

# **TENTH LOCAL RIGHTS OF NATURE TRIBUNAL**

## **CASE:**

### **MAYA TRAIN MEGAPROJECT**

#### **PARTICIPATING JUDGES:**

- Maristella Svampa - Argentina. President of the Tribunal
- Raúl Vera - Mexico
- Yaku Perez - Ecuador
- Francesco Martone - Italy - Ecuador
- Alberto Saldamando -Chicano/Zapoteca - USA

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# THE RIGHTS OF NATURE TRIBUNAL

## MAYA TRAIN CASE

### Summary

The International Rights of Nature Tribunal recently held a local hearing in Valladolid, Yucatan, Mexico, from March 9 to 12, 2023. The purpose of the hearing was to address concerns related to the implementation of the "Maya Train" project. This project involves the construction of a large rail transport system and is part of a larger plan to reorganize the Yucatan Peninsula. However, there are serious concerns that this development initiative poses significant risks to the ecosystems and the indigenous Mayan communities. It could lead to environmental destruction and degradation, threatening the sustainability of Mayan cultures and ancestral lands.

The evidence presented during the hearing, including various testimonies, highlighted that the Maya Train project is not limited to a mere train system or exclusively focused on serving the Maya communities. Instead, it is a massive undertaking that extends along the entire southern border of Mexico. Its development is driven by migration, politics, economics, trade, and tourism, all stemming from geopolitical interests. The project is linked to the Interoceanic Corridor, which aims to connect the Pacific and Atlantic Oceans through the Isthmus of Tehuantepec. It involves multiple economic endeavors, such as large-scale pig farms, renewable energy projects, and agro-industrial initiatives. The overall plan revolves around establishing "Development Poles," which will further exacerbate the existing social, cultural, environmental, and gender-related impacts experienced in the Yucatan Peninsula.

It is concerning that the authorities have not shared a comprehensive Master Plan for this project with the affected communities. There has been no opportunity for dialogue or discussion to address the concerns and interests of the people directly affected by these developments.

The Maya Train is part of a larger development initiative that includes the Program for the Development of the Isthmus of Tehuantepec, the Sembrando Vida program, and the Mesoamerican Integration and Development Project. However, these projects have faced opposition due to their negative social and environmental impacts.

During the visit to the affected communities of Pisté, El Señor-Xmaben, and Tihosuco, the Tribunal had the opportunity to listen to testimonies from members of these Maya communities. They also visited cenotes and caverns in Playa del Carmen, which are already being impacted by the construction of the Maya Train. The Tribunal was accompanied by environmental organizations such as SOS Cenotes and Cenotes Urbanos, as well as scientists, academics, and concerned citizens who advocate for the protection of water, caves, and the jungle.

On Saturday March 11, a hearing was held at the School of Ecological Agriculture in Valladolid, Yucatán. During this hearing, the Tribunal received 23 testimonies from representatives of indigenous communities in Yucatán, Campeche, Chiapas, and Quintana Roo, as well as from citizen and environmental organizations. Expert reports were also presented by academics and researchers in various fields related to forestry, agriculture, aquatic and terrestrial ecosystems, biodiversity, ecological sustainability, cultural and territorial rights, political ecology, and environmental engineering. These testimonies and reports provided compelling evidence that established a clear connection between the accusations made by the Earth Prosecutor and the documented damages to nature and violations of community rights.

It is worth noting that no representative of the State attended this hearing, despite being duly invited through multiple channels. The invitation was sent to the Mexican Embassy in Ecuador, which serves as the Tribunal's headquarters, as well as through email and in person on March 7. Various government entities, including the Government of Mexico, the National Human Rights Commission, the National Fund for the Promotion of Tourism, the Ministry of Environment and Natural Resources, the National Institute of Indigenous Peoples, the Ministry of Urban and Territorial Development, and the National Commission of Protected Areas were all invited but did not attend.

