



Summary of the advisory opinion of the International Monsanto Tribunal

Delivered on the 18th of April 2017 in The Hague, Netherlands

The International Monsanto Tribunal is a unique "Opinion Tribunal" convened by civil society to clarify the legal obligations and consequences of some of the activities of the Monsanto Company.

During the hearings that took place on October 15th and 16th in The Hague, judges heard testimonies related to the six questions posed to the Tribunal¹. The ensuing legal opinion delivered by the Tribunal includes a legal analysis of the questions asked, with respect to both existing international law, and to prospective law in order to improve international human rights and environmental law.

The advisory opinion is structured in three parts. The introductory section details the conditions within which the Tribunal was initiated. The middle section examines the six questions posed to the Tribunal. Looking at the broader picture, the final section tackles the growing asymmetry between the rights conceded to corporations and the constraints imposed upon them to protect local communities and/or future generations, wherever corporations operate.

Question 1, as posed to the Tribunal, related to alleged infringement on the right to a healthy environment. In other words, did the Monsanto firm, by its activities, act in conformity with the right to a safe, clean, healthy and sustainable environment, as recognized in international human rights law (Resolution 25/21 of the Human Rights Council, of 15 April 2014), taking into account the responsibilities imposed on corporations by the Guiding Principles on Business and Human Rights, as endorsed by the Human Rights Council in Resolution 17/4 of 16 June 2011?

The Tribunal recalls that "the right to a healthy environment" concept can be traced to the UN Conference on the Human Environment in Stockholm, 1972. With the notion that the environment is a precondition for the enjoyment of human rights, this marked the dawn of a new era in international law. Today, no less than 140 states have incorporated the right to a healthy environment into their constitutions, making it a norm of international customary law. The Special Rapporteur on Human Rights and Environment, John Knox, has identified threats on the right to a healthy environment, and established a set of requirements to protect it. The UN Human Rights Council has concluded that human rights law sets certain obligations on States to guarantee that the right to enjoy a healthy environment is respected. The Monsanto Tribunal hearings allowed for the gathering of testimonies related to various impacts on human health (especially on farmers), soils, plants, aquatic organisms, animal health and biodiversity. These testimonies also included the impacts of spraying crop protection products (herbicides, pesticides). In addition, the information collected also shed light on the impacts on indigenous communities and peoples in many countries, and on the absence of adequate information given to those concerned.

Based on the above findings and to answer Question 1, the Tribunal concludes that Monsanto has engaged in practices which have negatively impacted the right to a healthy environment.

¹ See terms of reference.

Question 2 concerned the alleged infringement on the right to food as recognized in Article 11 of the International Covenant on Economic, Social and Cultural Rights, in Articles 24.2(c) and (e) and 27.3 of the Convention on the Rights of the Child, and in Articles 25(f) and 28.1 of the Convention on the Elimination of All Forms of Discrimination against Women.

According to the UN Committee on Economic, Social and Cultural Rights, “The right to adequate food is realized when every man, woman and child, alone or in community with others, has physical and economic access at all times to adequate food or means for its procurement”. According to the Tribunal, business entities are also responsible to respect this right by applying the Guidelines for Multinational Enterprises of the OECD and the UN Guiding Principles on Business and Human Rights. The hearings accounted for negative impacts on production systems and ecosystems, the appearance of invasive species and the loss of efficiency of Roundup over time. Some farmers were sentenced to pay royalties after their fields were contaminated by genetically modified organisms (GMOs), while others stated that the corporation is taking over the seed market, even though Monsanto’s products are not as productive as promised.

In response to Question 2, the Tribunal concludes that Monsanto has engaged in practices that have negatively impacted the right to food. Monsanto’s activities affect food availability for individuals and communities and interfere with the ability of individuals and communities to feed themselves directly or to choose non-genetically modified seeds. In addition, genetically modified seeds are not always affordable for farmers and threaten biodiversity. Monsanto’s activities and products cause damage to soil, water and to the environment more generally. The Tribunal concludes that food sovereignty is also affected and underlines the cases in which genetic contamination of fields forced farmers to pay royalties to Monsanto or even to abandon their non-GMO crops due to this contamination. There is indeed an infringement on the right to food because of aggressive marketing on GMOs which can force farmers to buy new seeds every year. The dominant agro-industrial model can be criticized even more strongly because other models - such as agroecology - exist that respect the right to food.

