INTERNATIONAL RIGHTS OF NATURE TRIBUNAL

CHIQUITANÍA, CHACO AND AMAZONÍA V. THE PLURINATIONAL STATE OF BOLIVIA

FINAL VERDICT

In the case Chiquitania, Chaco and Amazon (hereinafter 'plaintiffs') v. The Plurinational State of Bolivia (hereinafter also 'the State' or 'Bolivia'), the International Rights of Nature Tribunal (hereinafter 'the Tribunal' or 'the International Tribunal') by virtue of the hearing held on August 17th and 18th, 2020, issues the following verdict.

I. Rights governing the International Rights of Nature Tribunal

1. The Tribunal is established to promote the universal respect of the rights established in the Universal Declaration of the Rights of Mother Earth (hereinafter 'the Declaration') in order to promote harmonious coexistence between human beings and the other beings of Nature.
2. The Declaration was approved by the People's Conference on Climate Change and the Rights of Mother Earth, which met in the city of Cochabamba, Bolivia from 19 to 22 April, 2010. At said conference, 142 countries were represented through official delegations, groups and social movements. This Declaration constitutes the first international instrument of civil society to consider Nature a subject of rights, thus overcoming the anthropocentric paradigm of the protection of Nature.
3. The Declaration recognizes in its Article 2 that Mother Earth has the right to live, to be respected, to regenerate itself, to continue with its life cycles and processes free from human alterations, to maintain its identity and integrity, to be self-regulated and interrelated, to water as a source of life, to comprehensive health, free of

contamination, pollution and toxic waste, not to be genetically altered and modified, and to its full and prompt restoration.

4. The Tribunal also references the Constitution of the Republic of Ecuador, which recognizes Nature as a subject of Rights. Likewise, the tribunal takes into account the provisions of Bolivian legislation -mainly Law No. 071 on the Rights of Mother Earth- that incorporate the content of the Declaration. Furthermore, the Tribunal takes into account that the right to a healthy environment has been recognized by various nations in the continent, who include it in their respective Constitutions[1]. In the same way, it will consider the jurisprudential developments of the Republic of Colombia, which recognized the Atrato River[2] and, subsequently, the Amazon[3] as a subject of rights.
5. Likewise, the Tribunal considers the international instruments pertinent to the protection of nature, the environment and biodiversity, such as the Washington Convention, the Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat, commonly known as simply the "Ramsar Convention", the Convention on Biological Diversity, the Convention on Climate Change, and the Convention to Combat Desertification and Drought, among other relevant international law instruments.
6. Given that the Tribunal recognizes the dependence of human beings on Mother Earth and the close relationship between the violation of the Rights of Nature and the violation of Human Rights, with respect to allegations about human rights violations in this case, this Tribunal is also governed by the provisions of the Universal Declaration of Human Rights; the Covenants on Civil, Political, Economic, Social and Cultural Rights contained within the American Convention on Human Rights; the Additional Protocol to the American Convention of Human Rights in the Area of Economic, Social and Cultural Rights; Convention 169 of the International Labor Organization; the Universal Declaration of the Rights of Indigenous Peoples, and the American Declaration of the Rights of Indigenous Peoples, without prejudice to other instruments that the Tribunal deems pertinent in the matter.

[1] Bolivia, Brasil, Chile, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, México, Nicaragua, Panamá, Paraguay, Perú, Dominican Republic and Venezuela.
[2] Verdict T - 622, November 10th, 2016, established by the Sixth Session of revision of the Constitutional Court of Colombia.
[3] Verdict STC 4360/2018, established by the Chamber of Civil Cassation of the Supreme Court of Colombia.

7. The Great Law[4] will be taken as a reference, the ethical framework that inspires the Declaration, which postulates that we are all part of the universe, and as such, we have to respect this order, and consequently, recognize and accept the intrinsic nature of Mother Earth. It is therefore necessary to protect all species that coexist with the human species, implying that Nature cannot continue to be objectified, considering it as mere merchandise that we can take advantage of, exploit, degrade, reduce, and even silence at will.
8. There is also Wild Law, which states that laws should be designed to deepen the connection between all human beings and Nature, by guiding humans to act in ways that are compatible with the Great Jurisprudence, and thus promote harmonious coexistence within the Earth Community. Wild Law allows human societies to exist in harmony with Nature by establishing parameters within the legal system that are designed to ensure that the human species contributes to the proper functioning of the Earth Community by defending the rights and freedom of all beings to perform their unique functions within that community. Wild Law generally focuses on promoting ways of behaving and acting that maintain healthy relationships within the Earth community rather than prohibiting or authorizing specific acts. In this way, the intention and duty to protect Mother Earth are born in relation to the rights of other communities to live and self-regulate.

II. Jurisdiction

9. As established in its articles of incorporation, the Tribunal exercises the jurisdiction to promote universal respect and recognition of the rights established in the Universal Declaration of the Rights of Mother Earth, in order to promote harmonious coexistence among human beings and the rest of the beings of nature. For these purposes, it falls within its purview to investigate and rule on any violation of rights, or infringement of responsibilities established in the Declaration, whether committed by the State, private or public legal entities, and/or individuals.

[4] See Cormac Cullinan, "Wild Law" a Manifesto for Earth Jurisprudence" South Africa, 2018.

III. Procedural background of the Case

10. On December 5th, 2019, in the City of Santiago de Chile, the International Rights of Nature Tribunal took place, chaired by Yaku Pérez (Ecuador) and by a panel of judges made up of: Alberto Acosta (Ecuador), Antonio Elizalde (Chile), Maristella Svampa (Argentina), Nancy Yáñez (Chile), Raúl Sohr (Chile); Enrique Viale (Argentina) served as Land Prosecutor, and Natalia Greene (Ecuador) as Secretariat. On that occasion, the Tribunal took cognizance of the allegation presented by representatives of the indigenous peoples, communities, and the civil society of the Plurinational State of Bolivia on behalf of the trees, animals, fish, and other human and non-human beings affected by acts that presumably constitute the crime of ecocide in the Bolivian Chiquitania, Chaco and Amazon.
11. This process is part of the macro case "Threats to the Amazon," which the Tribunal has defined as a permanent case with evidence under consideration until its final session in Glasgow, planned for the end of 2021.
12. In the aforementioned session, the Tribunal was informed of the forest fires that occurred between the months of July and September 2019 in the ecoregions of Chiquitania, Chaco, Amazon and neighboring areas such as the Pantanal. On that occasion, the plaintiff argued that, although there are climate change factors that *"contribute to the dryness of the environment and the expansion of fire, the fires and deforestation of 2019 are not the product of natural factors."* [5] They affirmed that in recent years, deforestation has increased and the burning of forested areas has been promoted in order to *"expand the agricultural frontier for the benefit of agribusiness and cattle breeding,"* [6] they also claimed that the Bolivian State *"is favoring the interests of agribusiness without protecting the right of human beings to a healthy environment, and without taking into account the terrible impacts of its policies on other non-human living beings and the ecosystem of the planet as a whole."* [7]
13. By virtue of the foregoing, and in response to the plaintiffs' request, the Tribunal decided to accept the case Chiquitania, Chaco and Amazon v. The Plurinational State of Bolivia as a potential case of ecocide and violation of the Rights of Nature. At the

[5] Resolution 05/2019, Final Verdict of the Fifth International Rights of Nature Tribunal, December 5 2019, paragraph 5.
[6] Resolution 05/2019, Final Verdict of the Fifth International Rights of Nature Tribunal, December 5 2019, paragraph 7.
[7] Resolution 05/2019, Final Verdict of the Fifth International Rights of Nature Tribunal, December 5 2019, paragraph 6.

same time, the Tribunal requested that precautionary measures be adopted such as the repeal of regulations that allow deforestation and burning in areas affected by fires. It also saw fit to designate a commission to carry out an on-site visit in order to gather information from the different actors involved, to verify the seriousness of the events on the spot.

14. On January 13, 2020, the Secretariat of the Tribunal (hereinafter also 'Secretariat'), in communications addressed to the Presidency of the Plurinational State of Bolivia and the Presidency of the Senate of the Plurinational State of Bolivia, through the Embassy of the respondent State in Ecuador, made known and formally delivered the case's verdict of admission during the session of the Tribunal in Santiago de Chile. In turn, the Bolivian authorities were informed of the resolution to establish precautionary measures for the case, of the request to repeal the laws and decrees that facilitate the burning, and the on-site visit of a delegation of authorities from the Tribunal was announced.
15. The Tribunal appointed a delegation composed of Nancy Yáñez (Chile), Patricia Gualinga (Ecuador), Felicio Pontes (Brazil) and Natalia Greene (Ecuador) to carry out the on-site visit between March 15th and 20th, 2020; However, it could not be completed due to the COVID-19 pandemic, as announced on March 12th through a Public Statement.
16. On August 4, the Tribunal informed the Presidency of the Plurinational State of Bolivia and the Presidency of the Plurinational Legislative Assembly of the online Public Hearing to be held on August 17th and 18th, 2020, and requested information regarding the repeal or modification of the following laws:

    - Law No. 1171 of April 25th, 2019 on "Rational Use and Management of Burns",

    - Law No. 741 of September 29th, 2015, which authorizes the clearing of up to 20 hectares,

    - Law No. 1098 of September 17th, 2018 on Plant-Based Additives,

    - Supreme Decree 3874 of April 2019, which authorizes the National Biosafety Committee to establish abbreviated procedures for the evaluation of the HB4 soybean and Intact soybean for the production of Plant-Based Additives/Biodiesel, and

- Supreme Decree 3973 of June 10, 2019, which authorizes slash and burn for agricultural activities on private and community lands.

17. These communications were received officially through the embassy of the Plurinational State of Bolivia in Ecuador; however, no response was received.
18. The Secretariat opened the period for receiving documents and evidence for the case on August 11th, 2020, and these have been received by the Secretariat from that date until the final day of the hearings, Tuesday, August 18th, 2020.
19. Considering the circumstance of the pandemic, which forced the cancellation of the on-site visit, as well as the urgency of holding a hearing in order to avoid a recurrence of the 2019 fires, given that several heat sources had already been detected, and taking advantage of technological tools, The International Tribunal convened the online Hearing for August 17th and 18th, 2020. It was chaired by the judges: Nancy Yáñez (Chile), Patricia Gualinga (Ecuador), Felicio Pontes (Brazil) and Natalia Greene (Ecuador). In a hearing that lasted 6.5 hours, the Tribunal examined the oral and written evidence presented by indigenous organizations, citizen groups, civil society organizations and representatives of protected areas, in order of presentation: Directorate of the Tucabaca Protected Area Natural Heritage Conservation Unit, Management Committee of the Tucabaca Protected Area Natural Heritage Conservation Unit, Directorate of Protected Areas of the Charagua Iyambae Indigenous Government, Organization of Indigenous Chiquitania Women (OMICH), Chiquitana Indigenous Organization (OICH), Germán Busch Chiquitano Indigenous Central (CICH- GB), National Confederation of Indigenous Women of Bolivia (CNAMIB), Central of Ethnic Mojeño Peoples of the Beni (CPEM-B), Central of Indigenous Communities of Lomerío (CICOL), Solon Foundation, College of Biologists of La Paz, Quebracho Forest Firefighters Organization, Senda Verde Wildlife Refuge, Assembly for the Forests and Life of Bolivia, and Colectivo Árbol. Likewise, this Tribunal heard from representatives of the Directorate of Natural Resources of the Government of the Department of Santa Cruz and from the Mayor's Office of the Municipality of San Ignacio de Velasco.