Based on the provisions of the Universal Declaration of the Rights of Mother Earth, Convention 169 of the International Labor Organization, the Declarations of the United Nations and the Organization of American States on the Rights of Indigenous Peoples, the Convention on Biodiversity, the Escazú Agreement, the 2030 Agenda for Sustainable Development Goals, and the jurisprudence issued by both the Inter-American Human Rights System and the Universal Human Rights System, as well as the legislation of the United Mexican States, this Ethical Tribunal, in the name of the Rights of Mother Nature, of Humanity and of the generations to come resolves as follows:

- I. To recognize in an irrefutable way the violation of the Rights of Nature and the biocultural rights of the Mayan People, who have been and continue to be protectors and guardians of their territory. Of their cenotes, caves and coasts; their jungles, their biodiversity and traditional crops, and the non-human beings that inhabit their ecosystems, all of which constitute crimes of ecocide and ethnocide. The Tribunal holds the Mexican State responsible for the violation of these fundamental rights of Nature and of the Maya People.
- II. To declare the violation of the Rights of Mother Earth, her right to life and to exist; her right to be respected, the right to the regeneration of her biocapacity and the continuation of her vital cycles and processes free of human alterations; the right to water as a source of life; the right to integral health; the right to be free of contamination, pollution and toxic or radioactive waste, all of which are recognized in Article 2.1, paragraphs a) b) c) e) g) and h) of the Universal Declaration of the Rights of Mother Earth.
- III. To condemn the authorities of the United Mexican States to the immediate suspension of the Tren Maya Megaproject with all its components, as well as the

demilitarization of indigenous territories. We demand that the State, particularly the Government and the Executive branch of it, cease the dispossession of *ejido* lands, or communal lands, and territories in general, as well as to end the persecution, threats, harassment and intimidation of Nature defenders.

IV. To declare the cenotes as a subject of rights, as they constitute the most important water source for the survival of the people, communities, and animal and plant species in the region.

V. As comprehensive reparation measures, the Tribunal orders:

a) To conduct an independent, inter- and transdisciplinary and intercultural audit, with the participation of the communities affected by the different sections of the Maya Train project and by the Master Plan, which to date has not been presented by the competent authorities. In this regard, the environmental impact statements should be systemic and not partial and include not only this project, but all those planned for the area.

b) To comprehensively repair and restore all ecosystems that have been affected by the execution of the Maya Train and its collateral facilities, as well as all social impacts generated by this project in terms of communal land tenure and territories.

c) To suspend the processes of dispossession and expropriation of cultural land from the communities and review the processes of dispossession and expropriation already carried out.

d) To immediately demilitarize the territory and guarantee the lives of the people who have expressed their disagreement with the project and other programs linked to it.

VI. Exhortations

Urge the companies and investors in the project to respect the collective rights of the peoples provided for in the Escazú Agreement and in the other norms established in the legal system aimed at guaranteeing the rights of the peoples.

Exhort the federal Executive and Legislative branches to:

Revise the Agrarian Law that establishes the social ownership of land, so that it is replaced by a law that contemplates the socio-ecological function of the territory in its indissoluble relationship with the sustainable cultural practices of the peoples and communities that ancestrally inhabit them.

Carry out constitutional reforms to incorporate the recognition of Nature as a subject of rights.

Carry out constitutional reforms at the Federal level to recognize Indigenous Peoples as subjects of public law.

To the Judicial Branch of the Federation:

Apply the highest national and international standards of protection in environmental matters and the rights of Indigenous Peoples in all lawsuits that have been filed against the Maya Train Megaproject for violations of the Rights of Nature, water, as well as cultural rights.

The Rights of Nature Tribunal determines that the construction of the Project called "TREN MAYA" violates the Rights of Mother Earth established in the Universal Declaration of the Rights of Mother Earth, especially the right to life and to exist; to be respected; to the regeneration of its biocapacity and continuation of its cycles and vital processes free of human alterations; to water as a source of life; the right to integral health; and the right to be free of contamination, pollution and toxic or radioactive waste; recognized in Article 2.1 letters a) b) c) e) g) and h).

The above stands in relation to the rights to land, territory, natural resources, cultural integrity and self-determination, recognized in Convention 169 of the International Labor Organization and the United Nations Declaration on the Rights of Indigenous Peoples.

This Tribunal used the information gathered during its field visit and meetings with local organizations and communities, as well as during the course of its hearing, and the materials and documents collected and analyzed in preparation for the hearing to support its decision.

### **Proceedings before the Tribunal**

The Assembly of Defenders of the Múuch' Xiinbal Maya Territory and the Mexican Civil Council for Sustainable Forestry approached the International Rights of Nature Tribunal on June 5, 2022, and presented the case of the impacts of the Maya Train. On June 28, 2022, the Assembly of Judges of the International Tribunal for the Rights of Nature analyzed the case presented by the communities and organizations of the province of Yucatan, and considering the seriousness and urgency of the issue due to the rapid advance of the Train, convened a session of the International Tribunal for the Rights of Nature and an *on-site* visit by the participating judges for the beginning of March 2023.

