

# A Time for Reigning In?

**Big environmental NGOs are being ceded concessions for large protected areas of land and sea without proper monitoring, control and enforcement**

States are ceding land and marine concessions to large environmental non-governmental organizations (ENGOs), which are often set up as ‘trusts’. These ENGOs then manage the environmental reserves ceded to them on behalf of the States. The board of these trusts, whose activities are financed by transnational corporations, then decide by themselves—without any democratic control—environmental actions to be undertaken. Local communities and citizens are often uninformed about these projects or kept out of managing these environmental reserves. They are also often direct victims like artisanal fishers and peasants.

Large industrial and financial corporations are increasingly investing in environmental activities. Private transnational companies are also going to pay for the environmental actions and activities undertaken by NGOs to ‘compensate’ for the pollution caused by their activities or simply to invest in activities in a profitable sector. This is why private companies are financing, amongst other things, the buying up of debt by NGOs and why NGOs are becoming creditors for developing countries, taking the place of Western States from whom they have bought the debt.

Let us imagine that an NGO financed by a transnational company buys up for US\$25 mn dollars from the French government the debt of a Small Island Developing State (SIDS) worth US\$100 mn. The French government agrees that this buy-back will be reimbursed in part by its loan to the SIDS, but, above all, that within the framework of its development policy, it insists that the amount of this debt owed by the SIDS government be reduced to US\$50 mn. To do a ‘debt for nature swap’ and ‘pay’ the balance of this US\$50 mn debt which it owes to the NGO, the SIDS is going to cede maritime concessions to it in the same way that a State cedes a petroleum or mining concession to a transnational company. This concession will, in this case, be ceded free of charge in exchange for the relief of the entire debt.

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Whilst the fight to combat climate change has, in large part, been entrusted by States to large ENGOs, and, for various reasons, transnational corporations finance these NGOs, the question now arises as to how what is often referred to as the ‘environmental industry’ is regulated. This was the question posed by Mathilde Jounot’s film *Océan, La Voix des invisibles* (Ocean, the Voice of the Invisibles), shown at the film festival in Lorient, France.

Environmental protection is becoming a global industry. The 2015 Paris Climate Conference (COP 21) and French law are turning NGOs into ‘service providers’ for dealing with environmental compensation.

## **Corruption**

Extractive concessions (petroleum, gas, mines, etc.) have, for a long time, been the cause of corruption amongst officials and of violence meted out to

local communities, forcing them out. This is also beginning to be the case for environmental concessions, examples of which include marine reserves conceded by States to large NGOs covering tens of millions of sq km. The case of traditional fishers obliged to abandon their livelihoods and to leave their villages is identical to the case of peasants who are forced to quit zones where petroleum is extracted.

Let us return to our hypothetical NGO which is benefitting from an imaginary maritime concession in a SIDS. No one is aware of the concession contract's content, nor about the rights ceded, nor the role of the transnational corporation that is financing the debt buy-back, nor the activities being undertaken by the NGO or by the transnational corporation in this concession. No one is associated with these activities and the question of the survival of the fishing and peasant communities will be managed by those who are involved in the start-up.

This environmental industry functions around the view that humans have only created disasters on land areas of the planet. The logical consequence of this assumption is to close these areas completely and without any appeal, exclude all human activities from them, and then create reserves. At the same time, this industry, conveniently forgetting that humankind is an integral part of ecosystems and should engage in the management of environmental actions, does not engage with local communities. Environmental activities must be framed in the same way that extractive activities were framed 20 years ago. Rights have been granted by the United Nations or by the global extractive industries themselves in the framework of Corporate Social Responsibility (CSR), to local communities to combat, for example, the displacement of communities (UN Declaration on the Rights of Indigenous People, and other internationally accepted norms).

Concretely, we must develop a norm for environmental activities equivalent to the Extractive Industries

Transparency Initiative (EITI) norm, a soft law, that has transformed the extractive industry. The EITI is a global norm to promote an open and responsible management of natural resources.

