

**PEOPLE'S PERMANENT TRIBUNAL
Colombia Session**

Oil Hearing

Bogotá, August 3rd and 4th 2007

translated by Espacio Bristol-Colombia
www.espacio.org.uk

INTRODUCTION

The People's Permanent Tribunal (PPT) was founded in 1979 to continue the work started by the Russell Tribunals on the Vietnam War (1966-1967) and Latin-American dictatorships (1974-1976). Its aim is to assess in legal terms all those situations where the massive violations of fundamental human rights are not tried by legal institutions, either national or international. During its 25 years of history and 33 sessions, the People's Permanent Tribunal has accompanied, anticipated and supported peoples' fights against the violation of their fundamental rights, including the denial of self-determination, foreign invasions, new dictatorships, enslaving economies and environmental destruction.

The trial against multinational companies to judge their involvement in the violation of human rights in Colombia started in April 2006.

So far three hearings have taken place: one on food and agriculture (Bogotá April 1st and 2nd 2006), a second on mining (Medellín, November 10th and 11th 2006), and a third on biodiversity developed in the "safe area"¹ of Nueva Esperanza, in the Cacarica Watershed in Bajo Atrato Chocoano (February 25th and 26th 2007).

This hearing has been preceded by 4 pre-hearings which took place in Saravena (December 11th, 12th and 13th 2006), Barrancabermeja (March 22nd 2007), El Tarra (May 19th and 20th 2007) and Cartagena (May 25th 2007) which have allowed the most damaged communities to participate directly in the investigation process and compilation of testimonies.

The hearing was undertaken in the headquarters of the Asociación Distrital de Educadores (District Association of Educators) – south headquarters – according to the detailed program enclosed in Annex 1 and it was attended by about 400 people

¹ Translator's note: a "safe area" is a space designed to protect the human rights of those in danger.

from the regions affected by the oil multinationals, as well as representatives of Linking Alternatives, an international network which includes more than 80 European and Latin-American NGOs.

According to the agreement established with the Lelio Basso International Foundation and the PPT General Secretary Office, the collaboration of the Social Observatory of Multinational Corporations, Mega-projects and Human Rights was taken into account to prepare the material and documentation needed for the prosecution.

The jury appointed by the PPT, together with father Javier Giraldo and the PPT Secretary General Gianni Tognoni, included the following people as judges:

- DALMO DE ABREU DALLARI. Lecturer in Law at the University of Sao Paulo, member of the International Commission of Jurists, member of the Council for the Defence of Human Rights of the President's office of the Republic of Brazil.
- MARCELO FERREIRA. Professor of Human Rights at the Faculty of Arts at the University of Buenos Aires (Argentina).
- ANTONIO PIGRAU SOLÉ. Professor of Public International Law at the Rovira i Virgili University of Tarragona, author of several works on International Law and member of several academic groups active in this field.
- NATIVIDAD ALMÁRCEGUI. Teacher in secondary education, member of the General Confederation of Labour (CGT Spain), coordinator of the Seminar on Political Solidarity at the University of Zaragoza.
- DOMINGO ANKWASH. President of CONFENAIE (Confederation of the Indigenous Nationalities of the Ecuadorian Amazon).
- DEIRDRE GRISWOLD. Journalist, representative of International Action Centre, former member of the President's office of the Bertrand Russell Tribunal on war crimes in 1967.
- RALF HÄUSSLER-EBERT. Theologian and Reverend of the German Lutheran Church, member of the board of directors of Iniciativa ecuménica para América Central (Ecumenical Initiative for Central America).
- IVONNE YANEZ. Ecuadorian ecologist, coordinator in South America for OILWATCH network (resistance network that opposes the activities of oil companies in tropical countries).

THE ACCUSATION

The multinational corporations Oxy, BP and Repsol have implemented common policies in Colombia, which were put into practice by looting natural resources and using systematic violence against the population. They have resulted in the destruction of the social fabric, in murders and in the pursuit of its leadership, as well as the violation of human rights and the destruction of indigenous groups.

