

PERMANENT PEOPLES' TRIBUNAL

SESSION ON BIODIVERSITY IN COLOMBIA

Third Hearing
Humanitarian Zone, Cacarica
February 24 to 27, 2007

JURY'S DECISION

In keeping with the previous hearings that examined the issue of multinational enterprises in Colombia engaged in the extraction of natural resources with the support of the Colombian public force and paramilitary groups, the Permanent Peoples' Tribunal held session on February 25 and 26, 2007, in the Humanitarian Zone of Nueva Esperanza en Dios in the Cacarica River Basin of the Lower Atrato in the department of Chocó. The hearing was chaired by the Argentine jurist Marcelo Ferreira, a human rights professor at the School of Philosophy and Arts at the University of Buenos Aires, who had been delegated by the Tribunal's Presidency along with the judges Ricardo Carrere, international coordinator of the World Movement for Tropical Forests, and João Ricardo dos Santos Costa, member of the Association of Judges for Democracy in Brazil and the World Forum of Judges. Additionally, joint judges included Andebeng Labeu Madeleine Alingue with tchadian nationality, president of the Pan-African Alliance Corporation of Colombia and expert in South-South cooperation, Alfredo Molano, Colombian journalist and writer, Francine Damasceno Pinheiro, attorney and member of the national coordination for the Rural Landless Workers' Movement of Brazil and social sciences teacher, and Lorenzo Loncón, Chilean indigenous delegate from the Mapuche people.

The Permanent People's Tribunal, in keeping with the Russell Tribunals endorsed by the Lelio Basso Foundation, has as an object to visibilize and legally evaluate situations of mass violation of fundamental rights that have not obtained institutional responses.

Prior to the hearing, some of the judges traveled around the region with other national and international observers to verify the impact caused by the presence of certain national and multinational enterprises on the environment and society in this region. The mentioned judges wish to leave express record that they witnessed the suffering of this land's people with their own eyes as well as the degradation of nature.

The hearing took place on the week that commemorated 10 years since the violent and mass expulsion that destroyed many communities in the region by forcing people to abandon their territory (later occupied by transnational enterprises). Said operation, in which many persons were murdered, was called "Operation Genesis" by the Colombian army. In this regard, we should emphasize the decapitation of Marino López Mena. After his head was severed, the victimizers used it to play football in front of the community, which is a type of lesson commonly employed in State terrorism. The closing ceremony was held precisely on the tenth anniversary of his death.

The hearing was carried out in a settlement that was used as a humanitarian zone after the return of some of the persons who had been violently displaced in 1997. Despite the ongoing harassment and threats by the Colombian armed forces and paramilitary groups, these persons resisted heroically for several years by deciding to remain in the territory. The hearing was attended by almost three hundred persons from different regions of the country, where these and other multinational enterprises have caused similar harm to the environment and enjoy the support of paramilitary groups in the pursuit of their objectives. Additionally, delegates came from supportive organizations from 17 countries in Europe and North and South America.

The sessions for the hearing were carried out with distinct conceptual frameworks. For example, there were contextual exhibitions on biodiversity and biopiracy, palms and biofuels, environmental and agrarian policy, and genetically modified organisms (GMO's) in Colombia.

Additionally, charges were presented against several transnational enterprises, some of which have subsidiaries in Colombia. Each charge included testimonies by persons who have suffered directly from the impact of these activities as well as documentary evidence presented by the prosecuting counsel and witnesses. The Tribunal collected the documentary and testimonial evidence for the presentation in the final hearing of the Permanent People's Tribunal session on Colombia, which will take place in July 2008.

Lastly, a preliminary hearing concerning fumigations and militarization in Colombia was carried out in Medellín on February 22. The conclusions to this proceeding were presented to the hearing and became part of the indictment.

The enterprise Smurfit Kapa – Cartón de Colombia was charged with violating environmental, social, cultural, and human rights. It was specifically charged with the following: destroying tropical rainforests, Andean forests, and other ecosystems; destroying social fabric and traditional and cultural means of production in communities; depleting and contaminating water sources; influencing the formulation of governmental policies in the country and pressuring public servants to favor the interests of multinationals; concealing information related to the enterprises and manipulating regional and national media; spreading false statements, information, and deceitful publicity to justify their activities and mask the resulting impact; and accusing and criminalizing with false arguments those who denounce its improper conduct.

