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# A Call for the Building of an Alternative Legal Framework to the International Investment Treaties

Favoring the Public  
Interest while doing away  
with Transnational  
Corporate Impunity.

WORKING GROUP ON  
INVESTMENT  
OF THE AMERICAS

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## INTRODUCTION <sup>1</sup>

This document has been prepared over several years by a Working Group on Investment of the Americas which includes people from several organizations and networks seeking to ensure that international trade and investment is based on social justice and respect for the environment. The objective of this document is to contribute to the debate and promote a coming together in regard to investment rules that conform to the existing paradigm on which Free Trade Agreements (FTAs) and Bilateral Investment Treaties (BITs) are built. It seeks to incorporate proposals that have for some time been in the process of elaboration by actors from civil society, social movements, academics, and legal experts.

This work is being carried out by people and organizations that make up the Working Group on Investments. Because this group has worked on this thematic area from various locations and networks it is in a position to help facilitate the bringing together of proposals and struggles with respect to this crucial theme. In addition to other initiatives and areas, this group has worked on “The Alternatives for the Americas” of the Hemispheric Social Alliance (2006), the campaign against ICSID and the BITs that was launched

during the Social Forum of the Americas in Paraguay (2010), and the Week of Action against Investment Treaties and for an Alternative Framework for Investment that was carried out in Brussels, Belgium (2011). This group has also participated in the elaboration of the document “The International Peoples Treaty,” which will soon be made public and opened up for discussion.

The debate around the need to dismantle the excessive power held by the transnational corporations has risen to the top of the International agenda, not only for social movements, but also for various governments and parliaments and even international organisms. Today there is a new urgency around the need for legal mechanisms to ensure acceptance of the principle that international law privileging holistic human and environmental rights considerations should trump any other right. With this in mind, a binding international code for corporations that obligates them to promote and respect human rights to go along with those mechanisms and institutions that enforce such a code is indispensable.

Corporate power has crystallized a system of international legal practices that has accorded them with omnipotent, abusive powers and guaranteed them systematic impunity. While it is the case that such a system was not able to crystallize as a result of the failed Multilateral Agreement on Investments (MAI), or at the WTO, or via the FTAA, it never the less has been built as a result of a very broad network of Bilateral Investment Treaties (BITs) and Free Trade Agreements (FTAs). Until just a few

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<sup>1</sup> This document has been written by the Working Group on Investment of the Americas, drawing from ideas and proposals coming from many people and organizations (see references). Those responsible for drawing this document up are: Alberto Arroyo, Cecilia Olivet, Manuel Pérez-Rocha, Alberto Villareal, Jim Schultz, Graciela Rodríguez, Javier Echaide, Alberto Arroyo, Luciana Ghiotto and Héctor Moncayo. The English and French versions of this document were prepared by Rick Arnold and Pierre-Yves Serinet respectively.

years ago this system existed happily in the shadows, but today it has been forced into the light thanks to the work being done by civil society as well as functionaries and parliamentarians who act responsibly with regard to their citizenry, and regarding the environment. And, it should be noted, things are beginning to happen that until recently were unthinkable. For example, three countries (Venezuela, Bolivia and Ecuador) have withdrawn from ICSID and are renouncing their BITs. Ecuador has begun a process of holistic auditing of its BITs and the demands presented to ICSID, an approach that we think could be emulated in other countries. At the same time, South Africa and Indonesia are moving forward in renouncing their BITs, while governments and parliaments in many countries question or are opposed to the inclusion of investor-state rules in free trade negotiations currently under way such as the Trans-Pacific Partnership (TPP), and the Transatlantic Trade and Investment Partnership (TTIP).

It is now time for a radical overhaul of the international legal regime governing investments, and to be able to accomplish this we have to begin by canceling or radically renegotiating the International Investment Agreements. The

negative impacts from such agreements on human rights and on the environment are universally recognized not only by civil society but also by parliaments and governments.

