



**SOUTHERN AFRICA  
CAMPAIGN  
to DISMANTLE  
CORPORATE  
POWER**



# **PERMANENT PEOPLES' TRIBUNAL**

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## **TRANSNATIONAL CORPORATIONS IN SOUTHERN AFRICA**

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**The jury of the Permanent Peoples Tribunal was composed of:**

Chair Person: Mireille Fanon-Mendes France (France),  
Donna Andrews (South Africa), Nnimmo Bassey (Nigeria),  
Lucy Edwards-Jauch (Namibia), Stefano Liberti (Italy),  
Masego Madzwamuse (Botswana), and Paolo Ramazzotti (Italy).

# I. INTRODUCTION

## 1.1. Role of the Second Session of the Permanent People's Tribunal

This second session of the Permanent People's Tribunal (PPT), held 17 to 18 August 2017, in Johannesburg, South Africa, is a continuation of the work of the previous PPT session on *Transnational Corporations in Southern Africa*, held in August 2016 in Manzini, Swaziland. Seven new cases were presented at the 2017 session. This report documents the proceedings and discussions of the 2017 session in Johannesburg as well as the steps towards implementing the recommendations made at Manzini.

A total of 11 cases from Swaziland, Zimbabwe, South Africa, Zambia and Mozambique were presented to the PPT at Manzini in 2016 by witnesses and affected communities. The violations of fundamental individual and peoples' rights depicted by those cases provided compelling evidence of:

1. the crimes committed against the communities by extractive and destructive mining corporations in a context of generalised impunity guaranteed by the complicity of the State;
2. the strength, capacity, struggle, resistance and resilience of these communities;
3. the opportunity and need to expand investigation and documentation of the extent and impact of the alliance of corporate and state powers - both in other countries as well as in other areas and activities, such as land grabbing and exploitation, agribusiness, food insecurity, environment and natural resources, that critically threaten the rights to self-determination and sovereignty of the Southern African communities.

The extensive participation of communities in an ongoing process is significant. Collectively sharing awareness and knowledge, through investigating, documenting and discussing, is a powerful and concrete instrument of solidarity. It makes communities more aware that, more than being victims of crime, they are the legitimate subjects and owners of their fundamental rights. These rights must be recognised at a legal, social, cultural and political level by all actors and institutions that are accountable to national and international constitutions and laws, which affirm the inviolable priority of the right to life in dignity over and against other indicators of development.

The process of the Tribunal facilitates and develops an understanding of the facts, causes, actors, mechanisms of exploitation, repression and impunity more clearly through the economic contexts and industrial activities of the South African Developing Countries (SADC). The similarities, despite the diversity of transnational interventions, are striking. Making this apparent enables more effective and coordinated strategies of resistance to the violent policies of fragmentation and division typical of corporate powers. These policies are reflected in the increasing global pressure to join free-trade agreements or to participate in uneven public/private partnerships where public partners are mostly compliant supporters of private interests.

The testimonies, documentation and expert reports of this second session of the PPT relate to the new cases as well as to the updates on the earlier ones (see list of all cases in Annex 1 and 3) presented at Manzini. The findings and resolutions reflect the promise and increased opportunities of collaboration between communities to share their experience and know-how

towards building their social, legal, cultural and political strategies based on grounded research.

## **1.2. Introductory remarks**

The below mentioned introductory remarks shed light on the process of the PPT regarding corporate powers and the Southern African Countries.

The Southern African cases considered were specific but consistent expressions of a world order where people are deprioritised and made invisible. The work of the PPT and its sessions and judgements on different but comparable and complementary experiences - such as those on transnational Corporations and peoples rights in Colombia (2006-2008), European Corporations in Latin America (2014), Living Wages as human right (Sri Lanka, Cambodia, Indonesia, India, 2009-15), Free Trade, Violence, Impunity in Mexico (2014), Community participation as fundamental right in local and global scenarios (2015) - supports and integrates the analysis and implications of the findings.<sup>1</sup> The work of communities in Southern Africa is illustrative of encouraging forms of resistance and resilience.

The main public hearing of the PPT opened with bearing witness and attendance of the Marikana community on the 5<sup>th</sup> anniversary of the Marikana Massacre. Extensive documentation about the massacre is widely available and says more than any words can.

Two rallying cries of Marikana could be seen as the precursor to and summary of this report: "We were massacred - for radical economic emancipation - by the State". Only radical respect for people's rights over any corporate-state alliance could represent a step toward a radical emancipation in dignity. "Economic freedom within our lifetime," was the "war cry" of women as a reminder of the intolerable delays of justice and of the patient impatience of the struggle.

The public hearings were held at Constitution Hill in the former Women's Jail. This is possibly the most apt and moving symbol of how incredible and interminable, inhumane, repressive behaviour and intolerable human suffering has become a memory, a house, a companion of struggles, and a wish for a life with dignity for the violated communities of Southern African people.

## **1.3. Overview of information and documentation of cases presented**

The public hearings were organised around three sources of information and documentation (see Annex 1):

1. the detailed and comprehensive accounts of the cases, with oral testimonies and the presentation of data, written and visual materials and technical comments on various aspects of the cases selected. These narratives represent the real protagonists of the Tribunal and are the most relevant to its work;

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<sup>1</sup> For details of the respective judgements see <http://permanentpeoplestribunal.org/category/sessioni-e-sentenze-it/>

2. the contribution of experts, focused on the broader normative, legal, political, social, economic determinants of the interplay of institutional (States) and private (TNCs) actors in producing the highly diversified spectrum of violations and correspondingly systemic policies of impunity - from the non-recognition of requests for justice by individuals and communities, to the denial of, or endless delays of, investigations, to the failure to apply even the most fundamental constitutional personal and collective rights;
3. intensive dialogue and Q/A by the jurors with the representatives of the cases and experts to allow a more thorough and focused exploration and qualification of the factual data and underlying political and economic models, which on one side, are specific of national contexts and on the other, transversal across the various areas of intervention of the TNCs.

#### **1.4. Organisation of deliberations by jurors**

The overall evaluation of the Jury is organised in four sections, to better understand and present the range of evidence presented:

1. the main framework focuses on the interplay between the rights to development and an equitable and sustainable environment, and on their concomitant and interlinking violations;
2. a more technical and in-depth overview and assessment of the general and specific mechanisms and implications of the economic models, instruments and strategies. These are key determinants that translate the general framework into the concrete policies and practices which violate people's rights, while assuring and promoting the generalised impunity of the TNCs;
3. a comprehensive presentation of the concrete and dramatic consequences of these mechanisms that violate the fundamental rights of communities through a focus on the most relevant scenarios presented and documented: land grabbing, food and livelihoods, mining and natural resources;
4. a synthetic qualification of the most significant evidence of the illegal and illegitimate behaviours of institutional and private actors presented to the Tribunal, with the indications of the possible and necessary actions recommended to guarantee, without further delay and disregard, the rights to a life with dignity for the affected communities.

