



INTERNATIONAL RIGHTS OF NATURE TRIBUNAL

Decision Nº 1/2018

Decision on the case of TIPNIS (Indigenous Territory and National Park Isiboro Secure)

1. On November 7th and 8th of 2017, the International Rights of Nature Tribunal held its fourth session in Bonn, Germany, at the LVR Landesmuseum. During the second day of hearings the Tribunal heard different cases of widespread violations of indigenous rights and the rights of Mother Earth throughout the Amazon. One of those cases was the case of the **Indigenous Territory and National Park Isiboro Secure (TIPNIS for its acronym in Spanish)** presented by the President of the Subcentral de Indigenous People of TIPNIS, Fabian Gil and the president of the Women Organization of TIPNIS Marqueza Teco Moyoviri de Maleca, among other experts.

I. FACTS

2. On November 22nd of 1965 the Supreme Decret Nº 7401 issued by the government of Bolivia created the National Park of Isiboro Secure with an extension of 1.225.347 hectares.
3. On September 24th of 1990 this territory was also recognized as Indigenous territory of Yuracares, Tchimanes and Moxeños Trinitarios by the Suprema Decret Nº 22610.
4. In 2009 the government gave the indigenous people of TIPNIS the collective title for 1.091.656 hectares of their territory. The reduction of the size of the indigenous territory was due to the expansion of mainly coca producers in the "Polygon 7" inside the national park.
5. The famous French naturalist Alcides D'Orbigny explored the region of TIPNIS during the XIX century and said it was "the most beautiful jungle in the world". TIPNIS is the

home of 858 registered species of vertebrate animals. Among them are 470 species of birds, 108 mammals, 39 reptiles, 53 amphibians and 188 species of fishes. When it comes to insects, there are 178 species registered. At the level of plants there are around 2,500 species. TIPNIS is the home of different kind of forests and ecosystems. TIPNIS is the region in Bolivia where the most rain falls – the rainfall in the area exceeds 3.000 mm per year. The ecological communities of TIPNIS are one of Bolivia's most important sources of oxygen and water.

6. The proposal to build a road to connect the cities of Cochabamba and Trinidad in Bolivia, was made long ago. In 2008 the government of President Evo Morales signed a contract of 415 million dollars with the Brazilian construction company OAS to build the road from the population of Villa Tunari from Cochabamba to San Ignacio de Moxos on the way to Trinidad. The National Economic and Social Development Bank of Brazil (BNDES) approved a loan of 332 million dollars after an agreement signed in 2009 between the governments of Presidents Evo Morales and Luiz Inácio Lula da Silva.
7. The government of President Evo Morales divided the construction of the road into three tranches. The first from Villa Tunari to Isinuta (47 km), the second from Isinuta to Monte Grande (177 km) and the third from Monte Grande to San Ignacio de Moxos (82 km). The second tranche cuts TIPNIS in two.
8. An environmental impact assessment (EIA) of the whole road was never done. There are only EIAs of the first and third tranches done in 2010.
9. On August 15th 2011 around one thousand indigenous people of the lowlands of Bolivia set out from the city of Trinidad on the "Eighth March of Indigenous people" in defense of TIPNIS. On 25th of September 2011 the police used force to stop the march in Chaparina and hundreds of indigenous people were detained. The indigenous people managed to reorganize the "Eighth March" and 65 days later arrived in La Paz to a great welcome of solidarity.
10. On October 24th 2011 the Bolivian Parliament approved the law N° 180 that declares that TIPNIS is inviolable and cannot be touched and that the road Villa Tunari - San Ignacio de Moxos will not pass through TIPNIS.
11. On February 10th 2012, the government approved the Law N° 222 that establishes a process of "consultation" with the communities of TIPNIS to see if the "inviolability" was going to be maintained and the road Villa Tunari-San Ignacio de Moxos will continue to be built.
12. On April 29th 2012, the "Ninth March" of indigenous people started rejecting Law N° 222 and defending Law N°180. The indigenous people march arrived at La Paz after 61 days of marching but President Morales did not receive them to discuss their demands.
13. During the second semester of 2012, the government developed a process of "consultation" inside TIPNIS. It is alleged that this consultation process did not follow international standards for a free, prior, informed, consent of indigenous people. A

report of the Catholic Church and the Human Rights Assembly of Bolivia highlights several violations. For example, the government inviolability said that the TIPNIS indigenous communities were not going to have access to health, education and tourist projects if the concept of “inviolability” was not erased from the law. (Threats of this nature would violate the requirement that consent must be given freely.)

14. On August 13th 2017 the government of Bolivia issued the Law N°969 that repeals Law N° 180, deletes the inviolability of TIPNIS and opens the door for the construction of the road that will cut this National Park and indigenous territory in half.
15. According to the map of indigenous communities inside TIPNIS the majority of the 69 communities that are inside this indigenous territory are more than 50 km away from the planned road. The road will benefit mainly the coca producers that are in “Polygon 7”. They have already deforested 60% of this area and if the road is constructed it will enable them to expand the area used for coca cultivation, causing more deforestation.
16. According to the report of the United Nations Office on Drugs and Crime (UNODC) between 2015 and 2016 there has been an increase of coca plantations of 43 % in “Polygon 7”.
17. The Strategic Environmental Evaluation of the TIPNIS done in 2011 by the National State Office of Protected Areas (SERNAP) warns against these kinds of projects saying that they will impact on indigenous peoples lives, undermine their culture and force them to adopt patterns of production and consumption that are based on a different logic.
18. The study from the Program of Strategic Research in Bolivia (PIEB) of 2011 shows that if the road is built through the TIPNIS, 64,5% of the forest will be lost in 18 years. This means to clear 610.848 hectares of jungle that is the habitat of hundreds of animals, insects, plants and territory of Yuracares, Tchimanes and Moxeños Trinitarios
19. The environmental impact will not be only in the territory of TIPNIS but also in neighboring areas like the city of Cochabamba that already suffer from droughts.

