

PERMANENT PEOPLES' TRIBUNAL

Session on the Canadian Mining Industry in Latin America
May 30 – June 1, 2014, Montreal, Québec

Reading of the preliminary verdict, June 1st, 2014

Note : This document is part of the preliminary verdict that was presented by the Permanent Peoples' Tribunal (PPT) jury on Sunday, June 1, 2014. The definitive and more detailed final version will be available soon.



Left: Mireille Fanon-Mendès-France, President of the jury of the Permanent Peoples' Tribunal on Canadian Mining, during the reading of the verdict. Mireille Fanon-Mendès-France is president of the Frantz-Fanon Foundation and a member of the International Association of Democratic Lawyers. .

Right: Viviane Michel, president of Quebec Native Women (FAQ-QNW) and Javier Mujica Petit, from the Public Policies and Human Rights Center in Peru, members of the jury, during the reading of the verdict.

Preliminary Verdict (Excerpt):

"The Permanent Peoples' Tribunal (PPT) has gathered together to judge Canadian mining companies that are accused of threatening the fundamental human rights of peoples in Latin America; and to consider allegations against the Canadian state for having contributed, through act and omission, to human rights violations of peoples in Latin America through its support for the mining industry and by favouring these companies in a context of impunity.

With regard to the impacts of Canadian mining companies to the access, enjoyment and exercise of human rights on nations and peoples in which they have invested and are operating, the PPT identifies several levels of responsibility:

First, the expert panel finds the **companies** responsible for having failed in their obligations to respect, protect and ensure human rights, according to international human rights law. Second, the **Canadian state** and **Latin American states** are also responsible for the continued violation of human rights. In both cases, states have failed in their obligation to protect human rights, to prevent and sanction violations, particularly those related to Canadian mining companies.

The lack of fulfillment of this obligation leads to responsibility by act and omission. In the case of the **Canadian state, it is responsible through its actions** when it stimulates the presence of Canadian mining companies in other countries through political, economic, financial and diplomatic support; when it tolerates or covers up human rights violations that companies are perpetrating; or when it denies access to effective mechanisms to protect victims from these violations.

The Canadian state is **responsible by omission** when it abstains from adopting measures, or from requiring that Canadian mining companies undertake measures to prevent or remedy human rights violations. This is a responsibility that cannot be avoided, considering that some 50 to 70% of mining activities in Latin America are undertaken by Canadian mining companies, and that many of these projects are the source of serious socio-environmental conflicts and human rights threats. Overall, as is well known, this is taking place because these are large scale projects frequently undertaken without respect for the right of self-determination of affected peoples and for the right of people to define for themselves their ways of life and their future. As a result, Canadian mining companies' operations entail serious impacts on the life of communities, generating tension, mistrust, divisions and conflicts.

In the case of the **host states** in which Canadian mining companies are invested, their responsibility is related to granting licences to operate and exploit mineral resources without consideration for the impacts that these activities have on human rights; when these authorities grant licenses for extractive industry activities without prior consultation and/or free, prior and informed consent of the communities and indigenous populations that will be affected by these operations; when they fail to set requirements to ensure these companies respect human rights; when they loosen labour, environmental and tax laws to favour the interests of mining companies; and when they tolerate or collaborate in these activities at the expense of the communities in which they operate.

They are also responsible when – arbitrarily undermining the democratic and social foundation of a democratic state – they directly criminalize the activities of individuals, activists, community leaders or human rights and environmental defenders who are legitimately and peacefully defending peoples' right to self-determination and opposing violations of human rights and fundamental freedoms. Social movements (frequently indigenous) are frequently stigmatized and criminalized for organizing in defense of and to protect the territories of mining-affected communities and the right to a healthy environment, the protection of nature, ecosystems, livelihoods, water, cultural heritage and the right to decide the type of development that they desire.

States are responsible by omission when, as in the case of the Canadian state, they fail to take measures or to demand that Canadian mining companies adopt measures to prevent violations and/or to remediate violations that occur during their operations in the area of human rights and the environment.

