

OECD complaint against Bayer's agricultural model in Latin America

Q&A on the legal background

1. What is the case about, and why is it relevant?

We are filing an OECD complaint in Germany against Bayer for the violation of the OECD Guidelines on two main issues related to its genetically modified (GM) soybean and glyphosate business in Argentina, Bolivia, Brazil and Paraguay: (1) the company's contribution to the infringement of the rights to a healthy environment, health, food and land; (2) its inadequate human rights and environmental due diligence for the downstream value chain of these products.

For the first time, six organizations, four from Latin America and two from Germany, are exposing the regional impact of soybean industrial agriculture in the Southern Cone and taking collective action against Bayer AG. While each country has its specific problems, the dimensions are regional, and the cause is the same: land-intensive cultivation of soybean seeds and glyphosate-based pesticides marketed heavily by Bayer in these countries for decades.

While global food demand requires efficient agricultural models, transnational companies operating in this sector should ensure that such models incorporate a human rights perspective and are sustainable for the environment. Food production – in this case, the cultivation of soy often used for animal feed – should not come at the expense of indigenous, peasant and other marginalized groups.

2. Why is the cultivation of genetically modified soybeans and use of glyphosate such a big problem in Latin America?

The current agro-industrial model for GM soybean cultivation is highly problematic due to the human rights and environmental impacts it has on communities living near soy plantations, in particular indigenous and peasant communities, but also urban neighborhoods. These impacts are widespread, as

Argentina and Brazil are among the top three soy-producing countries in the world, while Paraguay and Bolivia are in the top-ten ranking.

The situation results from the introduction in the mid-1990s of Monsanto's (now Bayer) GM soy seeds that are resistant to glyphosate, which spurred a drastic increase in the exploitation of agricultural land for soybean cultivation in the region. The market has grown so much that now GM soybeans occupy on average more than 50% of the arable land in these countries. In turn, the use of glyphosate-based pesticides increased in all countries, with Bayer holding a significant position in this market, particularly since its merger with Monsanto in 2018.

Against this background, our complaint shows the negative impacts of such a model on the environment and human rights, and points to Bayer's role in the situation.

3. What are the negative impacts of the use of GM soy seeds and glyphosate-based pesticides on local communities (in South America)?

The impact on the ground ranges from socio-territorial conflicts with local (indigenous and peasant) communities, massive deforestation and water pollution, to violations of the rights to health, food, land and a healthy environment.

Socio-territorial conflicts and the right to land

The leading GM soy production areas in Brazil, Paraguay, Bolivia and Argentina are characterized by socio-territorial conflicts, where land tenure rights are in dispute, leading to land dispossession or usurpation, illegal evictions, armed attacks, poisoning by illegal fumigations, and criminalization of indigenous, peasant and rural communities by soybean producers. Large soy producers have resorted to some of these tactics in order to accumulate land and increase soy plantation areas.

Instances of these conflicts abound in the region. For example, the indigenous Ava-Guaraní communities in southern Brazil have witnessed alleged instances of fumigation used as a chemical weapon against indigenous communities, where large grain producers intentionally spray villages to intimidate and harm residents in the context of land disputes over their ancestral land. In Paraguay, the peasant community in "Colonia Yvypé" has been falsely accused by soy producers of land invasion, leading to legal persecution and potential imprisonment for community members defending the land they are entitled to.

Indigenous peoples and peasant communities have a traditional and spiritual relationship with their territory. They need sufficient land to maintain these relationships and their traditions, which are expressions of their rights to life and self-determination. The agro-industrial sector in general, and GM soybean production in particular, have placed strong pressure on these communities and their territories, most of which are now enclosed by large-scale soy plantations. As a result, the communities' right to land is affected: they are left with territories too small or too polluted to provide the dignified and respectful conditions for their traditional ways of living.

Environmental damage and violations of the right to a healthy environment

Soy is considered a “forest risk commodity,” given that its cultivation entails severe risks to the environment. Deforestation is one of the greatest impacts of GM soy cultivation, with forests being razed to make space for large-scale GM soy plantations. Currently, soy cultivation is the second-largest driver of tropical deforestation in the world. The ecosystems located in the regions of the four countries include the Amazon, the Cerrado, the Atlantic Forest, the Chaco, and the Chiquitanía, which contain enormous biodiversity and carbon reserves. Thus, they are of global importance, given the essential role they play in climate change prevention and mitigation, as well as forest cover and biodiversity preservation. For instance, Brazil and Bolivia have some of the highest rates of primary forest loss in the world. Particularly in the region of Santa Cruz de la Sierra in Bolivia, soybean cultivation is directly tied with deforestation in the area. And while some measures have been taken to protect the Amazon against soy-related deforestation, these had the unfortunate effect of causing increased deforestation in the other regional ecosystems.

