tradoc_158167.%20Transparency.pdf)

With this instrument, TNCs are able to exert huge influence over the amendment or repeal of public policies and national regulations, using the power granted to them by ISDS to sue States. The sole threat of a claim often enables TNCs to achieve their goal, as States prefer to avoid the costs involved in defending themselves in arbitration tribunals; TNCs therefore also use this “*system as a mechanism of persuasion or pressure, regulatory cooling-off, and even as a new source of profit.*”<sup>11</sup>

In sum, TNCs are empowered to capture and control public policy and legislative action, imposing severe restrictions on countries’ democratic and sovereign decisions. This weakens the role of the State and facilitates the imposition of private interests over the public interest and the realisation of rights.

As the Georgetown University’s Center for the Rule of Law in the Americas (CAROLA) explains, “*ISDS is asymmetrical by design. States cannot initiate proceedings against investors nor, for the most part, successfully assert counterclaims on the merits. This results from the fact that obligations are typically only construed in relation to the State.*”<sup>12</sup>

Indeed, the claims have become a business for TNCs, which more often than not win arbitration awards or favourable settlements. In the case of Latin America and the Caribbean, 62.6% of the finalised disputes have been decided in favour of investors.<sup>13</sup> For their part, countries and States must spend significant public funds – resources that should be used for public policies to benefit the population – to pay investors when tribunals rule in their favour, which, as we have seen, is what happens in most cases. In the rare occasion that the arbitration decision favours the State, at best, companies are only responsible for paying the arbitration costs incurred by the State.

According to Friends of the Earth International, FOE Europe, TNI and Corporate Europe Observatory, “*ISDS claims are usually decided by a tribunal of three private lawyers – the arbitrators – who are chosen by the litigating investor and the state. Unlike judges, these for-profit private sector arbitrators do not have a flat salary paid for by the state, but are in fact paid per case... In a one-sided system where only the investors can bring claims, this clearly creates a strong incentive to side with companies rather than states – because investor-friendly rulings pave the way for more lawsuits and more income in the future.*”<sup>14</sup>

Investors based in the United States (US) have lodged the largest number of claims against Latin American and Caribbean countries, with 98 cases – or 30% of the total –, followed by investors from European countries and Canada. The US, Canada and Europe are host to the investors lodging 86.7% of all claims.<sup>15</sup> In terms of the treaties that enable claims before arbitration tribunals, investors have invoked violations of BITs in 258 cases and breaches of FTAs in 55 cases, while the US-sponsored Trade Promotion Agreement has been used to justify 8 claims.<sup>16</sup>

Among the industries most involved in disputes, mining is at the top of the list. Other sectors ranking high on the list are electricity; construction; finance; water supply and waste management; and oil and gas.<sup>17</sup> TNI affirms, “*Of the 303 known cases against countries in Latin America and the*

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11 Carrau Natalia 2022, <https://www.redes.org.uy/2020/07/24/politicas-publicas-y-regulaciones-en-la-mira-de-las-empresas-transnacionales/> [Own translation.]

12 <https://isdslac.georgetown.edu/>

13 <https://isd-americalatina.org/wp-content/uploads/2021/08/Informe-ISDS-en-AL-Junio-2021-final.pdf>

14 Red Carpet Courts <https://10isdstories.org/wp-content/uploads/2019/06/red-carpet-courts-WEB.pdf>

15 <https://isd-americalatina.org/wp-content/uploads/2021/08/Informe-ISDS-en-AL-Junio-2021-final.pdf>

16 Ibid.

17 <https://isdslac.georgetown.edu/industries-most-involved-2/>



*Caribbean, 70 involve the mining and oil and gas extraction sectors – accounting for 23.1% of claims.*<sup>18</sup>

These corporations and sectors – which are responsible for violations of peoples’ rights, land grabbing and destruction of territories and livelihoods, the climate and biodiversity crisis – sue States when these attempt to regulate their activities. In many cases, companies that have driven and profited from the privatisation of public services – transforming them into mere commodities – have then sued States when these seek to reverse privatisation or introduce regulations that protect the public good.

