

## **International Rights of Nature Tribunal**

### **Statement on Serbian Government and Dundee Precious Minerals (DPM) responsibilities for violations of the Rights of Nature connected to planned and ongoing activities the Homolje region, Serbia**

**November 23, 2024**

#### **PREAMBLE**

The International Tribunal on the Rights of Nature carried out a public online hearing in Beograd on November 23, 2024 upon invitation of Serbian environmental NGO Earth Thrive. The Tribunal's jury is composed of Francesco Martone, chair of the Judges' Assembly of the International Tribunal on the Rights of Nature, Ute Koczy (president) and Damien Short.

Purpose of the hearing was to gather material and visual evidence and hear testimonies on the current and projected impacts of current prospecting and exploration and projected mining operations operated by Canadian company Dundee Precious Minerals (DPM) on the fragile and unique ecosystems of Homolje and ascertain current and potential violations of Rights of Nature and threats of ecocide.

This hearing has been carried out in the framework of a broader initiative put in place by the International Tribunal on the Rights of Nature that includes the 6th International Rights of Nature Tribunal on Canadian mining companies scheduled to take place in Canada during the [Prospectors and Developers Association of Canada \(PDAC\) Conference in March 2025](#). The findings and evidence collated in this mission will be fed into the process of preparation of the International Tribunal.

The Tribunal judges carried out preliminary desktop research on the current and potential impacts of Dundee's planned operations in Homolje, complemented by evidence provided by the invited witnesses that participated in the public hearing that took place in Beograd on September 14, 2024.

On the basis of evidence gathered, witness testimonies, expert opinions, and retrieved data and information, the Tribunal issues the following statement and related precautionary measures towards Canadian mining company Dundee Precious Minerals and the Serbian Government.

#### **THE INTERNATIONAL TRIBUNAL ON THE RIGHTS OF NATURE**

The International Tribunal on the Rights of Nature is constituted to promote universal respect for and guarantee of the rights set forth in the Universal Declaration of the Rights of Mother Earth in order to promote harmonious coexistence between human beings and other beings of Nature. The Declaration was adopted by the World People's Conference on Climate Change and the Rights of Mother Earth, held in the city of Cochabamba, Bolivia from April 19-22, 2010. At this conference, 142 countries were represented by official delegations, groups and social movements. Article 2 of the Declaration recognizes that Mother Earth has the right to live, to be respected, to its regeneration, to continue with its vital cycles and processes free of human alterations, to maintain its identity and integrity, to be self-regulated and interrelated, to water as a source of life, to integral health, free of contamination, pollution and toxic waste, to not be genetically altered and modified, and to its full and prompt restoration.

The Tribunal is also governed by the provisions of the Universal Declaration of Human Rights, the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the American Convention on Human Rights, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Convention 169 of the International Labor Organization, the Universal Declaration on the Rights of Indigenous Peoples and the American Declaration on the Rights of Indigenous Peoples, without prejudice to other instruments that the Tribunal considers relevant in the matter. The Tribunal is guided by the ethical and philosophical foundations that inspire the Declaration, in particular, that all inhabitants of the Earth are part of the universe, and we must respect this order, recognize and accept the intrinsic nature of Mother Earth, protect all species that coexist with the human species in order not to continue reifying Nature, considering it as a mere commodity that we can benefit of, exploit, degrade, minimize and ignore.

## **RIGHTS OF NATURE**

This Tribunal has been asked to issue a statement on violations of the Rights of Nature associated with ongoing and planned DPM activities in Homoljie. For this purpose some general considerations on Rights of Nature will be articulated to provide the basis for the Tribunal's arguments contained in this act of accusation.

The Rights of Nature constitute a transcendental paradigm shift in that nature itself is the holder of rights intrinsic to it, thus moving away from the anthropocentric view that the human being is the only species capable of having and demanding the effective fulfillment of rights. That is, nature ceases to be an object of law and is now recognized as another subject, which is why it can no longer be seen as a mere resource at the disposal of human beings to satisfy economic, social and even political needs. This in itself implies a new level of understanding of nature as another living being that deserves different treatment under the law, especially from the traditional one based on freedom and private property. It is considered that nature is the holder of rights and that its respect should take priority over any individual economic interest.