Moreover, the indiscriminate use of glyphosate in fields neighboring indigenous, peasant, and peri-urban communities has significant and immediate consequences on their environment and, consequently, on their right to enjoy a healthy environment. This includes the pollution of water sources, such as community wells or local streams, along with destruction of subsistence crops and remaining pockets of forests, leading to reduced biodiversity and negative impacts on local wildlife. In Pergamino, Argentina, the neighborhood of Villa Alicia borders soy fields where glyphosate was indiscriminately sprayed. Multiple studies have revealed severe water pollution in the area, rendering the water unsuitable for human consumption.

Violations of human rights to food and health

The right to food, namely the access to and availability of food, has also been directly affected by the continuous expansion of the agricultural barrier.

Dedicating large land areas to soybean production severely reduces the quantity and quality of food. The indiscriminate use of glyphosate without respecting buffer zones has destroyed subsistence crops of nearby communities or has hindered their ability to engage in small-scale agriculture. This practice affects their right to self-determination with regard to their food systems and puts present and future generations at risk by jeopardizing food sovereignty.

The use of pesticides in excessive quantities and frequencies, often only a few meters away from the homes of local communities, has led to severe poisoning, chronic illnesses, and deaths. Residents of these communities have reported serious health effects, which include strokes, cancer, respiratory diseases, bone conditions and cysts, lymphatic proliferations, and conditions in the cervical spine and sciatic nerve. Less serious illnesses include diarrhea, vomiting, skin irritations and damage, as well as headaches, which were reported to occur immediately after the spraying of pesticides. These conditions particularly affect vulnerable segments of the population, such as children, pregnant women and the elderly.

4. How is the transnational company Bayer AG involved?

After its merger with Monsanto in 2018, Bayer positioned itself as one of the leading agrochemical companies in the Southern Cone region through its “Crop Science Business line.” Bayer, with its headquarters in Germany, markets its Crop Science products in Argentina, Brazil, Bolivia and Paraguay through several subsidiaries and production plants. Bayer promotes industrial monocultures, a type of agriculture which requires large fields and the intensive use of pesticides. This type of agriculture is based on what has been called the “technology package,” composed of a bundle of glyphosate-based pesticides and GM soy seeds resistant to it, which is widespread in all four countries. In fact, Monsanto’s seeds were the first GM soybean registered, and in Paraguay and Bolivia, they remained the only GM event for years to come. To this day, the company has maintained a market leader position in the development and registration of GM soy seeds.

Bayer also maintains a prominent position in the glyphosate-based pesticides market. Bayer produces glyphosate-based herbicides in the Monsanto plant in Zárate (Argentina) and Rojas (Argentina). It then sells, distributes and exports these products to Uruguay, Bolivia and Paraguay. Bayer has two other production facilities in Brazil, where it produces the raw materials for the glyphosate-based herbicide “Roundup” mainly for the domestic market.

For both seeds and pesticides, Bayer has a strong presence throughout the entire value chain. It is involved in every stage of soy seed production and distribution, either through its ownership of breeding companies or by commercial licensing

agreements. Similarly, it has licensed pesticide distributors, at times exclusively, and promotes its chemical input-heavy soybean agriculture at local fairs and as part of incentivizing programs aimed at larger distributors and smaller dealers alike.

Despite its strong presence in the market in the region, Bayer's human rights and environmental due diligence policies – which are established in Germany – have not adequately addressed the potential and actual adverse impacts related to the GM soy and pesticide business in the four countries.

5. What are the affected communities demanding?

The civil society organizations submitting the complaint have worked for years in their countries with local communities affected by the agribusiness model promoted and implemented by Bayer. In interviews carried out with local community members, they shared their views on the situation and their demands for an agricultural model that respects their rights, their lands and traditions. For rural indigenous and peasant communities, this means, first and foremost, respect for their traditional lands, in order to ensure their access to food and that the environment in which they live remains unpolluted. For urban communities, preventing exposure to toxic pesticides and the pollution of local water sources is paramount. The complaint argues that Bayer should live up to its corporate responsibility to respect human rights and the environment and adapt its business practices and due diligence policies to prevent future impacts, and mitigate those that have already occurred.

6. What is an OECD complaint?

An OECD complaint is a mechanism to encourage responsible business conduct within the operations of multinational enterprises, through the framework established by the OECD Guidelines for Multinational Enterprises (the "Guidelines"). One of the main purposes of filing an OECD complaint is to address grievances related to the operations of multinational enterprises. Among other things, complaints allow interested parties to claim that companies are in breach of the Guidelines by contributing to human rights violations and/or failing to conduct adequate environmental and human rights due diligence as part of their business operations. Complaints can be made to the National Contact Point (NCP) of the country where the company is based – in this case, Germany – or where it conducts business. The NCP does not have the power to impose sanctions, but it can facilitate dialogue between the parties – namely the complainant(s) and the

multinational enterprise accused of violating OECD guidelines – with the aim of seeking a solution. The NCP may issue a final report assessing the company’s conduct and providing recommendations for improvement in the event that no agreement is reached.

