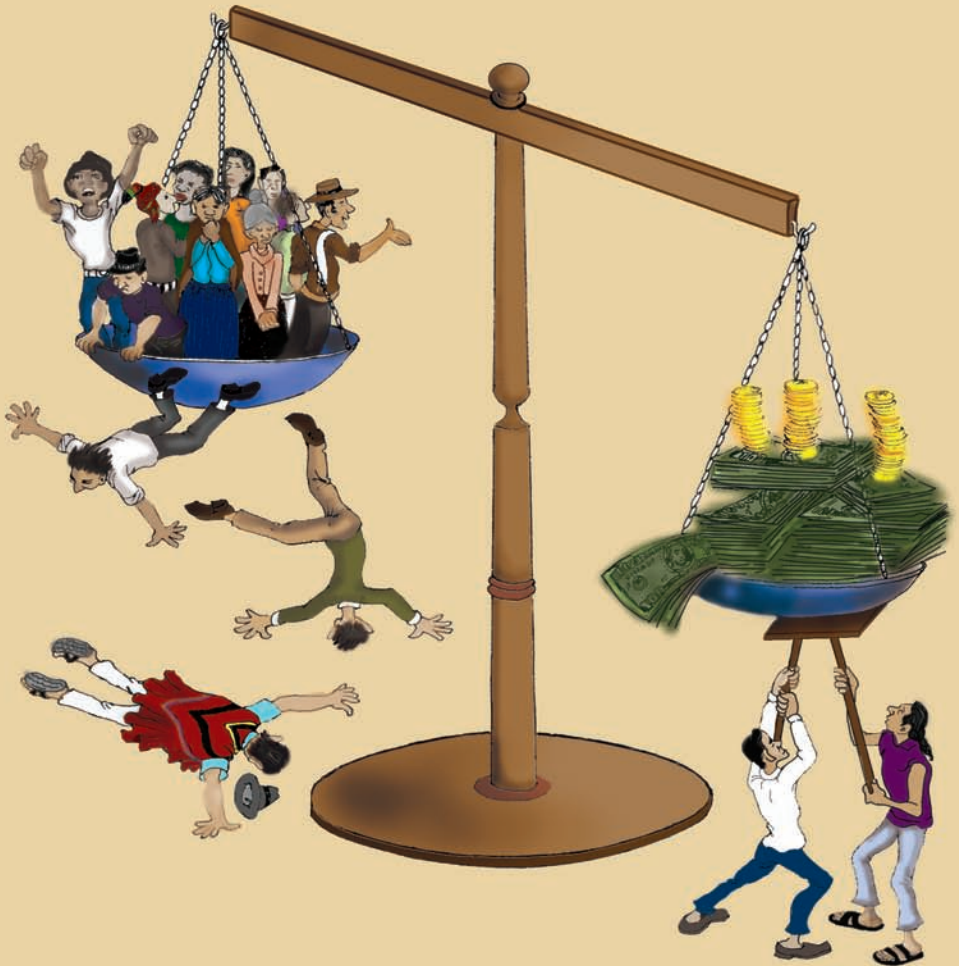


# GLOBAL INVESTMENT RULES



How they threaten communities and the environment,  
and how we can change them

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*The Network for Justice in Global Investment aims to advance new rules and institutions to govern investment and finance, in ways that support fairness, justice, and environmental sustainability.*

*NJGI is an initiative jointly supported by the Institute for Policy Studies in the United States and The Democracy Center in Bolivia.*

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## Introduction

Across the hemisphere and around the world, people are organizing to defend their environment and their economic sovereignty against attacks from transnational corporations.

We struggle to protect our water, our environment, and our health. We struggle against economic exploitation. But even when we succeed in getting governments on our side, a higher authority lurks in the background that can overrule people and overrule governments to give corporations what they want.

The threat lies in an expanding web of trade agreements and investment treaties that gives foreign investors sweeping new powers. Secretive arbitration tribunals, organized through institutions like the World Bank, act as the enforcers.

