



Conceptual Framework

Madrid Session of the Permanent Peoples Tribunal, May 2010

This framework document aims to outline the principal ideas, arguments and core concepts that have developed over the long and rich process of the work driven by the Europe Latin America & Caribbean bi-regional Network *Enlazando Alternativas* and by the Permanent Peoples' Tribunal over the past five years. This conceptual framework aims to serve as a reference point for the diverse organisations and groups participating in that process, to prepare for the coming session of the PPT in Madrid, in May 2010.

Throughout the different sessions of the PPT promoted by the Bi-regional Network, conceptual tools have been created to investigate and confront the systemic behaviour of transnational corporations (TNCs), in particular, the European TNCs in Latin America. The condemnation of the abuses of TNCs, the curbing of human rights violations and the demand of compensation in each case, continues to form part of a unifying political aim. However, during the process undergone in recent years it has become clear that the impacts, abuses and specific violations committed by TNCs in the field, occur even when the companies are doing it “by the book” and acting in accordance with the law. The network has therefore turned part of its attention to the existing legal instruments that allow transnational corporations to act with impunity and commit abuses within an apparently legal framework.

It is necessary to synthesise the evidence collected throughout the PPT process, in order to allow us, the organisations and social movements converging within the Bi-regional network and beyond, to advance to a new level of global articulation against the power of the transnationals.

Furthermore, it has become increasingly necessary to focus directly on the role played by the European Union through its different policies, instruments and actors, in the expansion and increasing power of the TNCs, and in the consolidation of the subordinate relationship that exists with regard to Latin America. At the highest point of this hierarchy of official support, we find the European member states, when they allow European transnationals to violate the rights of the affected populations, groups and communities. The States share responsibility for, or are at least complicit in, many of the human rights violations. This contrasts with the international commitment of the States, in the framework of their obligations to protect and guarantee respect for vulnerable sectors, as expressed in international agreements or treaties such as the International Covenant on Economic, Social and Cultural Rights (ICESCR), among many others.

Although many Latin American governments have also played a not insignificant role in allowing and even instigating these violations, this time, as the coming PPT will take place in Europe, emphasis will be placed on the cases in which European transnationals and official institutions are implicated.

Throughout the hearings of the PPT in Colombia, Nicaragua, Guatemala, the Spanish State, Glasgow, The Hague, Honduras, Vienna and above all in the last session in Lima, Peru, the

identification of the *actors involved* and the principal *instruments and mechanisms* has enabled us to comprehend the “magnitude of the disaster” generated by the TNCs. The functioning and logic of plunder has been exposed. On the surface, we have revealed the fluid connections between the TNCs and the local elites, but the fundamental process continues - under the logic of maximising profits in the shortest possible time - currently generating impacts, which result in permanent destruction which accumulates on the damage already done.

Placing the spotlight on EU complicity

The TNCs place profits and their objective of growth and new market quotas above respect for the law or human rights. In particular, the TNCs are a source of economic and environmental crimes across the entire planet. In addition we have to consider that these TNCs accused of violations of the peoples' rights are helped, protected and promoted by the governments and institutions in their countries of origin (mostly in the Global North, but also in the South), under the supposition that the internationalisation of local corporations brings great benefits to the economy of the country in which the TNC originates.

While this support is given in a wide variety of ways, the important point is that it forms a central part of the geopolitical attitude of these powers towards third countries. In our view the foreign policy of the European Union and its members States gravitates around the expansion of the major European corporations.

The collaboration of governments in the pursuit of profit and corporate expansion is so intense that it can, without a doubt, be classed as “**complicity**”. Complicity that, in terms of human rights violations, becomes “*external responsibility*” and “*anti-cooperation*” not only on the part of the directors and share-holders in the TNCs, but also of the governments that help them to internationalise.

It is therefore necessary to recognise that economic and/or environmental crimes are not only perpetrated through direct contact between the corporation and the communities, but that a large part are generated by indirect channels through the deforming of laws, policies and institutions in the interests of the TNCs and the local oligarchies, to the detriment of the peoples and the territories where they live.

In other words, *anti-cooperation* also emerges from the governments when, in complicity with the TNCs, they impose transnational regimes that do not serve the well being of their peoples. Because of this it becomes necessary to develop, both politically and judicially, the notion of the legal responsibility of the official institutions in the face of these crimes. In this case it means holding a “**Globally Irresponsible European Union**” legally responsible for these crimes, particularly because the European Union presents itself to public opinion as a guarantor of development and the promoter of human rights at a global level.

Getting to the source of the problem, focussing on the *policies, institutions and official instruments* of the EU and its member countries that make up this regime on the European side, helps us to better conceptualise that complicity. We are referring to policies such as the Treaty of Lisbon itself, the strategy of “Global Europe: competing in the world” (COM, 2006), The Lisbon Strategy 2020, the Common Agricultural Policy (CAP), Common Fisheries Policy (CFP), the Latin America Regional Programming Document 2007-2013 (COM, 2007), the “Raw Materials Initiative” (COM 2008), the Economic Partnership Agreements or EPAs, and of course, the policy of persecuting migrants.