## II. FROM MANZINI TO JOHANNESBURG

While cases presented in Manzini during the Permanent Peoples' Tribunal on 16-17 August 2016 focused on the judges' analysis of issues related to women and extractivism, the Johannesburg PPT enabled the 7 participating judges to focus on issues of environment and development. This PPT session specifically strengthened the understanding of how these two rights are linked and interconnected. Most cases specifically demonstrated how the environment's destruction has dire consequences for the right to development.

The judges questioned the evolution of development and specifically, its complete realisation, which can only occur when all aspects (physical, intellectual, moral and cultural) are addressed within the community and at a global level.

In this regard, it is useful to recall Article 1 of the Universal Declaration of Human Rights, which stipulates that, "All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood". This notion of solidarity and sharing also evokes Article 1 of the United Nations Charter, which goes beyond the individual by recognising that "international cooperation" must be achieved with the aim of "solving international problems of an economic, social, cultural, or humanitarian character".<sup>2</sup>

Development impacts on the entire international community due to the interdependence between all nations. The economic and social organisation of countries enables the satisfaction of basic needs for the entire population.

The judges pointed out that governments neglected to prioritise and guarantee the satisfaction of people's needs. The cases reflect a sense of grave injustice inflicted by national authorities and transnational corporations (TNCs) upon communities. However they also showed the determination of people to resist and fight back.

There is a continued threat of dispossession, dislocation and displacement by the State, which favours a mining-for-development approach regardless of social, cultural and ecological costs. SADC States, their local elites, the international institutions and the TNCs are bent on an extractives model and a neo-colonial plunder of resources. This approach is promoted as *the only* rational and viable economic model with the illusive promise of productive employment, increased incomes and social economic gains. The evidence presented at this Tribunal however suggests the opposite.

The intensification of the mineral-energy complex, financialisation and technological advancements in the most recent wave of seed commodification - reflected in recent TNC mergers, cartels and new acquisitions in agribusiness and agrichemicals - underscores the expansion of TNCs and new areas of enclosures.

The Manzini spotlight on tax evasion, illicit financial flows and bilateral and multilateral trade regimes was amplified in Johannesburg by a focus on Mauritius. Attention was drawn, once again, to how State revenue is being undercut in the interests of TNCs. The inquiry further emphasised the social and political implications of tax havens: the connection between

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<sup>2</sup> Universal Declaration of Human Rights, Article 1, paragraph 3.

undermined state tax revenue, shrinking social services and socio-economic rights was made visible. Furthermore the lack of transparency and secrecy in accessing information shows that freedom of communities to be informed, to act and to determine their development is being undermined.

Increased police brutality, harassment and judicial bias in favour of capital interests and TNCs are pervasive. This was reflected in land tenure insecurity and in the threat of "evictions" (the case presented from Madagascar; Mozambique - Prosavana; and Tanzania). These cases showed the horror and loss of these communities at being separated from their land. More so, this separation for the communities is not quantifiable in economic and income terms.

The cases moreover highlighted the blatant disregard for human rights, for the dignity of people, for the health of workers and communities and for environmental safety.

Parallel to the advent of UN standards, those in economic power imposed their vision of "world economy" and "global market". The idea of public service and an irrevocable right to essential goods to live in dignity was undermined by the assertion that the law of the market governs everything. The 7 cases demonstrated this shift clearly. Witnesses, as in Manzini, provided irrefutable proof that their respective States abandoned the goal of human welfare and consciousness so as to protect TNCs interests. In the majority of cases, it became clear that the right to the environment could not be separated from the right to a people-centred development.

The witnesses, using well-documented examples, demonstrated how their right to development is flouted, ignored and violated. This right to development, as defined in the Declaration on the Right to Development, emphasises development as both the right of peoples and individuals.<sup>3</sup> If we consider development as a peoples' right, whether individuals or nations, then governments have an obligation to support policies that promote development. This obligation implies that the rights set forth in the Declaration may not be alienated, dismantled or superseded. This approach means that, taking into account the interdependence of human rights, the right to development requires simultaneous progress towards the realisation of different (civil and political, social, economic and cultural) rights. Thus, the right to development implies that progress and policies put in place towards the realisation of a particular right must not be at the expense of the commitment to others.

This concept of development, from a vantage point of peoples' rights, is the first qualitative addition to the human rights-based approach to the right to development. Therefore, poverty caused by political choices imposed by States or International Financial Institutions "is a violation of human rights".<sup>4</sup> The cases presented showed that TNCs, with what appears to be the unwavering support of governments, increase rather than reduce poverty. The projects and proposed plans of TNCs that were presented do not lead to the gains promised by the new Sustainable Development Goals; rather, they deteriorated social conditions so that poverty is endemic in the areas where transnational corporations have set up their activities.

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<sup>3</sup> Adopted by the General Assembly, in its resolution 41/128, on the 4<sup>th</sup> of December 1986; 1981 African Charter on Human's and Peoples' Rights, Article 22; 1976 Algiers Charter Universal Declaration of the Rights of Peoples, Article 2.

<sup>4</sup> Adopted by General Assembly, in its resolution 41/128, on the 4<sup>th</sup> of December 1986.



The first and second hearings, in Manzini 2016 and Johannesburg 2017 respectively, presented evidence of the numerous violations committed by the plundering of natural resources from the land on which peoples have lived. These cases help build the legal arguments and evidence for the upcoming third hearing scheduled in 2018 (place not yet specified). Action plans will then be elaborated for these three hearings to provide legal tools to the victims and affected communities against this looting and the unfair and libertarian policies put in place by their governments.

The task of the PPT judges is to draft a legal argument so that the voices of communities, which governments refuse to hear - despite their obligations as per signed international conventions - and that transnational corporations blatantly disregard - in spite of their international code of conduct and their rhetoric of corporate social responsibility - are heard and legal traps untangled.

### **III. THE SOUTHERN AFRICAN DEVELOPMENT COUNTRIES (SADC) CONTEXT**

The majority of Southern African countries have fledgling democracies. They are largely instrumental and formal rather than substantive, with citizen participation limited. The regular elections that are a key characteristic of the region have failed to deliver meaningful people-centred democracy and development. Poverty and inequality remain high, unemployment is on the rise especially amongst youth and women and the region continues to grapple with high levels of food insecurity.

Participatory institutions have weak institutional frameworks. The lack of separation of powers and poor systems of transparency and accountability undermine effective checks and balances. Communities are excluded from decision making processes about policies and development processes that affect their lives.

This governance and development deficit is not accidental, but the result of collusion between the political and economic elites in the private sector and the overarching neoliberal economic paradigm. Corruption and impunity have become endemic, existing tools and frameworks for fighting corruption are ineffective, and the regional and international normative frameworks are simply not enforced. Popular dissent in response to exclusion and deprivation is met by heavy-handed state retaliation. Public protest is criminalised and violence and intimidation becoming common.

