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## REPORT ON JUDGEMENTS OF THE INTERNATIONAL RIGHTS OF NATURE TRIBUNAL

(Fourth Session of the Tribunal held in Bonn, Germany on 7<sup>th</sup> and 8<sup>th</sup> November 2017.)

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Decision N° 2/2018





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## INTRODUCTION

The 4th session of the International Rights of Nature Tribunal, was held in November 2017, in Bonn, Germany concurrently with the 23rd United Nations Framework Convention on Climate Change Conference of Parties (COP23) The Tribunal exposed the significant role which legal systems play in enabling climate change and global environmental degradation. The Tribunal heard seven cases from around the world which collectively demonstrated that global and national climate change commitments cannot be met without fundamental changes to the legal systems which legalise the activities that cause climate change and the destruction of the ecological systems on which life depends. This is a global problem, yet, one of the cases concerned a massive lignite mine approximately 50 km from the COP 23 negotiations.

## TRIBUNAL AND PANEL OF JUDGES

The Tribunal considers cases from the perspective of what is in the best interests of the Earth community as a whole, and hears cases involving alleged violations of the Universal Declaration of the Rights of Mother Earth (“UDRME”) and international human rights law. The Tribunal was established in 2014 by the members of the Global Alliance for the Rights of Nature<sup>1</sup> and was formally constituted in 2015 in Paris when a wide range of civil society organizations and indigenous communities signed a Peoples’ Convention to establish the Tribunal. Cases are heard by a panel of eminent legal and environmental experts from around the world.

The Bonn panel consisted of 9 distinguished judges from 7 countries presided over by the prominent indigenous climate and environmental justice leader, **Tom Mato Awanyankapi Goldtooth** (Indigenous Environmental Network, Turtle Island - USA). The other judges on the panel were: **Osprey Orielle Lake** (Women’s Earth and Climate Action Network - USA); **Alberto Acosta** (former president of the Constitutional Assembly - Ecuador); **Fernando “Pino” Solanas** (senator, Argentina), **Ute Koczy** (Urgewald E.V., former Parliamentarian, Germany); **Cormac Cullinan** (Wild Institute Law - South Africa); **Simona Fraudatorio** (Permanent People’s Tribunal, Italy); **Shannon Biggs** (Movement Rights, USA), and **Ruth Nyambura** (African Biodiversity Network - Kenya).

## OVERVIEW OF HEARING IN BONN

Over the course of two days, 53 people from 19 countries speaking over 7 languages presented cases regarding violations of the rights of Nature. A range of experts who

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<sup>1</sup> The hearings were organised by Global Alliance for Rights of Nature (GARN). GARN is a network of organizations and individuals committed to the universal adoption and implementation of legal systems that recognize, respect and enforce “Rights of Nature - see <https://therightsofnature.org/>

testified before the Tribunal explained that whatever is agreed at the COP 23 and subsequent meetings, action to combat climate change will be ineffective while governments continue to authorise coal mines, oil wells and hydraulic fracturing (“fracking”), and the mining of groundwater, and allow corporations to use investor state dispute settlement mechanisms in trade agreements to prevent the taking of effective measures to protect life.

Witnesses gave first-hand accounts of what it is like to live near fracking operations, oil wells and refineries, and coal mines, about how those who defend Mother Earth are persecuted, attacked, criminalised and have their homes burnt. It heard of the anguish of indigenous and other peoples from local communities who live in intimacy with Nature as it is destroyed by roads, mines or industrial agriculture in order to benefit a small elite.

Indigenous peoples from around the world played a prominent role throughout the Tribunal as experts and witnesses. The Tribunal opened with deeply moving ceremonies and evocations of Mother Earth by representatives of the Sámi people of Europe, the Sarayaku community in the Ecuadorian Amazon, and the indigenous peoples of North America. Indigenous peoples from Africa, Russia, Northern Europe, Bolivia, Ecuador, French Guyana, and the USA/Turtle Island presented testimonies that drew the Tribunal’s attention to the sacredness of Earth – a dimensions ignored in the COP 23 negotiations.