The essence of the Rights of Nature is that nature has intrinsic value and deserves recognition of its own rights, regardless of its usefulness to humans. This perspective has an integral vision that seeks to protect natural processes for their own value. Ecosystems, such as rivers or forests, are considered life systems whose biological processes deserve legal protection through the recognition of inherent rights as a subject.

Nature is conceived as a community of life, in which all its components, including human beings, are interconnected and fulfill a specific function. The dynamics of the system depends on the relationship between the different elements, and the alteration of one of them affects the functioning of the whole. Thus, any change in the system influences each of the components of the community.

[The Declaration of the Rights of Mother Earth](#), adopted in Cochabamba, Bolivia, on April 22, 2010, from its preamble states that human beings are part of Nature, being "a vital indivisible community of interdependent and interrelated beings with a common destiny" recognizing the intrinsic value of Mother Earth as "source of life, food, education, and provides everything we need to live well". In this line, Article 1 *ibidem*, determines that Mother Earth is a living being and as such "a unique, indivisible and self-regulated community of interrelated beings that sustains, contains and reproduces all the beings that compose it". Several legal systems with democratic states and territories with Amazonian and indigenous peoples have recognized these rights, such as Ecuador, Bolivia, Colombia, United States, New Zealand, , Brazil, Australia, Argentina, and Uganda.

As regards Europe, there are important cases in which Rights of Nature have been recognized: the Rio Tavignanu in Corsica and Mar Menor in Spain, while initiatives for the recognition of rights of Nature or for the introduction of the crime of ecocide in national legislations are underway in Germany, Italy, France the Netherlands Spain, Poland, Sweden, United Kingdom Ireland

The Tribunal wishes to recall, with specific reference to the Berne Convention that has been addressed on the case of Homolje by Earth Thrive, that its preamble explicitly recognizes the “intrinsic value” of wild flora and fauna, that needs to be preserved and handed to future generations. By doing so the Berne Convention implicitly recognizes an ecocentric approach, that in turn would imply that entities with their own sake, rather than for the value they provide for others can have rights.

For the purpose of this statement and related precautionary measures, it should be recalled that among the inherent rights of Mother Earth recognized in the declaration are: the right to life and to exist; to be respected; to the regeneration of its biocapacity and the continuation of its vital cycles and processes free of human alterations; to maintain its identity and integrity as differentiated, self-regulated and interrelated beings; and to water as a source of life; these being applicable to the specific case of the Timok Mining project in Homolje.

## **ECOCIDE**

The Tribunal has also been asked to issue a statement on the potential crime of ecocide associated with DPM ongoing and planned activities in Timok. It should be recalled here that ecocide can be defined as *“unlawful or wanton acts committed with knowledge that there is a substantial likelihood of severe and either widespread or long-term damage to the environment being caused by those acts”*. These acts are committed with reckless disregard for damage which would be clearly excessive in relation to the social and economic benefits anticipated”. By severe damage it means damage which involves very serious adverse changes, disruption or harm to any element of the environment, including grave impacts on human life or natural, cultural or economic resources. Such damage would extend beyond a limited geographic area, crosses state boundaries, or is suffered by an entire ecosystem or species or a large number of human beings. Lastly it would be either an irreversible damage or which cannot be redressed through natural recovery within a reasonable period of time.

## **DUNDEE PRECIOUS METALS (DPM) IN HOMOLJE**

DPM has been active in mineral exploration in Serbia since 2004/5. The company began the drilling programme on the Timok Project in 2007. The number of drill holes completed on this project as of May 29, 2020, amounts to 1277. In December 2021, DPM announced their plans to open a gold mine in Homolje using surface extraction techniques potentially involving cyanide.

The affected Homolje Mountain region is in Eastern Serbia, located between two National Parks adjacent to the Danube River to the north and close to two Nature Monuments: river Mlava source and Homoljska potajnica. Furthermore, there are three Important Bird Areas surrounding the affected region. Many rivers run through the project area with the catchments of the Zlotska Reka, Mlava, Veliki Timok and Crni Timok rivers which all drain into the internationally protected Danube. It is host of beech woodland, hay meadows, Fagus & oak-hornbeam forests, a 350-year old rainforest, wetlands, ponds, gorges, and underground springs and of 143 species important for protection. 42 species are included in the the Habitat Directive, 57 species from the Bern Convention, 7 species from the Bonn Convention, 7 species with CITES Cites concession, 106 species from the Rulebook on Protected and Strictly Protected Species of Serbia and 32 species in the "endemic/relict/rare" category.