The enterprise MULTIFRUIT S.A., subsidiary of the US transnational DELMONTE, was charged with the practice of illegal plantain agro-business planned on 22 thousand hectares of land. This planting would also include rubber and palm in the rural communities of La Balsa, San José, Varsova, and Bendito Bocachica. It would also benefit from the paramilitary structures

established in La Balsa since February 26, 1997. These paramilitary structures forcibly displaced more than 2,500 Afro-Colombians, looted and destroyed essential assets for survival, murdered MARINO LOPEZ, as well as used the location as a center for paramilitary operations that tortured, disappeared, and executed civilians (including several of 85 victims from this community). Control is maintained in this area through the pressure employed by the *Águilas Negras*, Black Eagles, despite having announced their demobilization in 2005. Additionally, this enterprise was charged with causing irreparable environmental damage to the ecosystem as well as removing land for agro-industry and disturbing the mass graves of victims of crimes against humanity.

The enterprise PIZANO S.A. and its subsidiary MADERAS DEL DARIÉN were charged with the destructive mechanized extraction of wood resources in Cacarica; having caused profound damage to the territory, forest resources, and the living conditions of the Afro-Colombian communities that live in the logging areas; benefiting from extensive logging, which principally affects forest growth in the municipalities of Riosucio and Carmen del Darién in the department of Chocó; indiscriminately exploiting the “catal” species (*priora copaifera*), which is catalogued as a species under the threat of extinction, and causing serious impact on the humid tropical rainforest as well as the forced displacement of more than 2,500 Afro-Colombians and *mestizos* and a third of the region’s indigenous peoples. This forced displacement occurred after Operation Genesis in which there was evident collusion with the paramilitary Peasant Self-Defense Forces of Córdoba and Urabá (currently Elmer Cárdenas Bloc). The population was attacked with machine guns, their possessions and crops were burned, and grave human rights violations were carried out (including extrajudicial executions, sexual violence, and forced disappearances). The Colombian State is held responsible –by act and omission- for crimes against humanity, genocide, and terrorism in all of the documented manifestations committed by the National Army’s XVII Brigade with paramilitary groups in the area. The Colombian State is also held responsible for maintaining the impunity of each one of the crimes committed against the victims and for not duly investigating, trying, and punishing the members of the public force and the paramilitaries acting in collusion.

The enterprise URAPALMA S.A. was charged with acting jointly with other palm enterprises and the Colombian State in illegally planting from between 4,000 to 7,000 hectares of palm (and projected to comprise 22,000 hectares) within the collective territories of Afro-Colombian communities. These operations were made possible due to the commission and impunity of more than 113 crimes against humanity, 13 acts of forced displacement, 15 cases of torture, 17 arbitrary detentions, 19 cases of destroying rural communities, 14 paramilitary incursions, cases of aggression against the humanitarian zone, 4 murders or extrajudicial executions, and the so-called “demobilization” that has allowed carrying out new death threats and threats to control the population. The enterprise is charged with having encouraged the violence and having favored from it as well as having attempted to legalize the property in favor of its interests through different mechanisms, including: signing leasing agreements, improvement purchases from the proprietors, signing false intents of use, creating front peasant associations, devising concepts like the so-called Strategic Alliances to obtain public investment resources, falsifying public and private documents, and altering settlements concerning the allotment of unoccupied land and the concept of land accretion, among other actions.

The transnational enterprise Monsanto is charged with supplying –with no sense of ethics or legal responsibility- the component Round-Up Ultra for the aerial spraying eradication program using glyphosate on crops used for illicit purposes (which has been applied since 1984 and has become the principal Plan Colombia strategy implemented jointly by the Colombian State and the United States of America); flagrant and knowing complicity in violating Article 54 of Protocol 1 of the Geneva Convention, which prohibits starving civilians as a method of combat and attacking objects indispensable to the survival of the civilian population (such as food-stuffs, crops, livestock, drinking water supplies, and irrigation works); selling toxic chemicals –frequently used as weapons in the chemical war waged on the civilian population- to the Colombian government with US government resources; violating international norms that oblige State institutions and their private consortiums to protect and respect biodiversity and the environment (including the Convention on

Biological Diversity, the Ramsar Convention on Wetlands, and ILO Convention No. 169 on the Rights of Indigenous and Tribal Peoples); and ignoring humanitarian, social and territorial consequences that result from carrying out mass and indiscriminate aerial spraying with chemicals produced by this transnational.