The EU is being particularly aggressive in pushing free trade negotiations under the format of “Association Agreements” with the Central American region and with Colombia and Peru. These

agreements further strengthen the European transnationals, and continue to undermine the rights of the peoples.

It also implies focussing on the European institutions, starting with the governments of the member States (such as the Spanish government), The European Council, the General Affairs and External Relation Council (GAERC), and the Article 133 Committee, the European Commission, and the European Investment Bank (EIB).

These EU policies, institutions and instruments act at State, regional, local, European community and supra-state levels, interfering in a systematic and negative way in the areas of trade, finance, technology and production, the military, the environment, migration, diplomacy, symbolism and “solidarity”. For example, at a state level, these policies mediated through financial instruments such as the so-called Export Credit Agencies (ECAs), are responsible for two-thirds of foreign debts and the environmental destruction of different parts of Latin America and the Caribbean. At a supra-state level, the European policy is expressed as pressure exerted through multilateral organisations such as the IDB (Inter-American Development Bank) or the IMF (International Monetary Fund) itself, where European interests compete or cooperate with those of the United States.

A model of internationalisation that acts as a paradigm and a current for the rest of the European capitals is Spain, the influence of which is decisive in the configuration of the European agenda for Latin America and the Caribbean. There are examples of this in the new official instruments of internationalisation of Spanish business, “beyond the control” of citizens, like the Fund for the Internationalisation of Business (FIEM by its Spanish initials), or older examples like the CESCE (the Spanish Export Credit Agency); in the direct and indirect interference of Spanish TNCs whose investments are greater than the sum of all the other European investments and whose presence can be as destructive as that of *Unión Fenosa* or *Marsans* in Guatemala, Colombia, Nicaragua or Ecuador; or the Spanish influence on policies such as the Common Fisheries Policy (CFP), that are attacking the subsistence of traditional fisher folk on the coasts of Latin America.

Advancing in the consideration of violations of corporations as “crimes against humanity”

In recent months we have witnessed important signs coming from other arenas – such as the United Nations and not only from the “Ruggie-Panel” about how to fill the legal vacuum that TNCs are taking advantage of. It is clear that the TNCs' game of “double-think”, whereby they ***impose*** certain actions on the States, and then ***seek their protection*** when they feel threatened, has yielded them excellent results, and we have not, as yet, found a way to neutralise it.

Nevertheless, the Bi-regional Network *Enlazando Alternativas* has sought to go beyond the notion of Corporate Social Responsibility, considering it insufficient - given that it is based on voluntary, unilateral principles which are not legally enforceable – in order to address and punish those cases presented to the PPT. The *Enlazando Alternativas* network has identified the need to build a judicial-regulatory framework that can consider the violations committed by these corporations to be “crimes against humanity”.

“Crime against humanity”

The definition of “crime against humanity” or crime of “lesa humanidad” in the Statutes of Rome of the International Penal Court covers conduct categorised as murder; extermination; deportation or forced displacement; jailing; torture; rape; forced prostitution; forced sterilization; persecution on political, religious, ideological, racial, ethnic or other expressly defined grounds; forced

disappearances; kidnapping; or any other inhumane acts that cause grave suffering or attack the mental or physical health of those who suffer them, provided that said conduct is committed as part of a generalised or systematic attack against a civil population and with knowledge of that attack.

This definition clearly coincides with our diagnosis of the practices of European TNCs in Latin America and the Caribbean with the active support of European (and Latin American) public institutions.

The cases for the Madrid session of the Tribunal

Taking into account the accumulation of the past four years and the decision to focus this Tribunal session on the role played by the European Union through its different policies, instruments and actors, in the expansion and increase of the power of the TNCs. For the preparation of the Session in Madrid consideration will be given both to the *updating of the cases already presented to previous Tribunals, as well as new cases to be presented now.*

Given the need to build on what we have created with the previous Tribunals, the PPT session in Madrid could be an opportunity to present the updating of the cases already presented in previous sessions. For this it is not enough to simply bring the details up to date, it is fundamental that the cases bring to light new elements. As far as is possible, these should be elements that show new impacts or the involvement of any of the instruments or actors that show the complicity of the EU in the behaviour of European TNCs.

It is important that the new cases being presented consider the focus of this session and, in consequence, aim to provide evidence that contributes to arguing on the complicity of the EU, its policies and institutions, as well as arguing why the violations committed by the corporations should be considered “crimes against humanity”.

In this way, at the PPT in Madrid, we should be able to conclude that European TNCs stand accused of crimes against humanity, and that official European institutions are complicit or share responsibility in these crimes. We will analyse cases where TNCs coincide with official institutions, in all their complexity. Later, with the legitimacy that the Permanent Peoples' Tribunal has, and with the backing of the convening social organisations, we will spread the information and publicly decry it to the highest levels so that global justice can be imposed.

Thus, with the PPT in Madrid, one chapter is closed and another opened. The evidence gathered, the experience of the campaigns and the accumulated conceptual advances from the different Tribunals organised between May 2006 and May 2010, will provide the basis for going forward. This will lead to new articulations and campaigns that seek to dismantle the power of the TNCs as a way of protecting the peoples and the planet on which we live, and walking towards living well and living together around the globe.