Today the struggle against corporate power is also present in diverse networks and campaigns. There are different methods of struggle, and national and regional realities differ; but in all situations we run up against the enormity of globalized corporate power where one of the key instruments underpinning their power and impunity is the international legal framework that they have been building which guarantees them excessive rights and impunity through investor protection agreements, namely BITs and the FTAs.

As a result of this struggle, several documents featuring alternative proposals have been produced. This document picks up much of what has been previously elaborated to enrich a specific focus on something that we consider to be one of the main instruments of corporate power: the international investor protection agreements. We invite you to discuss and enrich this document thus continuing to promote a discussion on proposals that are familiar to networks and struggles that we are active in.

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## **I. AN ANALYSIS OF INTERNATIONAL INVESTMENT AGREEMENTS**

Civil society organizations and networks that have signed on to this call are speaking out to express our concern over the current modalities of the flow of investments at a global level, as well as with the different International Investment Agreements (IIA) that serve to protect such agreements.

We understand that under certain conditions Foreign Direct Investment could contribute to the development of local and national economies. However, this has not been the case: empirical evidence indicates that promises made by the promoters of so-called “free trade” have not been kept. Under the current rules investors have neither been sanctioned for violations of human rights nor for collaborating in the speeding up of the process of climate change leading to environmental disasters. In fact, the rules of the Bilateral Investment Treaties (BITs) and the Free Trade Agreements (FTAs) are not in sync with the observance of human rights or the protection of the environment, nor do they respect a country’s sovereign ability to implement responsible public policy. Of course we are aware that some current governments, even without the obligations imposed by a BIT, can act in an irresponsible manner. But what we wish to show is that the BITs make it much more difficult for the people to be able change this situation.

The global crisis of capitalism cannot be understood without making reference to irresponsible financial speculation or irresponsible extractive investments impacting on the planet and on the rights of communities. The transnational companies (TNCs) carry on with business as usual without caring about peoples’ lives or the future of humanity, not to mention the planet. TNCs pay little attention to gender specific considerations; on the contrary, they heighten the processes of inequality and discrimination and make more acute precarious employment while increasing the exploitation of women and undercutting their survival strategies.

It is becoming more and more evident and alarming that corporations operate in an irresponsible manner while receiving virtual impunity under the protection of International Investment Agreements under the form of BITs or the investment chapters of the FTAs. At an international level the TNCs take responsibility for their actions only under codes of conduct that are non binding, and that they themselves write and regulate, while States are subject to legally binding rules that give extraordinary rights to foreign investors, that are later backed up in an even more abusive manner by pro-corporate interpretations in mechanisms such as the International Centre for Settlement of Investment Disputes (ICSID), granting corporations virtual impunity with regard to their actions.

BITs contain clauses that limit the ability of governments that have received foreign investment to act in such a way as to promote economic growth and sustainable development, to protect the environment and public health care, to act to defend their countries in the face of financial crisis, and to sustain the primacy of human rights. If a country’s public policies affect the profits of the TNCs or any of the other ‘privileges’ accorded to companies by the BITs, they can demand compensation. Just the threat of a legal demand of this type has

what is known as a 'chilling effect' on a government's option when it considers enacting public interest policies.

The claim is that BITs are necessary to attract FDI (Foreign Direct Investment). However, there is evidence that BITs are not necessary or key to attracting foreign direct investment, and to the contrary they serve to expose countries to destabilizing flows of speculative investments. Furthermore these treaties negate the possibility of having those investments conform to national objectives or of having a positive outcome in pursuing the goals that are part of the "*buen vivir*"<sup>2</sup> concept.

Brazil represents a typical case of a major recipient of FDI in Latin America, and yet it has not ratified a single BIT with countries known to be prime exporters of capital (nor any FTA that contains a chapter on investments). Another good example is China, which receives enormous sums of investment monies from the United States, despite these two countries not having a signed BIT between them. In fact, most of the FDI that flows to 'developing' nations is attracted mainly by what is known as 'comparative advantage', that in their cases amounts to nothing more than access to their raw materials along with the exploitation of a pool of cheap manual labor, as well as to gain access to domestic markets along with those of third parties.