With the exception of a few countries, existing constitutional and legal frameworks and institutions lack the ability to promote and protect human rights, guarantee the rule of law and ensure access to justice for all citizens – especially the most vulnerable, disadvantaged and marginalised.

The cases presented to the Tribunal contravene a number of frameworks ratified by African countries. These include the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, the African Union (AU) Agenda 2063, and Agenda 2030, otherwise known as the Sustainable Development Goals.

The Agenda 2063 is lauded as a strategic framework for the socio-economic transformation of the continent over the next 50 years. The AU has set a target to “eliminate hunger and food insecurity by 2025.” Both Agenda 2063 and the African Union Summit decision on Accelerated Agricultural Growth and Transformation have reaffirmed this commitment. While the African Union Agenda 2063 framework declares the intent to address inequality and facilitate inclusive growth, it emphasises modernising and industrialising the sector to make it more productive, profitable and attractive for FDI and TNCs. However with very little participation by local communities this process is likely to further marginalise communities, especially women and youth. Furthermore the cases suggest that this is not the type of development they want especially as it destroys livelihoods, communities and the environment.

African countries are signatories to the 17 Sustainable Development Goals which compliments the continent’s Agenda 2063. The goals are integrated and recognise the trade-offs between economic growth, equality and sustainability, promising to tackle the systemic barriers to progress. In the context of the cases that have been brought before the PPT - goal 1 on ending poverty in all its forms; goal 2 on ending hunger and achieving food security; goal

5 on gender equality and; goal 8 on decent work and economic growth, are relevant to interrogate.

Paragraph 79 of the 2030 Agenda states that member States should “conduct regular and inclusive reviews of progress at the national and subnational levels which are country-led and country-driven.” Such reviews should draw on contributions from indigenous peoples, civil society, the private sector and other stakeholders, in line with national circumstances, policies and priorities. Although these reporting mechanisms can enhance accountability they are not restorative as there is no punitive mechanism to deal with lack of implementation.

## **IV. THE ECONOMIC FRAMEWORK: NEOLIBERALISM AND SOCIAL COST**

### **4.1. General context**

Despite their specific features, the cases discussed reflect a general neo-liberal economic and ideological climate. This is characterised by a business-centred notion of development whereby private business firms are considered the drivers of economic growth. Domestically this implies that government policy objectives are to privatise the public sector and limit state interference in the market. Capital should be free to move from one country to another in search of the best business opportunities. The sole focus of international financial institutions projects as well as of national agencies is private profitability. Where institutions and agencies are not directly involved in projects, they must refrain from questioning economic, environmental and social viability. Governments of countries where the headquarters of TNCs are domiciled, must not extend their restrictions on domestic business practices to what TNCs do in host countries.

### **4.2. The Southern African case: a broad assessment**

For Southern African countries, free capital movement involves inward foreign direct investment (FDI). Most of it is resource-based: companies extract resources—be it from agriculture (as in the ProSavana project in Mozambique) or mining (as with uranium mining in Tanzania's Namtumbo District or with ilmenite in Madagascar's Atsimo-Andrefana region)—in order to export them. This is an export-orientated model of development, where income growth depends to a large extent on the exports of the countries' natural resources.

Advantages ascribed to this model are questionable. Let us consider them. First, exports may allow the country to obtain foreign reserves that it can then use to import the goods it is unable to produce domestically. In some cases it could be the investment goods that the country needs to further economic change. Unfortunately, in the absence of any specifically detailed project to this end, it is more common for international reserves to be used for consumption goods that have little or no effect on development. The information that the governments under examination provide tends to be scarce and sketchy, which suggests that they are not undertaking any major plan with regard to the use of their foreign reserves.

Second, exports-induced income may stimulate domestic production of goods, thereby increasing domestic output and (indirect) employment. However, resource-based foreign direct investment rarely has a significant effect in this sense. Inputs – capital equipment and intermediate goods - are generally imported and the output is not processed in the country. As a result the only effect tends to be the direct employment that the investment determines. Given the capital-intensive nature of investments in mining or in power plants, this effect is not particularly high. This may be higher in the case of investment in agricultural activity. Unfortunately, one of the important effects reported during the session is that all foreign direct investment crowds out existing employment. In the case of agricultural foreign direct investment, this is exacerbated because these projects pursue the advantages associated to economies of scale, i.e. to the size of the overall activity that is being carried out. For instance, in the Niassa province in Mozambique, a single vertically integrated company is expected to operate nine 5000 ha farms.

Third, a possible benefit associated to the activity of TNCs is that governments could benefit from the taxes on profits that derive from the activities of these firms. However, in most of the cases examined the tax rate on profits was rather low. The ProSavana project in Mozambique, for instance, provides for the establishment of Special Economic Zones where companies do not pay taxes or customs duties. Additionally, a number of practices - such as transfer pricing, access to double taxation agreements and triangulation with tax havens - allow TNCs to either conceal the actual amount of profits they earn or simply avoid having to pay taxes for them.

Various tax havens participate in these projects – for instance, one of the funds operating in the ProSavana project is registered in Luxembourg. The role tax havens play was examined with special reference to the State of Mauritius. Mauritius has double taxation agreements with most countries in Southern Africa and with the home countries of TNCs operating in Southern Africa, such as Australia, China and Russia. The regulation of offshore companies in Mauritius is such that practically no information about their ownership is available. Thus TNCs from other countries may be operating in Southern Africa in secrecy. It is thus noteworthy that agreements between Mauritius and important European countries – including Belgium, France, Germany, Italy, Luxemburg and the United Kingdom – exist and that agreements with other EU member countries are being negotiated.

Owing to the very low tax rates in Mauritius, these double taxation agreements allow TNCs to either pay few taxes or no taxes at all, thereby depriving host countries – countries where TNCs set up a subsidiary - of this potential benefit. World Titane Holdings Ltd is a typical case. The company, which runs the Toliara Sands Project in Madagascar, is incorporated in Mauritius where it is subject to a net effective corporate tax of 3%.

Tax havens are important not only because of their low tax rates but also because of the limited information that the authorities of these countries demand from registered companies. The opacity of annual accounts makes it fairly easy to conceal illegal financial movements associated with bribery of officials. The OECD and the G20 acknowledges the need for an action plan on Base Erosion and Profit Shifting (BEPS) to deal with illicit financial flows and tax treaties, but no comprehensive project seems to be finalised.

Finally, it may be that these investments allow the transfer of technology and know-how from the parent country of the TNC to the host country. Given the scarcity-induced effects that these investments have on local output and the complete foreign ownership of the companies involved, it is more likely that this effect is close to zero.