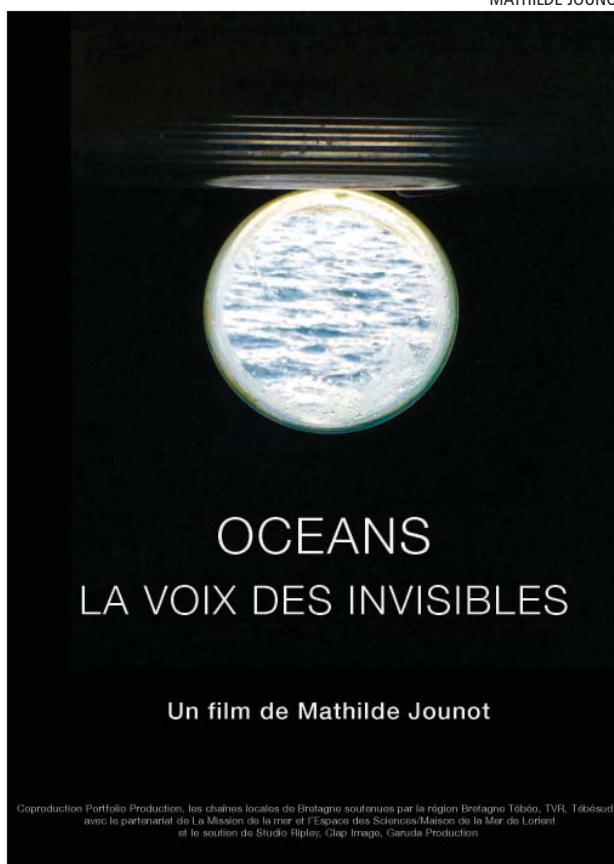
The EITI seeks to reinforce government and corporate sector systems, inform the public, allow open debate, and improve confidence. In each country, the EITI is supported by a coalition composed of governmental, corporate, and civil society representatives, working together.

This EITI norm, first of all, envisages transparency of extraction contracts and also of the payments made. Nothing is really known about what is contained in the concessions for maritime reserves, but since the EITI norm has been in place, extractive concessions are available on the Internet. Nothing is known about the income that the NGOs and transnational corporations draw from these environmental activities, and even less about the long-term consequences for fishing and peasant communities.

This norm further envisages that local populations can be associated with the management of these concessions, which will be important for genuinely implicating the fishers or peasants in the management of the reserves. A World Bank report describes putting this norm into place and especially the national "mediators" who are engaged with the companies.

This norm, and also industrial mining norms such as those of the

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Mathilde Jounot's film *Océan, La Voix des invisibles* (Ocean, the Voice of the Invisibles), shown at the film festival in Lorient, France

International Council on *Mining* and Metals (ICMM), agree on the rights of local communities to be consulted on these concessions which must include fishers and peasants, namely, the local populations.

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These two rights—to public information and consultation by the local communities—will be formalised by investigators from the Global Legal Studies Network (GLSN), which, in co-operation with international organizations, will draft a text inspired by this mining right to regulate the environmental concessions. International organizations of fishers and peasants will be associated with the drafting. This text will be called the Environmental Organization Transparency Initiative (EOTI).

NGOs, States, international institutions and transnational corporations will be called on to ratify the text. Having ratified the text, the organizations will then be engaged in applying it in their concessions or in the management of environmental actions. The EOTI norm will contain a clause on the ‘choice of law’, making explicit reference to the EOTI norm as the norm applicable to the relations between the contracting parties (States, large NGOs, transnational enterprises, financial institutions) which could be included in the contracts in the environmental industry.

This mechanism of contractual clauses referred to in the EOTI standard has been applied with success to regulate the extractive industry, which includes companies that are the richest and most powerful global industrial and commercial companies. This mechanism must become the principal route for the creation of transnational laws promoted by the United Nations. 

#### For more

[eiti.org/files/Implementing-the-eiti-FRE.pdf](https://eiti.org/files/Implementing-the-eiti-FRE.pdf)

**De L' Initiative pour la transparence dans les industries extractives**

[papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2657885](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2657885)

**Adding Human Rights Punch to the New Lex Mercatoria: The Impact of the UN Guiding Principles on Business and Human Rights on Commercial Legal Practice**

[transnat.hypotheses.org/](https://transnat.hypotheses.org/)

**International Society for Extractive Law and Practices**

[eiti.org/files/Implementing-the-eiti-FRE.pdf](https://eiti.org/files/Implementing-the-eiti-FRE.pdf)

**Extractive Industries Transparency Initiative**

[icmm.com/document/9714](https://icmm.com/document/9714)

**International Council on Mining and Metals**

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