The Tribunal found that in each of the seven cases, serious and systematic violations of the Universal Declaration of the Rights of Mother Earth (UDRME)<sup>2</sup> had occurred, often accompanied by human rights violations, and in several cases the harm was so severe as to constitute ecocide. In each case the legal system did not provide adequate remedies to prevent on-going harm. In most cases the harm was caused by activities such as deforestation and mining which could only take place because they had been authorized by law. It was abundantly clear those legal systems that elevate property rights and the rights of corporation above the rights of water, air and ecosystems to exist and contribute to the ecological health of the planet, are exacerbating climate change by clothing destructive activities in a cloak of legal legitimacy. The Tribunal noted that carbon, biological and conservation offsets and ecosystem services are financialization processes that enable Nature to be privatized, commodified and traded in financial market systems. Carbon market, for instance, is a false solution that does not cut emissions at source.

**JUDGEMENTS AND DECISIONS** The following judgements and decisions summarize key aspects of the evidence presented to the Tribunal in Bonn and the decisions of the Tribunal in response to the cases presented, but are not comprehensive judgements. This report has been prepared by the Secretariat of the Tribunal, in collaboration with

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<sup>2</sup> The Universal Declaration of the Rights of Nature is available at <http://therightsofnature.org/universal-declaration>

judges of the Tribunal and members of the Executive Committee of the Global Alliance of the Rights of Nature, in order to communicate the outcomes of the Bonn Tribunal. However the goal of the Secretariat of the Rights of Nature Tribunals is to prepare and publicize full judgements in each case. Those judgements will take account of both the evidence presented at the Tribunal and the additional documentary information submitted to the Tribunal Secretariat, and explain the Tribunal's reasoning in more detail.

It is also important to appreciate that the cases heard in Bonn were are not all at the same stage. Some were presented for the first time, while others were continuations of cases that had been presented in previous hearings of the Tribunal (for example the Climate Change Case). In some cases the Tribunal made a decision to defer making a final judgement (for example it was decided to send a fact-finding mission to Bolivia before deciding on the TIPNIS case) and it was decided to refer the Yasuni case to a regional tribunal in Ecuador to conduct more detailed hearings.

### **Climate Change and False Energy Solutions.**

The presenters made it clear that the consequences of climate change are leading to irreversible and fatal changes to the very web of life and grave violations of Mother Earth's rights. The destructive pressures from capitalism based on endless material growth, an extractive economy with its devastating trade deals, and a worldview based on domination, patriarchy and colonization, are not only destroying animals, forests, rivers, oceans and the atmosphere—but are bringing into question the continued existence of the human species. Indigenous and frontline local communities already being impacted first and most severely by all these forces.

The presenters argued that the fossil fuel industry, governance structures and corporate institutions must be held accountable for these violations against Nature. For example, the fossil fuel industry must be held accountable for deliberately withholding information from the public, and spreading disinformation about the dangers of burning fossil fuels. The presenters pointed out that while many world leaders hold on to the notion that we can postpone reductions in fossil fuels, the Earth's natural laws cannot be manipulated, purchased, compromised, or ignored. This year alone many thousands of people have lost their lives in climate disruption events.

Expert witnesses testified about how corporations which profit from activities which they know cause dangerous climate change (i.e. Exxon) are also impeding the transition to renewable energy and other climate change mitigation measures by promoting false solutions to climate change and deliberately spreading false propaganda about indigenous and other people who are opposing the fossil fuel industry.

The Tribunal heard disturbing evidence from witnesses about the severe health impacts of living in places polluted by the coal, oil and gas industries. Evidence was presented about how energy industry operations had contaminated water, air and ground in many

parts of the world in violation of the rights of Mother Earth and of human rights. Witnesses from Mauritius and Texas gave evidence of the impacts of severe hurricanes and cyclones caused or exacerbated by climate change. (For example, in the USA in the aftermath of Hurricane Harvey, homes were damaged, environmental restrictions were suspended and people had to breathe toxic fumes.)

Witnesses testified how continuing with fracking only perpetuates the world's destructive dependence on the oil and gas industry. Fracking pollutes water, land, air and has severe adverse health and social impacts on local communities. Shale gas is a dirty fuel with a high carbon footprint and should not be regarded as a bridge fuel as the industry claims. From a scientific perspective it is clear that 80% of fossil fuel reserves (80% carbon, 50% oil –known reserves -IPCC, IEA) must remain in the ground in order to avert catastrophic climate change, and rising of temperature to more than 2°C. From an indigenous people's perspective fracking is repugnant and has been characterised it as “breaking the bones of Mother Earth”. Continuing with fracking only perpetuates the world's destructive dependence on the oil and gas industry. With destruction to healthy water, land, air and communities - fracking is a violation of Mother Earth rights, and people in communities worldwide are resisting fracking and calling for sustainable and just renewable power as they fight to protect their communities. Investing in fracking adds to the unburnable reserves.