The ProSavana project illustrates this. Despite the government's claim that local farmers would benefit from an increase in productivity, farmers reported a complete lack of involvement in the project. Farmers denounced the lack of consultation and guarantees for the protection of property rights, the absence of adequate information about the deployment of the project, land grabbing (for example, in the Nampula province in Mozambique) and, in some cases, even intimidation and threats.

Parmalat's approach in Zambia, while different, had similar impacts on local farmers. Contrary to most FDI, which is export-oriented, Parmalat has taken over the public dairy distribution network, collecting local milk but also supplying the local market. While the State company had supported farmers through subsidies or by redistributing gains when prices rose, the substitution of the public network with a private one led to price

discrimination amongst farmers. Milk was priced in relation to the size of farms. As a result, a redistribution of income has favoured major producers at the expense of small farmers. Since small farmers are more likely to spend their earnings on local rather than foreign products it is likely that the final effect will lower the demand for domestic output.

The considerations outlined above may appear somewhat generic in that they are not grounded on any quantitative data. The reason for this lack of data is that, despite pressure from local non-governmental organisations (NGOs), neither the TNCs nor the governments involved provide such information. In Mozambique the reluctance to make information available resulted in legal action against the government and formal complaints against the Japanese Agency for International Cooperation (JICA). In another instance, in the Mkuju River Project in Tanzania, information materials prepared by NGOs on the economic and social consequences of uranium mining and its effects on population health were censored and destroyed by the authorities. Moreover, the company threatened workers not to divulge information concerning the mining activities. In the absence of appropriate data, it is impossible to assess what the potential benefits of an investment are. It is also impossible to provide an assessment of the actual effects and, consequently, to identify what action is required to make up for any identified shortcoming. However the qualitative data presented in by the cases as well as the expert witnesses suggest that advantages ascribed to the dominant neoliberal model appear illusive.

### **4.3. The Southern African case: a more in-depth assessment**

The broad assessment above was based on the standard economic analysis of money and employment effects of investments discussed during the session. The cases examined highlighted that this type of analyses are extremely limited and restrictive. They prevent an adequate assessment of the actual consequences of these activities. It is important to point out that the social and environmental costs of these investments are:

**4.3.1 Destabilisation of local communities.** Households are often forced to leave the land they live on – thus their homes but also the land they cultivate and get their livelihood from – and to move elsewhere. These evictions have dramatic effects on economic and general living conditions. The land people are sent to, is often less fertile than that they've had to leave, households are not compensated for these evictions, the houses provided are often inadequate both in terms of their size – with consequent overcrowding effects – and in terms of building requirements: in some reported cases, such as in Tanzania, houses had no foundations.

**4.3.2 Social disintegration.** The projects lead to changes that the affected people find hard to understand and internalise. Customary laws are disregarded both by the companies and by the government. In some cases, new legislation changes property rights so that what people have always thought of as theirs, suddenly belongs to someone else. In order to carry out a project, TNCs and government authorities may sometimes require the formal approval of the communities involved. In order to obtain it, they interact with – sometimes corrupting - local leaders, thereby failing to adequately involve the rest of the community. Alternatively, they provide minimal support to local communities under the banner of “Corporate Social Responsibility Programs” or make promises about the future rehabilitation of the natural environment. Evidence presented in the Toliara Sands Project in Madagascar and the Mkuju River Project in Tanzania clearly illustrates that without any binding regulation or contract, these promises remain unfulfilled.

In the absence of any appropriate information - other than vague promises concerning the advantages of the project – the communities end up being dispossessed of their very cultural background. This process is exacerbated when people are forced to leave their areas of worship, as with the Mkuju Project in Tanzania, and when the rural exodus of the population, who have no means of living, leads to crime and prostitution, as happened in the Nampula province in Mozambique.

**4.3.3 Societal disruption.** A range of changes affects the overall quality of life not only of single communities but of society at large. These concern the legal infrastructure of the economy. Since the priority assigned to the projects of TNCs is never properly assessed, because no information is made available, governments tend to set “national priorities” in order to avoid protests. These are officially put forward at the expense of local communities and their human rights.

Zambia’s privatisation of the milk collecting network, possibly imposed by the structural adjustment programmes enforced by international financial institutions, demonstrates this. Parmalat’s action in Zambia contradicts the government’s Poverty Reduction Strategy Paper – i.e. its National Development Plan - which aims to promote the empowerment of citizens and gender equity. In Madagascar, a change in the Mining Code imposed by the World Bank, favours the Toliara Sands project despite its dramatic impact on approximately 200 000 people, including the Mikea indigenous community. In Mozambique, the lack of information about the Mphanda Nkuwa Hydropower Dam contravenes the Convention on the Elimination of all Forms of Discrimination Against Women, which provides for public consultations and the involvement of rural women. In Tanzania, even the environmental impact assessment has been kept secret, hiding the consequences uranium mining may have on mine workers, the local population and the environment, which includes the Selous Game Reserve, a UNESCO World Heritage area.

The enforcement of these priorities occurs at the expense of the rule of law. In the Toliara project, an extreme case, references were made to a militarisation of economic policy whereby companies could ask for armed action when people’s protests prevented them from carrying out their business. In Tanzania, police-backed officials earmark houses that must be demolished to make way for the Mkuju project. Officials provide no information about when and where households will be transferred and whether they are entitled to any compensation.

In other cases, people are not provided with any specific directives but rather, as in the case of the Mphanda Nkuwa Hydropower Dam, they are “informed” through rumours that they will eventually have to be resettled. The implication is that it is better not to build new houses or infrastructures. Most of the people affected are unable to ascertain what their true rights are and, given the uncertainty these rumours create, they refrain from any improvement in their housing and in their land. This has two implications. The first one is that, when people are asked to leave their land, the degradation of their living conditions will be such that it is unlikely that they will complain about leaving and will therefore not struggle to defend their rights. The second, and most important, is that, given the uncertainty concerning their right to the land they live on, people will be less prone to make improvements that increase productivity. Another case of emerging changes in the legal system was related to the switch from a nationalised milk-collecting network, which distributed possible gains from high prices to the farmers, to a private one. The substitution of a public monopolistic network for a private one led to farmers being discriminated against, due to the size of their farms, when their milk was priced.

**4.3.4 Environmental costs.** Some of the reports pointed out that blasting associated with mining often lead to cracks in the walls of the houses. Poisonous material used in mining flows down into the earth and, eventually, pollutes catchment basins, so that the water that people use directly, as well as for their crops and livestock, eventually poisons them. In one instance the poisonous effect comes from the very output: this is the case of uranium mines (Tanzania). In this, as well as in the other mining cases (such as Madagascar), reports were that no provision was made to prevent these effects or even to avoid their damaging consequences.