Paradoxically, the United States and the European Union along with other members of the G-20 speak about international financial regulation while continuing to promote economic and financial liberalization as the solution. Such a focus will continue to strengthen corporate power and benefit the financial elites. The costs of this, of course, will continue to be borne by the majority of the world's people.

FDI should favor inclusive development, dignified work and distribution of income, leading to economic linkages at a local and regional level. The purpose for attracting FDI should be complementary and respectful of the concept of "*buen vivir*" and not for the enrichment of a few. Besides, not all economic activity can be liberalized under FDI. Food, drinking water, electricity, gas, as well as health and education and in general those areas linked to human rights or common goods should be excluded from the sectors towards which foreign investment can be channeled, and furthermore should not be governed by the logic of free trade and extractivism. The rules of the game need to be changed in order to accomplish this.

**Given this brief analysis based on accumulated evidence that is widely known, the signers of this document understand that:**

- While on the one hand investment is constantly being promoted as a tool for development, there is simultaneously a growing international recognition that corporate activity, and in particular that carried out by

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<sup>2</sup> Buen vivir "is a proposal, a utopia, a different project of coexistence that was born thousands of years ago in these lands known as Latin America. It doesn't come from a modern government but rather from the original inhabitants of this AbyaYala Continent and has been included as fundamental to two new political Constitutions, those of Ecuador (2008) and Bolivia (2009), both countries with populations that are majority indigenous". <http://conapi.org.py/interna.php?id=187>

powerful transnational investors, can have serious negative and long term effects on human rights, on the environment, and on equitable development that is both sustainable and inclusive. And in many cases these investments don't even generate economic growth and significant employment<sup>3</sup>.

- Despite this, the set of rules governing the protection of international investment continues to be expanded, guaranteeing an extraordinary, abusive and far reaching frame for investor rights, without in exchange committing to any binding obligation with respect to human rights, environmental rights, and socially sustainable and inclusive development<sup>4</sup>. At the same time that corporate measures are institutionalized and are increasingly being strengthened by obligatory implementation mechanisms, the international set of rules governing human rights is being downgraded to a level of 'soft law' or quasi-legal instruments with no implementation power.
- The BITs are part of a framework of impunity that gives the TNCs unprecedented powers to be able to dispute the prerogative of governments to be acting as guarantors for human rights while also guaranteeing that FDI will have a positive impact within a broader plan for national development. The BITs allow companies to evade laws, constitutions, and local and national courts. They also give corporations a green light to sue sovereign States for millions of dollars before private, secretive and arbitrary tribunals associated with the World Bank's International Centre for the Settlement of International Disputes (ICSID), or the United Nations Commission on International Trade Law (UNCITRAL), the International Chamber of Commerce (ICC), among others. In the role of counterparts, governments and citizens can't count on legal counterweights to wield before international bodies in order to be able to bring the TNCs to justice when they violate human and environmental rights, and to also employ when facing restrictions on public policy measures that would be in society's general interest<sup>5</sup>.
- These international agreements are part of a legal set of rules that have been developed on a parallel track to be made applicable to the international community in its entirety without any consideration of whether there is reciprocity based on mutual consent, or that all are involved (*erga omnes* obligations) being understood as the international

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<sup>3</sup> For example, the BITs allow for an extraordinary repatriation of profits, while at the same time facilitating tax exemption and/or tax evasion by means of the so-called agreements to avoid double taxation, and transferal costs.

<sup>4</sup> We are not proposing that these neo-liberal accords should contain chapters on the environment, labor, and human rights. In those cases where they have been included they become 'soft law' and used to legitimize and justify the trade and investment chapters that are then applied as 'hard law'. Our critique is aimed at the paradigm that underpins these treaties that submits everything to the law of market forces.