The Permanent Peoples' Tribunal heard the testimony of numerous victims, in addition to specialists and experts, enabling an understanding of the practices of Canadian mining companies, as well as the Canadian state and host states in which these companies are

investing, which are taking place with disregard for human and social values of all kinds, and not infrequently, for life itself.

The cases examined by the Tribunal demonstrate relevant human rights violations and the Tribunal considers that it has been shown – based on the documentation and the testimonies presented – that the Canadian mining companies based in Mexico, Honduras, Guatemala and Chile, whose behaviour has been examined during this session, have committed multiple human rights violations, as outlined in the original allegations, which can be grouped into three areas:

First, violation of the right to life, an adequate quality of life, nutrition, water, health, housing, the freedom and integrity of persons, security and a healthy and safe environment.

Second, the jury considers that it has been demonstrated that these companies, according to the allegations made, have also violated the right of peoples to self-determination and, in accord with this right, their right to land and territories in which they live and in which the resources on which they depend are located.

The jury further considers that it has been demonstrated that the companies have violated the right to participation and to prior consultation and free, prior and informed consent of the communities, as well as to their own vision of development and the full exercise of their own culture and traditions. The Tribunal considers that the violations of the right of these communities to a full citizenship that includes the right to human dignity, education, work, just and equitable work conditions, as well as labour rights that include the right to free association and collective negotiations of their working conditions have been further demonstrated. The Tribunal also considers that unionized companies have violated the right to freedom of expression, association, peaceful gatherings, access to information, participation and the right to effective, simple and efficient mechanisms that would guard against human rights violations. Additionally, the Tribunal considers that the companies have violated the right of persons and affected communities to not be discriminated against in any way and to defend their human rights.

The Permanent Peoples' Tribunal finds that **Canadian mining expansion in Latin America would not have been possible without the promotion and direct involvement of the Canadian state** to uphold the mining industry through diverse political activities and government programs. Canadian state intervention has taken various forms. First, through political support and meddling in the legislative processes of host states. For example, through inappropriate interference in the reforms of mining and environmental legislation, diplomatic lobbying, support for companies' social projects and negotiating investment agreements that protect Canadian investments abroad.

Second, the Canadian state has also provided economic and financial support channeled through the Export Development Corporation and the Canadian Pension Fund Investment Board. It has also failed to ensure transparency in the regulation of the Canadian stock exchanges, installed favourable tax regimes, and supported trade missions, among other initiatives.

Finally, the Canadian state has also imposed or tolerated barriers to justice in Canada for individuals and communities affected by the activities of Canadian mining companies.

The international promotion of Canadian trade and investment cannot ignore the supremacy of human rights as established in international law; and, least of all allow that favourable conditions for the promotion of private interests be established at the expense of human rights in Canada, Latin America or anywhere else.

Based on these considerations, the Permanent Peoples' Tribunal declares that the following companies are responsible for human rights violations as described in this summary: Barrick Gold and its subsidiary Nevada Spa Mining, Goldcorp and its subsidiary Entre Mares, Tahoe Resources and its subsidiary Minera San Rafael S.A., Blackfire Exploration and its subsidiary Blackfire Exploration México S.A. de C.V. and Excellon Resources Inc. and its subsidiary Excellon de México S.A. de C.V. The Canadian state and the countries in which these companies are operating are also at fault for not having prevented and for having facilitated, tolerated or covered up these human rights violations, as well as for having impeded in practice access to adequate mechanisms that would protect the victims from these violations".

* The jury for the Latin American hearing was comprised by: Maude Barlow (Council of Canadians), Mireille Fanon-Mendès-France (Frantz- Fanon Foundation, France), Nicole Kirouac (Malartic Supervisory Committee, Québec), Gérald Larose (Université du Québec à Montréal), Viviane Michel (Quebec Native Women), Javier Mujica Petit (Centre for Public Policy and Human Rights, Peru), Antoni Pigrau Solé (Rovira i Virgili University, Spain), Gianni Tognoni (Permanent Peoples' Tribunal, Italy).