Similar effects occur in agriculture. As illustrated in Mozambique (ProSavana) and Malawi (Farm Input Subsidy Programme, FISP), crops are cultivated through agrochemically intensive processes that may increase productivity in the short run but eventually destroy all of the natural elements that make the land fertile. The outcome is an increasing need for agrochemicals, which eventually pollute the catchment basins.

Farming projects do not take climatic requirements into account. An example illustrated through the Zambian diary network demonstrates that breeding animals not suited to the environment leads to more extensive use of veterinary pharmaceuticals. This affects the quality of the milk and meat produced and the net income of farmers.

Dams change the access that communities have to water, undermining their ability to cultivate the land and, consequently, to live. More generally, given their size, they determine micro-climatic changes that may disrupt the viability of local agriculture.

In addition to the environmental considerations and their effect on people's livelihood, these externally imposed activities negatively affect the health and long-term productivity of the population. They will negatively affect the fertility of soil and, more generally, productivity in agriculture. Finally, they are likely to determine negative effects on other industries. A particularly important case is uranium extraction next to Tanzania's Selous game reserve, which is most likely to lead to a drop in tourism both because of the effects on the animal population and for the feared effects on tourists themselves.

**4.3.5 Distributional effects.** These environmental effects have immediate consequences on people. The uranium mining project in Tanzania is the most dramatic: people reported respiratory and skin diseases as well as infertility and sexual impotence. Effects associated to the other projects – for instance the progressive water poisoning by agrochemicals – occur more slowly and are more difficult to detect. They are compounded by the absence of appropriate information – which, in some instances, is explicitly concealed - and, even more, by the absence of any adequate sanitary control. In so far as these effects undermine the ability of people to work, they are a cause of impoverishment.

People who are forced to leave their land suffer even greater economic consequences: they must start from scratch; the land they are assigned often is not as fertile as the one they are displaced from; in most instances they will not receive adequate compensation.

The increasing quantities of agrochemical products - in crop farming - and veterinary pharmaceuticals - in dairy farming - increases the costs that farming households must bear. Furthermore, available data suggests that – at least as far as South African maize is concerned –seed price indexes tend to rise more than output price indexes. This is not surprising, given the monopolistic or oligopolistic market power of the seed producers relative to the dispersion



of the farmers. The obvious consequence is a redistribution of income from farmers to the agrochemical industry and a rise in inequality.

Although no absolute economic law exists, it is generally believed that inequality in the distribution of income increases the probability of poverty traps. Despite claims that FDI is important to enhance economic growth, the opposite may well be true.

All of the above-mentioned circumstances are part of an implicit economic policy, which consists of social and environmental dumping. This reinforces the rising social costs of local and national communities, which in effect subsidizes the costs of TNCs thereby augmenting their profitability. These detrimental social costs lead to alternative ways to earn a living, including the above mentioned cases of crime and prostitution. In turn, this change is likely to reinforce the breakdown in the set of rules shared by society.

#### **4.4 Effects of Illicit Financial flows**

With the collusion of host governments TNCs are able to avoid taxation through a number of opaque mechanisms that prevent transparency and accountability. In the case brought by the Centre for Alternative Research and Studies, the Mauritian double taxation regime came under scrutiny. This taxation regime is aimed at preventing individuals and companies from being taxed on the same income in two different countries. Off-shore companies use the double taxation treaty to avoid paying taxes in the country where they actually conduct their business operations and where their actual income is generated. In this way companies use the tax haven provided by Mauritius to circumvent payment of dividends, interest, capital gains tax and income tax. This deprives countries of vital income streams that could be used for development and poverty eradication. Secrecy jurisdictions like Mauritius serve to hide ownership and financial flows and money laundering.

## **V. MAIN MECHANISMS OF VIOLATIONS OF PEOPLES' RIGHTS**

The forthcoming and final session of the Tribunal in 2018 will focus on a formal juridical qualification of the crimes committed by the TNCs, with the joint commissive and omissive responsibility of the SADC governments. This is consistent with the operational strategy and approach adopted by the Tribunal during its previous sessions.

It is clear however, that the breadth and the severity of the violations of individual as well as collective fundamental rights to development, environment and life - affecting both the communities and the people they represent - are so dramatic and aggravated by the generalised situation of impunity that urgent correctives actions are required.

### **5.1 Land grabbing**

Over recent years TNCs have been extending their grip on a new sector, which had traditionally been off their radar: agriculture. The race for the acquisition of arable land in the Southern hemisphere is intensifying. Striking deals between complicit governments and various players such as multinational companies, investment funds, sovereign funds and cooperation agencies to acquire large tracts of land is increasing. In 2011, the International Land Coalition (ILC) documented reports of more than 2,000 land deals under consideration or negotiation worldwide, covering a total of 203m hectares over the past decade – an area more than eight times the size of the United Kingdom. This is especially true in sub-Saharan Africa, where millions of hectares have so far been leased to foreign companies in order to produce food or energy commodities for export.

Those investments, encouraged by national governments and by some international institutions such as the World Bank, are linked to a model that is keen to promote a new “green revolution” in the Southern Hemisphere. Proclaiming the need to enhance productivity to feed the world’s growing population, this self-styled revolution is based on monoculture productions, hybrid and GMO seeds and extensive use of chemicals.

Rather than enhancing the productivity of small-scale producers, which are responsible for the food sovereignty of the targeted countries, this movement is set to impose a development model similar to the one implemented in South America from the Seventies onwards - the so-called plantation-style model, whereby the Southern hemisphere is to be the provider of raw materials for manufacturing or consumption in the Global North. Based on the production of commodities for the world market, this model does not take into account either the needs of the local populations or the livelihoods of millions of small-scale producers, who are usually evicted from their ancestral land or turned into daily farm workers for these transnational groups. Furthermore, as has been clearly shown in South America, this model leads to consequent environmental problems such as deforestation, soil degradation, pesticide and genetic contamination.

This land grabbing process is part of a more general agri-business expansion and extraction across the continent, where big seeds-chemicals groups, more and more concentrated at a global level, are acquiring a monopoly position. Evidence brought before the PPT suggests that the land rush in Africa is rapidly turning land grabs into a continent grab. The ProSavana

case presented at the PPT is a case in point. Launched in 2009 by the Mozambique government with the support of Brazilian technology and funding from the Japanese International Cooperation Agency (JICA), it aims to convert a 14m-hectare area in northern Mozambique into commercial agriculture.

The project is expected to intensify conflicts over land by attracting companies focused on large-scale, high-yield production on massive estates. Once completed, it will displace thousands of small-scale producers (4.5 million people live in the area) and will jeopardise the country's food sovereignty, since it is mainly designed to produce crops for export, especially the highly profitable soybeans directed to Asia. The project implementation is set in the so-called Nacala corridor, one of the country's most fertile areas. This region's infrastructure is convenient for commodity export through the portal town of Nacala.

