

Rights of Nature and Indigenous peoples - The TIPNIS case: International tribunal faults Bolivia, calls for reparations

Monday 20 May 2019, by [FIDLER Richard](#), [IRNT](#) (Date first published: 20 May 2019).

Leading environmentalists find government violated Rights of Nature and Indigenous peoples as defenders of Mother Earth.

The following news release was issued May 15 by the International Rights of Nature Tribuna [1], a body created in 2013 pursuant to a recommendation of the first World People's Conference on Climate Change and the Rights of Mother Earth, held in April 2010 in Tiquipaya, Cochabamba, Bolivia. That conference was sponsored by the Bolivian government headed by President Evo Morales.

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On May 15, the International Rights of Nature Tribunal (hereinafter the Tribunal) released on its website its ruling regarding alleged violations of the Rights of Nature in the case of the Isiboro Sécure Indigenous Territory and National Park (TIPNIS) in Bolivia.

The TIPNIS case was presented by representatives of Subcentral TIPNIS and the TIPNIS women's organization before the Tribunal during its session in Bonn, Germany, on November 7 and 8 of 2017. The Tribunal agreed to try the case in January 2018 and decided to send an International Observer Commission to Bolivia to determine the facts and meet with all parties involved. Following a visit to Bolivia, the Commission — comprising Alberto Acosta (Ecuador), Shannon Biggs (USA), Enrique Viale (Argentina) and Hana Begovic (Sweden) — presented its report in January 2019. That report is the basis of the Tribunal's ruling, which concludes that, in the TIPNIS case, the Plurinational State of Bolivia has violated the Rights of Nature and of Indigenous peoples as defenders of Mother Earth and failed to comply with its obligation to respect, protect, and guarantee the Rights of Mother Earth as established under national legislation and relevant international regulations (p.82).

The French naturalist Alcides D'Orbigny (1802-1857) called the region now known as TIPNIS "the most beautiful jungle in the world." This territory became the "Loma Santa" in the "Casa Grande" where the Mojeño Trinitarios, Yuracares, and Tsimanes Indigenous peoples sought refuge during the "rubber rush" in the late 18th and early 19th centuries. The region was declared a national park in 1965, and in 1990, after the first indigenous March for Territory and Dignity, it assumed the double status of national park and Indigenous territory. On February 13, 2009, the Yuracaré, Tsimane, and Moxeño Trinitario peoples obtained the deed for 1,091,656 hectares, a small fraction of the initial request due to settlements by Andean migrants and the use of the valleys for coca leaf plantations in

the area known as “Polygon 7” of TIPNIS.

In 2008, the government of Evo Morales hired the Brazilian company OAS to build a highway that would divide the protected area of TIPNIS without ever carrying out a comprehensive environmental impact assessment of the three sections into which the road fragmented the park.

In October 2011, the Eighth Indigenous March, after being repressed by police forces in the town of Chaparina, achieved the enactment of Law 180 for the protection of TIPNIS, Article 3 of which expressly prohibited the Villa Tunari-San Ignacio of Moxos road or any other road crossing TIPNIS.

Six years later, in 2017, Law 180 was repealed by Law 969, which is what led this case to be presented before the International Rights of Nature Tribunal.

The report by the International Observer Commission that visited Bolivia from August 15 to 23 of 2018, presented sufficient evidence that the highway will expand the deforestation already present in Polygon 7, lead to the expansion of coca leaf production, and affect biodiversity, causing the irreparable loss of natural beings. The report also presents evidence that there was no consultation for the free, prior, and informed consent in good faith of the Indigenous peoples of TIPNIS, and that the colonization processes in Polygon 7 is already having negative impacts on life of these people.

Based on all of this evidence, the International Rights of Nature Tribunal deems proven the allegation that the Plurinational State of Bolivia, and in particular the Government of Evo Morales Ayma, have violated the rights of Mother Earth in the TIPNIS case. Likewise, the Tribunal believes that the Bolivian State has violated the collective and individual rights of the nations and Indigenous peoples of TIPNIS.

The Tribunal’s sentence proposes several reparations to be made immediately, including:

- An immediate and definitive end to any type of progress in the construction of road infrastructure in “Section II” from Isinuta to Monte Grande in the interior of TIPNIS.
- The repeal of Law No. 969 and the subsequent preparation and enactment of a law guaranteeing the conservation and protection of TIPNIS.
- The recognition of the territorial rights and autonomy of the area of the former Bosque de Chimanés forest concessions in favor of a Multiethnic Indigenous Territory (TIM, for its initials in Spanish), to guarantee the control and management of the northern zone of TIPNIS.
- The adoption of effective measures to halt the advance of colonization toward the central area of TIPNIS.
- The cancellation of plans for oil expansion in TIPNIS.
- The identification and punishment of those responsible for human rights violations in Chaparina in 2011.
- The recognition of the State’s responsibility in the lack of justice so far and a public apology by the president of the Plurinational State of Bolivia.
- The implementation of the Mother Earth Ombudsman’s Office, which has yet to begin operating nine years after its establishment under Law No. 71.
- The cessation of all pressure designed to discipline and control organizations that defend Mother

Earth and the issuance of guarantees to fulfill this task, which is essential for the reproduction of life on Earth.