The Tribunal heard evidence that nuclear power is a distraction, and furthering this dangerous energy system only wastes precious time and delays the transition to a just 100 percent renewable energy future. Testimony was given about how building enough nuclear power stations to make a significant reduction in greenhouse gas emissions would create thousands of tons of high-level radioactive waste, and that the extreme risks of nuclear energy far outweigh its potential benefits as the disasters in Chernobyl and Fukushima have demonstrated.

The case presenters argued that climate destruction is one of the many symptoms of the underlying forces of class-based, hierarchical, capital-dominated economics that subordinate and disempowering billions of people worldwide. The argued that the commodification and financialization of nature is inherent in the capitalist system and that nature cannot be protected and damaged ecosystems healed while nature continues to be subject to economic, legal and political systems that caused that damage.

The Tribunal found that gas extraction by means of hydraulic fracturing (“fracking”) and nuclear energy both violate the rights of Mother Earth and in particular the rights to integral health and to be free from contamination, pollution and toxic or radioactive waste. The parties who are accountable for rectifying the damage caused by these activities and restoring the integrity and health of Mother Earth include:

- the people and corporations involved in fracking and the generation of nuclear energy or in contributing to them (i.e. by mining uranium) since they have failed to

act in accordance with the rights and obligations recognized in the Declaration and to respect, protect, conserve and where necessary, restore the integrity of, the vital ecological cycles, processes and balances of Mother Earth; and

- governments and public institutions which have failed: to establish and apply effective norms and laws for the defense, protection and conservation of the rights of Mother Earth, to promote economic systems that are in harmony with Mother Earth and in accordance with the rights recognized in the Declaration, to hold those responsible accountable for violating the rights in the Declaration accountable for restoring the damage caused, and to empower human beings and institutions to defend the rights of Mother Earth and of all beings.

The Declaration requires human beings, all States, and all public and private institutions to promote and participate in learning, analysis, interpretation and communication about how to live in harmony with Mother Earth in accordance with the Declaration, and to empower human beings and institutions to defend the rights of Mother Earth and of all beings. The Tribunal held that the cynical dissemination of misinformation about climate change and its causes, the promotion of false solutions to climate change, and the attacks on defenders of Mother Earth in the media and physically, directly violated these provisions

Building on earlier judgements of the Tribunal, the Tribunal drew attention of the fact that the current economic and legal systems that define nature as property and commodify living systems, perpetuate and incentivize the violation of the rights and duties recognized in the Declaration.

The Tribunal held that governments and public institutions bear a special responsibility for taking urgent action to stop the causes of climate change, including:

- prohibiting coal, oil and gas exploration, the opening of new fossil fuel mines and wells (including fracking wells), and phasing out existing fossil fuel mines, wells and power stations as soon as possible in order to ensure that at least 80% of the remaining fossil fuel deposits remain in the ground;
- prohibiting the establishment of new nuclear power stations and phasing out existing nuclear power stations as rapidly as possible;
- holding state institutions, private companies and individuals involved in the fossil fuel and nuclear power industries accountable both for violating the
- promoting a rapid and just transition to renewable energy sources and the establishment of decentralized, democratically-controlled, energy systems using 100% renewable energy;
- prohibiting the logging of old growth forest and the unsustainable use of natural forests;



- complying with all treaties with, or concerning Indigenous Peoples and defending their right to continue to inhabit traditional lands, undisturbed by industrial projects and extractive industries; and
- prohibiting the use of high-risk technologies like geo-engineering and nuclear power, to reduce greenhouse gas emissions.

The Tribunal called for divestment from fossil fuel and nuclear industries and investment in renewable energy sources, and for individuals and corporations who deliberately spread misinformation about climate change, its causes, false solutions and defenders of Mother Earth to be publically identified and sanctioned.

The Tribunal decided that since climate change poses a grave and present threat to many members of the Earth community, it will continue to hear climate change cases as it has done in Ecuador, Peru, France and now in Germany. The climate change testimony highlights the urgent need to address actions that are real solutions based on climate justice and respect for the natural laws of our Mother Earth.

### **Financialization of Nature and the REDD+**

The Tribunal heard testimony and reviewed evidence showing that REDD+ (Reducing Emissions from Deforestation and Forest Degradation) framework and other carbon market frameworks and payment for ecological services have resulted in more ecological destruction and pollution and facilitated the establishment and continuation of destructive industries. Witnesses explained how systematic mechanisms, such as REDD+ were resulting in indigenous and local peoples who had not degraded their lands being disposed and losing their rights in order to enable a polluting company elsewhere in the world to continue exceeding air emission limits.