II. PETITION

20. The indigenous leaders of TIPNIS presented this case to the International Rights of Nature Tribunal stating that the approval of the law N°969 that abolish the intangibility of the TIPNIS and allows the construction of a road that will cut their territory in two, therefore it is a:
21. Violation of the Universal Declaration of the Rights of Mother Earth adopted in 2010 in Tiquipaya, Bolivia; in particular articles 2(a) (the right to life and to exist), 2(b) (the right to be respected), 2(c) (the right to regenerate its bio-capacity and to continue its vital cycles and processes free from human disruptions) and 2(g), (the right to integral health).

22. Violation of the Bolivia Law N°71 of the Rights of Mother Earth adopted on December 21 2010; in particular article 7 (Rights of Mother Earth) and article 8 (Obligations of the Plurinational State) that establishes the obligation of the State to *“develop public policies and systematic actions to prevent, early warning, protect, precaution to avoid that human activities lead to the extinction of populations of beings and the alteration of the cycles and processes that guarantee their life”*.
23. The indigenous leaders of TIPNIS stated that according to article 385 of the Constitution of the Plurinational State of Bolivia of 2009 *“protected areas constitute a common good, and they form part of the natural and cultural patrimony of the country”* and wherever there is an overlapping of *“protected areas and indigenous territories, the shared management shall be undertaken, subject to the norms and procedures of the indigenous nations and peoples, and respecting the goal for which these areas were created”*.
24. Also the indigenous leader of TIPNIS affirmed that all the process and approval of the law N°969 is a violation to the United Nations Declaration of Indigenous People Rights that is a law of Bolivia since its legal adoption on November 7th 2007 by the national law N° 3760, and of the International Labor Organization Convention N°169 “Indigenous and Tribal Peoples Convention” that states in its article 6(b) *“The consultations carried out in application of this Convention shall be undertaken, in good faith and in a form appropriate to the circumstances, with the objective of achieving agreement or consent to the proposed measures”*.

III. DECISION

25. The International Rights of Nature Tribunal based on all the evidence presented:
26. Accepts the case of TIPNIS presented by the indigenous leaders of this territory and national park and expresses its great concern particularly because the Universal Declaration of the Rights of Mother Earth that was proclaimed in Bolivia in 2010 and Bolivia has championed rights of Nature internationally.
27. Will gather more evidence from all the actors involved and in particular from the government of the Plurinational State of Bolivia, guaranteeing its right of defense.
28. Calls on the government of the Plurinational State of Bolivia to respond to the serious accusations of violation of the rights of nature and of indigenous peoples in the case of TIPNIS and to demonstrate its commitment to fulfilling its duties under article 3(2) of the Universal Declaration of the Rights of Mother Earth.
29. Request the government of the Plurinational State of Bolivia to impose a moratorium on the construction of the proposed road and bridges through TIPNIS and on further oil exploration and mining in or near TIPNIS, until the Tribunal has completed its work. The adoption of such a moratorium is an appropriate precautionary measure to avoid possible greater violations of the rights of Mother Earth and rights of indigenous people.

30. In order to gather more information and evidence the Tribunal will organize a visit of an International Commission of Observers and Investigators to the affected territories with the aim of verifying *in situ* the allegations that violations of Mother Earth's Rights and indigenous people's rights have occurred and will occur if the road is constructed through TIPNIS.
31. Based on the response of the government and all the evidence collected *in situ* the International Rights of Nature Tribunal will issue a final ruling on the case of TIPNIS.

VI. FINDINGS AND OBSERVATIONS ON AMAZON CASES

32. In reaching its decisions on the cases affecting the Amazon (including the TIPNIS case) the Tribunal made the following findings and observations.
 - (a) The community of life known as the Amazon plays an essential role in maintaining the integral health of Mother Earth. It is a reservoir of life, home to an incredible diversity of life forms, including many peoples and is vital to maintaining global climatic stability.
 - (b) The Amazon is being subjected to many human activities which violate its right to exist and maintain its vital cycles, and that this undermines the integral health of the Amazon, and of Mother Earth as whole.
 - (c) The "extractivist" development model which seeks to maximize what can be taken from Nature without reciprocation, and is consequently inherently exploitative, inevitably results in violations of the rights of the Amazon as a whole and of the members of that community of life and is incompatible with the Universal Declaration of the Rights of Mother Earth.
 - (d) The defense of the Amazon must be given the highest priority and people throughout the world who are committed to respecting the rights of Mother Earth and their duties to live in harmony with her must take appropriate action, whenever possible to defend the rights of the Amazon.
 - (e) Governments in the Amazon region bear particular responsibility for establishing and applying effective norms and laws for the defense, protection and conservation of the rights of the Amazon, to hold those responsible for damaging the Amazon accountable for restoring its integrity and health and for empowering human beings and institutions to defend the rights of the Amazon and of all beings within the Amazon.
33. The International Rights of Nature Tribunal expresses its great concern about the case of TIPNIS and the other cases concerning impacts on the Amazon presented to it and calls on governments and civil society to urgently undertake a comprehensive rethinking of the vision of the development that currently is destroying the Amazon.