<sup>5</sup> In response to these shortcomings Ecuador has promoted the Joint Declaration on Transnational Corporations and Human Rights subscribed to and backed by close to one hundred States, showing clearly a shared understanding of the responsibilities that the productive sectors must carry out with regard to human rights (see reference at the end), and that are being developed in the document The Peoples Treaty (see reference at end) of the Campaign to Dismantle the Power of the Transnationals.

rights that underpin human rights. This parallel track has been used to avoid any discussion of international-level norms. This serves the interests of the TNCs in that they are able to launch cases against States while avoiding local jurisdictions based on the clauses built into the BITs which have the force of applicable law. Thus the conditions under which the BITs were originally entered into can be ignored, domestic legislation avoided, and even the Political Constitutions of States along with all other existing international laws evaded, resulting in a frame that forces parallel obligations on the States.

The TNCs can forcefully relate to States in ways that will do damage to human rights including indigenous peoples rights, labor rights, women's rights, access to health and other public services, livelihoods, the management of natural resources and environmental protection. The TNCs and international investors often take advantage of weak labor, environmental, health and other legislation in the public interest such as may be found in developing countries, along with cultural differences, gender inequalities and racial ethnicity. On another plane, the labor, social and environmental clauses incorporated into the components of 'soft law' found in the BITs and FTAs, including those euphemistically known as "association agreements" or "economic partnership accords", among others, are inadequate and lack legal instruments to enforce those rights, and are used to legitimize neoliberal, deregulatory 'hard' components that are at the very heart of these accords.

#### **With this in mind:**

- National States should take back the ability to implement legislation and public policies so that those investments play a positive role within a long term strategy in a national project agreed to by the population, and one that guarantees absolute respect for all human rights. To achieve this there would need to be a fundamental reformulation of the international legal regime that currently acts like a straightjacket in preventing State action in this area.
- Along with States recuperating their regulatory capacity, it is necessary for people to put into place control mechanisms to be able to deal with their own States using approaches such as direct, participatory, and proactive democracy that include enforceable mechanisms to ensure that social demands are acted on, so that the democratic exercise of peoples' sovereignty becomes a reality. The problem rests not only with legislation or institutions: without genuine peoples' participation nothing can be guaranteed.
- It is not enough to rip up or renegotiate international investment treaties and to then implement national regulations. At the moment there is a competition to see who can offer the most concessions and privileges to the foreign investor. What is needed is a legislative framework along with international and/or regional regulations that prohibit unfair competition, all of which can then be applied with specific detail to national legislation.



## II. PRINCIPLES FOR THE CONSTRUCTION OF ALTERNATIVE FRAMEWORKS FOR INTERNATIONAL INVESTMENT<sup>6</sup>

We who have signed this document have concluded that to achieve sustainable and inclusive development that prioritizes public, social and ecological interests over and above private for-profit interests, it is necessary to create an alternative international investment framework based on democratic principles that will give priority to the public interest over private gain. The idea and design of this framework depends on the full participation of all interested parties with guarantees that the process will not be dominated or co-opted by powerful corporate pressure groups, such as was the case with the “Global Compact” of the United Nations.<sup>7</sup>

Those of us who have signed propose the following principles and measures<sup>8</sup>

### 1. PROPOSALS TO ACHIEVE THE PREEMINENCE OF HUMAN RIGHTS OVER INVESTOR RIGHTS AND TO ESTABLISH THE OBLIGATIONS OF TRANSNATIONAL CORPORATIONS WITH REGARD TO THE OBSERVANCE OF HUMAN AND ENVIRONMENTAL RIGHTS.<sup>9</sup>

- **It is necessary to overcome the current asymmetrical relation between investor rights and human rights.** While the rights that the TNCs enjoy are ‘hard rights’, that is to say can be taken to court resulting in binding sanctions, human rights are generally ‘soft rights’, that is to say hard to try in court with no binding provisions attached, and that generally end up in simple recommendations or mechanisms of self-regulation. It is necessary to make real a principle of international law that human and environmental rights trump any other legislation.
- **The new international set of rules on investments should include binding measures regarding human rights** such that corporations are also guarantors for all human rights (economic, social, cultural, environmental, civil, and political). It is critical to create a direct relationship between human rights and investment to guarantee respect for the lands of indigenous peoples and communities, environmental justice and access to basic public services like water, food, housing, health, and education for all.