DPM has been exploring extensively since around 2007 and currently holds three exploration licences. The company has drilled more than 1200 drill holes, and continues to explore and plans further expansion into the adjacent area Coka Rakita. The current mine project, features seven-eight open mining pits, three waste rock dumps, and one heap leach area, with other accompanying infrastructure.

Serbian NGO EarthThrive has been filing various submissions to the Bern Convention to denounce the projected and actual impacts of Dundee's mining activities and seek relevant action to prevent further damage and ensure respect of the Convention and of rights of Nature. .

The Homolje case is just one of the many in which Canadian companies are involved worldwide. For instance, this Tribunal heard expert testimony on the activities of DPM's Kimsacocha project in Ecuador

## **TRIBUNAL'S FINDINGS**

### ***1) CURRENT IMPACTS OF DPM PROSPECTING AND EXPLORATION ACTIVITIES***

#### **a) Serbian government's responsibilities**

Evidence gathered in the process of preparation of this initiative, (and further corroborated by testimonies heard in the public hearing) show that the Serbian government is responsible for current and potential violations of the rights of the Homolje ecosystems on various accounts:

- by regranting licenses to DPM new subsidiary companies thereby allowing DPM to obtain new exploration rights that would have devastating impacts on the environment. The most recent renewal would have catastrophic impacts that add up on to those already caused by 1300 holes already drilled since 2006. Among these: a) soil disturbance; b) destruction of vegetation; c) noise and light pollution; d) possibility of surface contamination of water bodies. Nevertheless the government continues to issue permits for geological exploration in zones inhabited by endangered species thereby laying out the conditions for further environmental damage and negative impacts on the rights of the Homolje ecosystems, its flora and fauna;
- by not taking action to strengthen its capacity to properly carry out inspections. Only one inspection was carried out in Potaji Cucka Tisnica since 2021 and in past drilling sites, thereby disregarding what is indicated by instructions for geological inspections for "Medium risk projects";
- more generally by the lack of commitment to carry out adequate mining inspections to provide adequate oversight of mining operations in the country. It is assessed that as many as 200 exploration licenses are active in Serbia and there are only 6 inspectors for the whole country. This limited capacity is of great concern to this Tribunal given the announced plans to step up mining operations and concessions for critical minerals in the country;
- by not ensuring availability of proper information and data on drilling waste produced by DPM and lacking basic mechanisms to manage mining waste with subsequent negative impact on the Homolje ecosystems and their rights.

- by failing to issue and enact proper legislative and administrative measures to protect wild flora and fauna. This sort of deregulation enables DPM to carry out its operations, current and future, without regard of their impacts on the rights of the Homolje ecosystems.

***b) DPM responsibilities***

Evidence gathered in the process of preparation of this initiative, (and further corroborated by testimonies heard in the public hearing) show that DPM is responsible for current and potential violations of the rights of the Homolje ecosystems on various accounts:

- DPM has been disregarding recommendations issued by the Institute for Nature Conservation in Serbia since 2006 that prescribe nature protection conditions for geological explorations and prospecting in Homolje drilling in nighttime, sourcing water for exploration from nearby water streams, generating waste pollution, leaving behind drilling debris and not properly closing drilling hole;
- DPM operators manage and dispose waste, without permission since, as explained above, the Serbian government has no instrument to ensure proper monitoring and management, thereby failing to protect the environment from mining-related harm.

**2. PROJECTED IMPACTS OF DPM ACTIVITIES**

By authorizing the further development of the Timok Gold Project mine the Serbian government would be co-responsible for the negative impacts deriving from mining activities in Homolje. Projected impacts range from deforestation to soil removal, heap-leaching, pit dewatering (and sedimentation ponds), different types of waste (including potentially the formation of Acid Mine Drainage), potential cyanide use, fumes or gases (including mercury vapours), acid rock drainage, non-mineral wastes, water diversion and high risk of contamination of groundwater and surface water, habitat fragmentation that would impact on populations of protected species and their habitats.