IV. Facts

20. The facts of the present case refer to the allegations of ecocide and damages to the beings of nature, which include human beings, particularly indigenous populations regarding the forest fires in Bolivia, which, as this Tribunal has heard, lasted more than 70 days between the months of July and September 2019.
21. Bolivia is the ninth country with the largest area of primary forest in the world, but it is the fifth country with the greatest loss of primary forest[8], threatening its great biodiversity. The ecosystems affected by the fires contain numerous species of plants, animals, fungi and microorganisms that are directly interrelated with each other and in turn with the environment. Plants have been shown to communicate with each other through a network of fungi that connect their roots. Nonetheless, in the event of a wildfire, most members of these ecosystems have no way to defend themselves against fire.
22. According to the documentary evidence[9] received by the Tribunal, in Bolivia approximately 6.4 million hectares were burned during the forest fires. 65% of the affected area was concentrated in the department of Santa Cruz, and 29% in the department of Beni, mainly affecting the Chiquitania region, which extends as a transition area between the Amazon and the Bolivian Chaco, at the same time being comprised of various ecosystems, including the Chiquitano Dry Forest, the Pantanal, the Cerrado, and the Chaco.
23. The Tribunal has learned that a large part of the areas affected by the fires correspond to forested areas, of which 27% were burned for the first time in 2019.
24. The Tribunal has taken note of the impact of forest fires on RAMSAR sites, in an approximate area of 1,961,649 hectares according to the data reviewed.
25. In the appearance before the Tribunal, the plaintiff has emphasized on the effects upon different ecological floors that are interconnected with each other, therefore, the forest fires have seriously affected the balance of the ecosystem and the regeneration capacity of their life cycles, structure and functions and evolutionary

[8] See Morales-Hidalgo, D., Oswalt, S.N., &; Somanathan, E. 2015. Status and trends in global primary forest, protected areas, and areas designated for conservation of biodiversity from the Global Forest Resources Assessment 2015. Forest Ecology and Management, 352, 68–77. https://doi.org/10.1016/j.foreco.2015.06.011

[9] The plaintiffs have referenced the data from the report "Incendios Forestales en Bolivia 2019" the Fundación Amigos de la Naturaleza (Friends of Nature Foundation).

processes. In the case of the Chiquitano Dry Forest, which represents the largest extension of well-preserved dry forest on the planet and plays a key role in mitigating the negative effects of climate change on the continent, more than 2 million hectares have been consumed by the fire. In the Pantanal, known as the largest freshwater wetland in the world and which stands out as a sponge that mitigates floods caused by seasonal rains, around 1.1 million hectares were burned. In the Cerrado, 1.8 million hectares were affected by the fires, it should be noted that this ecosystem, although it is adapted to fire, recurrent burns affect its regeneration. In the Chaco complex of low forests, scrublands and dry savannas, 28,390 hectares were burned in 2019[10].

Damage to Nature and to the beings of Nature, including human beings

26. According to what has been stated before this Tribunal, millions of animals, including vertebrates and invertebrates, have died as a result of the fires. A preliminary study estimates that around 5 million mammals died in the Chiquitano Dry Forest alone. In this regard, it is the International Tribunal's understanding that there as yet, no comprehensive assessment has been made of the damages and impacts of forest fires on beings in Nature.
27. Fires greatly affect connectivity corridors, which are essential to ensuring the mobility of numerous species of fauna, such as the jaguar, which is endangered. Other species are also at high risk, such as the anta, pejichi, anteater, flag bear, manechi, taitetú, and the blue paraba, among others.
28. The Tribunal has heard the testimony of Mrs. Polonia Supepí, who pointed out: "The fire was consuming everything in its path, animals such as anteaters, tigrillos, jochis, tatús, monkeys, foxes, petas, and many of them that they did not escape the fire, they burned. Others were left looking for food and water. This situation was very painful for us, because in our way of seeing, understanding, and living, the animals of the forest also need our protection. "
29. Water sources have been contaminated by ashes and tree resins. Several micro basins and rivers that supply surface water to the different municipalities were significantly

[10] The Tribunal references the report "Reporte de incendios forestales a nivel nacional, 25 de septiembre 2019" from the Amigos de la Naturaleza Foundation presented as documentary evidence. At the same time, it recurs to the document "Afectación a los ecosistemas y áreas protegidas, consecuencias ambientales" presented by the College of Biologists of La Paz during the Hearing on 17 and 18 August 2020.

affected, damaging both the quality and quantity of available water; damages that have not yet been addressed, neither with reparations for the populations nor with comprehensive restoration for the ecosystems and the beings that comprise them.

30. The forest fires in Bolivia have provoked a mass migration of species, creating an unprecedented situation of environmental refugees. "The tigers that were fierce became tame because they sought protection," Germinda Casupá, Vice President of OMICH, testified before the Tribunal.
31. The Tribunal has learned that the forest fires have affected 27 Indigenous Territories. The indigenous peoples most affected are the Chiquitanos, Ayoreos, Guarayos, Cayubaba, Baures, Sirionó and Araona[11].
32. Additionally, attention has been drawn to the impact of the fires on Ñembi Guasu, which was declared a protected area by the Charagua Iyambae Indigenous Government and which is part of the territorial circuits of the Ayoreo people, who live in a situation of voluntary isolation. The fires have reached 426,028 hectares of this ancestral territory, that is, 36% of its surface[12].
33. According to one of the testimonies recorded in the Trinational Report (GTI PIACI, 2020)[13] issued by Don Aquino Picarenai, son of Garaigoso de, leader of the Campo Loro community, Paraguay, says that "*Someone came to burn the house of the isolated. He burned the place where the isolated live and where wild animals are, because the forest is a house that protects them, gives life, gives food, gives water. The region that was ravaged by fire is empty today. There is no life. Eami* (Ayoreo word that means forest) *does not speak to us anymore."*
34. The International Tribunal has listened to the testimonies of indigenous representatives and has carefully reviewed the documents[14] that refer to forced displacement and migration of indigenous populations during and after the forest fires. It has also noted the effects of fire on the agricultural production and forest

[11] Information presented to the Tribunal by the Chiquitana Indigenous Organization (OICH) based on the data from the Centro de Planificación Territorial Autonómico (CPTA; Autonomous Center for Territorial Planning) and the Centro de Estudios Jurídicos e Investigación Social (CEJIS; Center for Jurisprudence Studies and Social Investigation).

[12] The representatives of the Charagua Iyambae Autonomous Indigenous Government have presented oral and documentary evidence to this Tribunal.

[13] International Working Group for the Protection of Indigenous Peoples in Situations of Voluntary Isolation and First Contact (GTI PIACI; 2020) Trinational Report: Fires and deforestation in territories with records of indigenous peoples living in voluntary isolation Bolivia – Brazil – Paraguay (2020, reference year 2019)

[14] As a reference, the Report presented to the Tribunal by the Central of Indigenous Communities of Lomerío (CICOL) with data from the Centro de Planificación Territorial Autonómico (CPTA; Autonomous Center for Territorial Planning) and the Centro de Estudios Jurídicos e Investigación Social (CEJIS; Center for Jurisprudence Studies and Social Investigation).

management systems that have reported partial and/or total losses, in addition to the impact on hunting, fishing and gathering areas, and on sources of water for human and animal consumption, thus causing food insecurity. The plaintiffs have emphasized the lack of attention that the Bolivian state has paid this situation, something which has been exacerbated by the effects of the Covid-19 pandemic and by the new fires registered in the months of July and August 2020.

35. In the testimonies presented as evidence before this Tribunal, the immeasurable effects of these fires on the health of humans and ecosystems have been reported. One piece of evidence is the presence of black balls in the lungs of cattle in the fire zone, which suggests that living beings, including humans, have had their health permanently damaged by this circumstance.

V. Causes of the fires

36. The plaintiff has emphasized that the 2019 forest fires in Bolivia are not isolated or fortuitous events. This Tribunal has proven that climate change has aggravated the fires; however, it is not their root cause. Hence, the promulgation and enforcement of laws and administrative policies which condoned burning in order to expand the agricultural frontier and which guaranteed impunity for illegal burning, as well as the weak institutional framework of the state bodies at their different levels of government responsible for the control and supervision of forests,[15] have been fundamental factors in causing events denounced in this case.
37. The Tribunal has examined the documents[16] which indicate that the increase in deforestation in Bolivia is a result of norms and policies that promote the advancement of the agricultural frontier for agro-industrial crops and the promotion of transgenics and livestock raising, among other activities that have a significant impact on Nature and the beings that depend on it.

[15] The list of factors was pointed out to the Tribunal by the plaintiffs based on various pieces of documentary evidence that may be found at https://www.rightsofnaturetribunal.org/cases/ecocide-in-the-amazon-chiquitania-case/#1596645255748-323760e5-6fd4

[16] See Report on Deforestation and forest fires in Bolivia and the violation of human and indigenous rights by the Centro de Estudios Jurídicos e Investigación Social (CEJIS; Center for Jurisprudence Studies and Social Investigation) and the Unión Nacional de Instituciones para el Trabajo de Acción Social (UNITAS; National Union of Institutions for Social Work), presented to the tribunal by the Chiquitana Indigenous Organization (OICH).

38. This Tribunal has also been made aware of a policy distribution of public lands for human settlements that does not take into account the ecological and social conditions of the territories in question, a fact that is indicated by the plaintiff as another cause of the forest fires insofar as it has constituted an expansion from the agricultural frontier through slash and burn practices in forest areas.[17]

VI. Legal framework applicable to the present case

39. This Tribunal recalls that Bolivia has been a promoter of the recognition of Mother Earth as a subject of law, therefore, and by virtue of the present case, it takes into account the provisions of the **Political Constitution of the Plurinational State of Bolivia** (hereinafter also 'the Constitution') in particular article 33, which refers to: *"the right to live in a healthy, protected and balanced environment."* At the same time, article 34 states: *"Any person, individually or on behalf of a community, is empowered to exercise legal actions in defense of the right to the environment, without prejudice to the obligation of public institutions to act ex officio against attacks on the environment."*

40. The Constitution also establishes that: *"It is the duty of the State and the population to conserve, protect and make use of natural resources and biodiversity in a sustainable manner, as well as to maintain the balance of the environment;"* likewise, art. 347.I determines that: *"The State and society will promote the mitigation of any harmful effects on the environment, and of the environmental liabilities that affect the country. Responsibility for historical environmental damage and the imprescriptibility of environmental crimes is declared."*

41. The Tribunal also takes note of what is established in Article 373 of the Constitution: *"water constitutes a fundamental right for life"* for which, according to constitutional duties, the State *"shall avoid actions in the springs and intermediate zones of the rivers that cause damage to ecosystems or decrease flows."*

42. The Tribunal refers to what is stated in article 342 of the Constitution: *"It is the duty of the State and the population to conserve, protect and make use of natural resources and biodiversity in a sustainable manner, as well as to maintain the balance*

[17] For more documentary evidence, see ://www.rightsofnaturetribunal.org/cases/ecocide-in-the-amazon-chiquitania-case/#1596645255748-323760e5-6fd4

of the environment." For this reason, the Constitution establishes the strategic nature of the *Lands of Permanent Forest Production* (Art. 386) and obliges the State to guarantee their conservation and sustainable use (Art. 387) given that they are also areas of rich biodiversity, *it must guarantee their ecological balance, respecting their capacity for greater use*, and taking into account their biophysical, socio-economic, cultural and political/institutional characteristics (Art. 380).