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<sup>6</sup> We make reference to not only the international set of investment protection laws but also to national laws that promote investment. For example El Salvador, at ICSID, is taking on the mining company Pacific Rim’s suit under its own Foreign Investment Law (which now needs amending so that these types of cases can’t be taken directly to ICSID).

<sup>7</sup> We recommend seeing <http://viacampesina.org/es/index.php/acciones-y-eventos-mainmenu-26/no-a-las-transnacionales-mainmenu-80/1431-no-mas-control-y-cooptacion-empresarial-de-la-naciones-unidas>

<sup>8</sup> Many of these proposals were developed earlier; to access them we recommend going to the annexed section entitled References.

<sup>9</sup> These binding obligations are to be found in the Joint Declaration on Transnational Companies and Human Rights fostered by Ecuador. See footnote no.5 and reference at the end of this document.

- **Investors should be held accountable for reporting** on their corporate initiatives not only in their country of origin but also in those countries where they invest. Given their transnational character and potential for significant impact of their activities on human rights, health, and environment, international as well as national investors should be held legally responsible for their actions both in a national and international context in accordance with universally accepted international legal instruments, and in accordance with other multilateral agreements pertaining to human and environmental rights.<sup>10</sup>
- Above a certain threshold, all transnational investment proposals need to be preceded by an **evaluation with social participation that would include a socio-environmental and human rights impact assessment** with a strict application of Informed Prior Consent in cases that specifically involve indigenous peoples and others as is found in international accords. Investment impact should continue to be monitored after it has been established.

## 2. PROPOSALS FOR ALTERNATIVE DISPUTE SETTLEMENT SOLUTIONS.

- It is imperative that **current clauses dealing with investor-State dispute settlement be annulled**, particularly those that allow investors to challenge and sue host States via international arbitration over governmental regulatory actions that they perceive to be harmful to their particular interests.
- **Investor-State disputes should be settled before national tribunals, in accordance with the host country's legislation.** National legislation should be strengthened to offer legal certainty, which is to say that the rules of the game are clear and not subject to arbitrary actions, but not according extraordinary rights to foreign investors that could rise above human rights. Only in exceptional circumstances and as a last resort can investors have access to properly constituted regional/international tribunals in order to review the carrying out of due process. Only after exhausting national procedures can the investor accede to a permanent and duly constituted national/international tribunal to review whether there was any violation of due process or that the appropriate national legislation was properly applied.
- **These new regional/international dispute settlement mechanisms should be two-way.** That is to say not only investors but also States, communities and citizens can originate a legal challenge.
- It is necessary to guarantee that that any appearance before a public international/regional tribunal **allows access and equitable participation for the communities impacted**, that the procedures be

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<sup>10</sup> Such as the UN Declaration on the Rights of Indigenous Peoples, the Agreement on Biodiversity, the Framework Agreement on Climate Change, and etc.

conducted publicly, and no rights be accorded that are stronger or broader.

