

PERMANENT PEOPLES' TRIBUNAL

SESSION ON THE CANADIAN MINING INDUSTRY
Hearing on Latin America
MONTREAL, CANADA, MAY 29 – JUNE 1, 2014
RULING



PERMANENT PEOPLES' TRIBUNAL

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Session on the Canadian Mining Industry (2014-2016)

Hearing on Latin America

Montreal, Canada, May 29 – June 1, 2014

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SESSION ON THE CANADIAN MINING INDUSTRY

RULING FOR THE HEARING ON LATIN AMERICA
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Judges

Mireille Fanon-Mendès-France
Maude Barlow
Nicole Kirouac
Gerald Larose
Viviane Michel
Javier Mujica Petit
Antoni Pigrau Solé
Gianni Tognoni

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EXECUTIVE SUMMARY

PERMANENT PEOPLES' TRIBUNAL SESSION ON THE CANADIAN MINING INDUSTRY

Ruling for the Hearing on Latin America
Montreal, May 29 – June 1, 2014

From May 29 to June 1, 2014, the Permanent Peoples' Tribunal (PPT) held a hearing in Montreal, Canada, to examine the facts related to claims of human rights violations caused by the Canadian mining industry in Latin America. The Tribunal assessed in this hearing the respective responsibilities of two types of actors: Canadian mining companies, on one hand, and on the other, the Canadian state and its different agencies, which contribute, through various political, economic and legal mechanisms, to human rights violations and to fostering impunity. Following the hearing, the PPT pronounced a verdict that includes recommendations directed at the corporations referred to in the cases presented at the hearing, to the Canadian mining industry, to the Canadian state, to the human rights treaty and non-treaty bodies, and to civil society.

First, the Tribunal notes that Canada is a key actor of the extractive sector. The country plays host to the headquarters of 75 % of the world's mining companies. Latin America is a premier destination for Canadian mining capital: Canadian corporations carry out between 50% and 70% of mining operations conducted in this region. The Canadian stock markets are also at the heart of the global extractive industry. In 2013, close to 1,500 mining projects carried out

in Latin America were operated by companies registered at the Toronto Stock Exchange (TSX and TSX-V).

Over the last twenty years, the proliferation of large-scale mining projects in the Americas, from the north of Mexico to the southern region of Patagonia in Chile and Argentina, a tendency strongly denounced by affected communities, has been assessed and documented by an impressive number of studies. A large number of these mining projects have triggered serious socio-environmental conflicts and undermined human rights. The McGill Research Group Investigating Canadian Mining in Latin America (MICLA) and the *Observatorio de Conflictos Mineros de América Latina* (OCMAL) have identified between 85 and 90 social conflicts involving Canadian companies.

In this context, a group of more than forty organizations from Quebec and the rest of Canada, involved in the promotion and defence of human rights and representing various social sectors, approached the PPT and submitted an official document detailing a pattern of systematic human rights abuses and stressing the gaps in access to justice for mining-affected communities. The organizations urged the Tribunal to set up proceedings and initiate



Photo : Quetzalli Malagon, 2014

THE MEMBERS OF THE JURY, PERMANENT PEOPLES' TRIBUNAL, SESSION ON CANADIAN MINING INDUSTRY, HEARING ON LATIN AMERICA

a specific session on the Canadian mining industry in light of the severity of the human rights violations reported over a number of years.

Founded in 1979 by socially-committed jurists, the Permanent Peoples' Tribunal is an opinion tribunal that builds on the historical experience of the Russell tribunals, set up as a forum for asserting peoples' fundamental rights. The methodology adopted by the Tribunal draws on an ongoing process of research that is firmly grounded in social realities, and the Tribunal attempts to bridge gaps in international law so as to adequately address the present and future needs of peoples as well as various emerging challenges.

During the public hearing on mining operations in Latin America that launched the Canadian session, the Tribunal heard the testimony of about 20 witnesses and experts. The testimonies focused on three interrelated areas of rights that are at particular risk of being affected by the implementation of mining projects: the right to life and a healthy environment, the right to self-determination, and the right to full citizenship. For their part, the charges presented against Canadian companies encompassed four areas: political support for and interference in the legislative processes of host states, economic and financial support, official development aid, and access to justice.