According to the charges, these abuses aimed to achieve control of the population and avoid resistance against multinational activities. The multinationals have combined several strategies for this purpose such as putting pressure on the government so it rules in their favour –for example minimizing regularization, relaxing the association contracts, privatising the power companies, granting them tax benefits and giving them more oil or gas reserves. Besides, corruption has been promoted and society has been militarised, aggravated by the implementation of Plan Colombia and the direct support of the legal and illegal armed forces from the oil companies.

According to those experts who supported the indictment, the three multinational oil companies share similar objectives based on imperialist policies to loot Colombian oil. They have used several strategies for this purpose, such as hiding the results of production tests, signing contracts on unfavourable terms for the nation, carrying out fraudulent transactions to evade taxes, using the national budget to their own benefit, invading ancient indigenous territories, signing security agreements with private companies and military forces and adapting the Colombian judicial framework to support all these actions – helped always by the government. All this is represented in more than 605 million dollars' worth of utilities obtained in 2005.

The prosecution states that these companies have to get rid of their enemies in order to reach their goals, regardless of who they are – grassroots environmentalists, workers, *campesinos*² and indigenous people, and according to neoliberals "these people are creating restrictions to the efficient work of markets."

Oil and gas are non-renewable resources. Therefore their extraction is finite, so once a country has finished its reserves it can never recover them again, unless

² Translator's note: a 'campesino' is a small-scale farmer and can be translated as 'peasant'. Since 'peasant' tends to be used as an insult in English, we have avoided this translation in the report in order to avoid the negative connotations which might be interpreted erroneously by some English-speakers.

new oilfields are discovered. If that country exported its oil carelessly –like it was done in Caño Limón, Cusiana and Cupiagua, formations that had common reserves of 3,500 million barrels, these mega oil wells would run out. For example: the life of the biggest oil discoveries in Colombia won't last more than 30 years, whereas the exploitation of Cira Infantas, another huge oil well, current property of Oxy, can last for 100 years.

The extraction pace has been so intense that, according to Ecopetrol, Oxy had extracted 750 thousand barrels from Caño Limón up until 2002, while BP had extracted 806 million barrels in Cusiana and Cupiagua. By then more than 2,500 million barrels had been extracted from both oilfields and the value of its production was more than 60,000 million dollars, almost the amount of the internal and foreign national debt and the foreign private debt of the country.

The particular charges against oil companies and the Colombian government are mentioned below:

Oxy and Repsol are partners in several business ventures. Repsol has become a complement to Occidental activities in Colombia. The American multinational, Occidental sold part of its rights in Caño Limón oilfield to the Spanish company, Repsol. After reacquiring Shell's part by buying Colcitco and turning it into Occidental Andina, Oxy sold, through Oxycol, 6.25% of its property to the Spanish multinational Repsol YPF. This transaction brought in at least 150 million dollars to Oxy. In this way Repsol became a minority partner of the association agreement *Cravo Norte* made by Ecopetrol, which owns 50%, and Oxy, represented by its subsidiary companies Occidental Andina (25%) and Occidental Colombia (18.75%).

Repsol has an increasing investment of American capital. Its main shareholders are the following Spanish financial groups: La Caixa (31% of the shares), the Basque bank Bilbao Vizcaya Argentaria (9%), and the energy company Iberdrola (3.5%). Brandes, an American investment fund, owns 9.4% of the shares. Besides, Repsol has been developing a growing association with Occidental Petroleum Corporation over the years.

When in 2003, Repsol bought a part of the property in Caño Limón, it also bought a large part of the responsibility for the genocide committed by the American multinational against the population of the province of Arauca and the ethnocide of Guahibos and U'wa peoples. It also went into partnership with the environmental destruction of oil exploitation and the brutal looting of national natural resources

carried out by multinationals. Apart from that, it joined a counter-insurgent and war project which is extremely aggressive towards the civilian population.