43. Given that forest fires have affected Indigenous Territories, the Tribunal wishes to point out the rights that the Constitution of the Plurinational State of Bolivia recognizes, respects, and provides for indigenous peoples in its article 30, in particular:

> *1. To exist freely.*
>
> *2. To their cultural identity, religious beliefs, spiritualities, practices and customs, and to their own worldview.*
>
> *4. To self-determination and territoriality.*
>
> *7. To the protection of their sacred places.*
>
> *10. To live in a healthy environment, with proper management and use of ecosystems.*
>
> *14. To exercise their political, legal and economic systems according to their worldview.*
>
> *15. To be consulted through appropriate procedures, and in particular through their institutions, whenever legislative or administrative measures that may affect them are envisaged. In this framework, the right to free, prior and informed consent regarding the exploitation of non-renewable natural resources in the territory they inhabit, will be respected and guaranteed by the state in good faith.*
>
> *17. To autonomous indigenous territorial management, and to the exclusive use and exploitation of the renewable natural resources existing in their territory without prejudice to the rights legitimately acquired by third parties.*

18. To participation in the organs and institutions of the State.

44. The Tribunal sees fit to refer to the national legal obligations of the Bolivian State in relation to the right to life of indigenous peoples in voluntary isolation, which are stated in the Constitution, and which impose upon the State the obligation to protect native indigenous peoples in situations of voluntary and uncontacted isolation, respecting their individual and collective ways of life. This is established in Article 31. I., of the constitutional text, which stipulates: *"The native indigenous nations and peoples in danger of extinction, in situations of voluntary isolation and first contact, will be protected and respected in their individual and collective ways of life."*

45. Article 403 of the Constitution is also indicated, which recognizes the integrality of indigenous territories so that they develop according to their own cultural criteria and their principles of harmonious coexistence with Nature.

    "I. The integrality of the original indigenous territory is recognized, which includes the right to land; to the exclusive use and exploitation of renewable natural resources under the conditions determined by law; to free prior and informed consent to, and participation in, the benefits of the exploitation of non-renewable natural resources found in their territories; to apply its own laws, administered by its structures of representation and the definition of its development according to its own cultural criteria and principles of harmonious coexistence with Nature. "

46. The Tribunal sees fit to refer to current Bolivian legislation, in **particular Law No. 071 on the Rights of Mother Earth**, of December 21st, 2010, which recognizes the Rights of Nature, as well as the obligations and duties of the Plurinational State and its civil society to guarantee them (art.1). Likewise, this regulation provides that *"Mother Earth is the dynamic living system made up of the indivisible community of all life systems and living beings, interrelated, interdependent and complementary, sharing a common destiny"* (art. 3).

47. Article 7 of the aforementioned law establishes the following as Rights of Mother Earth:

    To life: It is the right to maintain the integrity of life systems and the natural processes that sustain them, as well as the capacities and conditions for their regeneration.

To the diversity of life: It is the right to preserve the differentiation and variety of the beings that make up Mother Earth, without being genetically altered or artificially modified in their structure, in such a way that their existence, performance and future potential are threatened.

To water: It is the right to preserve the functionality of the water cycle, its existence in the quantity and quality necessary to sustain life systems, and its protection against contamination for the reproduction of the life of Mother Earth and all its components.

To clean air: It is the right to preserve the quality and composition of the atmosphere for the maintenance of life systems and their protection against pollution, for the reproduction of the life of Mother Earth and all its components.

To balance: It is the right to maintain or restore the interrelation, interdependence, and functionality of the components of Mother Earth, in a balanced way that ensures the continuation of its cycles and the reproduction of its vital processes.

To restoration: It is the right to the timely and effective restoration of life systems affected by human activities, whether directly or indirectly.

To live free from contamination: It is the right to protect Mother Earth of the contamination of any of its components, as well as the toxic and radioactive waste generated by human activities.

48. This Tribunal recalls that in Bolivia, on October 15th, 2012, **Law No. 300 Framework of Mother Earth and Integral Development for Living Well**[18] was issued, which establishes the respect and application of these rights over any other right, it being important to highlight that no right can supersede the Rights of Mother Earth, given that the latter is a collective right of public interest, which is given priority over any

[18] Living Well or "Buen Vivir" is a concept that incorporates the human relation to nature, aiming for harmony with nature and condemning the excessive exploitation of natural resources. It is a term commonly used in Bolivia and Ecuador (More information: https://anotherworldreal.files.wordpress.com/2013/01/compilation-on-buen-vivir-concepts.pdf)

others, having the characteristics of a human right, and being essential in guaranteeing the life and respect of these:

> *Art. 4. (PRINCIPLES). The principles that govern this Law in addition to those established in Article 2 of Law No. 071 on the Rights of Mother Earth are:*
>
> *1. Compatibility and complementarity of rights, obligations and duties. A right cannot materialize without the others or cannot be above the others, implying the interdependence and mutual support of the following rights:*
>
> *a) Rights of Mother Earth as a collective subject of public interest.*
>
> *b) Collective and individual rights of rural native indigenous peoples and nations, as well as intercultural and Afro-Bolivian communities.*
>
> *c) Fundamental, civil, political, social, economic and cultural rights of the Bolivian people to Live Well through their integral development.*
>
> *d) The right of urban and rural populations to live in a just, equitable and supportive society without material, social and spiritual poverty; as well as its articulation with the obligations of the Plurinational State of Bolivia and the duties of society and individuals.*

49. It is worth highlighting, for the purposes of this judgment, the obligations of the State expressed in Article 8 of Law 071: "*The obligations of the State are to develop public policies to prevent human activities from leading to the extinction of beings, the alteration or destruction of life cycles that include the cultural systems that are part of Mother Earth; to develop forms of production and consumption patterns that are in balance with Mother Earth; to defend Mother Earth in the plurinational and international sphere, and to promote the recognition and defense of her rights.*" In turn, Article 10 of Law No. 300 specifies as an obligation of the State: "*To create the necessary conditions for the performance of the compatible and complementary exercise of the rights, obligations and duties to Live Well, in harmony and balance with the Mother Land*" and Article 27 indicates that "*the State must develop policies for the care and protection of the basin headwaters, water sources, reservoirs and*

others bodies which are affected by climate change, the expansion of the agricultural frontier or unplanned human settlements."

50. In view of the fact that the fires have affected protected areas and conservation zones, this Tribunal will also take into account what is referred to in **Law No. 1333 on the Environment,** in force in the Bolivian State, which provides in its art. 61 that: *"Protected areas are the patrimony of the State and of public and social interest, and must be administered according to these categories, zoning and regulation based on management plans, for the protection and conservation of their natural resources, scientific research, as well as well as for recreation, education and promotion of ecological tourism."* While art. 64 establishes that: *"The declaration of Protected Areas is compatible with the existence of traditional communities and indigenous peoples, considering the objectives of conservation and their management plans."*
51. In this regard, it is pertinent to point out that **Forest Law No. 1700**, in its article 15, defined under the category of Permanent Forest Land Production that forests cover that, due to their characteristics, must have that category of use, thus restricting the change of soil use.
52. Having indicated the constitutional mandate referring to Indigenous Peoples in voluntary isolation, this Tribunal takes note of **Law No. 450 for the Protection of Indigenous Nations and Indigenous Peoples in Situations of High Vulnerability**, which aims to *"establish mechanisms and policies for sectoral and intersectoral prevention, protection and strengthening, to safeguard the systems and forms of individual and collective life of the nations and native indigenous peoples in situations of high vulnerability, whose physical and cultural survival is severely threatened"(*Art.1).
53. That article 16 of the **Statute of Indigenous Autonomy of Charagua Iyambae** determines the Territorial Organization of the autonomous Government and also includes the Area of Conservation and Ecological Importance of the Guaraní Ñembi Guasu Nation, a place that is part of the territorial circuits of the Ayoreo people in voluntary isolation. Likewise, the **Autonomous Law of Charagua Iyambae No. 033** of May 9th, 2019 establishes and consolidates the limits of Ñembi Guasu, considering that *"it is a strategic site that contains immense biological, natural, cultural and social wealth, inhabited by non-contacted indigenous people; which is part of a natural ecological corridor located between two National Protected Areas, the Kaa Iya*

National Park and Otuquis, but remains little investigated." It also points out: *"the area is very vulnerable and is being threatened by human settlements from third parties."*

54. In this regard, note is taken of **Supreme Decree No. 1286** of July 4, 2012 that determines the area of influence of the Ayoreo Indigenous People in voluntary isolation as a zone of strict protection (intangible zone), initially comprised of 1,900,000 hectares in the area of the Kaa-Iya del Gran Chaco National Park and Natural Integrated Management Area. The International Tribunal has learned that this territory corresponds to the geographical location of the 'Area of Conservation and Ecological Importance of the Guaraní Ñembi Guasu Nation' of subsequent creation.
55. In order to rule on this case, the Tribunal also takes into account the International Law ratified by Bolivia since, by virtue of Article 410, the Constitutionality Block is made up of international treaties and conventions on human rights, as well as by the interpretation made of those instruments by the international bodies and instances authorized for this purpose.
56. The **Convention on Biological Diversity**, ratified by Bolivia through Law No. 1580 of July 25, 1994, recognizes the sovereign rights of each State over its biological resources, as well as its responsibility for the conservation of biological diversity and the sustainable use of its resources; establishing in Article 6 that each State must develop strategies for the conservation and sustainable use of biological diversity.
57. **The Convention for the Protection of the flora, fauna and natural scenic beauties of the countries of America**, adopted in Washington in 1940, which in its article 5 establishes that *"the Contracting Governments agree to adopt or recommend to their respective competent legislative bodies, the adoption of laws and regulations that ensure the protection and conservation of flora and fauna within their respective territories."*
58. The **Ramsar Convention on Wetlands of International Importance Especially as Waterfowl Habitat** ratified by Bolivia through Law No. 2357 of 2002, which in its article 3, paragraph I establishes that States *"must develop and apply their planning in a way that favors the conservation of the wetlands included in the List and, as far as possible, the wise use of all wetlands in their territory."* Also, in paragraph II, the Ramsar convention refers to the obligation of the contracting parties to take *"the necessary*

measures to be informed as soon as possible about modifications to the ecological conditions of the wetlands in their territory and included in the List, which have occurred or may occur as a consequence technological development, pollution or any other human intervention. Information on such modifications shall be transmitted without delay to the organization or government responsible for the functions of the Office."

59. In terms of indigenous rights, international law recognizes the right of indigenous peoples over their ancestral territories and the habitats that have traditionally been used for their survival, development, and pursuit of their way of life and custom.

60. In Bolivia, **Law No. 1257** ratifies **Convention No. 169 of the International Labor Organization on Indigenous and Tribal Peoples** (hereinafter also 'Convention 169'), which recognizes, among others, the right to a healthy environment and to the subsistence, development and protection of natural resources. In its articles 4.1 and 7.4, it imposes the obligation upon states to adopt measures to protect the indigenous environment. In this regard, it is the obligation of governments to ensure that studies are carried out, in cooperation with indigenous peoples, to determine the social, spiritual, cultural and environmental impacts that development activities may incur upon these peoples. For its part, article 7.3. recognizes the subsistence rights of indigenous peoples, in particular, it provides that handicrafts, rural and community industries, and traditional activities related to the subsistence economy of the peoples concerned, such as hunting, fishing and gathering, among others, be recognized as important factors for the maintenance of the culture, self-sufficiency and economic development of the indigenous group, it being the obligation of governments to ensure that such activities are strengthened and promoted.

61. Likewise, Convention 169 recognizes the right of indigenous peoples to development. In accordance with article 7.1, it is structured around the right to self-determination, safeguarding the power of these peoples to establish their own development priorities, a matter of extreme relevance when their model collides with the one that the State intends to impose, on its own account or by individuals, and when the use and exploitation of nature and the elements that comprise it and that configure the natural habitat of indigenous peoples are disputed. Article 15.1 recognizes the rights of indigenous peoples to the natural resources existing on their

lands and imposes on the State the obligation to especially protect these rights and guarantee indigenous participation in the use, administration and conservation of said resources. It is provided, however, that if the ownership of these resources belongs to the state in accordance with domestic legislation, measures must be adopted to protect and preserve the territories of indigenous peoples, such as: free, prior and informed consent, participation in the benefits of resource exploitation, and compensation for damages, article 15.2.