### **Hearing and visit of the Tribunal**

The Tribunal visited the communities of Pisté, El Señor-Xmaben, Tihosuco where delegates from various regions participated<sup>1</sup> and heard testimonies from Maya indigenous

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<sup>1</sup> Communities heard during the tour: Pisté and Buctzotz -Yucatán; Señor, Xmaben, Ramonal, Yax-Ley, Felipe Carrillo Puerto, Chunhuhub, Tihosuco, Candelaria, Dziuché, José María Morelos - Quintana Roo.

communities, social collectives and environmental groups, totaling 23<sup>2</sup> of them. The hearing was held on Saturday, March 11 at the School of Ecological Agriculture in Valladolid, Yucatan, where the Tribunal heard representatives of indigenous communities and citizen groups, as well as expert reports from academics and researchers in forestry and agriculture, aquatic and terrestrial ecosystems, on biodiversity and ecological sustainability, on collective rights and the Rights of Nature, political ecology and environmental engineering, in relation to damages to nature, ecological risks and the impact on the culture and inalienable rights - cultural, territorial and existential - of the communities. Additionally, the judges conducted an *on-site* verification<sup>3</sup> of the damages caused to nature in Quintana Roo.

## **I. FUNDAMENTALS**

1. The Tribunal is constituted to promote universal respect for and guarantee of the rights set forth in the Universal Declaration of the Rights of Mother Earth (hereinafter the Declaration), in order to promote harmonious coexistence between human beings and other beings of Nature.
2. The Declaration was adopted by the World People's Conference on Climate Change and the Rights of Mother Earth, held in the city of Cochabamba, Bolivia from April 19-22, 2010. At this conference, 142 countries were represented by official delegations, groups and social movements. This Declaration is the first international civil society instrument to consider Nature as a subject of rights, thus overcoming the anthropocentric paradigm of protecting Nature.
3. Article 2 of the Declaration recognizes that Mother Earth has the right to live, to be respected, to its regeneration, to continue with its vital cycles and processes free of human alterations, to maintain its identity and integrity, to be self-regulated and interrelated, to water as a source of life, to integral health, free of contamination, pollution and toxic waste, to not be genetically altered and modified, and to its full and prompt restoration.
4. The Tribunal also takes as a reference the 2008 Constitution of the Republic of Ecuador, which recognizes Nature as a subject of rights, and also takes into account the provisions of Bolivian legislation - mainly Law No. 071 on the Rights of Mother Earth - which was inspired by the content of the Declaration. Furthermore, the Tribunal takes into account that the right to a healthy environment has been recognized by several States of the continent, which include it in their respective Constitutions, where it is stated that the right to a healthy environment is derived

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<sup>2</sup> Twenty-three testimonies that represented the voices of the Communities of Pisté, Tizimin, Sanahcat, Ticul, Izamal, Valladolid, Cantamayec - Yucatán; Communities of Tihosuco, Bacalar, Nuevo Jerusalem - Quintana Roo; Communities of Don Samuel Escárcega, Community of Ich Ek, Hopelchen, Isla Arena, Xpujil, Calakmul, Xcalot Akal, Xkix, Chencoh, Suc-Tuc, Komchen - Campeche; Communities of Salto del Agua, Palenque - Chiapas. Asamblea de Defensores del Territorio Múuch Xiinbal; Consejo Regional y Popular Indígena de Xpujil - Calakmul; Consejo Indígena de José María Morelos U Yo'ol Lu'um; Centro Comunitario Maya U Kúuchil K y Ch'i'ibalo'on de Felipe Carrillo Puerto.

<sup>3</sup> The Tribunal had the opportunity to physically verify, on Sunday, March 12, the irreparable damage caused by the construction of the Tren Maya in Section 5, guided into the caverns by citizen groups such as Sálvame del Tren, SOS Cenotes, Cenotes Urbanos, which will affect more than 100 caverns and cenotes located directly under the Tren Maya route, and that more than 9 million trees have already been deforested.



from human rights. Likewise, it will consider the jurisprudential development of the Republic of Colombia, which recognizes the Atrato River and, subsequently, the Amazon as a subject of rights and protection.