The transnational enterprise DynCorp is charged with creating war and political instability, profiting from the encouragement of conflicts, and making them functional to the rendering of their services; benefiting from mercenaryism, which encourages the deterioration of the living conditions of the population subjected to this militarization, the loss of thousands of lives, as well as the delicate social fabric pertaining to these persons; destroying natural resources; causing the loss of cultural and ecological values of humanity; encouraging grave humanitarian crisis and disgraceful food crisis; causing the loss of the population's assets; violating human dignity; and causing destruction and pain. It is also held responsible for human rights violations against Colombian –and Ecuadorian- communities subjected to the impact of its commercial activity –all of which entail grave affronts to humanity- and implementing a deliberate policy of human rights violations, formulated by the US government and accepted by the Colombian government.

On Biodiversity:

Evidence provided to the Tribunal indicates that the policies promoted and imposed by the Colombian State gravely affects the agricultural and forest biodiversity that has been used sustainably for centuries by peasant, indigenous and Afro-Colombian communities.

- The forced displacement of peasant, indigenous and Afro-Colombian populations entails the loss of species and varieties as well as traditional knowledge associated with the former.
- The expulsion of the traditional communities and the substitution of subsistence agriculture for industrial monoculture affect the local and

national food sovereignty.

- The mass and indiscriminate application of herbicides leads to the destruction of forests and crops as well as of the animals living in these environments.
- The introduction of certain monocrops (banana, pine, eucalyptus, cypress, and oil palm) substitutes ecosystems with vast biodiversity for green deserts with only one species. The mass application of plaguicides in the monocrops affects the few species of animals that are able to survive in these areas. The combination of agrochemicals used also affects the water resources, which has an impact on the health of the local population as well as on the plants and animals living in the rivers, streams, lakes, and wetlands.

A witness summarized the situation clearly with the following testimony: *“The oil palm is fertilized with the blood of our companions, friends, and family members [...]. We have nowhere to work because the territory has been covered in palm.”*

Due to the use of a large-scale globalized model, the industrial monocrops of palm and other species also become a very effective way to control territory and –indirectly- society.

On Sovereignty and Self-Determination of Peoples:

Monsanto’s commercial practice of imposing the monopoly of its biologically modified products is leading to the extinction of the seeds used ancestrally by the peasant, indigenous, and Afro-Colombian populations. For example, corn growing belongs to the cultural complex of the traditional populations. Additionally, the mastery of production techniques is one of the ways they express their identity as a people, in addition to being a factor that guarantees their autonomy.

The extermination of the native seeds threatens the autonomy of traditional

peoples because it creates a dependency on the economically dominant cultures, which results in the social exclusion of these peoples.

The autonomy of peoples is a guarantee established in the body of international human rights law; therefore it is also established in Colombian law (which has ratified the totality of human rights law). In this regard, the government must take the necessary measures to avoid the dispossession of the regional population and the gradual extinction of its cultural diversity.

On Afro-Colombian Peoples, Indigenous Peoples, and Peasant Communities:

The peasant, indigenous and Afro-Colombian communities principally live along the headwaters of the tributaries and rivers that flow into the Atrato River.

They originally came to this area after they had escaped the slave system. As freed slaves, they lived alongside the Kuna, Katio, Embera, and Wounaan peoples located in this region since time immemorial.

In the 1950's, peasants arrived that had been displaced by the violence in the departments in the Andes and along the Caribbean coast.

The occupation of the territory by these communities has allowed them to develop their knowledge, customs, and ancestral practices, encouraging the perfection of sustainable agricultural techniques through preserving and widening the local biodiversity. Additionally, the production system generated the balance needed to establish certain dignified ways of living and co-existence.