Question 3 concerned the alleged infringement on the right to the highest attainable standard of health of everyone can reach, as recognized in Article 12 of the International Covenant on Economic, Social and Cultural Rights, or the right of child to the enjoyment of the highest attainable standard of health, as recognized by Article 24 of the Convention on the Rights of the Child.

The right to health is intertwined with the rights to food, water and sanitation, and to a healthy environment. The right to health is also recognized in many regional human rights protection instruments. It encompasses physical, mental and/or social health. The Tribunal heard witnesses’ accounts of severe congenital diseases, development of non-Hodgkin lymphomas, chronic diseases, Lasso poisoning or even death occurring after direct or indirect environmental exposure to products manufactured by Monsanto. The Tribunal recalls that this company has manufactured and distributed many dangerous substances. First were PCBs, persistent organic pollutants exclusively commercialized by Monsanto between 1935 and 1979 despite the fact that the company knew about their deleterious health impacts. PCBs are now forbidden by the 2001 Stockholm Convention on Persistent Organic Pollutants. This carcinogenic product also causes problems with fertility and child development, and disrupts the immune system.

Secondly, glyphosate (ingredient in Roundup) is considered in some studies as a carcinogenic product while other reports, such as the one from the European Food Safety Authority (EFSA), conclude the opposite. In an opinion issued on the 15th of March 2017 and related to the classification of glyphosate, the European Chemicals Agency (ECHA) indeed estimated that this product could not be classified as a carcinogen, as a mutagen or as toxic for reproduction. The Tribunal however stresses that this classification does not take into account the risks of exposure, with residues found in food, drinking water and even in human urine. The

commercialization of Roundup-resistant GMO crop seed has resulted in widespread distribution and use of this product. It is classified as “probably carcinogenic to humans” by the World Health Organisation's (WHO) International Agency for Research on Cancer. Other reports assert the genotoxicity of glyphosate on humans and animals. Last but not least, internal Monsanto documents released in March 2017 as a result of a court order of the U.S. District Court, Northern District of California (San Francisco) show that Monsanto has manipulated science. This makes hollow the so-called scientific controversy about the risks glyphosate pose on health.

Thirdly, the use of GMO seed raises multiple questions. There is a distinct lack of scientific consensus about the impacts of GMOs on human health. The controversy is embedded in a context of opacity on GMO studies, and even on the inability of researchers to conduct independent research. The "Monsanto Papers" cast light on practices of systematic manipulation of scientific studies, and on the influence exerted on experts by Monsanto. There is no political consensus on the cultivation of GMOs either. The UN Special Rapporteur on the Right to Food, an independent expert, calls for the need to follow the precautionary principle at the global level. The Tribunal concludes that Monsanto has engaged in practices that negatively impacted the right to health.

Question 4 concerned the alleged infringement on the freedom indispensable for scientific research, as guaranteed by Article 15(3) of the International Covenant on Economic, Social and Cultural Rights, as well as the freedoms of thought and expression guaranteed in Article 19 of the International Covenant on Civil and Political Rights.

The “freedom indispensable for scientific research” closely relates to freedom of thought and expression, as well as the right to information. It is therefore key to safeguarding other fundamental rights, such as the right to health, food, water and a healthy environment. This freedom engenders the requirement to ensure that scientific researchers are able to express themselves freely and are protected when acting as whistle-blowers. Some of Monsanto's practices mentioned in the testimonies of agronomists and molecular biologists have resulted in court convictions for the company. Among those practices are: illegal GMO plantations; resorting to studies misrepresenting the negative impacts of Roundup by limiting the analysis to glyphosate only while the product is a combination of substances; massive campaigns aiming at discrediting the results of independent scientific studies. These strategies led, for example, to the withdrawal of a study published in an international journal and to the loss of a job for a scientist working in a governmental health agency.

In response to Question 4, the Tribunal concludes that Monsanto's conduct is negatively affecting the right to freedom indispensable for scientific research. Conduct such as intimidation, discrediting independent scientific research when it raises serious questions about the protection of the environment and public health, suborning false research reports, putting pressure on governments are transgressing the freedom indispensable for scientific research. This abuse is exacerbated by exposure to health and accompanying environmental risks, which deprive society the possibility to safeguard fundamental rights. Taking direct measures to silence scientists or attempting to discredit their work constitutes conduct that abuses the right to freedom indispensable for scientific research and the right to freedom of expression. This negatively affects the right to information.