Again and again corporations have used these tribunals as a powerful tool to force governments to pay tens of millions of dollars for having protected their people and environment.

The Network for Justice in Global Investment is campaigning to challenge these excessive investor “rights” so that communities and countries can determine their own just and sustainable futures.

Join us by learning how these global tribunals threaten our resources and rights and by becoming a part of the campaign for change.

## How transnational corporations use investment agreements and tribunals to attack communities

During recent decades, foreign investors have filed hundreds of cases against governments. Here are three that demonstrate clearly what's at stake:

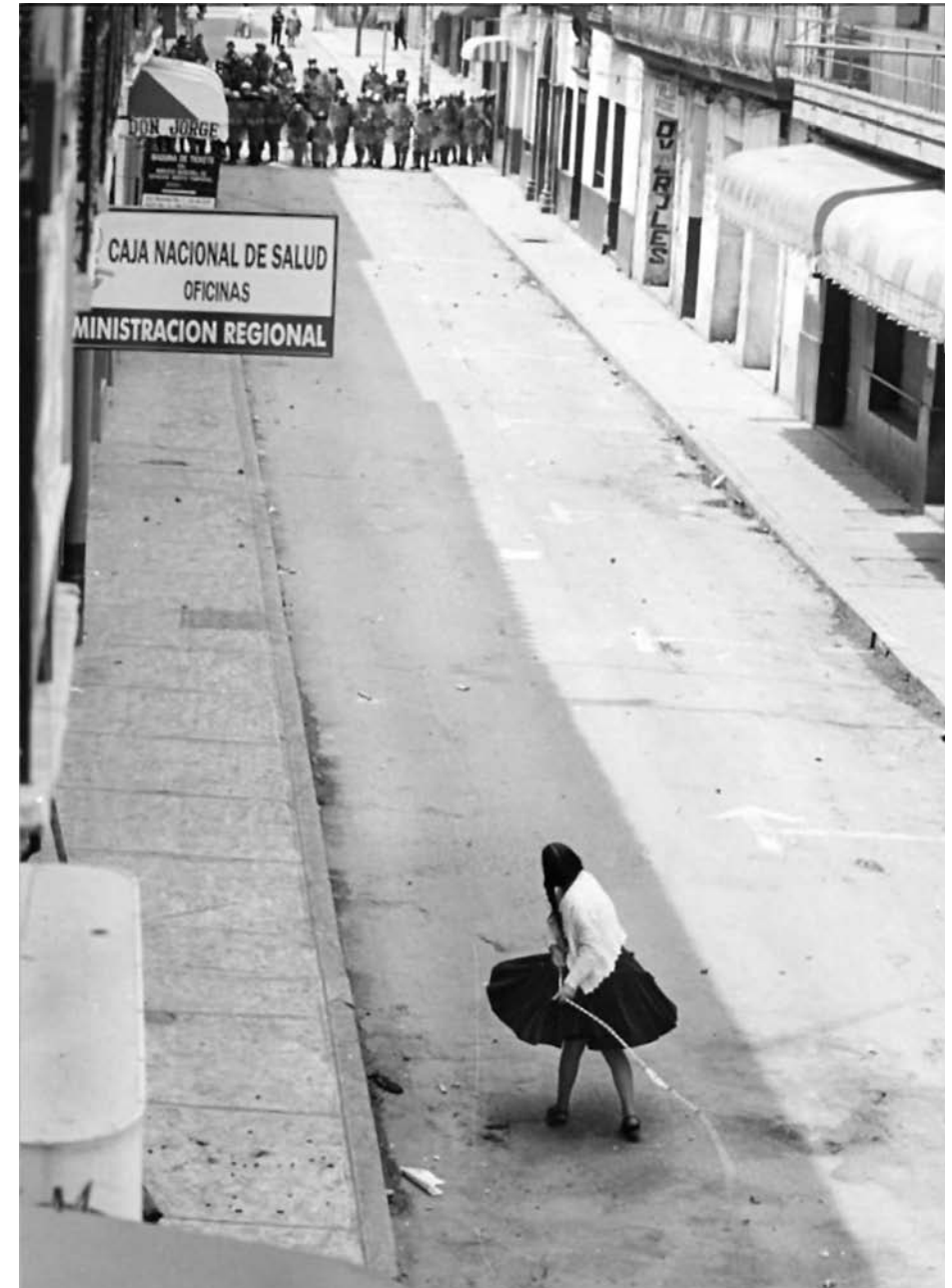
### **Bechtel vs. Bolivia**

In 2000 the eyes of the world fixed on the Bolivian city of Cochabamba, as a popular rebellion filled the streets to fight the privatization of the city's water, and one of the world's wealthiest corporations dramatically raised water rates on some of the world's poorest people.

In the face of widespread protests, road blockades and government repression that left many injured and one 17-year-old boy dead, Bechtel was forced to leave the country and its contract to manage Cochabamba's water was revoked. These events became known as the 'Water War.'

But soon after, Bechtel sought retribution, filing a \$50 million demand before ICSID (the International Center for the Settlement of Investment Disputes), the World Bank's arbitration tribunal. Even though Bechtel had invested less than \$1 million in Bolivia, investment rules also allow corporations to seek lost profits. What Bechtel sought was fifty times its investment.