The Tribunal found that that schemes such as REDD+ that commodified Nature violate both the Declaration and the laws of Nature. The Tribunal condemned the false and repugnant idea that violations of the Declaration can be rendered legitimate and lawful by purchasing “credits”, thereby enabling the wealthy to purchase immunity from the consequences of violating fundamental and inherent rights.

Consequently, the Tribunal:

- declared that the agreements that establish these schemes are contrary to the common interests of the living Earth community and must be regarded as unlawful, non-binding and unenforceable;
- declared that human beings, States, and public and private institutions who establish, promote or participate in these schemes are liable for restoring to integral health any ecological communities or being harmed as a consequence; and
- invited all people who respect the rights of Mother Earth to assist in identifying the perpetrators, accomplices and accessories to these violations; to take appropriate and proportional action to stop these on-going violations, and to ensure that those

responsible are held accountable for restoring the integrity and health of Mother Earth.

### **Lignite mining in the Hambach Forest**

Witnesses gave evidence of how a massive lignite mine near Bonn has created a 430 metre deep hole - the largest hole in Europe. Giant machines continue to excavate the hole 24 hours a day which causes coarse and fine dust particles and traces of uranium to be emitted into the air. As the mine expands the ancient Hambacher forest, in the west of the city Cologne, is being destroyed and approximately 40,000 people, their houses and villages are being relocated. The forest has existed for 12,000 years, contains 800 year old trees and is home to 142 protected species. Only approximately 7 square kilometers of the original 60 square kilometers are left and is likely to be destroyed soon.

The right of this ancient forest to continue to exist and play its unique ecological role has been denied and violated as a consequence of it being treated as commodity by both the government and the mining company (RWE).

The Tribunal heard evidence about how burning the lignite or "brown coal" from the mine will release approximately 90 million tons exacerbate global warming and cause severe pollution and health risks as well as diminish and pollute the groundwater which sustains the forest and other ecosystems. It also heard evidence from young people who are living high up in the trees in approximately 31 tree houses in an attempt to protect them from destruction, and of how they now have an intimate relationship with the trees and the forest.

The Tribunal emphasized that ecosystems and natural communities are not merely property that can be owned, but are entities that have an independent right to flourish, that they must be respected and have the right to regenerate its bio-capacity. The Tribunal found that this lignite mining violates many of the provisions of the Declaration, including: the rights of the Hambacher Forest, to be respected, to exist, to maintain its vital cycles, and to be free from contamination, pollution and toxic or radioactive waste. It also violated the rights of local inhabitants (both human and other) to continue living in the area and to integral health.

The Tribunal found that further expansion of the mine must be stopped immediately, that the site should be rehabilitated as far as possible and that Germany should recognize the rights of Nature in law in order to prevent such projects in the future. The Tribunal also drew attention to the fact that it is necessary to cease all coal mining as soon as possible in order to mitigate climate change, and particularly its effects on future generations. Once a nature reserve with high ecological value it could not be saved because the mining law breaks fundamental rights.

The Tribunal commended the courage and commitment of the people defending the Hambacher Forest (particularly those living in tree houses) and found that both public and private institutions are responsible for respecting the rights of these defenders of Earth who are seeking to uphold the rights reflected in the Universal Declaration of the Rights of Mother Earth for the benefit of the whole Earth community. (This aspect is dealt with more fully in the following case of “Aggression against defenders of Mother Earth.”)

### **Aggression against defenders of Mother Earth**

The persecution of Earth's defenders is a global phenomenon, denounced by human rights organizations as well as by the United Nations (see for example the 2017 report of the special rapporteur for human rights defenders).

Witnesses who testified included water protectors from Standing Rock in the United States of America/ Turtle Island), and representatives of indigenous peoples from Sweden (Sámi), and Russia (Shor). The Tribunal heard how indigenous people using peaceful means to defend water and Mother Earth are met with violence as governments protect corporate interests (as occurred at Standing Rock). The Lakota Sioux tribe at Standing Rock was never adequately consulted about the construction of the Dakota Access Pipeline across their land. The evidence showed that the pipeline would diminish the quality of life of indigenous peoples' minorities, specifically in relationship to the sacredness of water and sacred and cultural significant areas.