As a matter of fact, according to the Institute for Nature Protection, amphibian and reptile species would be potentially endangered due to their dependency on aquatic environment, Furthermore, Golden Eagle and Peregrine Falcon would be threatened by the possible destruction of their habitat.

The use of froth flotation technique to recover gold would contaminate groundwater with contaminants such as lead and arsenic. Dewatering and sedimentation ponds may affect habitats (as also admitted by DPM), by causing contamination and damage to waters and water depletion in the Korkan West and Bigar Hill pits. Birds and other wildlife can be poisoned after drinking contaminated water in tailings ponds. Increases in sedimentation or acidity can kill trout, salmon, and other aquatic organisms. DPM's preliminary economic assessment for the mine, identified naturally elevated concentrations of arsenic and cadmium in the environment , which can be released once turned into dust.

Mercury emissions can adversely affect algal growth, crustacean health, fish growth, brain function, and reproduction; and amphibian larval health and survival. Furthermore, mercury bioaccumulates in fish, which then poses a threat to any bird or mammal that consumes it, including humans.

The reduction of pH in waters generates possible impact on the health of the stream and increases water solubility to toxic metals such as chromium, arsenic, mercury, and lead. Contamination of downstream waters by these toxic substances would affect fish, wildlife and drinking water quality.

As regards the use of cyanide for leaching and gold extraction, this practice is partially banned in the EU by some member states, but allowed in Serbia. While, according to statements by Serbian authorities the use of cyanide would be “*out of question*”; thus far no official statement has been issued by DPM agreeing not to use cyanide leaching, nor is any information publicly available to confirm that DPM has decided not to use cyanide. Furthermore, it should be noted that the prefeasibility study (PFS) for Timok Project (Potaj-Cuka Tisnica mine) dated February 2021, envisages the use of ‘conventional heap leach technology’ that involves the use of cyanide that is still relevant also for Coka Rakita, that has become priority for DPM exploration and possible extraction activities since 2022.

## **VIOLATION OF INTERNATIONAL COMMITMENTS CONNECTED TO CURRENT AND PLANNED DPM ACTIVITIES**

In the course of the hearing, this Tribunal acquired disturbing evidence of violations of international conventions and commitments for protection of Nature and ecosystems connected to the ongoing exploration and prospective extraction activities by DPM that result in violations of the rights of rivers in Eastern Serbia and the Homolje region in particular, and provide additional grounds to call for precautionary measures and restoration of damage already caused by exploration and prospective activities by DPM.

1) **Carpathian Convention** ratified by Serbia in 2007 – whose goal is to develop a comprehensive policy to protect the Carpathian and preserve its natural and cultural heritage. The Tribunal noted with concern that the Carpathian of Eastern Serbia has the highest concentration of exploration licenses and 4 active copper and gold mines. In spite of the failed adoption of the Spatial/Development plan for 2021-2035 the Serbian government is proceeding with the implementation of the mining component ignoring international commitments with the goal of turning Eastern Serbia into a mining district

2) **Danube River Protection Convention** whose goal is to reduce pollution and exploitation of water bodies that are part of the Danube watershed. DPM exploration activities and planned mine would affect the upper watersheds of two rivers that are tributaries of the Danube: the Mlava and Pek rivers. Particularly alarming is the situation of the Pek, Mlava, Crna Reka and Tisnica rivers.

The Pek river is already polluted by the Majdanpek copper mine. Timok river also polluted by the Bor mine: Both mines are run by Chinese company Zijin. Due to its extension, DPM operations would affect large sections of the river watershed; Jagnilo river, a tributary of the Pek would be affected by the Timok-Potaj Cuka Tisnica project. Timok in particular would be an open pit mine whose impacts would be devastating.