5. The Tribunal is also governed by the provisions of the Universal Declaration of Human Rights, the Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights, the American Convention on Human Rights, the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights, Convention 169 of the International Labor Organization, the Universal Declaration on the Rights of Indigenous Peoples and the American Declaration on the Rights of Indigenous Peoples, without prejudice to other instruments that the Tribunal considers relevant in the matter.
6. The Tribunal is guided by the ethical and philosophical foundations that inspire the Declaration, in particular, that all inhabitants of the Earth are part of the universe, and we must respect this order, recognize and accept the intrinsic nature of Mother Earth, protect all species that coexist with the human species in order not to continue reifying Nature, considering it as a mere commodity that we can benefit of, exploit, degrade, minimize and ignore.
7. There is also the concept of *Wild Law*, which provides that laws should be in place to deepen the connection between all humans and Nature by guiding humans to act in ways that are compatible with the larger jurisprudence and thus promote harmonious coexistence within the Earth 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 in relation to the rights of other communities to live and self-regulate, are born. Understanding that, in reality, the one who gives us the right to live is Mother Earth, and Mother Earth is never wrong.
8. For the analysis of the issues discussed before this Tribunal, it is necessary to divide them into different parts, so that this judgment is duly organized and easy to understand. It should be noted that the main purpose of the hearings held before this Tribunal was to hear and review the evidence presented by the interested parties.

## **II. BACKGROUND OF THE CASE**

9. According to what was presented before this Tribunal and what was documented in its visits to communities affected by the Tren Maya Megaproject, this project will include a railway line of approximately 1,500 kilometers and the establishment of approximately 19 stations and 12 stops, as well as tourist infrastructure that will constitute new population centers and "development poles" (also called "sustainable communities") in the states of Chiapas, Tabasco, Campeche, Yucatan and Quintana Roo, in Mexico. In addition, wind farms and large-scale photovoltaic plants will be built.
10. The project covers more than 50 municipalities and 5 states in southeastern Mexico, which are currently home to a variety of indigenous peoples and farmers, as well as

being one of the most biodiverse areas in the world. The railroad crosses the Selva Maya, the second largest forest in Latin America after the Amazon.<sup>4</sup> The route consists of seven sections. Section 1 goes from Palenque to Escárcega (228 km); section 2 from Escárcega to Calkiní (235 km); section 3 from Calkiní to Izamal (172 km); section 4 from Izamal to Cancún (257 km); section 5 from Cancún to Tulum (121 km); section 6 from Tulum to Chetumal (254 km); and section 7 from Chetumal to Escárcega (287 km). The construction is included in the National Development Plan (PND) where it is mentioned as a project "aimed at increasing the economic flow of tourism in the Yucatan Peninsula, creating jobs, promoting sustainable development, protecting the environment of the area, discouraging activities such as illegal logging and species trafficking, and promoting the territorial organization of the region". The Maya Train is part of the 6 programs and projects that will "guarantee employment, education, health and well-being", which also include: 1) Sustainable Communities "Sembrando Vida", 2) the Inter-Oceanic Multimodal Corridor, 3) the Northern Border Free Zone, 4) Highway Infrastructure programs and 5) the "Felipe Angeles" Airport in Santa Lucia.

11. According to the Mexican Government, this project "will strengthen the territorial organization of the region and boost its tourism industry. It will generate economic benefits and increase connectivity in the Yucatan Peninsula, allowing the efficient movement of cargo and passengers, which will reduce the time and cost of transporting goods, passengers and tourists within the peninsula."<sup>5</sup> Additionally, this project is based on 4 main axes: cargo and passenger transportation service; reactivation of the economy of the Yucatan Peninsula; utilization of existing railroad lines with the objective of minimizing environmental impact; and the generation of development poles by virtue of the 19 stations planned to be built, arguing that it would generate a direct benefit to the communities, especially in terms of tourism and jobs.
12. The Tren Maya project has precedents in other tourism rail projects that have been proposed for the Yucatan Peninsula in the last 10 years. The most recent example is the Transpeninsular Train project from Merida to Punta Venado, which was cancelled in early 2015. However, the proposal for connectivity and integration of tourist attractions in the southeast is at least three decades old. The formal initiative of a railroad for tourism purposes in the Yucatan Peninsula was born at the end of 2007, with the proposal of the Mayan Train project between the cities of Merida and Cancun, by the Government of Yucatan and supported by the Government of Quintana Roo. By 2010, at the end of the first financial feasibility studies, the project changed its name from Bullet Train to Fast Train and an investment of between US\$ 403 and 565 million was estimated. By the end of 2012 and beginning of 2013, the project was adopted by the incoming Federal Government, changing its name to Trans-peninsular Train and modifying the route to Punta Venado, Quintana Roo; with a route of 278 km and an estimated investment of US\$ 1,500 million. During

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<sup>4</sup> The Calakmul Biosphere Reserve is the second largest in Latin America in terms of hectares, so the construction of the Tren Maya Megaproject would cause significant impacts on the vegetation, soil, water and biodiversity of one of the most biodiverse places in the region and the world.