The International Rights of Nature Tribunal was created in 2013. Its sentences are based primarily on the Universal Declaration of the Rights of Mother Earth adopted at the first World People's Conference on Climate Change and the Rights of Mother Earth, which was held in April 2010 in Tiquipaya, Cochabamba, Bolivia. The Tribunal's resolutions and sentences have an ethical character that is essential for building a true Earth community to prevent a sixth extinction of life on Earth. Without ethics, no government, institution, or person can recover the humanity that is needed now more than ever to prevent the collapse of the Earth's vital cycles.

The Tribunal is made up of judges of recognized ethical and scientific authority regarding the Rights of Nature that have been appointed by defenders of Mother Earth from different parts of the world. In the particular case of this sentence and given that the Morales administration promotes the rights of Mother Earth internationally, it has requested that the sentence be reviewed and signed by other judges who have participated in different hearings by the International Rights of Nature Tribunal. The members of the Extended Tribunal listed as signatories are:

Tom Goldtooth (Dine' and Dakota, USA), Cormac Cullinan (South Africa), Vandana Shiva (India), Osprey Orielle Lake (USA), Simona Fraudatario (Italy), Fernando "Pino" Solanas (Argentina), Ute Koczy (Germany), Yaku Pérez (Kichwa, Ecuador), Blanca Chancoso (Kichwa, Ecuador), Maristella Svampa (Argentina), Ruth Nyambura (Kenya), Nnimmo Bassey (Nigeria), Ashish Kothari (India), Enrique Leff (Mexico), Francesco Martone (Italy), Antoni Pigrau (Catalonia), Casey Camp Horinek (Ponca, USA), Antonio Elizalde (Chile), Horacio Machado Aráoz (Argentina), Rita Segato (Argentina), Valerie Cabanes (France), Arturo Escobar (Colombia), Rocío Silva Santiesteban (Peru), Patricia Gualinga (Kichwa Sarayaku), Atossa Soltani (USA, Iran), and Mario Melo (Ecuador).

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Note: The full text of the tribunal's judgment may be downloaded here in Spanish and English [2]. The English translation is legible albeit apparently unrevised in a few places. For example, the last sentence in para. 48 should read that "57 of the 58 [communities consulted] indicated their rejection of intangibility," if it is to correspond with the original Spanish text.

The tribunal's judgment is, as it says, "ethical" and is not binding on the Bolivian government. For the government's initial response to the 2011 TIPNIS protests, see Geopolitics of the Amazon, by Vice-President Álvaro García Linera, published in English translation in several posts on this website and subsequently as a pamphlet in pdf format by Climate & Capitalism [3].

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On the International Climate and Environmental Justice Tribunal

A word of caution, here...

The International Climate and Environmental Justice Tribunal proposed by the People's Agreement adopted at the Cochabamba conference in 2010 was to have "the legal capacity to prevent, judge and penalize States, industries and people that by commission or omission contaminate and provoke climate change." It was to prosecute claims "against developed countries that fail to comply with commitments" under the UN Framework Convention and the Kyoto Protocol, "including commitments to reduce greenhouse gases."

The TIPNIS tribunal is not that tribunal, which was never formed. This tribunal was established

three years later by an NGO, the Global Alliance for the Rights of Nature, which says it was “created to provide systemic Rights of Nature based alternatives to the false solutions and failed negotiations of governing Nation States.” Thus it is aimed not at transnational corporations but at governments, including those in lesser developed countries. The Global Alliance is headed by Pablo Solón (Bolivia) and Alberto Acosta (Ecuador) and nine other environmentalists. It includes among its founding members nine Latin American groups and four from North America, including the Council of Canadians.

Although the tribunal has held a half-dozen hearings internationally, the TIPNIS case appears to be unique as the only one resulting in a “judgment.” In paragraph 3 of its judgment, the tribunal states that the issues will be decided on the basis of the Bolivian Constitution and legislation on the rights of Mother Earth. So effectively Bolivia is being tried on the basis of its own laws, the most advanced in the world on the issue of the Rights of Nature and of Indigenous peoples.

The TIPNIS case originated in a complaint registered in November 2017 at a meeting of the Tribunal in Bonn, Germany. In August 2018 the four-person commission visited Bolivia and met with witnesses in the TIPNIS region, as well as government officials, and, it says, “reviewed thousands of pages of documentation, official reports, environmental studies and historical legal records.” Its report, issued January 16, 2019, is only in Spanish, a language unknown to many members of the tribunal judging this case. The tribunal’s “judgment” is based solely on that report.

Richard Fidler, May 20, 2019

P.S.

- Sunday, May 19, 2019, May 20, 2019 at 7:20 AM:
<https://lifeonleft.blogspot.com/2019/05/the-tipnis-case-international-tribunal.html>

Footnotes

- [1] <https://www.rightsofnaturetribunal.com/judgements>
- [2] <https://therightsofnature.org/tipnis-judgement-and-press-release/>
- [3] <https://climateandcapitalism.com/2013/01/13/geopolitics-of-the-amazon/>