Mlava River: is one of the main rivers in Eastern Serbia and provides water to the Stig valley a food producing region. The upper course of the river in Homolje is of high quality water. DPM activities (exploration and mining) would threaten the water spring (a category 1 natural monument) and the river. The area mostly affected is where two tributaries (Crna Reka and Tisnica) are formed and pollution would then spread downstream

Crna Reka and Tisnica: a biodiversity study commissioned by DPM in 2014 define these rivers as “biodiversity hotspots” to be protected Tisnica River and canyon are under Category II protection. Crna Reka is close to the Coka Rakita mine hence subject to pollution risk that would then affect Tisnica and Mlava,

Of particular concern for the Tribunal are DPM proposed activities in Timok/Potaj Cuka Tisnica and Coka Rakita located in highly sensitive areas with critical biodiversity and populated by 143 species of particular conservation concern, 57 of which protected by the Bern Convention of which Serbia is

signatory. The Tribunal noted that The Homolje Mountain region is located between two National Parks adjacent to the Danube River to the north and close to two Nature Monuments: river Mlava source and Homoljska potajnica. Furthermore, there are three Important Bird Areas surrounding the affected region. Many rivers run through the project area with the catchments of the Zlotska Reka, Mlava, Veliki Timok and Crni Timok rivers which all drain into the internationally protected Danube. It is host of beech woodland, hay meadows, Fagus & oak-hornbeam forests, a 350-year old rainforest, wetlands, ponds, gorges, and underground springs and of 143 species important for protection. 42 species are included in the the Habitat Directive, 57 species from the Bern Convention, 7 species from the Bonn Convention, 7 species with Cites concession, 106 species from the Rulebook on Protected and Strictly Protected Species of Serbia and 32 species in the "endemic/relict/rare" category.

The projected impacts of mining activities on the environment would be substantial and range from production and discharge of toxic waste, deforestation, water contaminatin and destrucion of habitats, among which that of the Balkan Lynx potentially affected by the Timok project activities. These impacts would add on the damage already caused by exploration activiities carried out by DPM in the Homolije region. The Tribunal expresses concern about the lack of official data on the impacts of the 1277 holes already drilled by DPM. However, it came to its knowledge that samples from the Coka Rakita concession area show a substantial increase of toxic minerals well above levels that are acceptable for human presence. Furthermore, experts heard by the Tribunal denounced the impact of water extraction for exploration activities by DPM that would endanger flora and fauna species that are strictly protected, such as the Stone Crayfish and the Grey Wagtail.

This Tribunal also wishes to recall that the UN Declaration of the Rights of Development states that“development policies should aim at the constant improvement of the well-being of the entire population” and that the “policies benefit all people equally”.

On the basis of the evidence gathered by this Tribunal, it is highly doubtful that this UN standard has been met. The witnesses have given us a picture, that the Rights of Nature are under attack and this will also destroy the livelihood of the people in the area. So, for them, the decision made for the extraction does not benefit them. This situation calls for an adequate accountability mechanism and remedies in case of violations of the people rights to development. This should be done and followed by the Government of Serbia.

## **RESPONSIBILITIES OF THE GOVERNMENT OF SERBIA IN CREATING THE ENABLING LEGAL AND POLICY FRAMEWORKS IN FAVOR OF MINING COMPANIES AND FOR VIOLATIONS OF THE RIGHTS OF NATURE CONNECTED TO DPM CURRENT AND PLANNED ACTIVITIES**

In the course of the hearing, the Tribunal gathered additional evidence of Serbian government’s behavior aimed at favoring the interests of DPM and mining companies at large.

For instance, regulations in mining and geological research have been developed with the aim of supporting mining interests against the rights of Nature and of citizens. Various changes have been registered from 1995 to 2021 including the decision to take competence for supervision away from the remit of local self-governments, measures to limit public access to information and regulations that would allow companies to change their names and the scope of their research activities to avoid any possible restriction the duration of the same. We also take note of and stigmatize cases of threats and harassment suffered by journalists and activists that attempted to gather data and information on the impact of DPM activities on the ground. We urge the Serbian Government to take all the necessary steps to ensure that

civil society and media are free to operate without any such risk as envisaged in international instruments and agreements on freedom of press and environmental defenders, such as the Aarhus Convention.