The Chevron case is an emblematic example of the perversity of the dispute settlement system, which is one of the pillars of the architecture of impunity. After perpetrating serious crimes, violating the rights of the Indigenous Peoples of the Ecuadorian Amazonia and evading justice, Chevron has been able to obtain an arbitration award in its favour. We will discuss this case in more detail later in this report.

#### **4. False solutions**

The promotion of false solutions is an obstacle created by transnational strategies to preserve and increase power. Carbon markets and offsets, so-called nature-based solutions, techno-fixes, among others, continue to be imposed in the region. These false solutions enable land- and territory-grabbing that benefits TNCs and ensures their expansion and control over energy and agrifood systems, among others.

Carbon markets were established for trading in invisible atoms of carbon and molecules of carbon dioxide.<sup>19</sup> In carbon markets, corporations and individuals can buy and sell carbon credits or bonds to offset greenhouse gas emissions generated by economic actors mostly based in the North. These credits supposedly account for avoided greenhouse gas emissions or carbon removed from the atmosphere, but there is growing scientific evidence that this is not the case. For example, tree monoculture projects that serve to create tradeable carbon credits actually absorb less carbon than the natural ecosystems that they destroy and replace. This false solution only benefits TNCs and neoliberal economic actors while exacerbating the climate and biodiversity crises and encouraging the privatisation, commodification, and financialisation of nature as a necessary condition for the success of markets and offsetting.

Nature-based solutions are defined as “*actions to protect, sustainably manage and restore natural or modified ecosystems that address societal challenges effectively and adaptively, simultaneously providing human well-being and biodiversity benefits.*”<sup>20</sup> This is one of the new narratives claiming to address the climate crisis, which gained prominence at COP 26 and amounts to a renewed corporate effort to impose false solutions that – while highlighting nature’s potential to help combat climate collapse – will lead to an accelerated process of grabbing and commodification of territories and nature. The proposed “nature-based solutions” mainly focus on the importance of nature’s contributions to carbon sequestration or storage. This view is based on erroneous assumptions – for example the false belief that emissions from fossil fuels and industrial agriculture can be offset or removed from the atmosphere, thus helping to tackle climate change, without radically changing the model of production and consumption. Furthermore, it can lead to increased land-grabbing, dispossession and plunder in the Global South under the promise of carbon sequestration, with

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<sup>18</sup> <https://isds-americalatina.org/wp-content/uploads/2021/08/Informe-ISDS-en-AL-Junio-2021-final.pdf> [Own translation.]

<sup>19</sup> Chasing Carbon Unicorns: The deception of carbon markets and “net zero”. Page 10. Friends of the Earth International. February 2021.

<sup>20</sup> This definition comes from the International Union for the Conservation of Nature (IUCN), an organisation advocating for these type of “solutions”.



TNCs planting millions of hectares of monoculture tree plantations, obviously in territories from which people are displaced.

Among the techno-fix false solutions we find an initiative named Agriculture 4.0, arising from the extreme mergers between corporations in the agro-industrial chain and the dizzying pace of digitalisation in the production of commodities, a phenomenon that is affecting agriculture and food worldwide.<sup>21</sup> The technologies behind Agribusiness 4.0 will lead to the displacement of family farmers who grow, process and sell food in artisanal and ecological ways, under adverse economic and political conditions, and who provide 70% of the world's food. With the arrival of synthetic biology,<sup>22</sup> companies assert they will have the capacity to produce at least 250 ingredients needed for manufacturing food, cosmetics and medicines. They seek to replace products such as vanilla, stevia, olive oil, among others, under the pretence of stabilising yields and costs, supposedly ensuring the quality that the artisanal farming and processing of these types of products lack, as well as contributing to the reduction of greenhouse gas emissions produced by traditional agriculture.

We must bear in mind that the introduction and imposition of this type of technology increases public health risks; undermines people's management and control over their livelihoods, knowledge and technologies; and goes completely against the construction of food sovereignty and land ownership in the hands of the people. Moreover, the so-called Agriculture 4.0 technologies depend on and are promoted by monopolies within the agro-industrial chain – that is to say, by TNCs that monopolise and centralise agricultural production to ensure profit and accumulation, violating peoples' rights to healthy food and self-determination, and furthering the global control of food systems.