<sup>5</sup> <https://www.gob.mx/trenmaya>

2013, feasibility and topographic studies were conducted for the design of the Trans-peninsular Train, whose Regional EIA was submitted to the environmental authority at the end of that year. In early 2014, SEMARNAT rejected the project's MIA. A year later, the Federal Government announced the cancellation of the project arguing financial unfeasibility, especially because it did not meet the minimum capacity required to be self-sufficient in its operation and at a given time it would be too expensive for users.

13. The new railroad project would seek to enhance the tourist attractions in southern Mexico, integrating the main archaeological centers of the Maya culture. In addition to the ruins of Chichén Itzá (Yucatán), Calakmul (Campeche) and Tulum (Quintana Roo), the train will visit tourist attractions such as Campeche, Mérida, Izamal and Valladolid.
14. Considering all state and federal reserves, the new railroad project will cross through the area of influence of 15 protected natural areas (including the Calakmul Biosphere Reserve, a UNESCO World Heritage Site), which were designed for the conservation of biodiversity in general and to preserve threatened or endangered species of fauna in particular.
15. It is worth mentioning that the Ministry of National Defense, to which the company Tren Maya S. A. de C.V. is attached, are in charge of the construction of almost half of the railway line, as well as the operation, management and administration of the profits of the railway line and the airports of Palenque, Chetumal and Tulum linked to it, and 6 new hotels. Also, the operation of the so-called Tren Maya, in addition to many of its adjacent projects, will be managed by the Ministry of National Defense (SEDENA), fundamentally in the hands of the Mexican Army.
16. In November 2021, the government of Andrés Manuel López Obrador issued a decree declaring that megaprojects and other infrastructure works, such as the Maya Train, will be considered of public interest and national security, in order to promote the national project of the so-called "Fourth Transformation". In the case of the Maya Train, this is intended to guarantee that no legal recourse can stop the construction, such as the injunctions filed against it. At the same time, this type of shielding adds greater opacity to the project, as it *de facto* reinforces the protection of these works in terms of publicity, data or information related to them. The initiative has been criticized by international organizations such as Human Rights Watch (HRW). Despite the fact that said Decree was declared unconstitutional by the Supreme Court, the Federal Government issued, on May 18, 2023, another decree in the same sense, i.e., declaring the Maya Train project and other infrastructure works as works of public interest and national security.

## **A. MAIN IMPACTS ON NATURE**

17. The Maya Train Project and associated works present multiple risks and negative ecological and environmental impacts throughout southeastern Mexico, which is a region with great biodiversity and an important value for the conservation of the jungle, the aquifer and the biological diversity of the Maya territory. Research

conducted by a multidisciplinary team for the National Council of Science and Technology (Conacyt, recently converted into the National Council of Humanities, Sciences and Technologies, CONAHCyT), has indicated that the project will affect several regions of Chiapas and Tabasco, including jungles, swamps and savannahs, while in the Yucatan Peninsula the largest and best preserved tropical forests in Mexico and Mesoamerica, as well as areas with mangroves and other wetlands, will be affected. These ecosystems will suffer disturbances such as degradation, fragmentation, and deforestation due to the construction, development, and operation of the Tren Maya project. Although CONAHCyT did not make this information public, recently several of the specialists who contributed to it published some of the main findings of this collective work<sup>6</sup>.