The Tribunal noted that all three cases (the Lakota Sioux of Standing Rock; the Shor People of Russia and the Sami People of Sweden) were characterized by:

1. the close and symbiotic relationship between indigenous communities and nature;
2. the essential function which the defenders played in the transmission of the memory of the life cycle of nature; and
3. the fact that the abuses of indigenous communities who defend and protect Earth, by state actors and transnational corporations, was not casual but intentional in order to open the way for the exploitation of minerals and other "natural resources".

The Tribunal noted the ongoing history of systemic violations of the rights of the indigenous peoples and reiterated that everyone has the duty to defend those who protect the rights of Mother Earth and to break the pattern of violation and abuse of indigenous peoples. It also noted that the persecution of the Earth's defenders is a global phenomenon, which has been increasing over the past two decades as the exploitation of "natural resources" intensifies

The strategy of persecution is well established. First of all, the identity of the people is destroyed by means of discriminatory laws that deny the cultural identity of the

indigenous peoples and their rights to exist as defenders. Secondly, violence is used against those who peacefully defend Nature and its rights. The States and companies involved commit widespread and systematic crimes, which under international human rights law, are considered to be crimes against humanity.

The UDRME requires all human beings and institutions to defend the rights of Mother Earth and of all beings. The Tribunal recognized the indispensable role of defenders as the protectors of Mother Earth and the future of humanity and found that to protect Mother Earth it is necessary to protect her defenders. These defenders must be free to denounce the imposition of a development model that exploits all of Nature, including human beings.

Testimony given to the Tribunal from around the world exposed the wide-spread disregard for this duty and how people, particularly indigenous peoples, in the United States of America, Russia, Latin America and Africa are being persecuted for defending Nature from harm. In many cases the persecution of indigenous peoples such as the Sámi peoples over long periods of time were clearly designed to destroy cultural understandings and practices that respect and protect the rights of Mother Earth and other beings.

The persecution of defenders of Mother Earth violates their rights to be respected, to life and to defend the rights of Mother Earth and of all beings. Those individuals, corporations and states involved in such persecution are guilty of profoundly anti-social behavior and deserve the most severe sanctions.

The Tribunal called upon human beings, all States, and all public and private institutions:

- to recognize and protect the rights of the defenders including their rights to life, integral health and to resist being displaced from their lands and the violation of the rights recognized in the Declaration;
- to recognize and affirm the link between human rights and the rights of nature, as expressed in the UDRME and to implement effective legal and other measures to guarantee the right of access to information, the right to participate effectively in decision-making processes that affect people and their habitat, based on the principle of free, prior and informed consent;
- to empower human beings and institutions to defend the rights of Mother Earth and of all beings; and
- to ensure that those responsible for violating the inherent rights recognized in this Declaration and are held accountable for restoring the integrity and health of Mother Earth.

## Depletion of groundwater in Almeria, Spain

The Almeria waters case concerned the abstractions of huge quantities of water from aquifers in the Almeria region of Spain, mostly to irrigate approximately 6 million olive trees which in large-scale plantations. These aquifers feed the springs and rivers that sustain unique ecological communities as well as the communities of people who live in the area. Those springs and rivers are now running dry, killing the species and ecological communities that rely on them, depriving local communities of their livelihoods and driving them out of the area. The existing legal system has failed to prevent this happening even though protected areas are being affected.

The Tribunal pointed out that whether one applied scientific hydrological and ecological knowledge or indigenous wisdom, or both, the conclusion is the same. Human societies that do not respect water as life and which fail to take whatever measures are necessary to protect the ecological systems and cycles that generate water, destroy life and ultimately destroy themselves. Water is priceless - societies that sacrifice water sources for money, will pay a terrible price.

The Tribunal pointed out that this case illustrates the consequences of treating water as a commodity that can be monopolized by the wealthy instead of recognizing water as a vital source of life, which must be respected and afforded the highest level of protection. Although this case focused on a specific area it is an example of what is happening in many areas of the world, and the principles are universal.

The Tribunal found that persisting in pumping out groundwater faster than it can be replenished, and depriving ancient communities of life of the flows of water that nourish them, violates the rights of the rivers and ecological systems of Almeria, and violates the human rights of local people, including the rights of future generations. In order to ensure that the community of life in the Almeria region may continue to benefit from its live-giving flows from the aquifer, human society must respect water as life and whatever measures are necessary to protect this extraordinary source of water must be taken.

The Tribunal also found that the government of Spain, the commercial olive farmers and others involved in the over-abstraction of this water, have failed to fulfil their duties under the UDRME and bear the primary responsibility for stopping the pumping to allow the ecosystems to recover.