62. For the Tribunal, it is necessary to recall that these rights have also been recognized in the Convention on Biodiversity and in Agenda 21, Chapter 26, both of these being instruments which were adopted in the framework of the United Nations Conference on Environment and Development, held in Rio de Janeiro in 1992. Article 8, paragraph j of the aforementioned Convention imposes on States a specific obligation to respect, preserve and maintain the knowledge, innovations and practices of indigenous and local communities that involve traditional lifestyles relevant to conservation and sustainable use of biological diversity.

63. It should be noted that the **United Nations Declaration on the Human Rights of Indigenous Peoples** (hereinafter also "the Declaration") has been elevated to the status of law in Bolivia through Law No. 3670. The Declaration recognizes the right to self-determination of indigenous peoples (art 3) and autonomy or self-government in their internal and local affairs (art 4). Likewise, it establishes consultation with a view to free, prior and informed consent, against the approval of any project or measure that affects their lands or territories and other resources (Article 32), as it establishes the standard of consent in the event of:

- The transfer of indigenous peoples out of their lands or territories (Article 10).

- The storage or disposal of hazardous materials on their lands or territories (Article 29).

- The restitution of their lands, territories and natural resources in those cases where they had been "confiscated, taken, occupied or damaged without their free, prior and informed consent", or to reparations which may consist of lands of equal size and quality, or in a fair and equitable compensation (article 28).

64. For the present case, the International Tribunal also takes into account what is agreed in the Charter of the Organization of American States (hereinafter also 'Charter of the OAS') and in the American Convention on Human Rights (hereinafter also ' American Convention '), the Covenant on Civil and Political Rights (hereinafter also' PDCP '), and the Covenant on Economic, Social and Cultural Rights (hereinafter also' PDESC ') as well as the development in the matter of the Inter-American Human Rights System.

65. The **Inter-American Court on Human Rights** (hereinafter the 'Inter-American Court') has developed jurisprudence that the Tribunal sees fit to reference for the purposes of the resolution of this case. Regarding indigenous communal ownership of lands and natural resources, applying Article 21 of the American Convention on Human Rights[19], the Inter-American Court has pronounced itself in the context of conflicts generated by the States or by individuals with the support of the State as a result of the exploitation and to the detriment of natural resources, forests, water and minerals, among others, existing in the territories where indigenous and tribal peoples live, which belong to them by ancestral right.[20] The property rights of indigenous and tribal peoples extend to the natural resources present in their territories, as a necessary consequence of the right of territorial property,[21] and in clear correspondence with

[19] The Inter-American Court on Human Rights. *Case of the Mayagna community (Sumo) Awas Tingni v. Nicaragua*. Verdict of 31 August 2001. Series C No. 79 paragraph 148, recognized the value of the communal property of indigenous peoples in light of article 21 of the American Convention on Human Rights. Likewise, it recognized the validity of the ownership of lands based on indigenous custom, even lacking deeds, as a fundament of the ownership of indigenous peoples over said lands, and, finally, established the necessity of recognizing the intimate connection between indigenous peoples and their lands, and recognizing this relation as fundamental to the existence of their cultures, their spiritual life, their integrity, and their economic survival. This jurisprudence has been ratified in numerous cases: Inter-American Court on Human Rights (ICHR) *Case of the Indigenous Community Ykye axa v. Paraguay*. Verdict 17 June 2005. Series C No. 125, paragraph 137. ICHR *Case of the Sawhoyamaxa Indigenous Community v. Paraguay*. Verdict of 29 March 2006. Series C No. 146, paragraphs 118, 121. ICHR. *Case of the Saramaka people v. Surinam*. Preliminary Exceptions. Verdict of 28 November 2007. Series C No. 172, paragraph 120. ICHR. *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Verdict of 24 August of 2010, Series C No. 214, paragraph. 85. ICHR Case *of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Verdict of 27 June 2012, Series C No. 245, paragraph. 145. *Case of the Kuna Indigenous People of Madungandí and Emberá de Bayano and its Members v. Panamá*. Verdict of 14 October 2014. Series C No. 284; *Case of the Garífuna Triunfo de la Cruz Community and its Members v. Honduras*. Verdict of 8 October 2015. Series C No. 305. *Case of the Garífuna de Punta Piedra Community and its Members v. Honduras*. Verdict of 8 October 2015. Series C No. 304. *Case of the Kaliña y Lokono Peoples v. Surinam*. Verdict of 25 November 2015. Series C No. 309; *Case of the Xucuru Indigenous People and its members v. Brazil*, Verdict of 5 February 2018. Series C N° 346. *Case of the Indigenous Communities Belonging to the Lhaka Honhat Association v. Argentina* Verdict of 6 February 2020, Series C N° 400.

[20] Inter-American Commission on Human Rights, Report "Rights of Indigenous and Tribal Peoples over their ancestral lands and natural resources, Norms and jurisprudence of the Inter-American Human Rights System", OEA / Ser.L / V / II., Doc. 56/09 , December 30, 2009, para. 179 and 180.

[21] I / A Court HR. Case of the Yakye Axa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, para. 124 and 137. I / A Court HR. Case of the Sawhoyamaxa Indigenous Community v. Paraguay. Merits, Reparations and Costs. Judgment of March 29, 2006. Series C No. 146, paras. 118, 121. I / A Court HR. Case of the Saramaka People v. Suriname. Preliminary Objections, Merits, Reparations and Costs. Judgment of November 28, 2007. Series C No. 172, para. 122, subtitle D. I / A Court HR Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations. Judgment of June 27, 2012, Series C No. 245, para. 146.

the notion of indigenous territoriality established by Convention 169 and the Declaration on The rights of indigenous peoples.[22] The Inter-American Court has determined that the protection of indigenous property over natural resources is necessary to maintain their forms of life and customs, therefore the protection also extends to cultural rights, and imposes the obligation to guarantee indigenous activities related to natural resources such as fishing, hunting or gathering.[23]

66. It is appropriate to point out that the Inter-American Court established that indigenous territorial rights encompass a broader concept than property, which is related to the collective right to survival as an organized people, with control over their habitat as a necessary condition for the reproduction of their culture, for their own development and to carry out their life plans.[24] This Tribunal sees fit to refer to the case of the Yakye Axa Community v. Paraguay, with respect to which the Tribunal concluded that the petitioners live in conditions of extreme misery as a consequence of the lack of land and access to natural resources, and that as a result, they find it impossible to access adequate housing equipped with basic services, as well as clean water and sanitation services, constituting an infringement on the part of the corresponding State in light of the rights guaranteed by the convention.[25]
67. Carrying out a systematic analysis between the American Convention and the OAS Charter, this Tribunal understands that the right to the environment, included in Article 26 of the Convention, arises from the obligation of States to achieve the integral development of their peoples, as established in Articles 30, 31, 33 and 34 of the OAS Charter.[26]
68. In this regard, the Inter-American Court on Human Rights states that several fundamental rights such as the right to life, security and physical integrity and health,

[22] Inter-American Commission on Human Rights, Report "Rights of Indigenous and Tribal Peoples over their ancestral lands and natural resources, Norms and jurisprudence of the Inter-American Human Rights System", OEA / Ser.L / V / II., Doc. 56/09 , December 30, 2009, para. 182.
[23] Inter-American Commission on Human Rights, Report "Rights of Indigenous and Tribal Peoples over their ancestral lands and natural resources, Norms and jurisprudence of the Inter-American Human Rights System", OEA / Ser.L / V / II., Doc. 56/09 , December 30, 2009, para. 184. I / A Court HR Case of the Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, para. 154, Case of Xkamok Kasek v. Paraguay, Merits, Reparations and Costs. Judgment of August 24, 2010, Series C No. 214, para. 113. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations. Judgment of June 27, 2012, Series C No. 245, para. 148.
[24] ICHR. *Case of the Indigenous Yakye Axa Community v. Paraguay*. Verdict of 17 June 2005. Series C No. 125, paragraph 146. The ICRH arrives at this same conclusion in the *Case of Kichwa Indigenous People of Sarayaku v. Ecuador*. Verdict of 27 June 2012, Series C No. 245, paragraph 147.
[25] ICHR. *Case of the Indigenous Yakye Axa Community v. Paraguay*. Verdict of 17 June 2005. Series C No. 125, paragraph 164.
[26] ICHR. *Case of the Indigenous Communities Belonging to the Lhaka Honhat Association v. Argentina* Verdict of 6 February 2020, Series C N° 400. Paragraph 202.

require a minimum environmental quality as a necessary precondition for their exercise, therefore that pollution and environmental degradation threaten these rights.[27] Notwithstanding the foregoing, in a recent ruling the Inter-American Court recognizes the right to a healthy environment as an autonomous right, and at the same time recognizes the right to adequate food, water and to participate in cultural life.[28] Thus, the Tribunal states that, despite the fact that the right to the environment is an autonomous right, it is unquestionable that other human rights may be violated as a consequence of environmental damage and, in the same way, must be safeguarded.[29]

69. Specifying the scope and substantive content of the right to the environment, the aforementioned ruling refers to the Advisory Opinion OC-23/17, emphasizing that it is an autonomous right that protects the components of the environment, such as forests, seas, rivers and others. It protects Nature and its components as subject/legal assets in themselves, even when there is no certainty or evidence about the risk to people. It is about protecting nature and its utility for all living organisms on the planet, not just for human beings. Regarding this right, the State has the obligation of respect and, likewise, the obligation to provide for this right in such a way as to prevent violations by third parties. It is stated that this obligation to prevent environmental damage is part of customary international law. It is established that the standards required of the State for the application of the preventive principle, against activities potentially damaging to the environment, are: *i)to regulate; ii) supervise and check; iii) require and approve environmental impact studies; iv) to establish contingency plans; and, v) to mitigate in cases where environmental damage has been*

[27] The ICHR has pronounced itself on this subject in numerous reports about the human rights situation in the countries of the SIDH. See, ICHR, *The situation of human Rights in Cuba, Seventh Report.* Doc. OEA/Ser.L/V/II.61, Doc.29 rev. 1-4 October 1983. In paragraphs 1, 2, 41, 60, 61, the court made a statement regarding the relationship between the protection of the environment and the right to health, for the realization of which the provision of water is necessary, as well as hygienic services and services for the disposal of wast3e products. ICHR. *Report on the Situation of Human Rights in Ecuador.* Doc. OEA/Ser.L/V/II.96, Doc. 10 rev.1, 24 April 1997. ICHR, *Third Report on the Situation of Human Rights in Colombia*. Doc. OEA/Ser.L/V/II.102, Doc. 9 rev. 1, 26 February 1999. ICHR, *Third Report on the Situation of Human Rights in Paraguay*. Doc. OEA/Ser./L/VII.110, Doc. 52, 9 March 2001. ICHR, *Access to Justice and Social Inclusivity: the path toward strengthening democracy in Bolivia*. Doc. OEA/Ser.L/V/II, Doc. 34, 28 June 2007. ICHR, *Democracy and Human Rights in Venezuela.* Doc. OEA/Ser.L/V/II, Doc. 54, 30 December 2009. The ICHR has pronounced itself regarding the right to environmental integrity in the *Case of the Saramaka People v. Surinam*. Verdict of 28 November 2007. Series C No. 172.

[28] ICHR. *Case of the Indigenous Communities Belonging to the Lhaka Honhat Association v. Argentina* Verdict of 6 February 2020, Series C N° 400, paragraph. 201.