## 5. Mechanisms for criminalisation

Peoples' struggles against violations of their rights perpetrated by TNCs are marked by injustice and violence against collective popular political subjects, through strategies that serve as mechanisms for criminalisation.

One such strategy is the judicialisation of politics, through which the judicial apparatus and institutionality is used to prevent political action by prosecuting or jailing those who develop political proposals in opposition to a model of dispossession centred on capital accumulation and framed in the neoliberal doctrine. Judicial action is also taken against leaders to prevent them from continuing with their political actions that bring peoples together in territories and communities to confront the power of TNCs and resist the occupation of their territories and destruction of their livelihoods.

Confronting these obstacles requires an understanding of how violence functions against collective actions organised to defend the commons, rights, justice and peoples' sovereignty – including the flagrant and systematic violations of the human rights of political subjects that represent collective struggles, and which lead to killings, jailing and stigmatisation.

We have seen how violence (de facto, political, and institutional) is used to intimidate organised popular subjects, at times effectively forcing them to give up their demands and – ultimately – withdraw from participating in politics and/or in the construction of public policy. These forms of violence also serve to intimidate popular subjects so that they distance themselves from the

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21 Villa, Verónica. Digitalización y poder corporativo en la cadena industrial alimentaria. Agricultura 4.0. Published in: **Tecnologías: manipulando la vida, el clima y el planeta**. Revista América Latina en movimiento. Online issue 543. September 2019.

22 Ibid.

consolidation of collective processes for self-determination and sovereign decision-making regarding the management of natural resources and their territories or socially constructed spaces.<sup>23</sup>

### 5.1 Judicialisation

Threatened and actual judicialisation of defenders of territory has been a reality in Latin America and the Caribbean for decades, particularly motivated by the just opposition of these political subjects to the imposition of extractivist mining-energy and agribusiness projects in indigenous, peasant and afro-descendent territories.

There are many examples of how the power of TNCs has become an obstacle to addressing injustices, and where political subjects who have confronted the destruction of their livelihoods and community life have been met with war-like treatment. One such case is that of Maxima Acuña, who in 2016 received the Goldman Prize in recognition of her environmental defence work and her struggle against the Conga mining project in Peru, which is owned by the US-based Newmont mining company. Maxima and her family were prosecuted for the crime of aggravated encroachment of the land known as Tragadero Grande, in the peasant community of Sorochuco in the Cajamarca region. The Yanococha mining company filed the complaint, asserting that it owned the land (near the Conga project) and that Maxima and her family had usurped it. Although in 2014, a second-instance ruling by the Superior Court of Cajamarca declared Maxima Acuña and other members of her family innocent of aggravated criminal encroachment, TNCs have used this type of action to intimidate activists opposed to the imposition of megaprojects. While we sometimes see victories in the judicial realm, the harassment is endless.

In the Casanare Department of Colombia, judicialisation was combined with military power to benefit TNCs. Frontera Energy Corporation, which signed agreements with the 16th Army Brigade, the Police Revolving Fund and the Attorney General's Office, instigated the prosecution of 16 social leaders for protest actions against the company's activities. Eight leaders were imprisoned and charged with criminal conspiracy.<sup>24</sup> The financing that the company provided as part of the signed agreements is a clear form of corporate capture that enabled the company to interfere with the justice system. The leaders had denounced that the corporation failed to fulfil its commitment to reforest 200 hectares as compensation for the damage caused by its oil activities (only 5.5 hectares were reforested); they were prosecuted for their legitimate exercise of their right to protest, and some of them were imprisoned. The legal tools for the prosecution of environmental defenders in these types of cases are known as *tipos penales en blanco* [blank criminal categories] – alleged crimes that can be interpreted in a way that supports the prosecution of defenders. For example, a roadblock is labelled as a public welfare offence punishable by 3 to 4 years in jail. Since public welfare can be interpreted broadly, it allows the TNC's lawyers to define various activities within this alleged crime.