After a long international campaign that ranged from legal petitions to civil disobedience, Bechtel ultimately caved in to citizen pressure and in 2006 dropped the case for a token payment of 30 US cents.



*Photo: Tom Kruse*

## Pacific Rim vs. El Salvador

Communities in El Salvador have long resisted gold mining for many reasons, including the dire threat to their water from cyanide-based mining. Thus far the Salvadoran government has refused to grant approval for international companies to start mining.



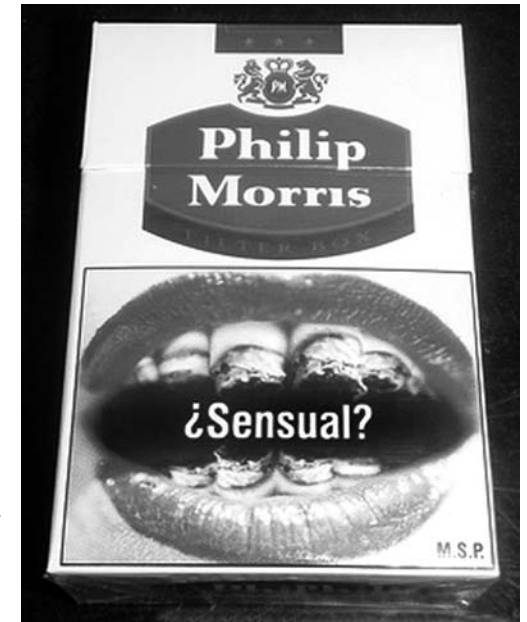
*Image: La Mesa Nacional frente a la Minería Metálica en El Salvador*

In 2009, several community members who were outspoken opponents of mining were killed, with others threatened with violence and forced into hiding. In this volatile context, two international mining firms - Pacific Rim of Canada and Commerce Group of the U.S. - are pursuing claims for millions of dollars over the refusal to issue mining permits, using the investment rules in the Central America Free Trade Agreement.

As of March 2010, these were two of 32 ICSID cases related to oil, mining, or gas, with Southern countries as the main targets.

## Philip Morris vs. Uruguay

Philip Morris, one of the world's largest cigarette conglomerates, filed an ICSID claim in early 2010 against the Uruguayan government, over new regulations designed to protect public health, such as requiring large warnings on cigarette packets. As well as claiming damages, the company is also reportedly asking the tribunal to suspend the new regulations. The case will be crucial in determining whether governments have the right to put the health of their citizens before the profits of big tobacco.