The Tribunal directed that in order to restore the health of the Almeria water system and all who depend on it:

- all responsible public authorities in Andalucía must immediately use their legislative, administrative and enforcement powers to stop the pumping of water from the aquifer and must ensure that other appropriate measures are taken to restore the aquifer and the Almeria province to integral health;

- the corporations and persons involved in abstracting the water for the new olive orchards must immediately cease pumping water from the aquifer; and
- all persons and institutions that facilitate the continuation of these unlawful and destructive activities, for example by financing these projects or purchasing the crops that they produce, must immediately desist from doing so in order to avoid being complicit in these unlawful activities.

The Tribunal invited all people who seek to respect the rights of Mother Earth to take appropriate and proportional action to stop this on-going violation, and to ensure that those responsible are held accountable for restoring the integrity and health of Mother Earth.

### **Amazon ecosystem v Threats to the Amazon**

The Tribunal decided to hear a number of cases from different parts of the Amazon simultaneously in order to consider threats to the Amazon ecosystem in a holistic way. It heard evidence of widespread violations of indigenous rights and the rights of Mother Earth throughout the greater Amazon region. This included testimony from communities in Brazil, Bolivia and Ecuador and French Guyana about how mining, oil extraction, road building and the clearing of forests in many different areas of the Amazon are affecting the health and vital cycles of the Amazon. Evidence was led about how from the perspective of the indigenous peoples of the Amazon, these activities were not just causing physical destruction, they were have a devastating impact on the metaphysical beings that inhabit the Earth, rivers and forests.

### **Bolivia (Tipnis)**

Representatives of indigenous communities in Bolivia gave evidence about alleged violations of the rights of Mother Earth arising from the proposed construction of a major road through the TIPNIS protected area in Bolivia and from oil exploitation in the area. Evidence about the victimization and intimidation of those opposing the construction of the road was also placed before the Tribunal. The Tribunal noted this evidence with great concern, particularly because the Universal Declaration of the Rights of Mother Earth was proclaimed in Bolivia in 2010 and Bolivia has championed rights of Nature internationally.

The Tribunal decided that it wished to gather more evidence from all concerned, including the State of Bolivia, and if possible to send a delegation on a fact-finding mission to Bolivia to investigate 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. 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

The Tribunal also decided to request 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 by demonstrating its commitment to fulfilling its duties under article 3(2) of the Universal Declaration of the Rights of Mother Earth; and
- to impose a moratorium on 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, as an appropriate precautionary measure to avoid possible violations of rights of Mother Earth while a resolution to this dispute is being sought.

### **Ecuador (Yasuni)**

The Yasuni area is one of the most biologically diverse and ecologically sensitive areas of the world and the territory of indigenous peoples. The Tribunal heard further disturbing testimony about the oil exploration and exploitation that is taking place within this area and about the planned expansion of these activities.

Requests to establishing full guarantees for the exercise of civil and political rights and of Indigenous Peoples over the territories they inhabit.

The International Tribunal for the Rights of Nature demands a comprehensive rethinking of the vision of the development model applied in Latin America, abandoning the civilizing paradigm centered on economic growth, extractivisms and therefore on the destruction of Mother Earth.

The Tribunal decided to refer this case back to the Regional Chamber of the Tribunal in Ecuador to enable more comprehensive hearings to be held.

### **French Guyana – Montagne d’Or Case**

The Montagne d’Or case concerns a proposed mega-mine in French Guyana.

The Tribunal heard that mega -mining started in Latin America in the 1990s. It involves using open-cast mining techniques over a large area and the use of colossal amounts of energy, explosives, water and extremely toxic substances to separate the rock from the ore. It differs from traditional mining in that it takes place on a far larger scale and the mining methods used make it inherently polluting, unsustainable and impossible to control.

For example, the mining enterprise Pascua Lama (Argentina-Chile border) will remove 1,806 million tons of rock. The La Alumbrera mine (Catamarca province, Argentina) will use more than 86 million litres of water per day (much more than the total consumption of the province) and consume 85% of the total consumption of electricity in the province.

Mega-mining involves the use of huge amounts of explosives. Pascua Lama alone will use almost half as many explosives as were fired in the Second World War and 493,500 tonnes will be dumped during the extraction process. Argentina's three main mining projects - La Alumbrera, Pascua Lama and Agua Rica- would concentrate a level of energy consumption (subsidized) of 395 MW, which exceeds the output of a nuclear power plant such as Atucha (375 MW).