Since the 2009 coup d'état in Honduras, hundreds of social leaders and defenders of Indigenous and Garifuna Peoples have been criminalised and prosecuted for their opposition to megaprojects. For example, on Thursday 5 August 2021, police officers violently entered the indigenous community of Reitoca, where a hydroelectric project is under construction on the Petacon River. The police repressed community residents, spraying tear gas, beating, threatening and detaining people opposed to the hydroelectric project owned by the corporation PROGELSA.<sup>25</sup> Although some of

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<sup>23</sup> To learn more about ATALC's vision in defence of peoples' rights and their human rights, see: *Internationalist Solidarity and the Struggle against Corporate Power. Reflections on the COVID-19 pandemic and corporate violations of peoples' rights and their human rights*. Available at: <https://atalc.org/2022/06/24/solidaridad-internacionalista-y-lucha-frente-al-poder-transnacional/>

<sup>24</sup> <https://pbicanada.org/2020/09/03/court-hearing-for-colombian-social-leaders-criminalized-for-opposing-toronto-based-frontera-energy-set-for-september-23-25/>

<sup>25</sup> For more information, please see (in Spanish): <https://atalc.org/2021/08/13/repudiamos-la-criminalizacion-de-los-defensores-del-rio-grande-de-reitoca/>

those detained were later freed, they still face judicial processes used as punishment to force people to abandon their collective struggles or to make them fear for their lives and freedom.

We cannot fail to mention that – in addition to the judicialisation strategies embodied in the criminalisation of those who defend the rights of the peoples and their territories and who fight for justice – social leaders and defenders are being killed and, by and large, the murderers remain in impunity.

## 5.2 Militarisation

Among the obstacles to confronting the power of TNCs, and as part of the current mechanisms for criminalisation, militarisation has expanded in the region over the last decades, exacerbated by the corporate capture of States and governments – and therefore the capture of public policies. Militarisation is closely linked to the financialisation of nature and the corporate control that these processes reinforce, such as the imposition of mining-energy projects.

Colombia is home to emblematic examples of mining-energy projects connected to the actions of police and military forces, and links to the origin of the funds that support these forces.

Systematic repression and militarisation answer to agreements signed between national public forces and TNCs, among other drivers of violence. Classified documents from Colombia's Defence Ministry describe contracts valued in the millions with corporations including Pacific Rubiales and Meta Petroleum, Carbones del Cerrejón Limited, Drummond, AngloGold Ashanti (AGA), signed between 2002 and 2014 – a sadly infamous period marked by governments claiming to promote “democratic security and prosperity”.<sup>26</sup>

*“Between 1990 and 2014, more than 1,229 secret cooperation contracts were signed to install Special Energy and Road Battalions (known as BAEEV in Spanish) and Centres of Special Operations for the Protection of Critical and Economic State Infrastructure (known as COPEI in Spanish). This number does not include more recent operations resulting from the expansion of the extractive frontier, nor possible agreements signed directly by the battalions.”*<sup>27</sup> In 2015, 68,000 people linked to the Colombian Armed Forces were involved in contracting through agreements with TNCs, equalling 15% of all active military personnel at that time. National senators have noted that at least six TNCs have their own battalions to protect their operations, and we must add that the national government provides the financing to sustain these battalions.

Militarisation has long been used as a tool for dispossession, in addition to paramilitary territorial control promoted by the State along with military and police forces. For example, the 1997 dispossession of lands in the Bajo Atrato Chocoano region was organised through an operation called *Genesis*. This action was coordinated between military and paramilitary actors in order to displace 3,000 people from the Black community of Cacarica and take their lands to install oil palm projects owned by businesspeople linked with the paramilitary,<sup>28</sup> and for territorial control by military-paramilitary agents associated with all types of illicit activities.<sup>29</sup>

In El Salvador, militarisation has become a tool to attack peoples' historical victories and collective management of the commons. Nayib Bukele's authoritarianism is known worldwide. He even militarised the Legislative Assembly on 9 February 2020 in order to pressure elected representatives

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<sup>26</sup> For more information, please see (in Spanish): <https://revistaraya.com/juan-pablo-soler/50-que-hara-petro-frente-a-la-privatizacion-de-la-fuerza-publica.html>

<sup>27</sup> Ibid. [Own translation.]