Then, in the 1960's, cattle ranchers from Antioquia began to arrive after the highway was built from Medellín to Turbo.

In the 1990's, different geostrategic reasons brought attention to this region, including the Pan-American Highway project; armed confrontations between

guerrilla, paramilitary and State forces; and the devolution of the Panama Canal Zone. Additionally, this change coincided with the increase in the international demand for banana and wood.

These circumstances gave rise to a new security model and regional development policy that contradicted the traditional practices of the communities. In particular, they went against the legal forms of association (indigenous reservations, ancestral Afro-Colombian communities, and peasant reserves).

In 1997, the Colombian army –in conjunction with paramilitary groups- carried out Operation Genesis, which entailed bombarding and occupying –through water and land- the populations along the Salaquí and Cacarica River Basins.

Witnesses testified to the Tribunal on the horrendous crimes committed, including mutilation, execution, torture, sexual violation, and forced disappearance. Chainsaws were used on human beings as a weapon of war.

The populations fled to the jungle and abandoned their land, homes, livestock, and property. Later, they gathered together in the city of Turbo and some took refuge in Panama. The break-up of families, uprooting, hunger, social discrimination, and lack of health attention and work conditions, led to social and family de-structuring while the State displayed absolute indifference.

Environmental and biodiversity activists were also forced to find refuge at the stadium in Turbo.

Nevertheless, the internally displaced population still wanted to return and preserve their biodiversity. Through the support of national and international human rights organizations, they began to return to their territory and establish humanitarian zones for resistance.

Now, as communities in resistance, they demand their right to exist as a people, exercise their culture, preserve their cultural identity and their ancestral

territories, and consequently guarantee food sovereignty, education, health, and physical integrity, among other fundamental rights.

Evaluation of the Acts:

Evidence provided to the Tribunal indicates that the policies encouraged and imposed by the Colombian State demonstrate a generalized and systematic panorama of violations to fundamental human rights, within the framework of a process of brutal reorganization of Colombian society through the destruction of its social fabric to favor a project for economic and social redesign to the benefit of transnational enterprises.

In this sense, the acts described to this Tribunal –including murder, torture, extrajudicial execution, forced disappearance, mutilation, and especially the forced displacement of thousands of persons- constitute crimes against humanity as defined by international conventions.

In effect, crimes against humanity are those crimes committed within the framework of a generalized and systematic attack on the civilian population, which is precisely what occurs in this region. In this regard, witnesses testified that: *“They come in chopping off heads; torturing to be able to keep the land and carry out their large-scale development project [...]. They tell us to leave, that they need the land empty to be able to fight the guerrilla. But there’s no guerrilla there.”*

The relevance of this designation lies in that crimes against humanity repulse the conscience of all of humanity. They are non-derogable, ineligible for pardons, and imprescriptible. Furthermore, they may be tried before any court in any part of the world and may concern acts committed at any point of time. No criminal may allege immunity in relation to these acts; though all criminals may be persecuted until the end of his or her days and to the farthest reaches of the earth.

Moreover, the very characteristics are seen of a true genocide, understood as acts leading to the elimination of a group of persons. These characteristics entail the method of disappearing persons and concealing their bodies as a way to create uncertainty concerning the victims' fate and whereabouts. In other words, the objective is to spread terror as a method of social control. This was eloquently expressed through the statements made by a witness that moved the Tribunal. In reference to peasants, he said: *"They aren't killed by bullets, rather they're killed another way, because peasants only know how to live on their land."*

Another characteristic of genocide is the call for a "cleansing" to be applied on human beings. This cleansing becomes a surgical washroom where what is dirty or infectious is human. One witness stated: *"The paramilitaries said they were going to carry out a cleansing [...]. Their job was to kill."* It should be stressed that the responsibility for this dirty work (of cleansing) lies with the Colombian State for allowing and supporting these actions.

In this respect, paramilitarism has meant the imposition of the world financial system. Likewise, the negotiation process presently being carried out is a covert legalization of crimes against humanity and a legitimization of agrarian counter reform imposed by these interests. In other words, it is a path leading to impunity.