Question 5 concerned the alleged complicity in war crimes as defined in Article 8(2) of the Statute of the International Criminal Court (ICC), by providing Agent Orange.

Between 1962 and 1973, more than 70 million liters of Agent Orange (containing dioxin) were sprayed on approximately 2.6 million hectares of land. This defoliating chemical has caused serious harm to health in the Vietnamese civilian population. And the harm caused to American, New Zealand, Australian and Korean veterans has led to court cases and to the recognition of Monsanto's responsibility, among others. Because of the current state of international law and the absence of specific evidence, the Tribunal cannot give any definitive answer to the question

it was asked. Nevertheless, it seems that Monsanto knew how its products would be used and had information on the consequences for human health and the environment. The Tribunal is of the view that, would the crime of Ecocide be added in International law, the reported facts could fall within the jurisdiction of the International Criminal Court (ICC).

Question 6 asked the Tribunal if the activities of Monsanto could constitute a crime of ecocide, understood as causing serious damage or destroying the environment, so as to significantly and durably alter the global commons or ecosystem services upon which certain human groups rely.

Developments in international environmental law confirms the increased awareness of how environmental harm negatively affects the fundamental values of society. Preserving dignity for present and future generations and the integrity of ecosystems is an idea that has gained traction in the international community. As an evidence of these developments, and according to the *Policy Paper on Case Selection and Prioritisation from September 2016*, the Prosecutor of the ICC wants to give particular consideration to Rome Statute crimes involving the illegal dispossession of land or the destruction of the environment. However, despite the development of many instruments to protect the environment, a gap remains between legal commitments and the reality of environmental protection. The Tribunal assesses that international law should now precisely and clearly assert the protection of the environment and the crime of ecocide. The Tribunal concludes that if such a crime of ecocide were recognized in international criminal law, the activities of Monsanto could possibly constitute a crime of ecocide. Several of the company's activities may fall within this infraction, such as the manufacture and supply of glyphosate-based herbicides to Colombia in the context of its plan for aerial application on coca crops, which negatively impacted the environment and the health of local populations; the large-scale use of dangerous agrochemicals in industrial agriculture; and the engineering, production, introduction and release of genetically engineered crops. Severe contamination of plant diversity, soils and waters would also fall within the qualification of ecocide. Finally, the introduction of persistent organic pollutants such as PCB into the environment causing widespread, long-lasting and severe environmental harm and affecting the right of the future generations could fall within the qualification of ecocide as well.

In the third part of the advisory opinion, the Tribunal insists on the widening gap between international human rights law and corporate accountability. It calls for two urgent actions.

First is the need to assert the primacy of international human and environmental rights law. Indeed, a whole set of legal rules are in place to protect investors' rights in the frame of the World Trade Organization, as well as in bilateral investment treaties or in the investment-related clauses of free-trade agreements. These provisions tend to undermine the capacity of nations to maintain policies, laws and practices protecting human and environmental rights. According to the Tribunal, there is an important risk of a widening gap between international human rights and environmental law and international trade and investment law. UN bodies urgently need to take action; otherwise key questions will be resolved by private tribunals operating entirely outside the UN framework.

The second call concerns the need to hold non-state actors responsible within international human rights law. The Tribunal is of the view that the time is ripe to consider multinational enterprises as subjects of law that could be sued in the case of infringement of fundamental rights. The Tribunal clearly identifies and denounces a severe disparity between the rights of multinational corporations and their obligations. Therefore, the advisory opinion encourages authoritative bodies to protect the effectiveness of international human rights and environmental law against the conduct of multinational corporations.

Appendices: letter sent by the Tribunal to invite Monsanto to participate in the hearings in The Hague on 15-16 October 2016, list of witnesses in alphabetical order and list of legal experts.

Appendix 1: letter sent by the Tribunal to invite Monsanto to participate in the hearings in The Hague on 15-16 October 2016



Stichting/Foundation Monsanto Tribunal
Marnixkade 111 H
NL-1015 ZL Amsterdam
Pays Bas
juris@monsanto-tribunal.org

Mr Hugh Grant
Chairman and CEO
Monsanto Company
800 North Lindbergh Blvd.
St. Louis, Missouri 63167
U.S.A.