<sup>28</sup> For more information (in Spanish), see: <https://www.justiciaypazcolombia.com/operacion-genesis-5/>

<sup>29</sup> Internationalist Solidarity and the Struggle Against Corporate Power. *Reflections on the COVID-19 pandemic and corporate violations of peoples' rights and their human rights*. Available at: <https://atalc.org/2022/06/24/solidaridad-internacionalista-y-lucha-frente-al-poder-transnacional/>

to approve a loan that served his interests and went against demands for social and environmental justice. In recent years, El Salvador experienced a coup on the country's institutionalism, with the executive power leveraging State forces to commit violence, as well as stigmatising and persecuting social activists.

## **6. Absence of a binding instrument and evading justice**

The architecture of impunity is one of the biggest obstacles to confronting the power of TNCs, and its continuity has been ensured – among other mechanisms – through corporate influence to prevent the adoption of legally binding instruments to address human rights violations perpetrated by these corporations. The Guiding Principles and the corporate capture of the UN have paved the way for TNCs to continue to circumvent justice while increasing their crimes and profits using all sorts of legal and political devices. This is why we promote the Binding Treaty on Transnational Corporations and Human Rights, with the hope that the joint work conducted over more than a decade among social movements and peoples affected by transnational crimes and impunity will result in the adoption of the Treaty. This will ensure that the rights violations of the peoples of the Ecuadorian Amazonia – among many others – will never be repeated, and that those affected and their territories will receive full reparations.

### *6.1 The Chevron Case*<sup>30</sup>

The Texaco oil company, now Chevron Corporation, carried out hydrocarbon operations in the Northern Amazonia region of Ecuador from 1964 to June 1990. For 26 years, Chevron operated in an area of more than 500,000 hectares of Amazonian rainforest in the headwaters of the Napo River, a major tributary of the Amazon River. In that territory, the transnational company drilled 356 oil wells, dug 880 pits to dump toxic waste and built more than 1,500 kilometres of roads through the rainforest. Its operations focused on obtaining the highest economic earnings possible with the lowest investment. It extracted more than 30 billion barrels of oil.

In the course of its operations, Chevron invaded the territory of the Indigenous Peoples of the Amazonia region. The TNC destroyed more than 500,000 hectares of tropical forests and soil; polluted rivers by dumping more than 60 billion litres of drilling water or toxic water and spilling more than 16.8 million barrels of oil; and flared more than 10 million cubic feet of gas daily through faulty flares. The intentional damage caused by the oil company harmed the elements that are crucial for life in Amazonia: air, water and land. All for the sake of making more money.

The criminal enterprise ruined the lives of the six indigenous nationalities that lived there. Despite the 55 years that have passed since the operations began, and 33 years since Chevron left Ecuador, the destructive legacy of the oil company continues to ruin the lives of Indigenous Peoples, of the thousands of peasants who live in the area, and nature in all its expressions. Two Indigenous cultures became extinct as a result of the oil operations in Amazonia. In addition, the region has the highest cancer rate in Ecuador, with women as the main victims, and a rate of miscarriages that is 150% higher than the rest of the country. It also led to the impoverishment of the local population, with the average poverty rate exceeding 70%, double the national average.

In essence, Chevron's operations are a serious violation of the collective rights to clean water, to a healthy and ecologically balanced environment, to health, to life, to culture, to the customs and cosmivision of each nation, to economic development, to the self-determination of Indigenous Peoples.

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<sup>30</sup> This section was contributed by the Union of People Affected by Oil Operations in Ecuador - UDAPT / FOE Ecuador. We thank them for their contribution to the drafting of this document, and we recognise their tireless titanic struggle against TNCs and for the construction of social and environmental justice.

