

# **Declaration**

## **Hearing of the Permanent Peoples Tribunal**

### **Geneva, June 23<sup>rd</sup>, 2014**

The Permanent Peoples' Tribunal (PPT) held a Hearing in Geneva on June 23, 2014.

The Jury, composed of Juan Hernández Zubizarreta (president), Roberto Schiattarella, Francesco Martone, Renata Reis and Beverly Keene, considered 12 cases in the mining, oil and water sectors. The cases were presented by human rights defenders from communities affected by Glencore (the Philippines, Zambia, Peru, Democratic Republic of Congo, Colombia), Pacific Rim (El Salvador), Lonmin (South Africa), Chevron (Ecuador), Shell (Nigeria), Mekorot (Palestine), Coca-Cola (Colombia), Hidralia Energia (Guatemala). The jury recognizes the systematic violations of the human rights and the legitimacy of the resistances of the affected communities

The Jury acknowledges the efforts made by human rights defenders and representatives of affected communities, with support from social movements, civil society organizations and campaign networks, in preparing and presenting the cases.

**The Verdict of the PPT session held in Madrid in 2010, that inspired this Hearing,** acknowledged the frequent damage caused by pillage and social and economic exploitation by European TNCs in Latin America, and more generally, the absence of checks and balances to the power of TNCs.

The Madrid Verdict stressed the instrumental character of Corporate Social Responsibility, and denounced as immoral and illicit:

- the behavior of TNCs;
- the practices of the neoliberal capitalist model fostered by industrialized countries, as well as international institutions such as the International Monetary Fund, the World Bank, the World Trade Organization, the European Union;
- the attitude of EU Member States, legal seat of the scrutinized TNCs, in providing them with unconditional support;
- the attitude of host countries in establishing legal and institutional frameworks that allow the violation of all rights that they are obliged to protect.

Subsequently, the PPT recommended the adoption of a binding code of conduct for the TNCs, and the definition of an institutional architecture that would ensure its implementation and justiciability, by means of an International Economic Tribunal and an International Center on TNCs.

We have met here in Geneva while member states of the UN Human Rights Council were debating rules for TNCs, such as the proposal by some governments for a Binding Treaty

for TNCs, and the campaign for a Peoples' Treaty on TNCs, launched by various social movements from all over the world.

All of these efforts and proposals under the framework of a new juridical order designed to regulate the activities of TNCs, in order to hold them accountable and to end the situation of extreme impunity that characterizes also all the cases considered by this Hearing.

## **2. Case analysis**

The cases analyzed in this session are an extremely representative sample of the operations of corporations and their rights violating practices (see **Annex**). This Hearing further confirms that violations committed by TNCs are not isolated and unconnected cases, but rather systematic patterns that occur all over the world, as expressions also of an architecture of impunity. The cases identified in this statement are listed as follows (the list is not comprehensive):

### **2.1 Damages to life:**

#### **Environment: Soil, water and air contamination**

#### **Threat to Food sovereignty**

#### **Threat to public health**

All of the cases presented provide evidence that the operations of TNCs produce irreparable damage to the communities, by violating the human rights of people, their physical integrity, the environment, nature, their living conditions including health and food sovereignty.

### **2.2 Privatization of public goods, water and the plunder of land**

### **2.3 Destruction of land and grabbing of land and of the ancestral territories of indigenous peoples and afro-descendant communities**

### **2.4 Attack on women's rights, labour rights, and exploitation of child labour**

### **2.5 Persecution of human rights defenders**

TNCs foster intimidation and violence against human rights defenders, including lawyers that in the exercise of their profession suffer all sorts of threats, pressure and judicial persecution.

## **2.6 Violence, repression and criminalization, promoted by TNCs, against social and labour movements as well as communities in resistance such as the Marikana workers' massacre in South Africa.**

These are carried out by police and military and paramilitary entities, private security companies, as well as the other institutions of host States.

## **2.7 Access to justice**

The cases considered in this hearing show that victims suffer from limited access to justice and reparation due to lack of resources, and to political and security implications as well as the asymmetry in litigation conditions.

## **2.8 Jurisdiction**

The instrumentalization of rules on jurisdiction and competence represent an additional hindrance to peoples' rights and justiciability.

## **2.9 States complicity**

The Hearing acknowledged that the States where the accused companies have their headquarters (Switzerland, the United States, Canada, Israel and EU Member States) are complicit through failure to take action against TNCs for their abuses.