The so-called reorganizing genocide operates within an already existing society –a pre-existing Nation-State- and seeks to refound social relations, ties, codes, daily life, and political culture. In other words, it seeks to refound the concrete exercise of power in said society. The forced displacement of persons –and the subjecting of groups to living conditions that entail their destruction- are typical acts in the crime of genocide, the "crime of crimes."

Brutally and paradoxically, the Colombian State demonstrated the genocidal character of its gruesome plan by calling it Operation Genesis. It was a project of death and fear with a biblical name. In effect, Genesis means creation, which in this case meant creating something new by destroying the preexisting state of

things. It was the violent reorganization of society on new foundations.

In this sense, the Tribunal found especially illustrating the testimony by an economist, who eloquently described the process of destruction of Colombian social networks through the murder of three thousand unionists, within the framework of a general reprimarization process of the economy as a way to integrate it with the world economy.

This witness described the failed attempt at industrializing Colombia and instead opting for a new plan with perverse characteristics, which meant the return to a primary and dependent economy based on the destruction of the agricultural diversity, encouraging energy sectors, and an entirely export-based model with the calculated consequence of a reduced rural population.

On Responsibility:

Evidence provided demonstrates conclusively the responsibility of each one of the accused enterprises, their corporate headquarters, and also the Colombian State. Specifically, the Inter-American Court of Human Rights laid down or established the State responsibility for human rights violations committed by private third parties. The State party must protect all persons that are under their jurisdiction, even from illegal armed groups of any nature.

As far as the responsibility of the enterprises for crimes against humanity, this has foundation in the area of international law insofar as these crimes may be committed by organizations with the support or collusion of the State. In this sense, the trials for Germany derived from the Nuremberg Tribunals dealt with the responsibility of enterprises complicit with the Nazi regime, which would be perfectly applicable to the Colombian case and should be retaken by international law. The discussion on the responsibility of enterprises is not a new creation, rather has its past grounds.

Additionally, the conservation of biological diversity also exceeds the framework of the justice system of individual States and involves all of humanity. In this

regard, the Convention on Biological Diversity ratified by Colombia establishes in its preamble that: “*the conservation of biological diversity is a common concern of humankind*”; and in article 10, subsection (c), that the State will protect the use of biological resources in accordance with traditional cultural practices.

Due to the foregoing, invoking the Algiers Charter on the Rights of Peoples, after confirming the veracity and conclusiveness of the testimonies provided with the support of ample documentary evidence, considering proven the totality of the charges against all and every one of the enterprises as well as the responsibility of the Colombian State, and with the conviction that the violation of their rights constitutes an attack on the common consciousness of humanity and concerns all peoples, the Tribunal resolves:

1. To submit the charges and the evidence produced to the final deliberative hearing of the Permanent People’s Tribunal session on Colombia.
2. To communicate the present resolution to the indigenous peoples, Afro-Colombian peoples, and peasant communities (who have suffered the impact of the destructive action by transnationals), as well as to the organizations supporting these peoples, in addition to workers and academic and student organizations, to the Office of the Attorney General, to the High Courts and Colombian Control Agencies, alternative communications networks, the mass media, the African Union, the Inter-American Commission on Human Rights, the Inter-American Court of Human Rights, the United Nations High Commissioner for Human Rights, the United Nations High Commissioner for Refugees, the International Criminal Court, the accused enterprises, their corporate headquarters, and the States where their main offices are based.
3. To express its solidarity and recognition of the victims’ pain.
4. To actively support their struggle for truth, justice, comprehensive reparation, reestablishment of the violated rights, and the guarantee that the crimes will not recur, with the ideal that the peoples of Colombia will finally

achieve the peace with social justice they deserve.

Delivered in the Humanitarian Zone of Nueva Esperanza en Dios in the Cacarica River Basin of the Lower Atrato in the department of Chocó on February 26, 2007.

Marcelo Ferreira, President

Ricardo Carrere

João Ricardo dos Santos Costa

Andebeng Labeu Madeleine Alingue

Alfredo Molano

Francine Damasceno Pinheiro

Lorenzo Loncón.