In 1993, seeking reparations for this crime, people affected by Chevron's operations in Ecuador filed a complaint in the US state of New York. At the request of the oil company, and after 10 years of litigation in the US, the case was transferred to Ecuador. In 2003, the court case began in the city of Nueva Loja, Province of Sucumbios in the Ecuadorian Amazonia. In 2011, the judge ruled that Chevron was guilty and ordered the company to pay the costs of repairing the damage. Although the sentence was appealed, the Appeals Court ratified the ruling in 2012. In 2013, the National Court of Justice of Ecuador again upheld the ruling against the oil company, and finally in 2018, the Constitutional Court – the last instance and after hearing the company's arguments – upheld the ruling. This ruling is final as there is no law in Ecuador that allows the oil company to repeal the ruling. Chevron is guilty and must pay. The peoples of Amazonia had been struggling for 25 years and were only beginning to access justice – or so they thought. The ruling ordered Chevron to repair the damage it caused in the Ecuadorian Amazonia and to Indigenous Peoples' lives.

Chevron delayed the court case as much as possible. By the time the court issued its ruling, the oil company did not have a single dollar in Ecuador. Nor does it have the will to comply with a court ruling, despite choosing which justice system should judge them. The peoples and organisations that filed the lawsuit were therefore forced to seek legal recognition of the ruling in other States where the oil company holds assets. Despite all these efforts, Chevron has yet to pay one cent.

The company has made use of the architecture of impunity to evade its responsibilities, exerting political and commercial pressure. Chevron's first acts of economic and political pressure were exerted against the government of Ecuador to prevent the country's justice from ruling against the company. When the oil company requested that the court case be sent to Ecuador, it did so with the certainty that the judges there would dismiss the lawsuit within a few months. When it was not dismissed as they had calculated, Chevron sought to prevent the US from entering into any more trade agreements with Ecuador until the lawsuit was dismissed, while at the same time trying to turn the Ecuadorian business community against the Indigenous Peoples and affected communities. Chevron used Ecuador's economic weakness to leverage the international finance system to ensure that the International Monetary Fund (IMF), the World Bank (WB) and the Inter-American Development Bank (IADB), among others, did not grant the country loans until the lawsuit was dismissed.

Despite all the illegalities committed by the TNC, the court case proceeded, the evidence obtained in the field was conclusive, and it was impossible to believe that the oil company would prevail in court. The evidence in favour of the plaintiffs was powerful. Faced with this reality, Chevron enacted an aggressive communications plan to defame the State of Ecuador, seeking to turn it into a legally insecure State where no company would want to invest.

When the plan to pressure the State failed, they implemented another comprehensive plan to attack the plaintiffs' lawyers and leaders. Unity was strong among the affected peoples, the struggle was consistent, the evidence was irrefutable and there were good conditions to win the case in the legal and communications spheres. However, Chevron designed another strategy against leaders and lawyers through an aggressive defamation campaign that accused them of using the plaintiffs, the Indigenous Peoples, claiming that there was no environmental damage and that it was all fraud. The growing media campaign was accompanied by legal intimidation of those who supported the peoples' cause. The TNC hired more than 2,000 lawyers to defend itself and to attack the plaintiffs' leaders.

In the legal sphere, Chevron turned to the US courts, leveraging the Racketeer Influenced and Corrupt Organisations Act (RICO). The indigenous leaders and lawyers were accused of extortion under this law. According to the company, Chevron did not cause any damage but rather, the oil

company is victim of an extortion attempt. It brought 27 lawsuits against the organisations and defenders in the United States, four claims in Ecuador, plus other claims in other countries such as Gibraltar. Through these legal actions, it succeeded in getting US judges to prohibit the enforcement of the ruling in the United States, as well as in rounding up the plaintiffs' leaders.

The oil company used a parallel strategy of physical persecution and threats. It hired several companies dedicated to surveillance and monitoring, the most noteworthy was Kroll Inc. At the height of its espionage for Chevron, the surveillance company had 150 agents pursuing UDAPT's leaders and lawyers.

In economic terms, Chevron spent more than 10 years pursuing anyone in the United States who was providing financial or economic support to the Amazonian plaintiffs, accusing supporters of being accomplices of the so-called extortionists. The same script was used against young students from the US who volunteered in Ecuador. In this manner, the company succeeded in blocking economic and intellectual support to the Amazonian peoples.