It furthermore acknowledged the deficiency of host countries, either due to the weakness of local governments, clear complicity, or limitations imposed by the various instruments to defend investors' interests (such as Free Trade and Investment Treaties and Agreements, cessation of jurisdiction, investor-to-state dispute resolution) that prioritize investors' privileges and gains over peoples' rights. The World Bank's ICSID (International Center for the Settlement of Investment Dispute) is still part of this architecture of impunity.

The Hearing highlighted the huge diversion of public resources in favor of private profits for TNCs, as well as the indebtedness and submission to the International Financial Institutions (IFIs) and the new conditions of capital markets (waiver of jurisdiction, free movement of capital, etc.) aimed at attracting and maintaining TNC investments.

## **3. Recommendations**

On the basis of the work of the PPT in its various sessions and reflected in the Madrid Verdict, and during this Hearing in Geneva, the Jury proposes:

### **To the UN Human Rights Council**

- I. That it develop a binding Treaty for TNCs that takes into account among others, the obligations of TNCs to respect international norms on human rights, and civil and criminal responsibility in case of violation and countries' obligations with reference to TNC

- regulation and control;
- II. That it approves the creation of an international Court on Transnational Corporations and Human Rights, that would integrate universal, regional, and national mechanisms, and ensure affected communities and peoples proper and direct access to justice by means of an independent, international body;
  - III. That it approves the establishment of a Public Center for TNCs in charge of scrutinizing and monitoring their operations.

### **To States and international organizations**

- I. That they guarantee and protect communities and men and women affected by TNCs and ensure access to justice and the right to compensation and reparations;
- II. That they acknowledge and assume their responsibilities in accordance to the Maastricht Principles on Extraterritorial Obligations (ETOs) of states regarding economic, social and cultural rights, and that they should subordinate the mechanisms that support the internationalization of TNCs to the international system of protection of human rights, labour rights and the environment;
- III. That they forbid or limit access and establishment of investment in contravention of international standards and obligations on human rights, labour rights and the environment
- IV. That conflicts between TNCs and states are not settled in international arbitration courts, and that states strengthen the competence and capacity of national courts to settle the above mentioned conflicts, and that governments and parliaments consult with social movements, trade unions, NGOs, indigenous peoples, among others when taking decisions that are relevant to their interests.

## **Annex**

### **Cases presented Hearing of the Permanent Peoples Tribunal Geneva, June 23rd, 2014**

#### **Mining Cluster**

##### **Glencore PLC**

The accused corporation is the Anglo-Swiss Glencore PLC, a company involved in metals trade and mining all over the world. The contested actions occurred in several areas of four different countries, and were perpetrated through different subsidiaries, namely:

##### **Glencore in Philippines**

**Testimony:** Rene Pamplona (Social Action Center-Marbel, representing the Bla'an indigenous peoples - Alyansa Tigil Mina (ATM)

**Summary:** In the Philippines, through Xstrata Copper, Indophil Resouces NL and Sagittarius Mines, Inc., in the municipalities of Malungon (Sarangani), Columbio (Sultan Kudarat), Tampakan (South Cotabato) and Kiblawan (Davao del Sur), as well as four provinces in the Davao Region and the Regions XI and XII. Here the corporation is accused of deceptions, damage to property, desecration of burial grounds and sacred sites, illegal detentions, killings, and other violations of human rights, most of them perpetrated by means of financing and deploying military and para-military groups, and in order to foster its Tampakan Copper-Gold Project. This project will impact directly watersheds, forests and ancestral domains, at the expenses and despite the dissent of indigenous and local people, particularly the Bla'an People, and in violation of the UN Universal Declaration of Human Rights, the UN Declaration on the Rights of Indigenous Peoples, the ILO Convention 169 on Indigenous and Tribal People, the Indigenous Peoples Rights Act of 1997 and the Local Government Code 1991.