*Image: Physicians for a Smoke-Free Canada*

*"ICSID is used like a "boogie man" by governments to justify their acceptance of ruinous deals for taxpayers and the state."*

*Gustavo Spedele and Luis Bazan, Comisión Popular por la Recuperación del Agua, Córdoba, Argentina*

For more stories about international investors and local community struggles from Tanzania to Peru see [www.justinvestment.org/campaigns](http://www.justinvestment.org/campaigns)

## Investment agreements and tribunals: How the system works to the advantage of transnational companies

In recent years there has been an explosion in the number of ‘free trade’ agreements and investment treaties that allow transnational corporations to sue governments before investment tribunals organized under institutions such as the World Bank, the UN Commission on International Trade Law, and the International Chamber of Commerce.

What’s wrong with this system?

### **It gives corporations too much power over elected governments**

When governments enact laws to protect the environment, health, or working conditions, corporations can use the system to claim that these protections ‘unfairly’ reduced the value of their investment and then sue those governments for huge settlements. Sometimes, the fear of such cases can prevent governments from enacting particular policies, or investor claims can pressure governments to weaken these protections. In 1996, when a U.S. company (Ethyl Corp.) filed a complaint against Canada over a new law banning a suspected toxin, the Canadian government reacted by canceling the ban and paying the company compensation.

These agreements can act in favor of corporations and against national economic policies. Corporations are able to sue governments over important public policies for national and local development, such as requiring foreign investors to use local products and suppliers. Foreign investors can also sue governments over laws that prevent sudden massive withdrawals of capital (a practice that has sparked economic chaos in Mexico, Asia and elsewhere.)

Investment treaties often have lock-in clauses so that even if a newly elected government wants to abandon a bad pact made by a previous government, it can’t, at least for a period typically of 10 to 20 years.

### **It lacks public accountability and citizen participation**

Despite minor reforms, in most cases citizens are still not allowed to even attend a hearing, much less gain access to tribunal documents or provide testimony to the proceedings. Finally, the process is long, inefficient and expensive, forcing low-income countries to spend millions on high-paid foreign lawyers to protect themselves. The system also lacks any appeals process that countries can turn to after losing a case.

*“The ruling in the Metalclad case sets a terrible precedent for municipal and state governments that questions their legal authority to protect the health and environment of their people.”*

*Fernando Bejarano, Mexican activist*

## The tribunal system is far from neutral

A just process means that those making the judgments are neutral, but the investment tribunal system is far from it. In the Bechtel vs. Bolivia case, for example, the World Bank appointed the head of the tribunal, but was also the major force behind the water privatization in Cochabamba that led to the dispute. The judges who hear these cases and the lawyers who represent the companies are all also allowed to switch roles from case to case, creating major conflicts of interest.



## Changing the system: What would fairness look like?

While we need to continue struggling against individual companies like Bechtel, Pacific Rim, Philip Morris and others, we also need to work together to change a fundamentally flawed system.

There are many options for change, and many perspectives on the right way forward. The NJGI wants to have this discussion in the open, between the people who are most affected. Here are some of the ideas being promoted that we need to debate as a community.