The jury of the hearing was comprised of Maude Barlow, Nicole Kirouac, Gérald Larose, Viviane Michel, Javier Mujica Petit, Antoni Pigrau Solé and Gianni Tognoni, and was presided by Mireille Fanon-Mendès-France. Paul Cliche and Nadja Palomo acted as co-prosecutors on behalf of

civil society. The government, as well as the five corporations whose acts were examined by the proceedings, i.e. Barrick Gold Corporation, Goldcorp, Excellon Resources, Blackfire Exploration and Tahoe Resources, were invited to present their defence at the hearing. The Tribunal did not hear from them.

RIGHTS VIOLATIONS BY CANADIAN MINING COMPANIES

The evidence and testimonies brought to the attention of jury members reveal a pattern of systematic human rights abuses perpetrated against communities affected by large-scale mining projects. Specific cases of human rights violations were presented to illustrate these recurring situations.

Right to life and to a healthy environment

Some of the most significant environmental impacts of mining include the contamination, reduction and depletion of water sources and aquifers, worsening air quality, ground contamination, loss of biodiversity, deforestation, and irreparable damage to landscapes, forests and fragile ecosystems. These impacts generate degradation in the health of communities and the ecosystems that sustain them, leading to an infringement of several rights associated with the right to life and to a healthy environment. During the hearing, witnesses shed light on cases related to the Canadian mining companies Barrick Gold and Goldcorp as emblematic of these violations.

In this regard, the Tribunal notes that Goldcorp (San Martin, Honduras) infringed on the rights to health, to water, and to a healthy environment of the people living in the vicinity of the mine.

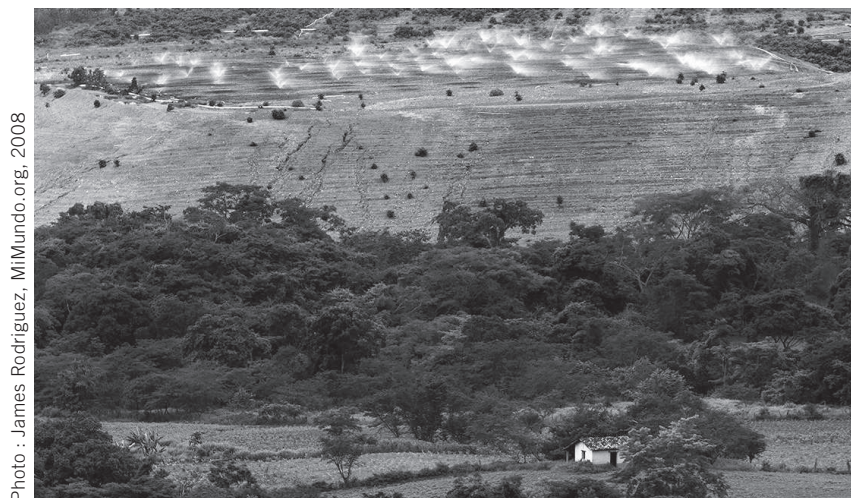


Photo : James Rodriguez, MiMundo.org, 2008

SAN MARTIN MINE, GOLDCORP, SIRIA VALLEY, HONDURAS

Reported impacts include the contamination of groundwater wells with cyanide and arsenic, which led to acute health problems, including the death of a 4-year-old child, and the depletion of 18 of the 21 water sources located near the mine, drastically reducing the availability of water for human consumption and agricultural production.

Barrick Gold (Pascua Lama, Chile-Argentina), for its part, has infringed on the right to water of indigenous and local peasant communities. The dust generated by the mine's operations has led to water contamination and to the irreversible impairment of glaciers that are fundamental in the hydrological cycle of this arid and semi-desert region, characterized by limited access to water.

Peoples' right to self-determination

Often carried out in spite of opposition expressed by local communities, mining activities are associated with abuses of a number of rights that are intrinsically related to peoples' right to self-determination and to dispose of their wealth and natural resources. The Tribunal finds that by dispossessing the communities of their natural and traditional resources, corporations also infringe on the economic, social, cultural and environmental rights of these communities and put their livelihoods and ways of life at risk. The right of indigenous peoples to consultation and to free, prior and informed consent is directly related to peoples' ability to determine their own development. The Tribunal denounces the overt discrimination, contrary to the United Nations Charter, to which indigenous peoples are subject, their being deprived of rights essential to the fulfilment of human dignity. The cases of Barrick Gold (Pascua Lama, Chile-Argentina) and Tahoe Resources (Escobal, Guatemala) have been presented at the hearing as typical examples of breaches of the right of peoples to self-determination.