##### **Glencore in Zambia**

**Testimony:** Edward Gorma (Centre for Trade Policy and Development)

**Summary:** In the area of Mufulira, Zambia, and through its subsidiary Mopani Copper Mines, the corporation is responsible for the pollution of land, waters and air, particularly due to the uncontrolled emissions of sulphate dioxide, which dramatically affects the local populations causing severe respiratory diseases, and contaminating the fauna and flora upon which they depend almost completely for their own sustainment. The corporation is also responsible, as it was also indicated by an independent audit, of distorting their balances in order to avoid taxes and distract funds out of the country, thus depriving Zambia of the sovereign right to perceive the profit of the exploitation of its natural resources, and consequently the possibility of implementing necessary public policies with the income derived from mining. In this sense the activities of the corporation violate not only the most basic human and peoples' rights recognised by international law, but also, as recognised by the aforementioned audit, the OECD norms on transnational corporations activities.

### **Glencore in DRC**

**Testimony:** David Van Wyk (Benchmarks) (*Through Videoconference*)

**Summary:** In the Democratic Republic of the Congo, in the mining area of Kolwezi, Katanga and through its subsidiary Kamato Copper Company, the corporation is responsible for allowing child labour, for employing expatriates who are not aware of their rights and thus live in conditions of extreme poverty and marginalisation, perpetrating fraud and corruption to smuggle minerals out of the country, avoiding fiscal and tax obligations by keeping management secreted from local authorities, causing air and water pollution, and finally harassing those who protest against their activities through subsidiary security companies. These activities are in violation of general international human rights and labour regulations, and also more specifically of the Basic Principles and Guideline issues by the UN's Office of the High Commissioner for Human Rights, the 2000 Voluntary Principles on Security and Human Rights, the 1979 UN Code of Conduct for Law Enforcement Officials, and the 1990 UN Basic Principles on the use of Force and Firearms by Law Enforcement Official.

### **Glencore in Peru**

**Testimony:** Jaime Cesar Borda Pari (Coordinación de Muqui Sur)

**Summary:** In Peru the company is responsible for the mining unit of Antapaccay, in Espinar, Cuzco, and in this context is accused of several human rights violations, such as violent restraint of community mobilisations, the blocking of investigations and workers' and judicial actions by means of harassment, intimidation and corruption. Glencore is also responsible for polluting water and land, the contamination of which resulted in deaths, miscarriages, birth defects, and loss of food sovereignty for the local population. The company is therefore accused of violating the Guiding Principles on Business and Human Rights, based on the duty of the state to protect and the corporate responsibility to respect and provide access to remedy, as well as the American Convention of Human Rights, and the International working standards of the International Labour Organisation.

### **Glencore in Colombia – PRODECO and El Cerrejón cases**

**Testimony:** Andrea Torres (Tierra Digna)

**Testimony:** Luis Enrique Uriana (Indigenous leader of the Resguardo Wayuu Provincial) - *filmed testimony*

**Summary:** In Colombia, through its subsidiaries PRODECO and Carbones del Cerrejón LLC, and through its participation in FENOCO, Glencore is accused of defrauding the public treasury through unpaid royalties of 500 million pesos, as well evading tax obligations. The company is constantly in non-compliance of legal and contractual obligations with regard to mitigation, prevention and compensation of environmental impacts derived from its activities, such as pollution of air, land, and water, unauthorized deforestation, undue intervention in watercourses, and the spilling of toxic waste, among

others. Moreover, as a consequence of extractive activities, the quality of life of local communities has been drastically reduced, especially with regard to social conflicts (both with the public authorities and the mining enterprise), militarization and intervention of the enterprise in local policy, demographic distortions, and restrictions to the use of land, air and water to the point of causing several forced displacements for which there was no compensation. The foregoing is a blatant violation of the previous consultation procedure established in the 169 ILO Convention, of the American Convention of Human Rights, of the Colombian Constitution, of the Covenant of Economic, Social, and Cultural Rights, as well as of the Guiding Principles on Business and Human Rights.

### **Pacific Rim in El Salvador**

**Testimony:** Saúl Baños (Mesa Nacional frente a la Minería Metálica de El Salvador)

**Summary:** The accused is the Canadian based Pacific Rim Mining Corporation for its activities in the Department of Cabañas in El Salvador. When Pacific Rim carried out exploratory activities in the region the local communities, who were well aware of the impacts of mining operations, denied Pacific Rim further access to their lands. Indeed, a Report of the International Union for the Conservation of Nature about the El Dorado mine project confirmed the communities' concerns, especially referring to environmental damage, reduction of access to water, water pollution and impacts over health and agriculture. The intention of Pacific Rim to exploit the gold mine in Cabañas has originated conflicts, worsened social divisions, and incremented threats and violence which still have to be investigated, like the murder of several environmental activists in 2011. Pacific Rim, even without producing sufficient environmental studies, denied all of these allegations and sued the government of El Salvador for 300 million dollars before the ICSID Tribunal of the World Bank, even though the core of the controversy is not with the state but with the independently organized communities that would be affected by the mining project. International Investment Law has to foster transparent and strongly guaranteeing regimes, however these should be compatible with international and national human rights standards instead of undermining them, in this case especially with the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the Constitution and Environmental Law of the Republic of El Salvador.