### Leave the current system behind

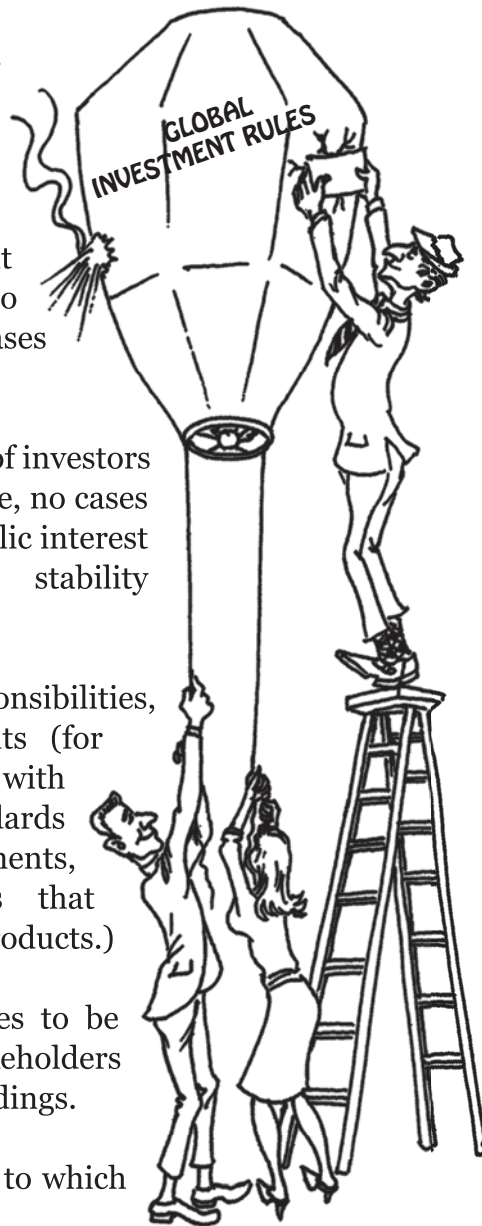
The Bolivian and Ecuadorian governments have withdrawn from the convention that establishes ICSID, refusing to recognize its authority. This is an important step, but because these governments are still locked into numerous investment treaties, foreign investors can still take legal action against them if the investment was made before the countries withdrew. Both countries have announced plans to renegotiate these treaties, but this is a more difficult process.



## Reform the current system

Others have focused on re-writing the rules that govern international investment. Proposals include:

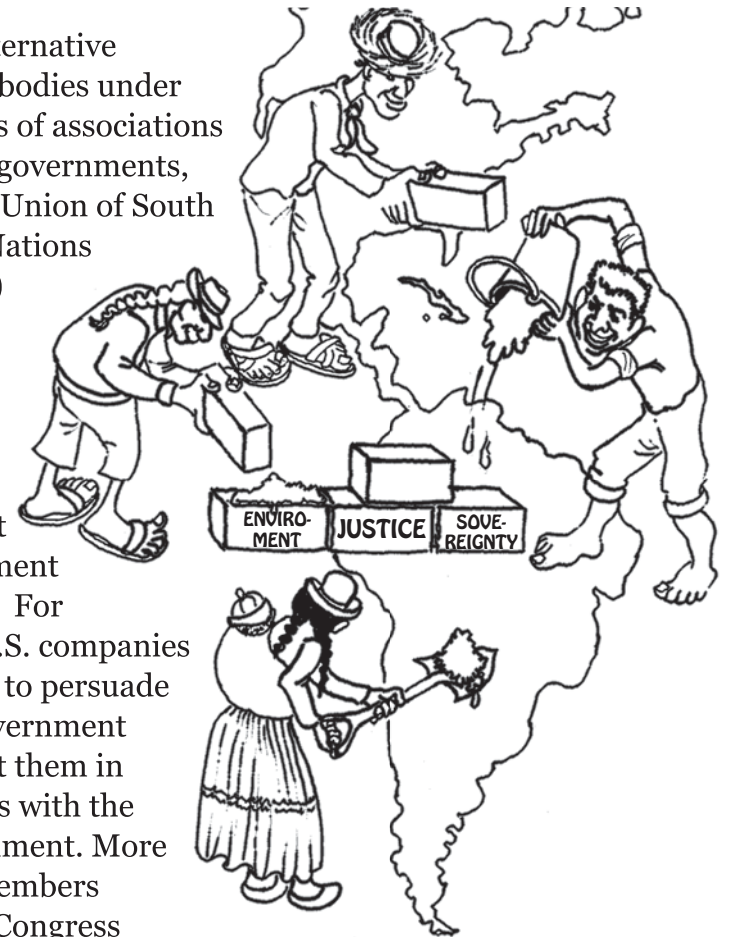
- Requiring corporations to exhaust local courts first, before they go to international arbitration.
- Adding a government screening mechanism to stop more outrageous cases from going to arbitration.
- Strictly limiting the power of investors to bring claims (for example, no cases over natural resources, public interest regulations, or financial stability measures.)
- Giving corporations responsibilities, instead of just new rights (for example, complying with international labor standards and environmental agreements, or development policies that require them to use local products.)
- Requiring all tribunal cases to be public and allowing all stakeholders to participate in the proceedings.
- Adding an appeals process to which governments can turn.