- In the **case of human rights violations** by an investor or company, the investment treaties should explicitly respect the rights of the affected individuals or communities to seek additional recourse at the international level, **as outlined in International Law governing Human Rights.**

### **3. PROPOSALS TO ABOLISH THE PRIVILEGES OF FOREIGN INVESTORS AND TO GUARANTEE STATES THE SPACE TO BE ABLE TO IMPLEMENT PUBLIC POLICY AND SPECIAL AND DIFFERENTIATED TREATMENT, GUARANTEEING THAT THE PRINCIPLE OF EQUALITY SUPPORTS NATIONAL PRIORITIES.**

**Eliminate the current arrangements of National Treatment, Minimum Standards Treatment, and Most Favored Nation Treatment.**

- **Exempt from the logic of the free market those sectors linked to human rights** such as water, health, essential public services and culture.<sup>11</sup> As well as that which is indispensable in order to be able to guarantee food sovereignty and security as well as the preservation of ecosystems and natural resources that should remain under strong public control while guaranteeing Special and Differentiated Treatment among parties with different levels of economic development.
- **Eliminate “national treatment” and “minimum standards of treatment” (including “just and equitable treatment”) obligations** that serve to paralyze the design and implementation of responsible public policies by governments at a national and also a sub-national level. These arrangements with their ambiguous formulations open the door to investor-State suits against a broad range of governmental measures.
- **Eliminate the Most Favored Nation clause**, given that the very broad network of investment agreements allows investors to use the one that is most favorable to their interests and not to subject themselves to the legal framework in their country of origin. Furthermore these types of clauses inhibit the possibility of making mutual concessions within the context of regional integration since they automatically expand recipient obligations to extra regional nations.

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<sup>11</sup> In accordance with the UN Convention on the Protection and Promotion of the Diversity of Cultural Expressions (2005).

**Eliminate the concept of indirect expropriation and restrict the definition of investment.**

- **The concept of “indirect expropriation” should be eliminated from international legislation.** The definition of expropriation should be limited to an act by a government that for reasons of public interest takes over or nationalizes a tangible good of an investor for which just compensation should be paid. Current provisions on “indirect expropriation” undermine the State’s right to regulate.
- **Restrict the definition of investment to “tangible” goods or properties.** Public tenders and government purchases along with those contracts issued for natural resource concessions, regulatory permits, intellectual property rights, financial instruments (such as derivatives), and ambiguous notions that claim that to “assume risk” is tantamount to a form of investment, should all be excluded. Also to be excluded are areas that range from the definition of protected investment to short term investments like bonds, stock market investment (fly-by-night capital), as well as the national debt.

**Eliminate the ultimate arbitrability clause as well as retroactivity.**

- **Eliminate the ultimate arbitrability clause,** which extends investor protections for 5, 10 or even 15 years after the termination or denunciation of an international agreement. This clause limits the sovereign ability of nations to extract themselves from deeply flawed agreements.
- **Eliminate the retroactivity clause** that extends coverage of the IIA to all investments agreements reached before the signing of the treaties.

**Permit the implementation of capital controls and performance requirements; stop the flow of illegal funds and tax evasion, and privilege productive over speculative investment.**

- **Permit the implementation of capital controls to prevent or mitigate financial crises.** The BITs generally include restrictions against the State’s ability to control the entry and exit of speculative capital, despite the fact that many governments have used these controls with a great degree of success to prevent financial crises. Some forms of capital controls also serve to guarantee that capital that enters a country contributes to economic development as they require a minimum time of remaining in the host country. Even the International Monetary Fund has recognized the need for capital controls and that those obligations present in BITs and FTAs can reduce the policy space for nations seeking to apply these measures.<sup>12</sup>

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<sup>12</sup> See Aldo Caliarì, “IMF: Trade obligations may work against financial stability goals”. Centre of Concern, December 2012.