[29] ICHR. *Case of the Indigenous Communities Belonging to the Lhaka Honhat Association v. Argentina* Verdict of 6 February 2020, Series C N° 400. paragraph 203.

incurred.[30] Due diligence implies acknowledging the fact that environmental problems can affect peoples, groups and tribes in conditions of vulnerability in a different way, such as indigenous peoples and communities that depend on the integrity of the environmental resources for their economy and survival, that conform their habitat.[31]

70. Regarding the right to food, the Inter-American Court supports itself on General Comment No. 12 of the Committee on Economic, Social and Cultural Rights, which indicates the basic content of the right: *"the availability of food in sufficient quantity and quality to satisfy the dietary needs of individuals, without harmful substances, and acceptable for a given culture,"* and *"the accessibility of such foods in ways that are sustainable and that do not hinder the enjoyment of other human rights."*[32] The cultural components of the law and their impact on the conceptualization of the standards of "adequacy" and "food security" that are specific to the law are surveyed.[33]

71. Similarly, the Inter-American Court ruled on the right to water and established its normative content in accordance with the provisions of the United Nations Committee on Economic, Social and Cultural Rights in General Comment No. 15, based on articles 11 and 12 of the PDESC, which establishes that the human right to water includes the right of everyone to have sufficient, safe, acceptable, accessible and affordable water for personal and domestic use. The observation also links the exercise of the right to water to the obligation established in article 1.2 of the PDESC, which states that a people may not be deprived of *"their own means of subsistence."* The regulation establishes preferential rights to local rural communities over their traditional sources of water, safeguarding them from any illegal interference and contamination. Additionally, the right of indigenous peoples to access water in their ancestral lands is established, which must also be protected from all illegal transgression and contamination. To this end, States must provide resources for indigenous peoples to plan, exercise, and control their access to water. Additionally,

[30] ICHR. *Case of the Indigenous Communities Belonging to the Lhaka Honhat Association v. Argentina* Verdict of 6 February 2020, Series C N° 400. paragraph 208.
[31] ICHR. *Case of the Indigenous Communities Belonging to the Lhaka Honhat Association v. Argentina* Verdict of 6 February 2020, Series C N° 400. paragraph 209.
[32] ICHR. *Case of the Indigenous Communities Belonging to the Lhaka Honhat Association v. Argentina* Verdict of 6 February 2020, Series C N° 400. Paragraph 218.
[33] ICHR. *Case of the Indigenous Communities Belonging to the Lhaka Honhat Association v. Argentina* Verdict of 6 February 2020, Series C N° 400. Paragraphs 220 y 221.

the preferential right of nomadic and wandering communities to access drinking water in their traditional and designated camping sites is guaranteed.

72. This Tribunal collects the systematic analysis that the Inter-American Court has carried out of the aforementioned rights and their interdependence, assessing the way in which these rights (to water, to food and to participate in cultural life) are particularly vulnerable to environmental damage. In the same way, it endorses the proposals of the Court insofar as they integrate the necessary relationship between cultural identity and integral development of indigenous peoples, communities and social groups of the continent, in accordance with the normative framework provided by the OAS Charter, the PDCP and the PDESC, which recognize that the right of peoples over their natural resources is linked to the exercise of the right of self-determination, and that this constitutes the cornerstone of articulating their development strategies and preserving their life projects. We note that article 1.2 of the PDCP and the same precept of the PDESC, recognize the right to self-determination of all peoples and link it to the right over natural resources, stating that: *"For the achievement of their purposes, all peoples can freely dispose of their wealth and natural resources, without prejudice to the obligations that derive from international economic cooperation based on the principle of reciprocal benefit, as well as international law. In no case may a people be deprived of its own means of subsistence."*

73. In turn, the Human Rights Committee, based on article 27 of the PDCP, has safeguarded the economic activities of indigenous peoples linked to the use and exploitation of natural resources when they are part of culture. It has determined that this constitutes a limit to the economic freedom of States, who cannot make use of these natural resources if doing so threatens the cultural integrity of indigenous peoples, and must also guarantee the right of participation of the concerned peoples.[34]

[34] The most relevant jurisprudence in the matter is determined by the following cases: *Iván Kitok v. Sweden* (Com. No. 197/1985), opinion of 7/27/1988, paragraph 9.2; This jurisprudence is a precursor in considering the relationship between the economic activity of the State and the culture of an indigenous community, and providing protection under article 27 of the PDCP. *Case of Chief Bernard Ominayac and members of the Lubicón Lake group v. Canada* (Com. N ° 167/1984), opinion of March 26, 1990, paragraph 32.2 and 33; In this case, it was established that the economic activities that are part of the culture and particular way of life of an indigenous community must be safeguarded from threats. It was determined that *"the rights protected by Article 27 include the rights of individuals, in community with others, to engage in economic and social activities that are part of the culture of the community to which they belong."* The Committee recognized that the subsistence and traditional economic activities of indigenous peoples are an integral part of their culture, and that interference with those activities, in certain cases, could be detrimental to their cultural integrity and survival; *Case of Länman et al. v. Finland* (Com. N ° 511/1992), opinion of 10/26/1994. The economic freedom of the State is measured by reference to the obligations imposed by article 27 of the PDCP;

74. Additionally, the Tribunal uses comparative law as a reference in its jurisprudential development, such as **Sentence T-622/2016 of the Constitutional Tribunal of Colombia**, which recognizes the Atrato River, its basin and tributaries as an entity subject to rights, in order to protect them and ensure their survival on the planet, it being the duty of authorities and citizens to adopt measures to protect it and preserve nature.

75. Likewise, **Judgment STC 4360/2018 of the Supreme Tribunal of Justice of Colombia**, which recognizes the Amazon as a subject of Rights and orders specific measures for its protection: *"to the Presidency of the Republic, to the Ministry of Environment and Sustainable Development and to the Ministry of Agriculture and Rural Development to formulate an action plan that counteracts the deforestation rate in the Amazon, and also build an intergenerational pact for the life of the Colombian Amazon; to the municipalities to update their land use planning and to consider a zero reduction action plan for deforestation; to the Corporation for the Sustainable Development of the South of the Amazon and others, to prepare an action plan to solve deforestation problems. Finally, all the defendants must increase actions to mitigate deforestation."*[35]

76. Consequently, what is referred to in the preceding paragraphs will serve the International Tribunal in evaluating the actions of the Plurinational State of Bolivia in the present case of allegations of ecocide and violation of the Rights of Nature. At the same time, by virtue of the principles of integrality and the interdependence of rights, the Tribunal will also pronounce itself on the violation of human rights of the affected populations, in particular of indigenous peoples, that could be derived from the denounced facts.

Diergaardt et al. v. Namibia, (Com. No. 760/1997), opinion of 07/25/2000, paragraph 2.1, 2.3, 3.1 and 10.6, specifies that the right of members of a minority to enjoy their culture in accordance with Article 27 includes the protection of a particular way of life related to the use of land resources through economic activities, such as such as hunting and fishing, especially in the case of indigenous peoples, being insufficient for the application of the precept to accredit exclusively the community use of lands for grazing. *Case of Apirana Mahuika et al. v. New Zealand* (Com. N ° 547/1993), opinion of 11/16/2000. Economic activities fall under article 27 of the PDCP, when they are an indispensable element in the culture of a community, in this case fishing activities even when they are not subsistence activities; *Case of Angela Poma Poma v. Peru*, opinion of 04/24/2009, it was determined that

economic activities of cultural value demand participation in the process that involves the extraction of resources. Participation must be effective and the free, prior and informed consent of community members is required. The lack of consultation, environmental impact studies and measures to minimize and the impossibility of continuing with the activity: substantively compromises the way of life and culture, paragraphs 7.4; 7.5; 7.6; and 7.7

[35] Resolution STC-4360-2018, paragraph 1. https://observatoriop10.cepal.org/es/jurisprudea/sentencia-la-corte-suprema-justicia-colombia-stc-4360-2018

VII. Considerations of the Tribunal about Rights of Nature in relation to the denounced facts

77. The International Tribunal will henceforth refer its considerations regarding the denounced facts, for this, it is deemed pertinent to determine whether Rights of Nature have been violated. Likewise, in light of the collected evidence, determine if the facts constitute the crime of ecocide and specify the typical elements of said figure as an international crime against nature and the beings that we depend on, while identifying those who are responsible.

78. According to the development of the international debate in order to consider ecocide as an international crime, there is no doubt that this responds to an ethical imperative that is consistent with the effective protection of the Rights of Nature as they have been recognized in the Declaration of Rights of Nature and other regulations profusely cited in the considering part of this verdict.

79. This Tribunal considers that any person who causes serious damage to the Earth's ecological system and damages to common ecosystems is guilty of ecocide.

80. The International Tribunal considers that ecocide implies a massive damage or destruction of the "ecological system", that is, of biodiversity and ecosystems produced by human causes; a crime against nature and human beings that are part of nature, affecting their resilience. Ecocide violates the Rights of Nature and human rights and requires: identifying the perpetrators, establishing that they were aware of the effects of their actions, and demonstrating the intent and/or negligence behind their actions.

81. Ecocide is presumed when there is serious damage to common ecosystems, for example: when rivers that cross international borders or biological corridors of species that travel across borders, or when wide geographic areas are affected, as has occurred in the case under analysis.

82. We emphasize that ecocide is at the top of crimes against the Rights of Nature and human rights. It is a crime against nature and against humanity and does not prescribe. It is an attack on the human condition and the condition of nature. In the

case of deforestation in the Amazon and Chiquitania, it is a crime of cyclical ecocide that is repeated every year with different intensity and that is reaching the point of no return, of not allowing the possibility of regeneration and existence of that ecosystem.

83. According to this definition, the elements to determine in order to verify whether in this case a crime of ecocide has been committed are:

    a. The severity of the damage

    b. Establish the causes of damage, action or omission

    c. Identify the perpetrators, accomplices or accessories

    d. Determine the responsibility of the authors, by fraud (intentional) or fault (negligence)

84. Regarding the severity of the damage, in addition to the previously exposed considerations, it should be noted that this factor does not imply not only a matter of magnitude (number of hectares) but also implies an attack on the very existence of that ecosystem and its interrelationships with other ecosystems. In the case of deforestation, there is a point of no return from which the forest begins to die due to the degree of damage, making restoration unviable.

85. In turn, this Tribunal considers it pertinent to evaluate the actions of the State in relation to the facts and evidence presented by the plaintiffs in light of the Precautionary Principle established in International Law (Rio Declaration on the Environment and the United Nations Framework Convention on Climate Change (UNFCCC) and in comparative environmental legislation. This Principle is constituted as a fundamental pillar in the protection of the Environment and nature that aims to guide the conduct of States as an inalienable obligation to prevent or avoid serious and irreversible damage to nature.

86. The information provided by the plaintiffs indicates that the forest fires in the ecoregions of Chiquitania, Amazon and Chaco in Bolivia in the past year 2019, occurred with the manifest intention of expanding the agricultural frontier for

the benefit mainly of agribusiness and livestock. It has been claimed before this Tribunal that "*deforestation in Bolivia in recent decades has increased due to the continuous expansion of the agricultural and livestock frontier, land allocation (...), and the newly implemented economic policies* "[36] ,*in the* same sense, the plaintiffs have referred to the "*beginning of meat export to China and the production of agro-fuels based on sugar cane and soy, are the incentive for deforestation*"[37].

87. The Tribunal has learned that the 2016-2020 Economic and Social Development Plan establishes as one of its goals to expand the cultivated area from 3.5 to 4.7 million hectares by 2020. Likewise, the Patriotic Agenda 2025 proposes in the pillar referring to productive sovereignty that, by the year indicated, agricultural production will have increased, and the population of livestock will have increased and at least tripled its size.

88. The plaintiff has indicated that the Bolivian State has favored the interests of the agro-industrial and livestock business without preserving the right to the environment of human beings and without taking into account the serious impacts of its policies on the lives of other non-human beings and the integrity of ecosystems of planetary importance.