Repsol YPF has mining rights in Colombia over 8 zones –7 of which are exploration zones. It owns 7,862 square kilometres. It is also the main operator of natural gas for domestic use in Colombia through the company Gas Natural. Repsol monopolizes the distribution of this product in Bogotá, the Altiplano Cundiboyacense and the eastern region, where it has nearly 1.5 million clients.

Repsol has established a close alliance with Oxy and its project of militarization of the society of Arauca. It has helped consistently to aggravate conflicts in this province. For example: its arrival coincided with the first paramilitary actions in Tame, one of the municipalities where oil exploration and exploitation is carried out and where the zone Capachos I is located. It also coincided with the aggravation of the armed conflict in the region. The same was done in the areas of Bajo and Medio Atrato, and Medio and Alto San Juan, where paramilitary forces had an important presence while oil was looked for and exploited by Repsol.

Part of its activities take place in the ancestral territory of the U'wa people. Three oil wells –Capachos, Caño Limón and Catleya– are very near the current indigenous territory, which was vandalized deliberately by the Colombian government to allow the exploitation activity of the multinationals.

So we accuse:

1. Ecopetrol (Colombia's National Oil Company) and the government of Colombia.
2. Oxy, Repsol and Ecopetrol and the government of Colombia of looting the natural resources, destroying ecosystems and polluting, destroying the territory and culture of the indigenous communities U'wa and Guahiba and the genocide against the communities and social organizations of the Department of Arauca. The latter was represented in the particular cases of the massacres of Santo Domingo, La Cabuya, Tame (villages of Flor Amarillo, Piñalito and Cravo Charo), Cravo Norte, Caño Seco, the homicide of the minor Hugo Horacio Hurtado and of systematically implementing a strategy of channelling through the courts any action against the social leaders of the region.

Occidental Petroleum Corporation is an American corporation founded in 1920 and it is registered in the state of California. It does business in different countries and its most important operations are in the Middle East and the American continent.

Oxy is accused of favouring the destruction of the Ecopetrol Oil-workers' Union (USO) and particularly of being responsible for the homicides of Manuel Gustavo Chacón, Jorge Orlando Higueta, Auri Sara Marrugo, Enrique Arellando and Rafael Jaimes Torra. It has implemented in Arauca highly repressive and extreme measures in order to keep its oil exploitation activities undamaged, for example by using the official state forces to expel the *campesinos*; supporting and paying for the war to guarantee its strategic interests, benefits and a permanent foreign cash flow with the American military intervention of Plan Colombia; creating war operations scenarios by using special laws (state of disturbance, state of emergency, consolidation and rehabilitation areas); militarizing Arauca by binding a part of the civil population to military programs, institutionalising the paramilitary forces and adapting justice to the interests of the corporation; and disrupting the social movement.

3. British Petroleum Company and the government of Colombia, of breaking up the social and *campesino* movement, exterminating the association of hamlets³ of Cunamá (ASOVEC), the El Morro Community Association for Agro-industrial and Social Development (ACDAINSO) and the Departamental Campesino Association (ADUC), through the homicides of Carlos Mesías Arrigúí, Daniel Torres, Roque Julio Torres Torres, Oswaldo Vargas and Carlos Hernando Vargas Suárez.

The evidence

Documentary evidence, witnesses and expert witnesses were provided in the course of the hearing. The documentary evidence was so extensive and of such depth that it cannot be assessed in this document due to space limits. However, it is added separately in order to be presented to the deliberate hearing of the PPT which will take place on July 2008.

During the testimonies several protagonists of the events gave evidence, as well as relatives of the victims, who saw how their beloved died. Therefore this part of the trial was a very moving and heartbreaking scene. Besides, some of the witnesses mentioned the possibility of facing reprisals in their home region.

The expert witnesses provided a general overview of the situation in Colombia in an economic, political and armed and social conflict context, especially of the impact of the American war policy in this region.

³ Translator's note: the Spanish 'vereda' has been translated as 'hamlet' as the nearest approximation used in England. 'Vereda' in Colombian Spanish refers to a collection of houses near a water source. In Irish English this can be more accurately translated, as 'townland'.