As can be seen, this was and continues to be a comprehensive plan, encompassing physical and legal persecution, persecution of supporters and defamation both in the media and in the courts. This is their strategy to annihilate peoples' resistance

In addition, the TNC filed three complaints against the State of Ecuador in international arbitration tribunals. The third arbitration claim was filed in 2009, based on the Bilateral Investment Protection Treaty between Ecuador and the United States. The oil company accused the country of denial of justice. It hired several Ecuadorian legal experts to testify in favour of the oil company, to affirm their belief that there is no access to justice in Ecuador, and that the plaintiffs conspired with the Ecuadorian government and judges to commit extortion against the oil company.

After a decade of arbitration in which the plaintiffs affected by Chevron had no right to appear in front of the tribunal or receive information about the proceedings, the arbitrators issued a decision ordering that the Ecuadorian State annul the Chevron ruling, which benefits peasants and Indigenous Peoples of the Ecuadorian Amazonia. The arbitration decision also orders the State to take all necessary measures to prevent the Lago Agrio plaintiffs from having the court ruling enforced in Ecuador or anywhere in the world, and from filing new lawsuits individually against Chevron. Among additional points in the decision, the Ecuadorian State was ordered to pay Chevron legal costs and moral damages incurred during the 29 years of legal proceedings.

International arbitration has become the most valuable tool to ensure Chevron's impunity. With the arbitration decision in favour of the oil company, they have succeeded in placing the government of Ecuador at the service of the TNC. Today, UDAPT not only has to struggle against Chevron, it must also defend itself and struggle against the Ecuadorian government that is allocating 2 Billion USD in the State's General Budget for payments to the oil company in 2023.

Despite the difficulties, the persecutions, the slander campaigns, and the criminalisation, the struggle for access to justice and reparations continues. UDAPT has stood alongside affected peoples and communities that have resisted for 30 years and are not willing to give up. With the firm belief that they have set legal precedent with the rulings and succeeded in further exposing the architecture of corporate impunity, they will continue fighting to ensure reparations for Amazonia. They are aware that 2023 will bring more attacks perpetrated by the State and the oil company, and they will respond with stronger unity and coordination alongside other peoples, organisations and movements that also struggle for life, land and dignity.

## **7. Conclusions**

The points raised throughout this report allow us to synthesise some of the main obstacles faced by peoples confronted by the growing power of TNCs, which has led to the grabbing and destruction of their territories and livelihoods, and violations of their rights – a growing phenomenon in the Latin American region.

The instruments of neoliberal control – Free Trade Agreements and ISDS – reveal the continuity of mechanisms that emerged over the past decades and which have been perfected or altered to ensure that capital accumulation by TNCs prevails over the guarantee of rights, with profound consequences for State economies and for the control of territories and national public policies. These instruments have in turn increased the control of TNCs over energy and agrifood systems. The corporate model also systematically violates the rights of women, Indigenous Peoples, peasants and Afro-descendants, deploying extensive territorial control, lobbying and political pressure.

False solutions continue to be imposed in different spheres in order to greenwash the devastating activities of TNCs and to ensure the continuity of the model of accumulation. Carbon markets and offsets, nature-based solutions and false technological solutions also undermine the rights to water, land and food, and contribute to processes of dispossession and plunder as well as the privatisation, commodification and financialisation of the commons.

The atrocities that we denounce, which are the result of criminal actions taken by TNCs, rely on the architecture of impunity that prevails due to the absence of binding instruments that serve peoples and justice, tools that would prevent rights violations and their endless repetition, and that would pave the way towards ending impunity. Given the obstacles discussed in this report, and the strategies and tools that TNCs have at their disposal to advance their accumulation and destruction, ATALC believes that the adoption of the Binding Treaty is a priority. While the challenges identified and analysed here are enormous, the convergence and coordination among social organisations and movements as well as national and regional political action and advocacy will lead to strong support for an ambitious Binding Treaty, in line with the needs and challenges we face.

The tenacity of the peoples of the region, as exemplified by the struggle against Chevron, encourages resistance and calls on us to practice internationalist solidarity in order to become stronger and collectively contribute to the construction of environmental, social, economic and gender justice and peoples' sovereignty. We hope this effort will contribute to peoples' struggles in Latin America and the Caribbean.