Almost all the minerals mined (including gold, silver, and copper) is the exported without being beneficiated (i.e. processed to add value). This accentuates an unequal geography of extraction and general consumption, which affects the entire Latin American subcontinent. For example, Latin America produces 26.2% of the world's bauxite, but consumes only 2.9% of the world's total, produces 45.1% of the copper and consumes 6.1%, and produces 15.2% of the world's gold but only uses 3%. Furthermore 83% of the gold mined is used for banking reserves and jewelry and not to meet primary needs.

Witnesses testified that as mining advances into new territories and it competes with other activities for water, land, and energy and eventually displaces them. Since agricultural, industrial and tourism production, among others, are incompatible with mega-mining, it progressively displaces them, and creates large areas from which other activities are effectively excluded. Mining operations leave a legacy of pollution and other environmental damage which become the responsibility of the State and the public after the closure of the mines.

The Tribunal heard that there is no region in the world that has achieved socioeconomic development through mining, and wherever mega-mining projects are developed (or attempted) there is great social conflict. The systematic attack on the most basic individual freedoms to impose this model leads to human rights violations that reduce the scope of democracy to a minimum.

The presenters argued that the proposed construction of the Montagne d'Or mine in French Guyana poses a clear, specific danger of violating the Rights of Nature, to the species of flora and fauna and water sources. They argued that the mine would violate the rights of Mother Earth to regenerate its bio-capacity and its right to continue its vital cycles and processes free from human disruptions (UDRME art. 2(c)) the right to water (art. 2(e)), the right to clean air (art.2(f)), the right to be free from contamination, pollution and toxic waste (art. 2(h)) and the right to full and prompt reparation for any violation of the rights recognized in the Declaration resulting from human activities (art. 2(j)). They also argued that the Montagne d'Or case project will also harm principles enshrined in the French Constitution, specifically in its Environmental Charter.

In addition to these violations, French Guyana has a very important indigenous people population that lives in harmony with nature, and for whom, this project implies a threat to their living practices and livelihood. This mining project will violate the collective and indigenous rights of its population, as well as the rights of the Mana River



who is considered a legal person for the Native people, and the forest with sacred entities like the Kapok Tree, areas that are directly threatened by the project.

Consequently the petitioners asked the Tribunal to apply the preventive and precautionary principles and order the suspension the Montagne d'Or project.

The International Rights of Nature Tribunal found that the Montagne d'Or Project in French Guyana, poses a clear and serious threat to the vital ecological cycles, processes and balances of Mother Earth. Consequently it called on the French State to immediately suspend the Project as a precautionary measure and recommended that further evidence be presented at future hearings of the Tribunal before a final judgement is given.

### **Brazil**

The Amazonian territories distributed among Bolivia, Brazil, Colombia, Ecuador, Guyana, French Guiana, Peru, Suriname and Venezuela share threats such as oil exploitation, mining, timber extraction, agribusiness, hydropower and road infrastructure, among many others.

An entire economic framework has been established that destroys the Amazon and its peoples. The destruction is carried out by hydroelectric dams, railways, mining, timber companies and agribusiness, all of which have been given the legal authority to undertake these projects by governments..

Witnesses testified that in Brazil these projects affect not only the rights of Nature, but also those of the indigenous peoples who inhabit the territories where the project are being developed. The principle of free, prior, informed consent is not applied and the very existence of indigenous peoples is often ignored. Indigenous peoples have lost their food sovereignty, they cannot fish because fish are disappearing, people have very restricted access to water, and young people are migrating away from their communities. Extractivism has generated division in the community, corruption processes and the imposition of external models that ignore and violate Nature and Peoples. Threats and deaths are also a major problem in the Brazilian Amazon.

### **Decision of the Tribunal in the Amazon case**

The Tribunal found that 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 and incredible diversity of life forms, including many peoples and is vital to maintaining global climatic stability.

The Tribunal found that the Amazon is being subjected to many assaults which violate its right to exist and maintain its vital cycles, and that this undermines the integral health not only of the Amazon but of Mother Earth as whole. Most of these assaults are occurring as consequence of the "extractivist" development model which seeks to maximize what can be taken from Nature without reciprocation. This "development

model" is inherently exploitative and inevitably results in violations of the rights of the Amazon as a whole, and of the people and other beings who form part of that community of life.

The Tribunal found that the defense of the Amazon must be given the highest priority and that 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 to integral health, to regulate itself, and to continue its vital cycles and processes free from disruption by humans, contamination and pollution.