Witnesses testified to a lack of prior informed consent and no impact assessment being done at all. Indeed, the ProSavana project has been negotiated behind closed doors by the central government and its partners without any consultation with the affected communities. The small-scale producers living in the area, as well as the public in Mozambique, only became aware of the project in 2012, three years after its launch from reports, in the international press.

Some NGOs and farmer organisations have built up a "No to ProSavana" campaign that has succeeded in raising awareness within Mozambique civil society and in temporarily discontinuing the project. But the government has recently reaffirmed that "ProSavana" will go further as planned. Since then, the project has seen the intensification of police intimidation, criminalisation and threats against people and activists both within the country and more broadly within the region. There has also been a filtering of representation to ensure that genuine leaders of the people are not invited to negotiations or consultations concerning the project. Civil society groups that could help are also prevented from doing so on the pretext that their offices are not located in the region. One common thread, that ran through all cases concerning mining and natural resource extraction, was the absence of consultations by way of environmental and social impact assessments.

The NGOs and witnesses presented the case at the Tribunal, raising their concerns about their lands and livelihoods. They have been living on the land for centuries and are now afraid of being evicted to make room for commercial agriculture. As one of the witnesses put it: "The land is my Lord, it is my life. I would not know what to do if I lose my land". The witnesses have very clearly pointed out some of the most critical points of the projects, which are common to similar deals concluded across the continent: opacity, lack of transparency and information and a complete absence of consultation with the affected communities. As with many other similar cases in sub-Saharan Africa, the ProSavana case stands at the crossroad between national and customary law. In Mozambique, as well as in many low-income countries, the state owns much of the land. Rural people claim the land as theirs and use it based on a "customary right", which is often not clearly stated on paper.

## **5.2 Food and livelihoods**

The entry of transnational corporations into mining, food production and agro-industries in Southern African countries is further transforming patterns of ownership and control over natural resources. The resulting spatial and economic displacement is disrupting their livelihoods, security and sovereignty. The emerging patterns of ownership concentration

intensifies existing global and local inequalities and increases women's vulnerability as it directly threatens and nullifies their access to, and their control over, natural resources.

### **5.2.1 Land dispossession and forced evictions**

As evidenced in the previous session of PPT hearings on southern Africa, large-scale land dispossession continues and is facilitated by policy and legislative changes as well as institutional arrangements in favour of transnational corporations by host governments. In cases where such legislative changes could not be effected, existing laws and land regimes (customary or civil) meant to protect the land rights of local communities are simply not enforced. Pending or executed land expropriations often occur without the free and informed consent of affected communities. Land expropriations and acquisitions enable dam construction, mineral extraction and export oriented large-scale farming and agribusinesses. These yield very little or no benefits to local communities. In many instances strategies of co-optation and the bribery of elites and local leaders are employed to divide or suppress local resistance to land grabs and/or to force consent.

In the case of the mining activities by World Titanium Holdings, land expropriation comprises several conservation priority areas, including the Mikea Forest and the highly important biodiversity areas in the Zambezi basin, which threatens the livelihoods and ecological integrity of the areas. In Tanzania, uranium mining in the Mkuju river caused the radioactive contamination of water and soil. This undermines food production and health. Women are adversely affected, as they are the custodians and managers of natural resources and land.

Land expropriations and evictions take place under the false assumption that fallow land, intended for land regeneration, is unused or unoccupied land that is available for investors. The allocation of land is done without prior consultation. Acquisitions often occur through violent forced evictions and intimidation perpetrated by private and state security agencies. Due to collusion between the national governments and private corporations, affected communities have no recourse to justice. This enforces a pervasive culture of impunity. Land and investment deals are shrouded in secrecy, due to absence of access to information laws or the lack of their enforcement.

Land acquisitions and investment frameworks lead to the destruction of local rural production systems. They lead to a loss of grazing land, loss of commons and a loss of arable land for local food production, which directly threatens food sovereignty. The envisaged evictions due to dam construction will affect fishing and agriculture. The ecological impacts will intensify erosion and sediment loss.

### **5.2.2 Concentration and market dominance**

Economic structural adjustment programmes and market liberalisation paved the way for the privatisation of state assets and the acquisition of state-owned monopolies by transnational corporations. In addition an American style corporate food production model is being globalised and entrenched in the Southern African food production system. Its key characteristics are the concentration of ownership, corporate influence over policies and laws, liberalisation of market access, market and corporate dominance in research and development

of seed varieties and fertilisers and in the supply chain. This has seen the emergence of neoliberal food regimes that entrench inequality and marginalisation of rural communities. In the case of Parmalat in Zambia, a contract-funding model has locked female small-scale dairy farmers into an unfair price structure and benefit sharing mechanism. In Malawi Monsanto monopolises seed distribution and greatly influences the seed policy-making process. It perverts government subsidy programmes for farmers, pushes up input prices and displaces the production of local crop varieties. The evidence from the Malawi case suggests that climate resistance is undermined as local varieties are resistant to the impacts of climate variability and diseases. The displacement of local crop varieties undermines nutrition security. In both cases household income has decreased and indebtedness has increased.

### **5.2.3 Disruption of livelihoods**

The land dispossession and economic displacement caused by TNC's are either not compensated or, if compensated, cannot support decent living. Few of the promises made to gain consent are realised and this includes job creation. Displaced persons have to seek alternative livelihoods. In most cases jobs are not available locally. This forces migration and urbanisation. Due to skills differentials and the centrality of land to their livelihoods, women are often less able to mitigate the impacts of livelihood disruption.

### **5.3. Minerals and natural resources**

Cases presented before the Tribunal underscored the fact that in the race for the exploitation of minerals and natural resources in Africa attention is not paid to the value that communities place on their environment and resources. They also showed that the states and TNCs are concerned about the economic gains of the exploitation and transformation of natural resources, while the needs of the communities are disregarded. This can be attributed to the perception of what natural resources are. While communities see these resources as the gifts of Nature, governments and TNCs see them as items and materials, including minerals, forests, water, and fertile land that occur in nature, that can be used for economic gain.

Efforts have been made by African nations, through the African Union, to tackle the paradox of great mineral wealth and the so-called resource curse manifesting itself through corruption and pervasive poverty. One of such efforts is the African Mining Vision of 2009. The vision seeks to integrate mining into "development policies" as a means of tackling the malaise but it is not clear how that would work in situations where there is no discussion aimed at determining exactly what the ends of development would be and by what gauge expected economic growth is measured. While government efforts do not appear to have the overarching aim of securing the well-being of the citizens, their push to optimise benefits for corporations is not in doubt.