### **Lonmin in South Africa**

**Testimony:** Joseph Mathunjwa (President of AMCU), Thumeka Magwangqana from Sikhala Sonke women's organisation in Marikana, and Dick Forslund (*Through Videoconference*)

**Summary:** The accused corporation is the UK based platinum miner Lonmin. The accusations are based on Lonmin's activities carried out in Marikana, Rustenburg, South Africa, since 2004. Generally, Lonmin is responsible for the environmental damage caused by exceeding the limits of emission of dust, sulfur dioxide, and calcium sulphide, and for causing water pollution with illegal discharges. Moreover, and with regard to the

workers it employs, Lonmin is involved in the Marikana Massacre of August 16, 2012, in which 34 workers were killed and 78 were injured by South African Police Forces and Lonmin Security while peacefully protesting. The protest resulted from a five months struggle with the company for decent living wages and the fact that it did not keep its promises. Due to the strong interest that the government has in the corporation there is no recourse at national, regional or international level for either environmental damages or the massacre. Needless to say, Lonmin's behaviour, as well as the complicity of the South African government, are blatantly in violation of international human rights law, especially of the UN Universal Declaration of Human Rights, the International Covenant of Civil and Political Rights, and the International Covenant of Economic, Social and Cultural Rights, as well as in breach of basic international labour standards, recognised by the International Labour Organisation.

## **Oil Cluster**

### **Chevron in Ecuador**

**Testimony:** Pablo Fajardo (Unión de Afectados por Chevron-Texaco – UDAPT)

**Summary:** The accused corporation is US based Chevron (formerly Texaco), for the damages resulted from the extracting activities that have been carried out since 1964 in over 1,5 million hectares in the Ecuadorian Amazon. The company admittedly spilled over 60 billion liters of toxic waste and approximately 650,000 barrels of oil in the area. The reparation, imposed by the Ecuadorean government, was carried out poorly, and resulted in a mere covering up which has had no effect on the damage and its negative effects, which still endure. In the affected areas cancer rates are extraordinarily high, and the indigenous peoples, including the Tetetes and Sansahuari who previously lived in the area are now extinct, while the Cofanes, Sionas and Siekopai risk a similar fate, as they have fled to other regions. Moreover, local farmers were left with infertile land, and lost their livestock, which is dying or has died due to the contamination. In 2013 the Supreme Court of the Republic of Ecuador has condemned Chevron to pay 9,500 million dollars of damages, thus recognizing that the company's activities violate the Universal Declaration of Human Rights, the International Covenant of Civil and Political Rights, the International Covenant of Economic, Social and Cultural Rights, as well as the Constitution of the Republic of Ecuador which was the first in history to recognize the rights to nature.

### **Shell in Nigeria**

**Testimony:** Goodwin Ojo (Friends of the Earth Nigeria)

**Summary:** The accused corporation is Royal Dutch Shell, based in the Netherlands, for the actions carried out by its subsidiaries in Nigeria, namely those of Shell Petroleum Development Company of Nigeria Limited (Shell Nigeria). Shell Nigeria has been violating Nigerian laws prohibiting gas flaring since 1984, and with its leaks has transformed the once fertile wetlands of the Niger delta into the world's largest oil

disaster. Several studies point to the devastating effects of gas flaring on people and the environment, first and foremost the United Nations Environmental Programme 2011 Assessment Report, especially referring to the 1 million people affected by hydrocarbon pollution in surface water in Ogoniland, where benzene, a known cancer-causing chemical, was found in drinking water at a level 900 times above the standards of the World Health Organization. Fisheries in the area are completely destroyed, affecting at least 5 million fishermen who lack resources to pursue court cases, as well as crops and vegetation for the effect of acid rain, which has also caused miscarriages, deformed births, respiratory illnesses, and cancer. The consequences of the activity of Shell Nigeria, undisputed in the substance, are in violation of Article 24 of the African Charter on Human and Peoples' Rights, which recognizes the right of all peoples to a satisfactory environment favourable to their development, and of the 1999 Constitution of the Federal Government of Nigeria, which recognizes a number of fundamental rights including the right to life and dignity of human person.