ASSESSMENT OF THE FACTS

The different aspects of the issue

SPECIFICITY OF THE OIL INDUSTRY

It should be pointed out that the oil industry works with a dynamic of accumulating capital and national security in countries that are highly dependent on power.

On the one hand, due to the strategic nature of the oil resources, oil activities have generated such a big economic excess in the last decades that it resulted in the consolidation of the most powerful economic groups in history: oil corporations.

On the other hand, it is well known that world hydrocarbon reserves are running out at a fast and inevitable pace. Therefore, these resources have become more and more precious and accessing them is an issue of national security for industrialised countries, particularly for European governments and the United States of America –the main consumer of fossil fuels in the world.

All the stages of oil activities –exploration, extraction, transport, refining or consumption, cause on a local and global level a social and environmental impact which is catastrophic and irreversible. Nevertheless, greedy corporations and the increasing demand of power are expanding the oil border, which is now on high biodiversity areas or indigenous regions.

The strategies of oil companies are unlimited –they collude with international banks to force the producing countries to get into debt so these companies can extract and export the natural resources; in order to act more freely and reap greater benefits they pressurise governments into relaxing the environmental, labour and fiscal laws; they greenwash their social and environmental image through agreements with international bodies; they form alliances with local mafias, the army and paramilitary forces who are accused of murdering, torturing, persecuting or “disappearing” community leaders to give their operations security.

These and other strategies permit them to act with a supposed corporate social responsibility and respect for human rights. However, complaints and evidence against them are appearing more and more for being directly responsible for environmental crimes –polluting lands, rivers and seas, destroying forests and biodiversity; for violating the economic, social and cultural rights of the local population; for generating thousands of social and environmental refugees or for destroying survival supplies which affect whole villages and cultures.

Oil companies violate fundamental rights, they become silent or open murderers and they act with impunity, because they corrupt the Rule of Law and they benefit from the armed conflict.

The governments of the original countries of those oil companies are responsible as well for allowing their impunity, encouraging the repression and militarization of the oil areas and creating conditions of anxiety, invasion and permanent war against their inhabitants or those opposing the social and environmental impacts generated.

Oil multinationals make a real profit in Colombia of more than 80%, in production installations which are totally militarized. Even though this hearing focuses on the above-mentioned companies, all the big oil companies in the world are working in Colombia.

INFRINGEMENT OF HUMAN RIGHTS

Taking into account the documents and testimonies and within the aforementioned conditions and the framework of the social and armed conflict that affects the Colombian people, we can conclude that there is a situation of widespread and systematic infringement of human rights.

Firstly, cases of murder, massacres (the Bombing of Santo Domingo, the Massacres of Caño Seco, Tame-Piñalito, Flor Amarillo, Cravo Charo, La Cabuya, Cravo Norte), torture and threats all confirm the existence of grave violations of the right to life and physical integrity of numerous people. In the course of the hearing many witnesses testified about the crime committed against their close relatives (mothers, fathers, children, cousins, brothers and sisters).

Secondly, a consistent persecution of trade-union leaders happens to such an extent that it can be said that Colombia is the country with the highest risk for this activity. More than 3,000 trade-unionists have been murdered in the last 20 years. A good example of this situation is the persecution suffered in the last 20 years by leaders and members of Unión Sindical Obrera -105 members were murdered and there were cases of disappearance, kidnapping, attacks, internal displacement or exile.

CRIMINALIZING THE SOCIAL PROTEST

The submitted evidence also confirmed the existence of a systematic persecution of any kind of opposition to interests of the involved oil company by criminalizing the social protest by means of arbitrary massive arrests, like those ones in Saravena.

Sometimes, even the people persecuted were sentenced because of these proceedings. In that respect a witness who was arrested and found guilty of rebellion said of the moment she was captured: "I was worried about our lack of students... The government asked for a minimum number of students... We got together to face the announcement of the government of closing the schools." This teacher goes on with "they came into the room where I was resting, they shouted asking where the weapons were."