

PERMANENT PEOPLES' TRIBUNAL

Founder: Lelio Basso (Italy)

President: Philippe Texier (France)

Vice-presidents:

Luiza Erundina de Souza (Brazil)

Javier Giraldo Moreno (Colombia)

Helen Jarvis (Australia)

Nello Rossi (Italy)

Secretary General: Gianni Tognoni (Italy)

Coordinator: Simona Fraudatario (Italy)

THIRD SESSION ON TRANSNATIONAL CORPORATIONS IN SOUTHERN AFRICA

Johannesburg, 9th – 11th November 2018

Statement of the Panel of Judges

Wallace Mgoqi, Chair
Donna Andrews, Co-chair
Teresa Almeida Cravo
Marina Forti
Makoma Lekalakala
Firoze Manji
Yasmin Sooka

General Secretariat:
Via della Dogana Vecchia 5, 00186 Rome
ppt@permanentpeopletribunal.org
www.permanentpeopletribunal.org

General framework¹

The public hearings of the Permanent Peoples Tribunal (PPT) held on November 9-11 in Johannesburg, South Africa, involving intense and representative participation of communities, movements and organizations of the SADC region, constitute the concluding step of a three-year process of gathering and analyzing evidence on the role of Transnational Corporations (TNCs) in Southern Africa. The highly collaborative research in many of the SADC countries has documented the impact of the extractivist policies of the TNCs on the fundamental rights to life, dignity, and self-determination of the affected peoples, through the individual and collective testimonies produced by grassroots communities and organizations. The Tribunal also received a number of expert reports. What was of particular note in the testimonies presented to the PPT was the courage of those individuals and communities that face daily threats and violence in their efforts to assert their rights to justice, dignity and self-determination.

The PPT received detailed reports on 18 cases, submitted in their hearings in Manzini in 2016 and in Johannesburg in 2017. These reports provided substantial proof of the depth, causes, and the personal and institutional responsibilities for the criminal violations of human and peoples' rights committed by TNCs, in explicit and systematic disregard of national and international obligations. These violations have further aggravated a situation of almost permanent and long-term impunity of the TNCs, even for events which amount to the most severe classification of crimes against humanity according to international law.

For a broader understanding of the PPT process promoted in SADC through the campaigns “Dismantle corporate power” and “The right to say no”, it is important to link the evidence produced on extractivist transnational policies in this region and the corresponding responsibilities with the verdicts of the PPT which, over the years, and in other political, institutional, economic, social and cultural contexts, have explored and qualified:

- a. The collusion and aiding and abetting between public and private interests and actors which characterize the strategies of multinational corporations, including the structural impact on the role of states (Madrid 2010; Colombia 2006-2008, Mexico 2011-2014);
- b. The obligation of international accountability of mining corporations (Montreal 2014);
- c. The qualification of living wages as a fundamental human right and not a purely contract dependent on economic variables (2011-2014);
- d. The constitutionally and internationally binding right of local communities to say “no” (Turin 2015).

The acknowledgement of these previous deliberations, expressed on the spectrum of cases submitted to the PPT, is meant to underline more clearly and with a solid doctrinal backing the

¹ This statement was prepared by the Panel of Judges of the PPT at the end of the public hearings in order to summarize the findings. It provides an indication of the direction of the deliberations to be conveyed shortly in a full report, pursuant to the Statutes of the PPT.

need for supporting the struggles not only with condemnations, but by indicating the urgency of conceiving new juridical and economic categories, which are essential to envisage a realistic transformation of the current neocolonial paradigms.

The courage, lucidity and creativity of the testimonies which have appeared in front of the PPT not only clearly assert a much-desired vision, in spite of immense difficulties and obstacles, but also show us the path for what should and could become our present and our future.