7. Why did we choose to file a complaint with the OECD, and what do we aim to achieve with it?

The complaint argues that the actions and omissions of Bayer AG are in violation of the Guidelines, particularly the company’s group-wide policies and its operations in the four Latin American countries. The company’s current design and implementation of its human rights and environmental due diligence policies is insufficient to adequately identify, prioritize, prevent and mitigate the risks associated with GM soy cultivation and glyphosate use in the Southern Cone. As a result of these business practices, we have found that Bayer is contributing to violations of the rights to a healthy environment, health, food and land.

In the complaint, we argue that Bayer should adapt its business model and operations in the Southern Cone in a manner that respects the Guidelines, the human rights of communities and individuals, and the environment in the region. The first step is to strengthen its due diligence process in its downstream value chain, meaning the stages in a product’s life cycle that occur after its production. For this, Bayer should adopt the specific due diligence parameters tailored for the agricultural sector, particularly those laid out in the OECD-FAO Guidance for Responsible Agricultural Supply Chains and the OECD-FAO Handbook on Deforestation. In implementing these measures, Bayer should conduct enhanced due diligence, especially considering that aspects related to their GM soy and pesticide business, such as the “technology package,” operational areas and business partnerships, should be identified as “red flags.”

We expect the outcome of the mediation to be a change in Bayer’s corporate conduct and policies in this sense, which will have a positive impact on the regions of the four countries of this complaint and the communities.

8. Who are the complainants, and which human rights organizations are involved?

The complainants are a coalition of human rights and environmental organizations in five countries (Argentina, Bolivia, Brazil, Paraguay and Germany), namely CELS, Terra de Direitos, BASE-IS, Fundacion Tierra, Misereor and ECCHR. The communities or areas of interest referred to in this complaint are presented as

concrete cases, which serve as examples of a more widespread problem, but they do not take part directly as complainants.

Partner organizations:

[CELS \(Argentina\)](#)

The Center for Legal and Social Studies (CELS) is a leading human rights organization which promotes the protection and fulfillment of rights, justice and social inclusion. CELS has been working on impacts on the rights of rural communities, particularly indigenous and peasant communities, for approximately two decades. Its first actions were specifically focused on intervening in land conflicts between peasant and/or indigenous communities and agricultural entrepreneurs, mainly through litigation actions, both nationally and internationally, and providing technical support at the local level.

[Terra de Direitos \(Brazil\)](#)

Terra de Direitos uses public interest law to act in defense of the right to free use and access to biodiversity in Brazil, especially in defense of people living in rural areas, along rivers and in forests. Together with the Permanent Campaign Against Pesticides, they bring together more than a hundred social movements, trade unions, social organizations and research institutions.

[BASE-IS \(Paraguay\)](#)

The organization BASE Investigaciones Sociales (BASE IS) is a think tank dedicated to the research and analysis of rural reality in Paraguay. Its research has focused extensively on the relationship between land, agribusiness and human rights. BASE IS has accompanied peasant and local organizations in the elaboration of draft laws to ban the use of agrochemicals and has supported them in filing administrative complaints related to the control of agrochemical applications.

[Fundación Tierra \(Bolivia\)](#)

Fundación TIERRA is a Bolivian NGO created in 1991. TIERRA accompanies indigenous and peasant populations in their struggle for sustainable rural development. For several years, Fundación TIERRA has been studying the dynamics of agribusiness and its impact on land access and use for Indigenous, native and peasant communities in Bolivia. TIERRA's work method of research-action to establish a broad network of agrarian and rural researchers, rural

development promoters, community facilitators, activists and community leaders. It builds management, negotiation and participation capacities of indigenous, native and peasant organizations.

Misereor:

Misereor is the German Catholic Bishops' Organisation for Development Cooperation. For over 60 years, Misereor has been committed to fighting poverty in Africa, Asia and Latin America. Misereor has supported and published reports on seeds and pesticides in Latin America.

The role of ECCHR:

ECCHR supports the local organizations and communities in their struggle for recognition of their human rights, including the right to a healthy environment. ECCHR is co-submitting the complaint at the National Contact Point of Germany to demand a change of corporate policies on the part of Bayer AG.

9. Why does Bayer's responsibility not fall under the German Supply Chain Act (LkSG), and why should it be covered?

This complaint is based on Bayer's failure to address human rights and environmental violations within its downstream operations. This category of operations, which include acts or omissions in product design, sales or marketing of products and services, is not covered under the German Supply Chain Act (LkSG), according to the current interpretation of the German supervisory authority, the Bundesamt für Ausfuhrkontrolle (BAFA).

However, German companies should respect the OECD Guidelines and the UN Guiding Principles on Business and Human Rights, both of which include downstream due diligence. The complaint highlights that Bayer's human rights and environmental due diligence policies and processes for its downstream operations in the GM soy and pesticide sector are insufficient. Consequently, the company is contributing to actual adverse human rights impacts. All of this violates the provisions outlined in the OECD Guidelines, even if it is beyond the scope of the German LkSG.

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European Center for Constitutional and Human Rights (ECCHR) e.V.

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