89. Based on these antecedents, the plaintiffs identify: the administrative, legislative, and judicial authorities as the perpetrators of the crime of ecocide, those who designed the policy, approved the legislative package and, once the fires occurred, favor conditions of impunity for the perpetrators, syndicate as perpetrators the factual groups represented by the large cattle ranchers and agro-industrial entrepreneurs, for which this Tribunal has formed a conviction in this regard:

    e. Government of Evo Morales, Government of Jeanine Añez and authorities of the Government of Santa Cruz and Beni.

[36] See Report on Deforestation and forest fires in Bolivia and the violation of human rights and indigenous peoples prepared by the Center for Legal Studies and Social Research (CEJIS) and the National Union of Institutions for Social Action Work (UNITAS), presented to the Tribunal by the Organización Indígena Chiquitana (OICH).

[37] See Report "Affection to ecosystems and protected areas, environmental consequences" presented by representatives of the College of Biologists of La Paz during the appearance at the Hearing on August 17 and 18, 2020.

f. Supervision and Control of Forests and Land Authority and officials from the National Institute of Agrarian Reform.

g. Assembly members of the chambers of deputies and senators of the Plurinational Legislative Assembly, ruling and opposition political parties.

h. Authorities of the Judicial Organ, Agro-Environmental Tribunal and State Prosecutor's Office.

i. Entrepreneurs of the Agribusiness and Livestock Sector [38]

VIII. Considerations of the Tribunal on State conduct in relation to the claimed facts

90. Evidence has been attached that the Plurinational State of Bolivia has systematically approved a set of standards aimed at making agribusiness and livestock viable and, therefore, at facilitating clearing and burning to expand the agricultural and livestock frontier. Policies and the regulatory package approved during the previous government of Evo Morales, have been claimed (in alliance with the opposition parties at the time), actions that have been continued and deepened by the transition government of Jeanine Áñez Chávez.

91. The Tribunal deems it pertinent to point out that Law No. 337 of Support for Food Production and Forest Restitution of December 19th, 2013, known as the Forgiveness Law, has exempted from criminal sanctions those who have dismounted, burned or burned to make way for land, in forest areas between 1996 and 2011, a period that has been extended several times (laws 502/14, 739/15 and 952/17). In line with what was stated by the plaintiffs, the Tribunal considers that the Forestry Law already cited in this verdict establishes as a forest crime "*felling or burning practiced on lands with forest cover suitable for other uses without the authorization of the competent*

[38] In the hearings, evidence is attached that indicates large landowners in the region as presumed responsible in their capacity as factual actors who have promoted the development of deforestation policies for agricultural and livestock development. Among the companies identified by the witnesses are: the Compania livestock exportadora importadora boliviana SA); The Curichi of the Quiroga Zambrana family; It has Cienda Chapadao of Tanure Correa family, among others. Testimonies identified agro-extractive industries and the Santa Cruz agro-industry that is represented by various institutions such as the Eastern Agricultural Chamber (CAO), the Federation of Cattle Eros of Santa Cruz (FEGASACRUZ), the Association of Oilseed Producers (ANAPO), among others. Similarly, it has been observed that it is also the agro-industrial sector that is promoting the regulations that allow the introduction of transgenic crops in the country.

authority or without complying with the regulations on the matter (...) " which constitute" (...) *acts of destruction and deterioration of State property and national wealth typified in Article 223 of the Penal Code.* In turn, this Tribunal considers the documentary evidence brought by the plaintiff that states "*as of 2015, deforestation has increased by 200% due to Law 337 and the flexibility of the approval system*, it also mentions that *the actors who contribute to deforestation in Bolivia are private (63%) and* not small owners or communities"[39].

92. In addition, the Law No. 741 Authorization clearings of up to 20 hectares for small and communal properties, or collective properties for agricultural activities and livestock of the September 29th, 2015, a standard that allows slash and burning in areas of Permanent Forest Production Lands, expressly violating articles 380, 386 and 387 of the Constitution. In addition to the above, the beneficiaries of the Law are exempt from previously carrying out Property Management Plans. The plaintiffs informed the Tribunal that according to the forestry regulations to acquire a Clearing Plan, a Property Management Plan is required, which consists of zoning the property according to its different capacities for use or vocation, which is equivalent to the declaration of environmental impact.

93. In this regard, the Tribunal has learned that Law No. 1171 on the Rational Use and Management of Burns, promulgated on April 25th, 2019, aims to regularize burning without authorization through minimal fines. The sanctions are equivalent to amounts of between 2 and 6 Bolivians (less than US $1) per hectare burned and between Bs. 47 (less than US $ 7) and Bs. 230 (equivalent to US $ 33) as a fixed fine per type of property. The plaintiffs have referred that this regulation translates into the promotion of clearing, favoring mainly livestock entrepreneurs and the agricultural sector.

94. In addition, the Tribunal wants to refer to Supreme Decree 3467 of January 24th, 2018 that modifies agrarian regulations and that empowers the National Institute of Agrarian Reform to distribute public lands as collective units, without taking into account ecological and geographical realities, as mandated by the Constitution and

[39] Information provided by the Forest and Land Authority in a Public Hearing on Accountability and included in the Report on Deforestation and forest fires in Bolivia and the aforementioned violation of human and indigenous peoples' rights.

without the consent of the indigenous peoples whose territories have been impacted by these policies.

95. Additionally, reference has been made to Law No. 1098 of September 15th, 2018 that allows the production, storage, transportation, commercialization and mixing of Additives of Plant Origin, in order to gradually replace the import of Inputs and Additives, and Diesel Oil. The plaintiff has pointed out that with the entry into force of this norm and the approval of Supreme Decree 3874 of April 16th, 2019 that authorizes the National Biosafety Committee to establish abbreviated procedures for the **evaluation of the event HB4 soybean and soybean event Intacta**, the legal framework for indiscriminate deforestation is given. This type of seed is intended to be resistant to droughts typical of the Chiquitano Dry Forest region, for example.

96. In line with the foregoing, the Tribunal wishes to emphasize that Supreme Decrees No. 4232 of May 7th and No. 4238 of May 14th, 2020 adopted during the transitional Government of Jeanine Áñez Chávez not only gives continuity but it also that deepens the claimed facts in as much, said disposition is granted as an exceptional authorization to the National Committee of Biosafety to establish abbreviated procedures for the evaluation of the genetic modification in its different events **, not only of soybeans but also of corn, sugarcane, cotton and wheat**, contravening constitutional mandates and current laws such as Law 071 and Law 300 ,already cited in this verdict, at the same time that the aforementioned provision puts Mother Earth at serious risk, as well as its components and of the beings that depend on her.

97. Likewise, the Tribunal indicates Supreme Decree DS 3973 of July 9th, 2019, which expands clearing in Forest Lands of the Beni department. According to the information received by this Tribunal, this regulation coincides with the 2020-2030 Livestock Development Plan presented by the Livestock Sector, which implies going from 13 million hectares of livestock use, to 20 million to comply with the export commitments of beef to China. Regarding this provision, the Tribunal sees fit to refer to the *Considerations on the rights of indigenous peoples to the Territory, to*

Free and Informed Prior Consultation, to a healthy environment and to the participation in matters that affect them.

98. In appearance before this Tribunal, the plaintiffs have indicated these regulations as the cause of the fires in the Amazon, Chiquitania and Chaco of Bolivia, and have also specified that if they continue to be in force, allowing and promoting the accelerated rate of clearing and burning, all the conditions exist for ecocide to occur again .

99. Likewise, the Tribunal considers that the written and oral evidence that it has heard show that the state bodies for the control and supervision of forests and protected areas are weakened in terms of resources, infrastructure, equipment and personnel, which has derived in a dire situation of lack of capacity to control and audit alert, prevention and reaction to the forest fires of 2019.

100. This International Tribunal has learned that the authorities of different levels of Government of the Plurinational State of Bolivia and of civil society have made multiple efforts to control and extinguish the forest fires reported in this case; however, it has also taken note that despite the magnitude of the events, the National Government did not declare the situation a National Disaster, an aspect that allows us to infer that all the necessary measures were not taken to face the disaster and protect the rights of the Mother Earth and the beings that depend on her, including human rights.

101. The Tribunal considers that the Plurinational State of Bolivia has failed to comply with the constitutional mandate in relation to the Principle of prevention for the protection of Nature. For these purposes, the jurisprudential development of the Plurinational Constitutional Tribunal of Bolivia has been considered as a source of interpretation, whose legal force is that it is the body in charge of interpreting the constitutional norms and setting their scope, this Tribunal has to refer to the Judgment STC 0228/2 019-S4 that, noting the Advisory Opinion 23 of the Inter-American Court of Human Rights, establishes: "*Regarding the obligation of inspection and supervision, the Inter-American Court of Human Rights recalled that as part of the obligation of prevention, the States must oversee compliance with and implementation of its legislation or other regulations relating to the protection of*

the environment, as well as exercise some form of administrative control over public and private operators. Likewise, the control that a State must carry out does not end with conducting the environmental impact study, but rather the States must continuously monitor the effects of a project or activity in the environment. "

102. Based on the considerations referred to the norms and public policies assumed by the Government of the Plurinational State of Bolivia, same ones that show the preponderance of the interest to expand the agricultural frontier over the duty to respect the Rights of the Nature and its components, from people to the environment and interrelated rights, in particular the rights of indigenous peoples. The Tribunal considers that the State's duty is to control and supervise the actions of third parties and other obligations referred to for the States in Advisory Opinion No. 23 of the Inter-American Court of Human Rights, broadly set forth in the preceding paragraphs of this Judgment, has been breached.

103. Considering (i) the seriousness and magnitude of the events claimed, having verified that these irreversibly affect a macro-ecological region, which constitutes a reserve of life, not only for the beings that live there but also for the entire planet ; (ii) that due to its ecological relevance this ecoregion is protected by different categories of conservation, in accordance with national laws and international obligations contracted by the Plurinational State of Bolivia; (iii) the impact on indigenous peoples whose territories have been devastated, putting their cultural integrity and development at serious risk, and causing forced displacement; (iv) the critical impact on indigenous peoples in voluntary isolation who inhabit environmentally damaged territories, putting their survival at risk; (v) the impact on all living things in nature in unprecedented magnitudes, killing enough species in the ecosystem to disrupt its structure and function. ; (vi) the permanence in time of the effects of damage to nature, compromising its ability to regenerate and guarantee a peaceful life through the harmonious relationship between all the beings that inhabit it; and, (vii) that the ecological damage claimed has resulted in a violation of all the inherent rights of Mother Earth established in article 2 of the Universal Declaration of the Rights of Mother Earth, which serves as a normative framework for the exercise of the jurisdictional activity of this Tribunal.

104. Having acted aware that they promoted and maintain a deforestation policy to expand the agricultural frontier in areas where this is prohibited by national and international law (indigenous territories and protected areas), compromising Mother Earth and the lives of millions of living beings, omitting the risk of extermination of Indigenous Peoples in Voluntary Isolation, the environmental displacement of the original communities and, likewise, the environmental vulnerability of the territory, there is no doubt that the action is intentional and malicious.

IX. Considerations of the Tribunal on the rights of indigenous peoples to the Territory, to Free and Informed Prior Consultation and Consent, to a healthy environment and to participation in matters that affect them.

Obligatory nature of indigenous consultation and the elaboration of Environmental Impact Studies

105. The Tribunal deems it pertinent to consider the standards of rights of indigenous peoples in order to then consider the claimed facts. In this sense, it wishes to point out that the rights to participation, consultation and prior, free and informed consent are established in Convention 169 to which this judgment has referred in the Legal Framework applicable to this case. The bases of this right are defined in Articles 6, 7 and 15 of said Convention. It has been established that consultations with indigenous and tribal peoples are mandatory before undertaking any activity of exploration or exploitation of minerals and / or other natural resources found on the lands of said peoples; or whenever it is necessary to transfer indigenous and tribal communities from their traditional lands to another location; and before designing and executing programs or public policies directed to the aforementioned peoples.