Findings

1. Our first and most relevant duty is to salute the courage shown by those affected and their willingness to face up to the state and the transnationals despite the serious threats to their lives and livelihoods.
2. During the public hearings of 9-11 November 2018, and building upon the previous two hearings in 2016 and 2017, we have been struck by the extent of the ruthless extraction, dispossession, displacement and brutality shown by the transnational corporations in search of profit. All this has been done frequently with the collusion of the state and its actors and organizations in the repression meted out as well as the gross human rights violations, including in some cases massacres of citizens. There were numerous cases demonstrating a mode of operation that allows no dialogue with communities, often seeking to avoid consultation, foster divisions and also manipulate local traditional authorities. We have seen examples of criminally low wages, with the externalization of the social cost of reproduction of labour passed onto unpaid work of women both in the home and in agriculture. Such low wages are supported by the creation of large-scale unemployment, and the casualization of labour, increasing the precariousness of large sections of the population. Transnational corporations operate not only in the extractive industries but in many other sectors, including agriculture and fisheries, resulting in the marginalization of smallholder farmers, frequently women. We were shown attempts to establish large-scale dams whose main purpose is to generate foreign exchange (dollars) through the sale of energy, instead of generating energy to meet the needs of the population. We have received evidence of dispossession, displacement and insecurity, combined with disruption of economic activities. We have noted that it is not merely the state and its organs that are colluding with transnational corporations but also the media.
3. Widescale dislocation of populations whose land has been dispossessed for large-scale operations of transnational corporations result not only in the loss of land but the loss of livelihood – for land is life, history and identity. Land needs to be seen as part of the Commons, something that cannot be privately owned. Where the state claims ownership of the resources below the land surface, those resources should belong to the people and any commercial exploitation of that land needs to be undertaken with context-targeted policies of real consultation and informed consent, including the presentation of alternatives. Communities need to be able to hire their own independent experts to help them assess any propositions made for natural resource extraction.

4. We received evidence of the way in which transnationals operate by securing approval and support from high-level government officials and from predatory local elites and people normally trusted by the community. There are efforts to pressure chiefs and traditional leaders into making land available for the companies. Promises of employment, improved infrastructure, schools, health facilities and so on remain unfulfilled. Community meetings are convened to give the appearance of community consent, while local opponents are silenced, women are excluded and marginalized, in many cases subjecting them to sexual violence. In agricultural projects, claims to improve food security create, in practice, food insecurity, undermining smallholder farmers.
5. The Permanent Peoples' Tribunal heard further testimony from AMCU miners and one of the widows of the Marikana Massacre of their still ongoing struggle for justice and accountability. The Tribunal was informed of the takeover by Sibanye-Stillwater of Lonmin, the company responsible for the Marikana massacre. The state-owned Public Investment Corporation (PIC) is the largest shareholder in Lonmin, holding 29.2 per cent. Sibanye is the second largest shareholder, with an 11.2 per cent stake. This deal would make Sibanye the world's second largest platinum producer. The Tribunal also heard testimony from communities affected by the Inga 3 Dam, a mega project to be built in the Democratic Republic of the Congo. The Tribunal was informed that the South African government had committed to purchasing 5000 MW of electricity generated by Inga 3 in the DRC, a commitment that potentially makes the project commercially viable. The Tribunal notes that both these cases are emblematic of a new complexity and sophistication in the relationship between states and transnational corporations amounting to aiding and abetting the exploitation of natural resources to the detriment of the communities affected.
6. We have been struck by the commonalities between countries facing challenges from the transnational corporations in similar ways, even though the details may differ. We acknowledge the pain that is being suffered. There are widescale examples of displacement without compensation and of transnational corporations working with impunity. And there is a growing loss of sovereignty, of peoples being able to assert their right to justice, dignity and self-determination.
7. In the DRC, there has been a normalization of repression, dispossession, abuse and violence. Mass killings are not limited to the DRC, with evidence of mass killings of indigenous peoples also in Madagascar.
8. We note with concern that governments in the region have become more accountable to transnational corporations and international financial institutions than to the citizens who elected them.
9. We are deeply concerned with the presentation of the activities of TNCs as 'development', which hides the real purpose of extracting and exporting wealth. The state provides cross-subsidy to TNCs, building the infrastructure to make exploitation more efficient, but this is paid for from the public purse, not by the companies concerned.

10. In addition we are concerned that development is often expressed and measured in purely economic terms and equated with the export of commodities in exchange for dollars. We believe that development ought to be accounted for in term of social development and the guarantee of the life and dignity of all citizens.

Recommendations

Because of the urgency of the two cases of Lonmin and of Inga 3 Dam, this Panel of Judges recommends that:

1. In both cases expert opinions be obtained with a view to holding Special Hearings on the Sibanye-Stillwater deal and the relationship between Sibanye, Lonmin and the Public Investment Corporation (PIC), so that the rights of workers whose pension funds are invested in the PIC are protected.
2. Expert opinions should be obtained in the case of Inga 3 to clearly document the relationship between the Government of the DRC, transnational corporations involved in construction of the dam, and to document whether the purchase of electricity by the South African government is contributing to the violation of the rights of communities affected by the construction of this dam.
3. Evidence gathered should be brought before a Special People's Tribunal which should be convened to hear these two cases and to explore the evolving relationships between the state and the transnational corporations.