## Replace the current system

Others argue that the real solution is to build a whole new system for handling investment matters. Some of these options include:

- Giving sole authority to the courts in the country that is the subject of the dispute, with the intent of asserting national sovereignty in these cases.
- Creating alternative arbitration bodies under the auspices of associations of national governments, such as the Union of South American Nations (UNASUR.)
- Having disputes mediated through government-to-government arbitration. For example, U.S. companies would have to persuade the U.S. government to represent them in negotiations with the host government. More than 130 members of the U.S. Congress have signed a bill (the TRADE Act) that would do this.



## Fight for fairness in investment: Get involved!

### Get informed

First, learn more. Have a look at the NJGI Web site and understand more about how the trade and tribunal system impacts our health, our planet, and our democracies. You can also learn more about specific cases going on right now to the NJGI Web site ([www.justinvestment.org](http://www.justinvestment.org)) which includes reports, videos, links, a blog and much more.

### Join the struggle for justice in specific cases

There are many important cases in the tribunal system right now and campaigns for justice on those cases that need international citizen pressure and support. Help join with the people of Ecuador, El Salvador, Uruguay and many other countries to fight off the assaults against them by foreign corporations. You can also find information on these campaigns and how to get involved on the NJGI Web site.



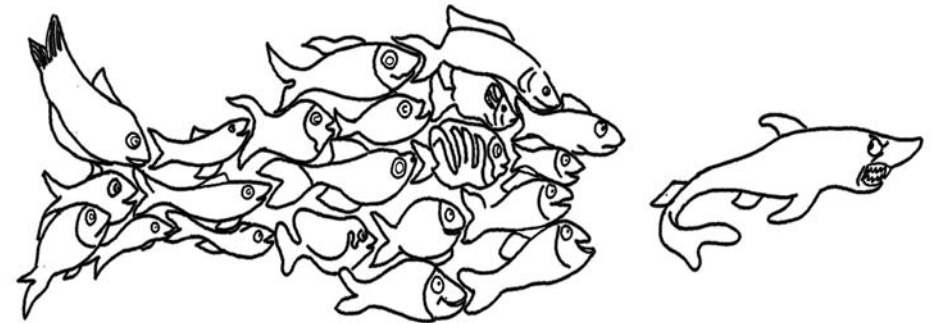
Image: La Mesa Nacional frente a la Minería Metalica en El Salvador

### Get involved in changing the system

You can also join the NJGI in a real debate about what a fair system of international investment should look like. Join the forums on the NJGI Web site – with opinions ranging from executives of Chevron corporation to grassroots activists from the Global South.

*"I think that a strategy to avoid these lawsuits will require more than just one country but rather the coordination of all Latin American countries to establish mechanisms to free ourselves from these threats that are harming all of our countries."*

*Alexandra Almeida, Acción Ecológica, Ecuador*



### Help spread the word

Is there a conference or forum coming up where you can help spread the word and get people involved? Do you need copies of this booklet, or of the NJGI video? Do you know groups that would benefit from knowing more about the issues?

Contact us at [www.justinvestment.org](http://www.justinvestment.org)

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**The advisory committee of the Network for Justice in Global Investment includes representatives of:**

**RMALC, México**

**Unidad Ecológica Salvadoreña, El Salvador**

**Fundación Solon, Bolivia**

**REDES Amigos de las Tierras, Uruguay**

**Red VIDA, United States**

**Council of Canadians, Canada**

**University of Toronto, Canada**

**Forum on Democracy & Trade, United States**

**For more information in Spanish and English, see:**

**[www.justinvestment.org](http://www.justinvestment.org)**

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