- **Allow States to use tax and other policy tools to encourage productive investment that is respectful of the environment and discourage that which is speculative.** To achieve this end, taxes on international financial transactions must be levied and controls implemented to deal with massive flights of capital, thus preventing recurring crises and instability. It is necessary to ensure that “productive” investments don’t turn out to be destructive to the environment, as does occur in the case of extractive industries.
- **The new set of rules governing investment should facilitate regulations and public policy nationally and regionally** that privileges those investments that are in sync with the national development project, and deter those that go against the public interest; that can reconcile the rights of nature with social rights and inclusive wellbeing; that give priority to new productive investment in strategic sectors in line with the directives found in the national project plan, and that link to the generation of jobs and to technological development.
- **Deter the illicit flow of capital.** It is necessary to impede not only the laundering of money coming from organized crime, but also the flows facilitated by free trade agreements and double taxation treaties. For example, mechanisms should be developed to combat intra-firm transfer pricing that in effect allows for the evasion of taxes. To accomplish this there must be on-line and real-time access to corporate tax returns with attachments that would allow for the costs associated with importing and exporting by country of origin and destination to be determined.
- **Put a brake on fiscal exemptions and facilitate taxation.** It is an urgent task to improve the mechanisms of oversight and control of illicit flows and tax evasion and put an end to tax havens. The current restrictions against capital controls in BITs and FTAs facilitate illicit capital flight and skew national accounts, adding to the distortion of commercial prices, the movements of massive amounts of cash, the transferal of money via the hawala<sup>13</sup>, contraband, etc.<sup>14</sup> An example of this is Mexico, which under NAFTA has become one of the countries with the highest out-migration of illicit funds in the world.<sup>15</sup>
- **States need to be able to demand performance requirements of investors.** Foreign investment flows depend more on business opportunities than the existence of investor privileges. Performance requirements on foreign investors would not lead to the loss of foreign investment if they became minimum international standards designed to discourage a ‘race to the bottom’ between our countries.

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<sup>13</sup> (Also known as **hundi**) is a system used for the informal transfer of funds (ITF) generally used in many regions at a local and international level. Hawala means “transferal” or “cable” in Arabic banking jargon. The words ‘aval’ in Spanish, *aval* in French or *avallo* in Italian appear to have a direct relation to the word **hawala**.

<sup>14</sup> <http://deberesparahoy.wordpress.com/tag/flujos-financieros-ilicitos/>

<sup>15</sup> <http://mexico.gfintegrity.org/es/>

Performance requirements should be based at least on the following objectives: to balance investors' interests in legitimate and reasonable profits with the need for benefits for the host country; to promote connections between foreign investment and national production chains in such a manner that they will boost direct and indirect employment; to guarantee human rights (economic, social, labor, cultural of indigenous and popular communities, environmental, civil and political) and the rights of mother earth.

All the afore-mentioned proposals are viable; and in fact are already under discussion in different international arenas, although not always with the approach put forward in this document.

The global crisis we are experiencing today will not be solved by loading the costs of the crisis onto the backs of the people in order to save the skin of a handful of speculators. It is time to hear the social outcry demanding that public interest trump the narrow profit-making interests of private corporations. It is time to save mother earth from the extreme level of exploitation that is leading to irreversible damages which the acceleration of climate change so clearly demonstrates. It is time to subordinate the financial-speculation sector and have it serve the productive economy to foment income redistribution and social and environmental sustainability as the only way out of the current crisis. It is time to transform from a savage globalization that advances the law of the strongest into an integrated world based on solidarity where respect for each person is the basis on which peace can be built.