Right to full citizenship

The imposition and implementation of large-scale Canadian mining projects jeopardize the ability of individuals and communities affected to defend their rights. Criminalization and repression of social protest and the undermining of labour and union rights are clear expressions of this trend. Numerous Latin American states have reformed their juridical framework in order to criminalize social protest and to legalize governmental responses to social protest. This leads to perpetuating the impunity of acts of

public repression. Only considering the 22 cases of Canadian mining projects examined in a report submitted to the Inter-America Commission on Human Rights (IACHR) by civil society groups from Latin America (*Grupo de Trabajo sobre Minería y Derechos Humanos en América*, 2014), we note at least 20 cases of murders and 25 attacks against mining opponents. Moreover, large-scale mining has particular impacts on women that translate into specific risks of economic marginalization, violence, oppression, and attacks on their health.

More specifically, Excellon Resources (La Platosa, Mexico) infringed on the right to freedom of association, the right to collective negotiation, as well as the right to peaceful assembly. The operations of Tahoe Resources (Escobal, Guatemala), for their part, violated the right to peaceful assembly and to security by orchestrating an armed attack against peaceful protesters. Finally, the operations of Blackfire Exploration (Payback, Mexico) generated significant social tension and violence, resulting in a breach of the right to life, through the murder, unpunished to date, of Mariano Abarca in 2009.

The Tribunal notes that the evidence brought to its attention highlights that the aforementioned human rights breaches are not isolated incidents. They are instead the expression of a widespread pattern of impunity and abuses by the mining industry, perpetuated by a lack of effective remedies in host and home states and in the current international legal framework.

THE CANADIAN STATE AND ITS SUPPORT OF MINING ON A WORLD-WIDE SCALE

The testimonies on the role and responsibility of Canada in mining-related human rights abuses demonstrated the significant, quasi-unconditional support of the Canadian government for mining companies operating in Latin America. The Tribunal notes with concern that government support is extended without being conditional upon any requirements regarding compliance with human rights standards. The documentary and testimonial evidence presented at the hearing clearly establishes that the Canadian state is fully informed of the high risks of rights violations and environmental damage associated with mining activity.

The Tribunal reiterates that states have extraterritorial obligations when it comes to protecting human rights. Under the *Maastricht*

Principles on Extraterritorial Obligations of States in the Area of Economic, Social and Cultural Rights, states, in this case Canada, are liable for acts and omissions that bring about foreseeable effects on the enjoyment of economic, social and cultural rights, whether within or outside its territory. This obligation fully applies to states where a corporation, or its parent or controlling company, is registered or domiciled.

Political support and interference in the legislative processes of host states

Canadian embassies have on numerous occasions supported mining projects even when there were important social conflicts, an absence of social license, and even demonstrated violations of rights. While they were informed of many litigious cases and obvious cases of violations of fundamental rights of individuals and communities, the staff of the Canadian embassy in Mexico provided constant political support for Blackfire Exploration, for example by lobbying Chiapas authorities on behalf of the company for the approval of necessary permits. This contravenes the *Maastricht Principles*, according to which state institutions in a position of influence over companies must ensure that they respect their human rights obligations.

Furthermore, witnesses have reported various lobbying and interference tactics on the part of the Canadian state and its agents in support of the adoption of mining laws that are favorable to the interests of foreign investors, in so doing, weakening the practice of economic, social, cultural, civil and political rights. The Tribunal considers that the pressures exerted by Canada for the reform of mining regulations in Columbia and Honduras constitute interference that is contrary to the responsibility to maintain non-interference recognized by the *Charter of the Organization of American States*.

Expert testimony presented during the hearings has also denounced the fact that budgets allocated by Canada to international development are increasingly oriented toward the promotion of extractive industries and Canadian commercial interests. The Canadian International Development Agency (CIDA) – merged with the Department of Foreign Affairs, Trade and Development in 2013 – finances programs based on new partnership procedures involving NGOs and mining companies designed to promote the social acceptability of mining projects and to pacify conflicts with affected

communities. The Tribunal considers that with regard to the allocation of international development funds, the Canadian state does not respect its obligations to protect human rights.