Governments in the region bear particular responsibility for failing: to establish and apply 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 failing to empower human beings and institutions to defend the rights of the Amazon and of all beings within the Amazon.

### **Trade Agreements and their Implications on Nature**

Expert witnesses from Canada, Germany, South Africa and Puerto Rico testified that Free Trade Agreements (FTAs) are the drivers of an unsustainable economy based on fossil fuels, privatization, commodification and legalized enslavement of all life on Earth. FTAs are legally binding and take precedence over non-binding commitments made under the Paris Agreement. States can even be prevented from passing new laws to protect ecosystems if the tribunals established under Investor State Dispute Settlement Mechanisms (ISDSMs) in FTAs decide that they are "barriers to trade". Indigenous peoples pay the highest price under schemes like NAFTA. Because they have protected and live close to the land, they are targets for displacement in the quest for pristine untapped "resources" for drilling, clear-cutting water mining, etc. For example, 50% of the groundwater has already been depleted in NAFTA affected areas in Mexico.

The case presenters showed how trade agreements have been used to stop ambitious climate policy by giving foreign corporations the right to directly sue governments for new laws or regulations that they claim negatively affects their profits. Consolidated trade deals in the USA and worldwide lock in high levels of fossil fuels consumption for years to come and distract societies from the deep systemic change necessary to address climate change. For example, a consequence of NAFTA Canada surrendered control of the energy sector and its required to export a proportion of their oil and gas capacity to the USA in perpetuity, thereby locking in a destructive system of fossil fuel extraction.

The case presenters drew attention to the fact that the current international trade regime reflects an exploitative and destructive world view. They argued that when we speak of "Rights of nature" we are really speaking to our human responsibilities, our duties to care for the Earth that nourishes us. From this perspective water is life. We are

born into water. It is the source and sustenance of all life itself. Water is what connects us to our mother, and to all of Mother Earth.

On the other hand, water can be regarded as a commodity or a service provided by Nature for the benefit of humans. From this perspective Earth exists only to serve humans, there is no responsibility to protect or care for Nature, and water is no different from any other “thing” to be exploited and extracted.

Trade can exist in both worldviews, but as the presenter Maude Barlow and the expert witnesses demonstrated, Free Trade Agreements belong exclusively to the second, destructive worldview. The presenters argued that FTAs are the ultimate expression of the endless quest for more, and reflected the worst instincts of colonization, FTAs accelerate the concentration of wealth and corporate-led globalization that dominate our political and legal systems.

FTAs encourage the fastest way to the lowest common standards. Environmental standards are lowest in those places where biological diversity and cultural heritage, have been replaced with monocultures, that which has been extracted is then shipped to places with the lowest labor standards in order to manufacture items before they are wrapped in plastic (often elsewhere) and shipped to consumers.

Trade agreements do not adhere to even the minimal standards of democracy. No one votes for FTAs, and in fact they are impervious to the desires and laws of communities, states and countries.

Recognizing the rights of Nature places human law within the context and boundaries of the laws of Nature, in order to restore balance, and to provide a legal framework that serves to help re-knit the relationship between humanity and the rest of the natural world. The presenters argued that on the contrary FTAs are part of a supranational legal system that supersedes democratic laws including those designed to protect nature.

The Investor State Dispute Settlement court places trade ministers in charge of decisions—based on the worldview that anything that represents a “barrier to trade” must be eliminated. Evidence was presented that this has a “chilling effect” on national legislatures and prevents the passage of new laws to protect ecosystems.

The presenters argued the current system of international trade is a systematic violation of the rights of nature which governments, trade ministers and corporate executives are complicit. They argued that humanity cannot survive in a system where the average plate of food travels 3,000 miles from farm to fork, and where trade is dependent on heavy use of fossil fuels for production and transportation of everything. Consequently we must unwind global trade agreements in order to survive. The Rights of Nature offers a path forward that involves shifting both laws and culture away from the accumulation of wealth and toward wellbeing. The Tribunal found that Free Trade Agreements are based on the delusion that trade is more important than life and result in systemic violations of the Rights of Nature.

The States and public institutions that enter into FTAs and the corporations and individuals that lobby for them are failing in their duties to ensure that the pursuit of human wellbeing contributes to the wellbeing of Mother Earth, now and in the future; promote economic systems that are in harmony with Mother Earth and in accordance with the rights recognized in this Declaration.

Accordingly, FTAs must be regarded as null and void to the extent that they conflict with the rights and duties in the UDRME.