## **VIOLATIONS OF THE RIGHTS OF NATURE AND POTENTIAL THREAT OF ECOCIDE**

First of all, as corroborated by facts and evidence provided by experts and witnesses heard by this Tribunal, the Serbian government and DPM are found responsible of directly or indirectly violating the rights of Homolje ecosystems and rivers and more widely the rights of nature as recognized by the Universal Declaration on the Rights of Mother Earth, adopted in Cochabamba, Bolivia in 2010 and that constitutes the legal framework for Tribunal's activities and deliberations. We recognize that Homolje is a complex subject of the rights of Nature composed of an infinity of other subjects that represent a network of life of crucial importance for the reproduction, maintenance and evolution of life in Serbia and the environment. We also stress that mining activities developed by DPM have already violated, at this moment, different rights of Nature in Homolje and that DPM's acts and omissions have or will result in violations of the following provisions of the Declaration for the Rights of Mother Earth:

**Article 2(a):** The right to life and to exist;

**Article 2(b):** The right to be respected;

**Article 2(c):** The right to regenerate its bio-capacity and to continue its vital cycles and processes free from human disruptions;

**Article 2(d):** The right to maintain its identity and integrity as a distinct, self-regulating and interrelated being;

**Article 2(e):** The right to water as a source of life;

**Article 2 (f):** The right to clean air

**Article 2(g):** The right to integral health; and

**Article 2(h):** The right to be free from contamination, pollution and toxic or radioactive waste.

Serbian government responsibilities lie in creating an enabling environment in support of mining interests, in this case DPM, and with the overall purpose of turning Eastern Serbia into a mining region by means of legislative and administrative decrees and measures that would ease environmental restrictions and hinder public participation and access to information. We denounce the corporate capture of the Serbian state and the practice of regranting licenses to DPM new subsidiaries to allow DPM to obtain new exploration rights whose impacts on the environment and on Rights of Nature would be considerable. Furthermore, the Serbian government has not taken any action to increase its capacity to carry out inspections in mining sites and provide adequate and effective oversight of mining activities in Homolje and throughout the whole country. The Serbian government has not ensured availability of data on drilling waste generated by DPM exploration activities and has failed to put in place adequate mechanisms to manage waste. Lastly, it has failed to ensure legal and administrative protection for wild flora and fauna. Such behavior results in widespread violations of international conventions of which Serbia is signatory such as the Carpathian Convention, the Berne Convention, the Bonn Convention, the Danube River Convention, the Aarhus Convention.

We also wish to point to the responsibility of DPM, that while being fully aware of the potential detrimental consequences of its activities has continued to expand its exploration activities in the Homolje region, generating substantial impacts on Nature and its rights. It should be recalled here, that the environmental damage wrought by such behaviour is equivalent to "*wanton*" acts and "*severe and widespread damage*" that are qualifiers for the crime of ecocide. Moreover, the company has benefitted from the weakening of the regulatory regime to carry out its activities with ensuing detriment to Nature and its rights, thereby contradicting its alleged commitments on responsible mining. Further evidence of

such contradiction and of DPM neglect of the rights of Nature has been provided by a testimony from Ecuador where DPM operates the Kimsacocha concession. It is our intention to dedicate more time and space on the Kimsacocha case and other cases involving Canadian mining companies in Ecuador in the lead up to the Toronto Tribunal.

On these grounds, the Tribunal issues the following recommendations:

- a) That, as a precautionary measure, the Serbian government should order that all exploration activities carried out by DPM be immediately brought to a halt and that concession agreements for exploration and exploitation of gold deposits in the Homolje region be suspended for an indefinite period of time;
- b) That, as reparation measure, the Serbian government and DPM carry out a full, independent and participatory audit of impacts of exploration activities and develop and implement restoration and remediation measures to be put in place to fully reintegrate the rights of Nature violated by their behavior . These would include cleaning up operations of the more than 1500 holes drilled for exploration and ensuing pollution. In accordance to the polluter-pays principles DPM should be financially responsible for these remedial action
- c) That the Serbian Government sanction any violation of national and international laws and ensure full alignment of its legislative framework with international commitments and conventions. Furthermore, the Serbian government is urged to ensure full and permanent protection of the Homolje region by granting a Special Nature Reserve status
- d) That, more generally and on the basis of precedents and current documented impacts of gold exploration and extraction worldwide and in Serbia, and in line with the precautionary approach, all mining activities in highly sensitive areas of the country should be ceased.
- e) That the case of DPM in Homolje be brought to consideration for the International Tribunal on Rights of Nature International Tribunal on Canadian mining companies and the rights of Nature to take place in Toronto, Canada, in March 2025 when a final judgment will be issued and that both the Serbian government and DPM be officially invited to present their testimonies in defense.
- f) That a Tribunal mission be organized after the International Tribunal in March 2025 to disseminate the final judgment to affected communities, the Serbian public and authorities