## **Water Cluster**

### **Mekorot in Palestine**

**Testimony:** Abeer Al Butmeh (Stop the Wall / Pengon)

**Summary:** The accused corporation is the state-owned Tel Aviv based Mekorot Israeli National Water Company. Mekorot, in collaboration with the state of Israel, is accused of: implementing (water) apartheid and discrimination of Palestinians by restricting water supplies to Palestinian communities in order to supply Israeli settlers, and for discriminatory water prices, charging Palestinians higher rates than Israelis; supporting illegal settlements by supplying water stolen from Palestinian territory, thus participating in the illegality of the settlements themselves by building water infrastructures which are essential to their development. The company is also accused of committing the international crime of pillaging natural resources in the occupied territories. The breach of the right to water violates Article 11(1) of the International Covenant on Economic, Social and Cultural Rights, as well as several other human rights , such as the rights to health, adequate housing and food, to which water is essential, thus also violating the International Covenant on Civil and Political Rights (ICCPR), the International Convention on the Elimination of All Forms of Racial Discrimination, the UN Convention on the Rights of the Child (CRC), the 64/292 UN GA Resolution recognizing the right to water and sanitation. Moreover, since Israel is an occupying power in the West Bank, the Gaza Strip and Jerusalem, the foregoing can also entail a crime of persecution and forced displacement, in breach of the IV Geneva Convention and the Statute of the International Criminal Court.

### **The Coca-Cola Company in Colombia**

**Testimony:** Javier Correa (SINALTRAINAL)

**Summary:** The accused corporation is the US based Coca Cola Company, through its involvement and control of its Mexican subsidiary Coca Cola Femsa which owns the Colombian bottler Industria Nacional de Gaseosas S.A. The parent and subsidiary companies are accused for violations that have occurred in Colombia between 1996 and 2014, including death threats, persecution of workers' representatives, assistance to military troops in entering the company, arbitrary dismissals and defamatory campaigns, as well as the complicity with military and para-military groups in carrying out arbitrary detentions, illegalization and incendiary destruction of workers' unions, covering up of environmental contamination and the unsustainable extraction of water. These abuses were previously recognized by the Permanent Peoples Tribunal in 2008, by the International Labour Organisation (ILO) in its recommendations of 2001(which were never implemented), and by the Interamerican Commission of Human Rights in provisional measures dictated to protect 26 workers affiliated to the Sinaltrainal Union. It is therefore alleged that the activities of the accused constitute a breach of the ILO Conventions, of the Universal Declaration of Human Rights, and of both the Constitution and the Labour Law of Colombia.

### **Hidralia Energía in Guatemala**

**Testimony:** Micaela Antonio Gonzalez (CEIBA Friends of the Earth Guatemala)

**Summary:** The accused company is the Spanish Hidralia S.A., a transnational corporation specializing in water-cycle management processes – i.e. hydroelectric energy, dams, infrastructure, civil engineering, water supply and sanitation. The accusation against the corporation is based on the activities of Hidro Santa Cruz, which is owned by Hidralia's subsidiary Ecoener-Hidralia Energía, which itself is dedicated to project development, engineering and consulting. The contested activities were carried out between June 2007 and January 2013, in Santa Cruz Barrillas, Huehuetenango, Guatemala. They include in particular the complicity with the Spanish and Guatemalan governments for their role in the invisibilisation, criminalisation and persecution of the Q'anjob'al people who were legitimately resisting the hydroelectric project. All parties are also complicit in the violent response to this resistance which took the form of, inter alia, intimidation, murder, illegal and arbitrary detentions, land spoiling and dispossession, all in violation of applicable human and peoples' rights established in international and national law, and in particular in the UN Universal Declaration of Human Rights, the International Covenant of Civil and Political Rights, the International Labour Standards of the International Labour Organisation (ILO), the ILO Convention 169 on Indigenous Peoples, the American Convention on Human Rights, and in the Constitution of the Republic of Guatemala.