106. Deciding on the scope of Article 7 of Convention 169, specifically regarding projects for the exploitation of natural resources and the execution of development plans in indigenous territories, the Committee of Experts on the Application of Conventions and Recommendations of the ILO, which has the legal force conferred upon it by the reliable interpretation of the Treaty, has indicated that: *"[t]he consultation, in the case of natural resources and development projects, is a requirement of the Agreement that must be integrated into a more participatory*

process provided for in Article 7 of the Convention " [40]. In addition to the above, it is clear that the legal bases of the right to autonomy are manifested in the right of these peoples "*… to decide their own priorities regarding the development process, insofar as it affects their lives, beliefs, institutions and spiritual well-being and the lands they occupy or use in any way, and to control, as far as possible, their own economic, social and cultural development.* " (Article 7.1). Along the same lines, the right of the concerned peoples is established to "*… participate in the formulation, application, and evaluation of national and regional development plans and programs capable of directly affecting them*" (Article 7.1).

107. It should be remembered that in accordance with the provisions of Article 7.3, this right implies the carrying out of studies in cooperation with the interested peoples that allow evaluating the social, spiritual, cultural and environmental impact of development projects, information that constitutes a fundamental criterion for decision making.

108. The Inter-American Court of Human Rights has specifically ruled on the standard of consultation, establishing that the State's obligation to consult is a principle of international law.[41] Regarding the obligation to consult, the Inter-American Court of Human Rights, in the context of the case of the *Saramaka* people *with Suriname* , has determined that the State is obliged to consult on six matters: *(i) The process of delimitation and demarcation of the communal territory; (ii) Legal recognition of the collective legal capacity of representative indigenous organizations; (iii) The process of adopting legislative, administrative or other measures that affect the recognition, protection and guarantee of indigenous collective rights: (iv) The process of adopting legislative, administrative or other measures that are necessary to recognize and guarantee the right of indigenous peoples to be effectively consulted, in accordance with their traditions and customs; (v) On the results of the previous studies of social and environmental impact; (vi) In relation to any restriction on the property rights*

[40] Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labor Conference, 98th session, 2009, Chapter on Indigenous Peoples, Observation to Colombia, p. 737.

[41] Tribunal HR. Case of the Kichwa Indigenous People of Sarayaku v. Ecuador. Merits and Reparations. 27 June 2012. Series C No. 245.párrs.165 et seq.

of indigenous peoples, particularly with respect to development or investment plans within or affecting their territories[42].

109. In a progressive interpretation of the American Convention and, applying as a scale of interpretation the norms and principles of Convention 169, quoted above, the Inter-American Court of Human Rights analyzes the rights of effective participation of Indigenous Peoples to rule on the implementation of plans for investment or development in their territories, recognizing that they have the right to prior consultation and that this is a continuous communication process[43]. Regarding the prior nature of the consultation, it is provided that the State has: "… *the duty, from the beginning of the proposed activity, to actively consult (…) in good faith, and with the aim of reaching an agreement, which in turn requires the State to accept and provide information in this regard in an understandable and publicly accessible format* "[44].

110. In summary, the obligation of the state, according to these guidelines, implies the duty to consult, actively and in an informed manner, with said communities according to their customs and traditions, within the framework of constant communication between the parties. [45]

111. The same Inter-American Court of Human Rights has also indicated that the consultations must be carried out in good faith, through culturally appropriate procedures and must aim at reaching an agreement, so that it is a true instrument of participation. The ultimate objective is to establish a dialogue between the parties based on trust and mutual respect, with a view of reaching a consensus and anticipating any type of coercion or bribery against indigenous representation by the State or third parties, with the consent of the latter. The people or the community must be consulted, in accordance with their own traditions. The indigenous representation corresponds to organizations that determine the indigenous peoples themselves, according to internal processes of self - identification and according to

[42] Tribunal HR, Saramaka Case with Suriname, 2008, para. 16.

[43] Tribunal HR, Saramaka Case with Suriname, 2008, paras. 15 et seq.

[44] Ibid., para. 17.

[45] Tribunal HR, Sarayaku Case with Ecuador, 2012, paras. 2 08 - 211.

their traditional systems rather than through structures imposed by the state. The C ort HDR provides that if an internal conflict arises between the members of the Indigenous Peoples during the implementation of a consultation process, it must be resolved by the members of the peoples involved, in accordance with their own customs. say by their traditional norms, and not by the State or judicial bodies (national or international)[46]. These requirements are also part of the standard that imposes that the consultation be adequate and accessible[47].

112. Regarding the timeliness of the consultation, there is consensus that it should be carried out in the early stages of the development or investment plan and not only when the need arises to obtain the approval of the community for the intended plan or implemented project[48]. It implies that the affected communities are involved as soon as possible in the process, and in any case before taking the measure or carrying out the project likely to affect indigenous interest[49].

113. The application of international standards on indigenous consultation developed in this section are conclusive in that in the case of the above, Environmental Impact Studies should have been carried and the corresponding indigenous consultation on settlement and expansion policies for the settlement and expansion of the agricultural frontier, should have been carried out in their habitat, territories and in regards to their ways of life and custom.

114. In effect, norms, administrative measures and activities of great impact on nature have been promulgated, such as agribusiness, livestock and human settlements in indigenous and conservation areas - without prior, free and informed consultation and consent.

[46] Tribunal HR, Saramaka Case with Suriname, 2008, para. 26; I / A Tribunal HR, Sarayaku Case with Ecuador, 2012, paras. 185 - 200

[47] Case of the Sarayaku People with Ecuador, Judgment of June 27, 2012, Judgment on Merits and Reparations, paras. 201-203.

[48] Tribunal HR, Sarayaku Case with Ecuador, 2012, para. 180; Human Rights Committee, Case of Angela Poma Poma with Peru, Com. N ° 1457/2006, opinion of 04/24/2009; paras 7.4; 7.5; 7.6; and 7.7.

[49] Tribunal HR, Sarayaku Case with Ecuador, 2012, para. 181.

115. In respect, the applicants state that, under the approval of the DS No. 3973 already mentioned, the modification of the filed the Beni Land Use Plan, located in the Amazon region of Bolivia. This instrument of territorial ordering was approved by Departmental Law No. 093 despite not having been subjected to a process of Prior, Free and Informed Consultation and Consent. According to the evidence reviewed and analyzed by the Tribunal, the new Beni Land Use Plan modifies the classification of forests, turning these spaces into land for extensive agricultural use. Taking as reference Law No. 300, developed in the preceding paragraphs, which in its article 28.1 indicates that land use planning must incorporate the integral management of life systems in harmony and balance with Mother Earth, respecting the worldview of nations. and native indigenous peoples, in article 28.5 it is also referred that the establishment of institutional, technical and legal instruments to verify that the use of the land and territories is adjusted to the characteristics of the zones and life systems, including the vocation of use and exploitation, conditions for the continuity of life cycles and restoration needs. This Tribunal considers that the implementation of the Beni Land Use Plan violates the Rights of Nature by ignoring basic principles of environmental management and participation; likewise, it does not take into account the obligations contracted by the Bolivian State in international instruments such as the Convention on Biodiversity Diversity, the Ramsar Convention, Convention 169, among others.

116. While the forest fires and the norms and policies promoted by the Bolivian State have specifically affected indigenous peoples and, have especially affected the Ayoreo people (who are in voluntary isolation) in a critical way, the Tribunal sees fit to refer to the national legal obligations of the State in relation to the right to life of indigenous peoples in that condition, which are stated in the Constitution and which have already been exposed in this document. Likewise, the Tribunal has referred to Law No. 450 for the Protection of Native Indigenous Nations and Peoples in Situation of High Vulnerability, which provides prevention mechanisms in different areas to protect isolated peoples from threats and / or attacks in their territories or areas. of influence. This is established in article 6. which urges the authorities to adopt measures that allow, among others:

- Establish the prohibition of entry and the performance of illicit acts by persons outside the territory occupied by the holders of this Law, without the express authorization of them and of the General Directorate for the Protection of Indigenous Nations and Native Peoples, other than in exceptional situations defined in the protocols and action plans.

- Take the corresponding legal and administrative measures in the event of any complaint from a natural or legal person, who knows of forced contacts or unauthorized entry of persons outside the territory of the holders of this Law.

117. The same precept, article 6.II, indicates that public and private institutions that work in the responsible and planned use of natural resources, as well as in the conservation of the environment, must observe the protection and care of the holders of this Law, established in the protocols and differentiated action plans.

118. The International Tribunal considers that such obligations and protection mechanisms have not been adopted by the competent authorities of the Plurinational State of Bolivia, as the expansion of the agricultural frontier in the territories of the Ayoreo people, in voluntary isolation and condition of discharge vulnerability, puts their life and cultural integrity at risk, which has been critically manifested in the serious damage to their ecosystem and environmental displacement produced as a consequence of the fires. It should be borne in mind that the obligation to safeguard the integrity of the territories of the peoples in isolation has been declared by the Plurinational Constitutional Tribunal of Bolivia, in Verdict 0014/2013 L, dated February 20th, 2013, which granted a guardianship to the Pacahuara people of the Northern Amazon, and ordered INRA and ABT to paralyze the extraction of wood in the territory, as it puts at risk the territorial and cultural integrity of said people considered in isolated condition.

119. In addition, the recommendations contained in the Report of the Inter-American Commission on Human Rights on Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas must be taken into account, which includes

the particular situation of isolated peoples in Bolivia[50]. This report highlights Bolivia's commitment to declare the Intangible Zone and the Comprehensive Protection of the Absolute Reserve the territories of peoples in isolation or initial contact[51]. Within the intangible zone, it was established that all prospecting, exploitation and extraction activities of any natural resource are absolutely prohibited, as well as the entry of any external agent, thus preserving the health of the isolated population, and avoiding putting a risk on the lives of the indigenous group. It also prohibits all types of population settlements other than those of the indigenous peoples that inhabit its interior, nor any intervention from peoples to peoples, respecting their own territory and habitat[52]. In the analyzed case, the territory of the Ayoreo People in voluntary isolation corresponds to an intangible zone according to the provisions of Supreme Decree No. 1286, so that the Plurinational State of Bolivia is bound by the terms indicated above.

120. For all that is stated in the preceding paragraphs, the International Tribunal considers that the obligations of respect and guarantee of the rights of indigenous peoples, in particular the right to the Territory, to Free, Prior and Informed Consultation and Consent, to a healthy environment and participation in matters that affect them, as well as those mechanisms for the protection of indigenous peoples in voluntary isolation and vulnerable situations have not been complied with by the Plurinational State of Bolivia. Considering the magnitude of the impact on the intangible Territory of the Ayoreo Indigenous People, it is presumable that there is a certain risk of cultural ethnocide with respect to these peoples.

X. Considerations of the Tribunal on the rights related to a healthy environment, the right to health, to adequate food and the right to water

121. In relation to the right to a healthy environment, health and water of all people, this Tribunal sees fit to refer its considerations in this case in light of the legal standards already indicated in the preceding paragraphs. In this sense, it is recalled

[50] OAS / Ser.L / V / II. Doc. 47/13 December 30, 2013

[51] OAS / Ser.L / V / II. Doc. 47/13 December 30, 2013 Original: Spanish, para. 80. Resolution 48, August 15, 2006, of the National Service of Protected Areas, which creates the Intangible and Comprehensive Protection Zone of Reserva Absoluta Toromona

[52] Resolution 48/2006, articles 4, 5 and 6.

that everyone has the right to live in a healthy environment and the States must promote the protection, preservation and improvement of the environment (Protocol of San Salvador, art. 11). With this article as a basis, the Inter-American Court of Human Rights has issued criteria and jurisprudence that help to understand its scope of protection and obligations of the State. Remarking what was stated in Advisory Opinion OC-23/17 already cited, the Tribunal wishes to emphasize the importance of respect and protection of the environment as part of an indissoluble total of rights, based on the dignity of people, prevailing their protection and in full validity.