With economic gain as the prime motivation, anything that hinders that objective is treated as an obstacle that must be subdued or eliminated. The pursuit of gains and profits for the TNCs and as revenue for governments place the communities and the environment at great risks. The evidence presented confirmed that the drive for foreign direct investment and government revenue makes it impossible for governments to enact and enforce strict environmental laws and regulations. Rather, they lower the bar in ways that enable TNCs to operate with scant responsibility. This state of affairs allows extreme harm to the people, communities and their environment. The situation allows for exploration and extraction of

harmful minerals without the communities being warned of the nature of the activities. A particularly poignant illustration of these acts of impunity and gross abuse is the case of uranium extraction in Tanzania. Witnesses testified that exploration activities commenced almost a decade before the license for such exploration was issued. In the meantime, workers and the community people assumed that the mineral being extracted was similar to gold and could be handled without direct and immediate health consequences. Workers worked without health warnings, health insurance or safety gear. The result was the appearance of diseases, including cancers, impotence and infertility.

The case concerning the Mikea people of Madagascar - indigenous people asserting their right to reject mining in their territory - came before the PPT. Besides the lack of consultation of the people, they reject mining because their territory is a biodiversity hotspot as well as having significant cultural and historical significance. A disturbance of the ecological balance of the territory would threaten their very existence, their right to life. The violations in this case breach national laws as well as international conventions.

### **“My Land is My Life”: Unyielding Resistance**

Witness testimonies reveal that the alliance of State and TNCs works to stifle resistance through co-option of leaders, division of communities and movements and false promises. Where those fail, they criminalise dissent and unleash terror on communities through police harassments, detentions, imprisonments, torture or outright murders. A troubling instance of cross-border criminalisation and lack of government protection was recorded in the case of eight anti-uranium activists from Tanzania that embarked on a study tour of uranium mines in Malawi. These activists were arrested, mistreated and jailed for six months before being let off with a criminal label and a suspended sentence. The Tribunal noted that because these activists were against uranium mining in Tanzania, their home government refused to intervene on their behalf, thus raising the bar of government impunity and shirking of responsibility for the benefit of transnational corporations.

Mining communities repeatedly testified that the land is wed to their lives. This is verified by the fact that most of the communities rely directly on the services of the natural environment for economic activities, recreation, and cultural and other expressions. When rivers are contaminated by mining and other extractive activities, the communities directly lose their source of potable water and this directly impacts on their food systems and overall well-being.

In the case of Tanzania, the PPT saw how contamination of a river by wastes from uranium mining led to critical health issues for children who swam in the rivers. Other community members have suffered and are still suffering from diverse health impacts because they were not warned of the contaminants dumped into the river they depended on and because of lack of adequate health care services in the localities. This is a case of gross negligence and wilfully causing harm to individuals and their communities.

Governments, apparently fronting for TNCs, see opposition to the exploration and extraction of minerals and the grabbing of natural resources as an affront. In both the Manzini (2016) and Johannesburg (2017) sittings of the PPT, testimonies were heard from communities rejecting a highway and from another rejecting a bridge – both seen not as infrastructure for the people, but to enable mining companies extract and ferry away resources. The Tribunal noted that the rejection of these infrastructures by communities with an acute deficit of such

provisions was made at a great sacrifice. By their strong resistance, despite the intimidations and criminalisation, the people show that the ends of development must correspond to the needs of the people and respect their right to live in a safe environment as enshrined in Article 24 of the African Charter on Human and Peoples' Rights. This article states that, "All peoples shall have the right to a general satisfactory environment favourable to their development."

## VI. IMPUNITY

With the emergence of neo-liberal policies promoted by the International Financial Institutions (IFIs) and with the support of powerful governments, transnational corporations have been promoted as the "engine of development". Evidence by the cases presented in Johannesburg shows that governments facilitate transnational control over natural resources as well as their monopoly in most areas of life. It should be noted that codes of conduct are criticised by the financial institutions, as they are considered detrimental to investment projects, particularly in the countries of the South. TNCs prefer to refer to the Global Compact, a voluntary partnership between TNCs and the UN. It should be emphasised that this Compact Global is closely aligned to the SDG policy, which claims that it fights poverty. TNCs and IFIs, however, only reinforce inequality and deepen poverty.

TNCs maintain that human rights and the protection of these rights lie with the states. However, this is not in conformity with international law - the Universal Declaration of Human Rights states that "no provision of this Declaration may be interpreted as implying for any State, group or individual any right to engage in an activity or to perform an act aimed at the destruction of the rights and freedoms set out therein" (article 30).

States do not uphold their obligations to their peoples and the TNCs do not adhere to the codes of conduct that most of them have themselves elaborated. These codes do not take into account the social and environmental consequences of corporate predatory activities, thereby allowing impunity. There are no penalties for violations against workers from factories in TNCs, those expelled from their lands, as well as those whose lives are at risk because of the use of highly toxic products. There has been an absence, in law and in fact, of the criminal responsibility of the perpetrators of human rights violations as well as their civil and administrative liability. The perpetrators of these violations are not subject to any inquiry for their indictment, arrest, trial and conviction, including the punishment on behalf of affected communities.

Impunity violates certain elementary rights and duties, including the right to truth and the duty of truth, the right to justice and the duty of justice, the right to reparation and duty of reparation.

In this context, the work of the PPT is essential; its function is to restore:

- the principal of the right to life,
- the truth of the facts,
- the voices of the excluded, the invisible and the numerous people considered as non-beings, both by their own government and by TNCs, who are protected by the opportunities created by legal instruments.

One of the important contributions of the PPT is:

- to speak for, and call for, justice when it is denied to victims, and
- to inform them of the legal avenues that could be taken to make their voices heard so that the right to reparations is open to them.

Through this work of reflection and expertise, the PPT helps to support, politically and legally, those who struggle every day against failed states and against TNCs. It seeks to transform existing power relations and to overcome structural blockages.



This can only be achieved by tracking the impunity of economic and financial delinquency that TNCs and governments enjoy when they set up factories that violate the status of the people, the environment and the economies for hundreds of years to come.

## VII. A COMPREHENSIVE OVERVIEW

The Manzini and Johannesburg cases pave the way to alternative legal and development paradigms for the peoples in Southern Africa. They show that many injustices are taking place in the name of regional development and economic growth. The struggles and resistance against corporate domination and the hegemonic extractives model in the region amplify that another way of living with nature—forests, rivers, land, minerals and metals, fish and seed etc.—and all its peoples is possible and desirable: hence the resounding war cry of “Yes to life, No to mining” reverberated during this second hearing. The cases called for an acknowledgement of the living and dynamic customary law to be reflected in the fundamental socio-economic and cultural rights enshrined in the national and regional legal frameworks.<sup>5</sup>

The constant refrain “NOT without our consent,” demonstrates a peoples-rooted development, which is not against nature or at the expense of nature but instead a holistic, connected and interrelated web between the earth and all its inhabitants, where all its peoples move freely, without prejudice and persecution. The demand for this right is critical for an interconnected Southern African people where borders are no hindrance for a truly integrated people. The hearings confirmed that the free movement of capital, commodities and goods and services in the region detrimentally supersedes the movement of its people.