Economic and financial support

The Canadian state uses economic development tools specifically designed to support the Canadian extractive sector and also brings considerable financial support to that same industry. The Canadian Pension Plan Investment Board (CPPIB), a Crown corporation responsible for managing contributions to Canadian pension plans, and Export and Development Canada (EDC), the official credit agency of Canada, permit the channeling of important investments toward mining operations of companies headquartered in Canada. These agencies therefore support projects whose social and environmental consequences are devastating, without the due diligence and transparency required given Canada's obligation to protect human rights.

The TMX Group of the Toronto Stock Exchange (TSX and TSX-V) is the global centre of financing for the mining sector. Corporations that are listed there must disclose the risks in relation to their performance on the markets, but there are no requirements to disclose information related to human rights. Canadian regulations protect the interest of investors, not of communities. Finally the Canadian tax system provides the mining sector with many marked benefits, including access to abundant liquidity and protection against legal proceedings, as well as tax benefits.

The Tribunal considers that the Canadian state financially and fiscally supports a sector that is soiled by numerous human rights violations, thus contravening its own priorities and commitments enshrined in the many human rights conventions, declarations and international agreements that Canada has duly signed.

Democratic deficit

The Tribunal deplores the highly asymmetrical application of international economic norms compared to international human rights laws. It was demonstrated that many states were constrained by arbitration tribunals to indemnify transnational corporations after instituting public policy that targets the respect of rights

and socio-ecological equity. This judicial, economic and political framework subordinates the ability of the state to implement public policies that favour the respect of human rights and environmental justice to the interests of transnational corporations, and thus has a highly anti-democratic effect.

Access to justice

Many international legal instruments provide for the right to effective recourse. While the *Maastricht Principles* set the obligations of states to protect economic, social and cultural rights of individuals on and outside of their territory, and to ensure that non-state actors do not prevent the exercise of these rights, the Canadian state has not promulgated any legislation outlining its competence to litigate as regards the extraterritorial activities of its corporations. Furthermore, written documentation and expert testimonies received by the Tribunal demonstrate that the mechanisms of non-legal recourse that exist in Canada, such as the Office of the Extractive Sector Corporate Social Responsibility Counsellor and the National Contact Point to the OECD, are either ineffective or very limited in scope.

Therefore, the victims, who are deprived of justice in their own countries, do not have access to Canadian justice either, whether from its legal or non-legal mechanisms. These victims are often confronted with a situation of complete impunity concerning violations of their rights. Consequently, the Tribunal considers that the Canadian state is violating the rights to effective recourse of individuals and peoples who see their human rights violated by the activities of Canadian mining companies.

RECOMMENDATIONS

In light of these considerations, the Tribunal has formulated the following general recommendations (refer to the verdict for all specific recommendations):

- That the Canadian state assume its responsibility to protect human rights; that it adopt measures to ensure that companies under its jurisdiction do not violate the exercise of these rights; that it make conditional any public support for companies upon adherence to standards that are clear and transparent concerning respect for human rights and

environmental legislation; and that it adopt legislation that enables effective access to justice for victims of abuses.

- That the Canadian mining industry recognize the primacy of human rights and the protection of the environment over economic interests; that it respect the right to self-determination of communities; that it assume all costs linked to the restoration of mining sites; that it cease its practices of repression of opposition; and that it adopt practices of transparency and accountability.

- That the Canadian mining companies targeted by this verdict recognize their failures and the damages caused to affected populations; that they provide compensation to the victims; that they respect the right to self-determination of communities, including their right to say no to mining projects; and if communities exercise the latter right, that the companies return the land to its rightful owners.

- That host states ensure they have a legal framework that efficiently guarantees the respect of human rights and the environment by foreign companies; that they ensure quick, effective and equitable access to justice; that they review the fiscal obligations of mining companies; and that they abstain from signing new free trade agreements.

- That conventional and non-conventional human rights protection agencies develop binding regulations for transnational corporations and include an international mechanism that is appropriate to supervise their respect; and that the Inter-American Commission on Human Rights prioritize the question of extraterritorial responsibility of host states of extractive companies and consider the nomination of a special rapporteur on the topic.

- That communities affected by Canadian mining companies in Latin America and in Canada establish permanent communication and solidarity channels, use the available international mechanisms to make their grievances and demands known publicly; and that civil society organizations in Quebec, the rest of Canada, and Latin America continue their work to identify and document cases of mining companies that violate human rights.