

DRAFT FINDINGS AND RECOMMENDATIONS

PERMANENT PEOPLE'S TRIBUNAL

SESSION ON AGROCHEMICAL TRANSNATIONAL CORPORATIONS

(Bangalore, 3-6 December 2011)

1. History, legitimacy and procedures of the Permanent People's Tribunal¹

This session of the Permanent People's Tribunal (PPT) completes a long process of investigation started in July 2008, when representatives of the Pesticides Action Network (PAN) presented a request of intervention in order to investigate how and in which terms the activities of the transnational agrochemical corporations cause "massive death, terrible harm to health, plunder of the environment and destruction of ecological balance and biodiversity" (letter of request). Due to the impossibility for the victims and survivors to have effective recourse to legal avenue for justice, compensation and remediation, the PPT decided to hold the session in Bangalore, from 3rd to 6th December 2011, after two years of intense work of gathering and documenting cases.

The significance and framework of reference for this ruling can be more readily understood if we first refer to the intellectual and field-based experiences accumulated by the Tribunal in its 37 Sessions developed over thirty years, and through its involvement in the assessment of the risks of industrial activities on human and environmental rights. The main themes of the request presented by PAN had been since long, and in different contexts, among those which have been treated in many of the previous Sessions of the PPT, as the case of Bophal. In the two Sessions held in 1991 in Bophal and in 1995 in London.

Over 3 days of public hearings, the PPT was presented with technical reports and individual testimonies on the many themes which had been submitted to its attention: the spectrum of violations of human rights by the different actors (TNCs, States, International Agencies); the threat to food sovereignty; the health implications of the failure to control dangerous pesticides (and their obsolete stock); the many complicities between TNCs, States and their official, scientific community; the violation of the rights of women and children; the qualification of the facts with the respect to the international law convention, treaties, instruments.

¹ www.internazionaleleliobasso.it

The jury was composed of the following members: Upendra Baxi (India), who acted as the President of the Jury; Elmar Altvater (Germany); Ibrahima Ly (Senegal); Ricarda Steinbrecher (Germany); Gianni Tognoni (Italy).

Based on the wealth and on the robustness of the documentations and the testimonies, the jury has reached the following conclusion, whose detailed motivations have been drafted in a provisional form and will become fully available in their final formulation over the next few weeks in the web page of the PPT and of the PAN.

2. Findings

The Tribunal makes the following declaration of responsibility for the six indicted MNCs and three Governments in particular and further also declares the responsibilities of all States, international organizations, UN Specialist Agencies, all other institutions of global governance.

AS CONCERNS THE INDICTED SIX CORPORATIONS (BASF, BAYER, DOW CHEMICAL, DUPONT, MONSANTO)

- The Tribunal finds on all evidence presented before it the six MNCs responsible for gross, widespread and systematic violations of the right to health and life, economic, social and cultural rights, as well as of civil and political rights, and women and childrens' rights.
- The Tribunal also finds these corporations responsible for their systematic conduct resulting in violation of indigenous peoples' human rights and other entitlements.
- The Tribunal further finds that their systematic acts of corporate governance have caused avoidable catastrophic risks, increasing the prospects of extinction of biodiversity, including species whose continued existence is necessary for reproduction of human life.

AS CONCERNS THE THREE SPECIFICALLY INDICTED STATES

The United States of America (USA), the Swiss Confederation (Switzerland) and the Federal Republic of Germany (Germany) have failed to comply with their internationally accepted responsibility to promote and protect human rights, especially of vulnerable populations and their specific customary and treaty obligations in the sphere of environment protection in the following ways:

- The three States, where six corporations are registered and headquartered, have failed to adequately regulate, monitor and discipline these entities by national laws and policy;
- The concerned States have not as fully respected human rights and social movement citizens protests against human rights violation in the moves towards a Second Green Revolution, not having learnt the lesson of the First.

The concerned States have unjustifiably promoted a double standard approach prohibiting the production of hazardous chemicals at home while allowing their own MNCs and unrestrained license for this enterprises in other States, especially of the Global South.

AS CONCERNS HOST STATES

- The Tribunal finds that for technology-importing States (the Host States) there is no justification for any pursuit of accelerated economic development which puts at grave and sustained long-term risk both for the natural resources and the affected populations. The global South States have a remarkable record in preventing for example an ever more expansive regulatory presence of the WTO and in their authorship (and further development) of the UN Declaration on the Right to Development.

The magic carpet type hospitality offered to hazardous MNCs sits in complete contrast with its otherwise progressive international leadership in some global arenas.

In particular, the Tribunal finds the Host States fully responsible for:

- Not adequately protecting human rights and social movement activists from vexation and harassment.
- Not adequately protecting independent scientists who on serious scientific research demonstrate severe future risks inherent to the development and distribution of chemical substances and process.
- Not taking all necessary steps to limit the global corporate ownership of knowledge production in universities and related research sites and not recognizing the value of ingenious knowledge and social relationships they create and sustain.
- Not fully pursuing alternative and less hazardous forms of agricultural production without having learnt the full lessons from the First Green Revolution.

AS CONCERNS THE UN SPECIALIST AGENCIES

The Tribunal finds that:

- Some of the policies especially of the WHO, FAO and ILO are not fully responsive to the urgency of regulation and redress, as articulated by suffering peoples, and human rights and social movement activist groups and associations. A more proactive role is especially indicated in the field of hazardous agrochemical and agribusiness MNCs. Further, the UNESCO ought to take expeditious and effective steps for protection of academic and scientific freedom of researchers and specialists who raise justifiable alarm over the long term impact of pesticides, herbicides, and other products.

AS CONCERNS GLOBAL GOVERNANCE INSTITUTIONS

The Tribunal finds that:

- The policies of WTO in relation to Intellectual Property Rights, especially the hard regime of patent, protection is not balanced with any sincere regard for the grave long-term hazards to humans and nature already posed by the activities of agribusiness and agrochemical industries.
- The international financial institutions have yet to develop policies concerning their support for hazardous manufacture, application, or process: it is not entirely clear to us why a strict regime of human rights conditionalities is as yet not contemplated in this regard.
- Institutions of global governance ought to play a more proactive role in protecting human rights and social movement activists from vexation and harassment, and more responsive to task of regulation and redress as articulated by suffering peoples, and human rights and social movement activist groups and associations.

3. Recommendations

The Tribunal recommends:

FOR NATIONAL GOVERNMENTS

- to prosecute the [defendant, accused] agrochemical companies in terms of criminal liability rather than civil liability.
- to take action to restructure international law so as to make the agrochemical corporations accountable for their activity and products.
- to accept a less heavy burden of proof on the victims and to fully commit to and legislate for the precautionary principle.
- to prevent TNCs from directly or indirectly harassing and intimidating scientists, farmers and human rights and environmental defenders, in any form, including judicial harassment.

FOR BOTH NATIONAL GOVERNMENTS AND INTERNATIONAL AND INTERGOVERNMENTAL ORGANISATIONS

- to subordinate the assignment and the keeping/maintaining/continuation of a patent to the respect and upholding of human rights and the welfare of the populations. This includes the protection of biodiversity and ecosystems.

THE TRIBUNAL FURTHER URGES SCIENTISTS, LAWYERS, ASSESSORS AND REGULATORS

- to be fully aware of conflict of interest.
- to respect information as a public good.

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