The current SADC corporate-driven development of annexing peoples’ lands, undermining livelihoods and the ways people relate to each other and to natural resources is possible because governmental economic policies are supported and underpinned by increased militarisation. The criminalisation of the defenders of the earth and of the people who live on it was starkly reflected in both hearings. More so were the difficulties and dangers conveyed to access public interest documents, contracts and information. The secrecy, blocking and use of tedious bureaucratic mechanisms show how the basic and fundamental right to access information is a critical barrier in the process of enacting an alternative development model.

The voices and testimonies of the workers, small-scale farmer, peasants and women in the second session were clear in their unwavering demand for a just system which acknowledges that they are deeply connected and dependent on Nature.

The social, cultural and ecological costs upon nature and its people are incomprehensible. Defenders of nature show that solidarity with Nature is an act of solidarity with others.

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<sup>5</sup> articles 221, 22, chapter 12, South African Constitution

## VIII. RECOMMENDATIONS

- Legal mechanisms to ensure inclusive, participatory voice of communities and of their development through processes such as a free-prior consent that is genuine and mandatory.
- A comprehensive assessment of agricultural deals in Southern Africa is yet to be provided, together with its socio-economic and ecological costs. It is a difficult task, since many of these deals are negotiated secretly and behind closed doors. Some of the data provided by the database land matrix could prove useful for performing, albeit partially, this task.
- It is important for the Tribunal to explore legal mechanisms making the national governments and the TNCs accountable at domestic, regional and national level accountable. It is vital for the governments to recognise progressive and participatory/democratic customary law as a legal binding instrument and to make the process of agricultural investments more inclusive.
- The crucial role of the small-scale producers in ensuring food sovereignty has to be recognised not only by national governments but also by international organisations. Public investments need to be directed towards smallholders in order to support their livelihoods and extend access into national and local markets. The access to land has to be secured for small-scale and subsistence farmers. Every government has to guarantee that private land-leasing investments don't result in people's evictions and don't jeopardise their livelihoods and, more generally, the country's food sovereignty.
- Respect small-scale farmers rights to choose local farming practices and approaches to food sovereignty.
- Respect indigenous knowledge systems, communities' social and cultural rights to maintain their heritage and value systems. In this regard, explore national and regional indigenous knowledge systems mechanism.
- Respect the use of local seeds by farmers and support protection of seeds against patenting and imposition of GMOs.
- From this point of view, it is useful to take into account the "Voluntary guidelines on responsible governance of tenure" approved by the Committee of World Food Security (CFS) at the FAO (2) in 2012. Point 12 of the voluntary guidelines state that, "States should provide safeguards to protect legitimate tenure rights, human rights, livelihoods, food security and the environment from risks that could arise from large-scale transactions in tenure rights. Such safeguards could include introducing ceilings on permissible land transactions and regulating how transfers exceeding a certain scale should be approved, such as by parliamentary approval. States should consider promoting a range of production and investment models that do not result in the large-scale transfer of tenure rights to investors, and should encourage partnerships with local tenure right holders". Many of the African governments that are allowing land-grabbing deals, including Mozambique, have joined the three-year inclusive consultation process leading to the approval of the Guidelines. They, therefore, have the moral obligation to act accordingly. This applies in particular to the ProSavana case, which patently violates the basic rights stated by the Guidelines.
- The complex and interwoven nature of the impact of the extractive sector on the environment in Africa requires a deep and holistic approach to justice.

- The African Charter on Human and Peoples' Rights, provides a good legal basis for impacted communities to seek redress and to protect their right to life and to a safe environment. A good example is Article 24 of the Charter.

**Annexe 1**  
**List of Cases Presented Session 2 of the Permanent Peoples’**  
**Tribunal on Transnational Corporations in Southern Africa 17-18**  
**Aug 2017**

**Case 1**

**The Prosavana Programme**

Coordinated by No to Prosavana Campaign

Country: Mozambique

**Case 2**

**Monsanto and Farmer Input Subsidies Programme**

Coordinated by Rural Women’s Assembly Malawi

Country: Malawi

**Case 3**

**Madagascar Resources and Ilmenite Mining**

Coordinated by Research and Support Centre for Development Alternatives

Country: Madagascar

**Case 4**

**Mphanda Nkuwa Dam**

Coordinated by Justicia Ambiental

Country: Mozambique

**Case 5**

**Illicit Financial Flows and Tax Evasion**

Coordinated by Rezistans ek Alternativ

Country: Mauritius

**Case 6**

**Paladin Uranium Mining and Illegal Imprisonment of Lawyers and Activists**

Coordinated by Lawyers for Human Rights Tanzania

Country: Malawi and Tanzania

**Case 7**

**Parmalat and Small Scale Dairy Farmers**

Coordinated by Rural Women’s Assembly Zambia

Country: Zambia

**Annexe 2**  
**List of Expert Presentation Session 2 of the Permanent Peoples’  
Tribunal on Transnational Corporations in Southern Africa**  
**17-18 Aug 2017**

**Food systems**

Presented by Stephen Greenberg (Researcher)

Organization: African Centre for Biodiversity

Country: South Africa

Presentation available upon request

**Illicit Financial Flows and Tax Havens**

Presented by Savior Mwambwa

Country: Zambia

Presentation available upon request

**Law from Below and the Right to Say No**

Presented by Akhona Mehlo (Attorney)

Organization: Legal Resource Centre

Country: South Africa

Presentation available upon request

**Annexe 3**  
**List of Cases Updated at Session 2 from Session 1 and Link to Juror**  
**Report from Session 1 of the Permanent Peoples' Tribunal on**  
**Transnational Corporations in Southern Africa**  
**17-18 Aug 2017**

**Minerals Commodities Ltd (Australia) and Amadiba Crisis Committee**

Coordinated by Amadiba Crisis Committee and Legal Resource Centre

Country: South Africa

**Somkhele Anthracite Mines- Tendele mining, Fuleni Anthracite Mines- Ibutho Coal and the Communities of Somkhele and Fuleni**

Coordinated by Womin

Country: South Africa

**Glencore Mopani Copper Mines and the Kitwe Community**

Coordinated by Centre for Trade Policy and Development

Country: Zambia

**Anhui Foreign Economic Construction Company and the Marange Community**

Coordinated by Zimbabwe Environmental Law Association

Country: Zimbabwe

**Vale, Jindal and the Communities of Tete Province**

Coordinated by Justicia Ambiental

Country: Mozambique

**DTZ-OZGEO Penhalonga Coal Mines and the Penhalonga Community**

Coordinated by Centre for Natural Resource Governance

Country: Zimbabwe

**Glencore-Graspan Coal Mine, Shanduka (Glencore Subsidiary)-Wonderfontein Coal Mine and Communities in Mpumalanga**

Coordinated by South African Green Revolution Council

Country: South Africa