The Hague, June 6th, 2016

Dear Mr Grant,

As you are aware, the Foundation Stichting Monsanto Tribunal was created in order to establish the International Monsanto Tribunal, an initiative of civil society groups that intends to allow for an open deliberation on the company's policies and their impacts.

The Foundation intends to convene the Tribunal in The Hague between 14 and 16 October 2016.

The Tribunal shall be asked to deliver an Advisory Opinion addressing six questions: the terms of reference, which identify these questions, are attached to this letter.

The result of an initiative of global civil society, the Tribunal is of course of symbolic value: it shall have no investigative powers; and its opinion is of a purely advisory nature. However, the members of the Tribunal shall deliver an opinion based exclusively on legal considerations, grounded in international human rights law and international humanitarian law; and they shall act in complete independence.

The Tribunal will be adopting its views on the basis of the principles described in Chapter IV of the Statute of the International Court of Justice, which describes the competence of the Court to deliver advisory opinions. It may also seek inspiration from Title IV of the Rules of the International Court of Justice, as regards procedural matters.

The Tribunal shall be presented with a number of written observations concerning the questions it has been submitted: teams of lawyers are already preparing these briefs. During the hearing, it shall hear testimonies from victims of Monsanto's conduct, as well as legal opinions presented by experts tasked with informing the Court about the legal issues involved in the questions it is presented.

The Foundation Stichting Monsanto Tribunal believes it to be of the highest importance that Monsanto itself is given ample opportunity to present its views to the Tribunal, in order to ensure that the Tribunal is fully informed and equipped to provide an assessment that is based on the fullest range of information possible.

We share this view.

We would therefore strongly encourage Monsanto to submit a written brief to the Tribunal, before the deadline of October 1st, 2016.

Moreover, Monsanto is invited to be represented at the hearings that the Tribunal shall hold on 15 and 16 October 2016 in The Hague. Please let us know by October 1st if you would like to make use of this opportunity.

Of course, we remain at your disposal to provide you with any further information you may require on the nature of this initiative and the conditions under which the Tribunal shall be operating.

We look forward to your answer.

Sincerely,

Françoise Tulkens, former vice-president of the European Court of Human Rights

A handwritten signature in blue ink, appearing to be 'F. Tulkens', with a horizontal line underneath.

Dior Fall Sow, former Advocate General of the International Criminal Tribunal for Rwanda

A handwritten signature in blue ink, appearing to be 'Dior Fall Sow', with a horizontal line underneath.

Annex: Terms of reference of the International Monsanto Tribunal

Appendix 2: list of witnesses in alphabetical order

Farida Akhter, policy analyst, Bangladesh
Krishan Bir Choudhary, scientist, India
Shiv Chopra, expert regulatory agency, Canada
Peter Clausing, toxicologist, Germany
María Colin, lawyer, Mexico
Art Dunham, veterinarian, USA
Angelica El Canché, beekeeper, Mexico
Diego Fernández, farmer, Argentina
Marcelo Firpo, public and environmental health researcher, Brazil
Paul François, farmer and victim, France
Sabine Grataloup, victim, France
Don Huber (represented by Art Dunham), biologist, USA
Channa Jayasumana, expert environmental health, Sri Lanka
Monika Krueger, veterinarian, Germany
Timothy Litzenburg, lawyer, USA
Miguel Lovera, agronomist, Paraguay
Steve Marsh, farmer, Australia
Pedro Pablo Mutumbajoy, victim, Colombia
Ib Borup Pedersen, pig farmer, Denmark
Juan Ignacio Pereyra, victim, Argentina
Claire Robinson, academic research, United Kingdom
Maria Liz Robledo, victim Roundup, Argentina
Kolon Saman, victim, Sri Lanka
Percy Schmeiser, farmer, Canada
Gilles-Eric Séralini (represented by Nicolas Defarge), academic research, France
Christine Sheppard, victim, USA
Ousmane Tiendrebeogo, farmer, Burkina Faso
Feliciano Ucán Poot, beekeeper, Mexico
Damián Verzeñassi, doctor public health, Argentina

Appendix 3: list of legal experts in alphabetical order

William Bourdon
Claudia Gómez Godoy
Maogato Jackson
Gwynn McCarrick (represented by Maogato Jackson) and Koffi Dogbevi