122. In accordance with the aforementioned, and I understand these rights in integrity without hierarchy that differentiates them, and enforceable in any circumstance, in relation to the right to life, the Inter-American Court of Human Rights has indicated that the State is obliged to adopt the necessary measures to create an adequate regulatory framework that manages to deter any threat to this right. This implies that any normative provision that allows or facilitates acts that threaten people's lives, imply breaches of the obligations of the States and violations of the right in question.

123. Regarding the specific obligations derived from the Right to a healthy environment, the Tribunal establishes the obligation of prevention, which implies the duty to ensure that no activity carried out within its territory causes significant negative effects on the environment. In order to fulfill this duty, the State must regulate, supervise and control all activities that could contribute to the environmental impact, as well as demand environmental impact studies regarding these activities. Accordingly, every State regulated by the Inter-American System has the obligation to maintain an adequate regulatory framework for the prevention of environmental impact, regulating any activity within the framework of its jurisdiction. Any breach of the obligation of prevention implies a violation of the environment and, in accordance with the principles of interdependence and integrality, also violates the Human Rights listed in the different international instruments, including a dignified life. In this sense, the regulatory provisions that allow the indiscriminate burning of forests and the lack of supervision of those who

carry out this activity, are acts that violate the Human Rights of all the people who depend on nature.

124. According to the evidence considered by the Tribunal, the forest fires have seriously affected nature and with it the human habitat essential for the full enjoyment and exercise of the rights of indigenous peoples and Bolivian inhabitants, in general.

125. It is worth highlighting the testimony of Mrs. Polonia Supepí: "During these 4 months our supplies were exhausted, our crops which are reserves for the whole year were also exhausted. In many communities, there is no water because with the first rains the ash contaminated our water sources". Likewise, the Tribunal has been informed about the health problems and respiratory diseases of Bolivian families, due to the fires. It is pertinent to consider that the right to water is one of the main rights that has been put at risk with forest fires. According to testimonies and evidence, "this situation is aggravated by the prolonged drought and the rains that put out the fires, that drag the ashes to the few available water sources that remain in the affected areas."

126. By virtue of the evidence by the Tribunal and in light of the provisions of the Constitution, current legislation, Article 11 of the Protocol of San Salvador and Article 26 of the American Convention, in addition to other International Instruments signed and ratified by the Plurinational State of Bolivia, as well as Advisory Opinion OC-23/17, insofar as environmental rights are a fundamental basis for the exercise of other human rights, this Tribunal considers that forest fires have resulted in a violation of human rights referring to a healthy environment, health, adequate food and people's right to water.

XI. DECISION

127. The International Tribunal rules for all those animals and plants that have no voice, those environmental refugees whose rights have been violated by these fires; for the Chiquitano Forest and its vulnerable and representative species: borochi, jaguar, paraba azul, tapir; in the Pantanal, by: the deer of the marshes, londra, pecarí, yacaré, capybara, sicuri; in the Chaco, by: the Chaco peccary, guanaco, deer of the pampas, jaguar, black manechi, range, ñandú; the more than 6341 plants recorded in these ecosystems, many of them endemic and by all the spiritual beings that inhabit the forests.

128. Regarding the present case of Chiquitanía, Chaco and Amazonía v. Plurinational State of Bolivia, the International Tribunal decides that it is an ecocide caused by State policy and agribusiness, for which all the Rights of Nature contained in article 2 of the Declaration of Mother Earth have been violated. Likewise, the Tribunal determines that there has been an impact on the rights of indigenous peoples to the Territory, to Free and Informed Prior Consultation and Consent, to live in a healthy environment and to participate in matters that affect them, in particular it resolves that the right to exist of the Ayoreo indigenous people in voluntary isolation, is at serious risk. This Tribunal also decides that the claimed facts have constituted a violation of the rights of people to live in a healthy environment, to health, to adequate food and to water.

129. The International Tribunal concludes that unionization as perpetrators of the crime of ecocide against the Chiquitania, Amazon and Chaco ecoregion of Bolivia corresponds to:

- Government of Evo Morales, Government of Jeanine Añez and authorities of the Government of Santa Cruz and Beni.

- Authority for the Supervision and Control of Forests and Land (ABT) and authorities of the National Institute of Agrarian Reform (INRA).

- Assembly members of the chambers of deputies and senators of the Plurinational Legislative Assembly, ruling and opposition political parties.

- Authorities of the Judicial Organ, Agro-Environmental Tribunal and State Prosecutor's Office.

- Businesspersons of the Agroindustrial and livestock sector.

130. The International Tribunal urges the Plurinational State of Bolivia to adopt the following measures:

Integral restoration measures

1. Immediately inform the Office of the Ramsar Convention about the damage caused by forest fires to Ramsar sites, in compliance with the obligation of the Bolivian State established in the Convention Relative to Wetlands of International Importance as Habitat for Waterfowl.

2. Prepare Environmental Impact Studies that allow to establish the real magnitude of damage caused to ecosystems, their balance and components, animals and water sources.

3. The Bolivian State at its different levels must guarantee the participation and the prior, free and informed consent of the indigenous peoples in the formulation, debate and application of any normative or administrative measure related to the restoration, recovery, regeneration and protection of the ecosystems of the Chiquitania, Chaco and Amazon.

4. Review the Restoration Plans of the National Government and the Subnational Governments that have been prepared without the corresponding participation and consent of the affected indigenous peoples.

5. Guarantee that the competent authorities, including autonomous indigenous authorities, have the resources to be able to execute Comprehensive Restoration Plans.

6. Respect the right to the existence of nature and guarantee the integral restoration and maintenance of its life cycles, structure, functions and evolutionary processes.

Reparation measures

7. Guarantee an effective ecological pause in protected areas and Ramsar sites to allow affected forests and ecosystems to regenerate and recover. Where there are subsistence activities, and where ecological pause is not an effective restoration mechanism, active restoration or ecological restoration will be required, including the planting of native species, among other techniques, to help the forest recover and regenerate. To ensure the regeneration of the forest, it is essential to avoid future fires and to allow nature to recover naturally, on its own, at least initially.

8. Avoid the introduction of exotic species, particularly forest monocultures, transgenic crops, the enabling of grasslands and the development of industrial agriculture.

9. Refrain from encouraging policies favoring human settlements in areas considered to be have high ecological fragility and prevent illegal settlements.

10. Initiate processes of investigation and punishment of those guilty of ecocide in the Bolivian legal system to determine the degree of responsibility of state authorities of the different levels of government and of private persons, natural or legal.

11. Establish Environmental Audits with independent external auditors and monitoring systems.

12. In relation to the Indigenous Peoples in a situation of isolation and high vulnerability:

12a. Fully comply with the provisions of Law No. 450 for the Protection of Indigenous Nations and Peoples of High Vulnerability, and adopt the regulations that allow its immediate implementation. Proceed with the creation of the General Directorate for the Protection of Indigenous Peoples that is contemplated by the Law.

12b. Take all the necessary measures for the restoration of the Territory of the Ayoreo People in isolation (especially the Ñembi Guasu area and the Santa Teresita TCO) and

guarantee its intangibility by preventing the development of extractive activities and human settlements.

12c. Take all measures to guarantee the right to life, physical, mental and health integrity of the Ayoreo people affected by the fires through the creation of sanitary protection networks, food sovereignty, environmental conservation, participative design, in a corresponding measure, of emergency or contingency plans, health policies and practices, and anthropological advice for attention to contact, if appropriate.

Non-repetition Guarantees

13. Abrogate the regulations that promote slashing and burning, specifically the following:

- Law No. 337 on Support for Food Production and Forest Restitution and Supreme Decree 1578, regulatory.

- Law N ° 502, Law N ° 739 and Law N ° 952, of extensions of the terms and modifications of Law 337.

- Law No. 741, Law for the Authorization of Slash and Burn of up to 20 hectares for small, community and collective properties for agricultural and livestock activities.

- Law No. 1171, Law of Rational Use and Management of Burns.

- Supreme Decree 3973 of Modification and Expansion of Slash and Burn for agricultural activities on private and community lands.

- Law N ° 1098 and DS 3874 on the authorization of transgenic soybean events associated with the production of biodiesel.

- Departmental Law 93/2019 (Beni) on the approval of the Beni Land Use Plan.

- DS 4232 and DS 4238 that authorize the National Biosafety Committee to establish abbreviated procedures for the evaluation of corn, sugar cane, cotton, wheat and

soybeans, genetically modified in their different events, destined to supply internal consumption and external commercialization.

- RA 084/2020 SENASAG that approves phytosanitary requirements for the importation of Eucalyptus spp. to be implemented in forest plantations.

14. Annul the resolutions of human settlements in Fiscal Lands that have been authorized without respecting the natural potentialities, the capacity for greater use of the land and the right to consultation and free, prior, and informed consent of the indigenous peoples.

15. Revoke all authorizations for slash and burns in the areas affected by the fires, and prohibit the issuance of new authorizations in order to avoid the repetition of fire events, except those that respond to traditional practices exclusively for the purpose of subsistence with the due control of state authorities and / or indigenous autonomous authorities.

16. Establish in forest areas and/or protected ecosystems, a moratorium on those activities that require the expansion of the agricultural frontier for their development, mainly agribusiness, large livestock, and the production and marketing of agrofuels.

17. Establish limits and prohibitions on the export of products that destroy biodiversity and ecosystems.

18. To comply with current legislation that guarantees the Rights of Nature and to make the operation of the Ombudsman for Mother Earth effective.

19. Guarantee the application of the precautionary principle in all activities with a possible impact on nature.

20. Define a new production model, respecting the regeneration capacities of the components, areas and life systems of Mother Earth, in accordance with the constitutional precepts and current legislation in harmony with nature and Living Well.

The Tribunal takes it on itself to follow up on this crime of ecocide of continuous execution, as it continues to be repeated, and to establish a permanent commission to monitor it.

This International Tribunal strongly recommends that the organizations, communities and groups that have presented evidence in this hearing, present this case of violation of the Rights of Nature before the Bolivian legal framework. Likewise, present the case of violation of the rights of indigenous peoples and, in particular, of the Ayoreo people in voluntary isolation, for the purpose of investigating whether a cultural ethnocide has occurred.

Finally, this jury will open this verdict to the entire Assembly of Judges of the Tribunal to obtain more adhesions, which will be circulated in a month with all the obtained signatures.

This is hereby certified by:

Natalia Greene López (Ecuador)
Secretary
International Rights of Nature Tribunal

Signing this judgment:

Nancy Yánez (Chile)
Judge - Hearing of the Chiquitanía, Chaco and Amazonía v. Plurinational State of Bolivia

Felicio Pontes (Brazil)
Judge - Hearing in the Chiquitanía, Chaco and Amazonía v. Plurinational State of Bolivia

Patricia Gualinga (Kichwa Indigenous People of Sarayaku - Ecuador)
Judge - Hearing in the Chiquitanía, Chaco and Amazonía v. Plurinational State of Bolivia

The following former International Rights of Nature have added their signatures in support of this Tribunals Decision:

Antonio Elizalde (Chile)

Ashish Kothari (India)

Maristella Svampa (Argentina)

Rocío Silva Santiesteban (Peru)

Edgardo Lander (Venezuela)

Helena Paul (England)

Osprey Orielle Lake (United States)

Francesco Martone (Italy)

Verónika Mendoza (Peru)

Alberto Acosta (Ecuador)

Enrique Viale (Argentina)

Shannon Biggs (United States)

Cormac Cullinan (South Africa)

Valerie Cabanes (France)

Margaret Stewart (United States)

Tom Goldtooth (Dine Dakota – United States)

Elsie Monge (Ecuador)