### **III. A CALL FOR THE DISCUSSION AND CONSTRUCTION OF A BASIC COMMON AGENDA; PROPOSALS TO BE WORKED ON:**

- ✓ Stimulate social movements, academics, and lawyers to deepen and improve the proposals for dismantling the current structure giving protection and extreme rights to investors and their investments and substitute them with a new set of national, regional and international rules under democratic control that will lead to a re-evaluation of the relations between human rights and national sovereignty along with the rights and obligations of investors.
- ✓ Foment highly participatory international collective evaluations of the impacts of the FTAs and BITs and disseminate the results while sharing alternative proposals in order to help the resistance movement grow. In some countries it may also be valuable to carry out public, participatory audits of the impacts of BITs and FTAs that are in place as well as for any outstanding cases before international tribunals.
- ✓ While frameworks for investments that meet with the minimal requirements mentioned above are being designed and implemented, we are calling for unity in ensuring that governments, and in particular those in the Global South, work on the following strategic measures:
  - Halt the signing of new investment agreements (BIT and FTA) that include investor-State dispute mechanisms and that protect foreign investment according to the privileges mentioned above;
  - Resist pressure from hegemonic governments, corporate lobbies, and international organizations to sign BITs and FTAs;
  - Get nation States to carry out a general audit of their investment treaties and the cases brought before the ICSID and other tribunals;
  - Cancel or denounce the BITs and the Investment Chapters found in the Free Trade Agreements and fight for new international or regional legal frameworks based on our proposal for a new international set of rules governing investment;
  - Pull out of the ICSID agreements and restrict the use of other arbitration tribunals that are not transparent such as those established under the UNCITRAL rules and under the International Chamber of Commerce;
  - Regulate foreign investment by means of national legislation according to what has been previously put forward and submit investor disputes to national tribunals;
  - To complement the above, promote the creation of regional dispute resolution mechanisms bearing the characteristics we have suggested at various points in this document.

## IV. REFERENCES

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- Text: <http://www.s2bnetwork.org/themes/eu-investment-policy/week-of-action-against-bits-and-for-an-alternative-investment-regime.html>
- Signatures:  
[http://www.s2bnetwork.org/fileadmin/dateien/downloads/signatories\\_-\\_6\\_dec.pdf](http://www.s2bnetwork.org/fileadmin/dateien/downloads/signatories_-_6_dec.pdf)
- *Campaña no al CIADI y los TBI; Por una nueva Arquitectura Financiera y Comercial* [http://www.enlazandoalternativas.org/IMG/pdf/Campana\\_CIADI-TBI\\_s.pdf](http://www.enlazandoalternativas.org/IMG/pdf/Campana_CIADI-TBI_s.pdf)
- The 2009 Trade Reform, Accountability, Development & Employment (TRADE) Act <http://www.citizenstrade.org/ctc/activist-resources/background-on-trade/organizing-materials-for-the-trade-act/>
- Statement (of Ecuador) on behalf of a Group of Countries at the 24rd Session of the Human Rights Council on “Transnational Corporations and Human Rights”, Geneva, September 2013. <http://business-humanrights.org/media/documents/statement-unhrc-legally-binding.pdf>
- Statement to the human rights council in support of the initiative of a group of states for a legally binding instrument on transnational corporations <http://www.stopcorporateimpunity.org/?p=3830>
- International Peoples’ Treaty on TNC (soon to be made public and opened for discussion); see <http://www.stopcorporateimpunity.org/>
- Alternative Trade Mandate; 2014. <http://www.alternativetrademandate.org/>



## **V. INITIAL LIST OF ORGANIZATIONS AND NETWORKS STANDING BEHIND THIS CALL PROMOTING A DEBATE ON INVESTMENT**

ATTAC – Argentina  
Brazilian Network for the Integration of Peoples (REBRIP)  
Center for Research on Investment and Trade (CEICOM)  
Colombian Action Network on Free Trade (RECALCA)  
Common Frontiers, Canada  
CooperAcción, Perú  
Democracy Center, Bolivia  
Ecuador Decide  
Forum Solidaridad Perú  
Fundación Solón, Bolivia  
Hemispheric Social Alliance  
Institute for Policy Studies - Global Economy Project (United States)  
Inter-American Platform for Human Rights, Democracy and Development  
(PIDHDD)  
Latin American Institute for an Alternative Society and an Alternative Law (ILSA)  
Latin American Network on Debt, Development and Rights (LATINDADD)  
Mexican Action Network on Free Trade (RMALC)  
National Conference on Social Development (CONADES)of Perú (CONADES)  
National Coordination Commission (Comisión Nacional de Enlace), Costa Rica  
Quebec Network on Continental Integration (RQIC)  
REDES – Friends of the Earth, Uruguay  
Salvadoran Ecological Unit (UNES)  
Transnational Institute (TNI), Amsterdam