18. Along the same lines, and according to various environmental organizations, indigenous communities, academics and specialists in various branches of the natural and social sciences, there are serious impacts to nature resulting from the project, which in turn will generate far-reaching social and cultural impacts. Some of these impacts are already beginning to become evident, as will be discussed below. These impacts can be summarized as follows:<sup>7</sup>
19. Fragmentation of the territory: The Maya Train will have a territorial fragmentation effect on the Yucatan Peninsula, causing the division and rupture of ecosystems. This project will affect 23 Natural Protected Areas, including the Sian Kaan and Calakmul Biosphere Reserves, 7 Priority Terrestrial Regions, 11 Priority Hydrological Regions, and 10 Important Bird Areas. The proposed works will increase the loss of ecological connectivity between conservation areas, which will reduce forest cover, isolate flora and fauna populations, disrupt biological corridors, change microclimates, transform habitat, and cause species extinctions. This could turn these areas that are currently rich in biodiversity into degraded and inhospitable places.
20. Depletion and contamination of the Yucatan Peninsula aquifer: Currently, the water supply in the Yucatan Peninsula comes solely from subway aquifers. The Maya Train project is expected to affect permanent and intermittent lagoons, flood zones, temporary runoff, and wetlands, especially in the municipalities of Benito Juárez, Tulum, Felipe Carrillo Puerto, Pedro Antonio Santos, Bacalar, and Othón P. Blanco in the state of Quintana Roo and Calakmul in the state of Campeche. The working group that conducted the research for the National Council of Science and Technology has determined that the Maya Train will have a negative impact on the environmental services provided by the affected ecosystems, particularly in the ring of cenotes designated in 2013 as a Geo-hydrogeological Reserve and in the jungles of the Calakmul region, where the collected waters are transported and accumulate to eventually flow towards the main coastal systems of the Yucatan Peninsula. The increase in population as a result of the project will generate a greater amount of

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<sup>6</sup> Maya territories in the path of the train. Foreseeable risks and independent positions on the Maya Train. Volume / Eduardo Martínez Romero, Giovanna Gasparello and Miguel Ángel Díaz Perera (coordinators) - Delegación Coyoacán, Mexico City, Mexico: Bajo Tierra Ediciones, 2023. Tren-Maya-VF-digital-subir.pdf (bajotierraediciones.com)

<sup>7</sup><https://www.cemda.org.mx/postura-del-centro-mexicano-de-derecho-ambiental-respecto-al-proyecto-tren-maya/>

waste and contamination, which will seep into the aquifer due to the characteristics of the karst soil, its high permeability and lack of a porous medium as a filtering material, as well as the shallow depth of the groundwater level. All the water that falls on the Yucatan Peninsula infiltrates into the subsoil, which facilitates the access of contaminants to the cenotes, spreading rapidly in the aquifer and presenting serious risks to human health.

21. Deforestation: The Maya Train crosses areas of great importance for jungle conservation, including the Calakmul region, which will result in the loss of forest cover due to increased agricultural activities and a change in land use. Research commissioned by Conacyt has also indicated that the project will affect the capacity of forest ecosystems to capture atmospheric carbon dioxide through photosynthesis, that is, their capacity as carbon sinks. Moreover, it is indicated that the impact of the project on the existing forest cover in the Yucatan Peninsula is significant, as 71% (2,578 ha) of the area that will be devastated corresponds to wet and dry forests, according to the Series VI of land use and vegetation coverage published by INEGI in 2018. According to a study by the Zero Net Deforestation Observatory, the construction and entry into operation of the project will implicate an increase in deforestation from 9,786 hectares per year to 12,189.2 hectares per year between 2018 and 2030<sup>8</sup>.
22. According to data obtained from the Mexican federal government itself, up to 3.4 million trees have been felled as a result of the works derived from the Maya Train. This was detailed by FONATUR when it was forced to provide this information through the review appeal RRA 1066022. The data show that the fifth section of the Maya Train, Cancun-Tulum, is the one in which the most trees had to be removed or cut down, 2 million 239 thousand. In second place is section four, Izamal-Cancun, with 505 thousand, figures as of February 2023<sup>9</sup>. This figure, however, has been questioned by various environmental organizations, who estimate that approximately 10 million trees were removed or cut down as a result of the megaproject<sup>10</sup>.
23. In this regard, it should be noted that on May 18, 2023, the First District Court decided to grant a definitive suspension to several organizations that filed an injunction for violations of environmental human rights derived from the Maya Train Megaproject, for the effect of "suspending or paralyzing any act that has as its purpose the continuation of logging or clearing in the lands comprising Section 3 (Calkiní - Izamal), Section 4 (Izamal-Cancún), Section 5 North (Cancún-Playa del Carmen) and Section 6 (Tulum-Chetumal), so that the removal of forest vegetation is not allowed in the areas that are outside the surface in which the change of land use in forest lands was authorized.<sup>11</sup>

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<sup>8</sup> Maya Train doubles deforestation trend in southeastern Mexico, <https://www.economista.com.mx/estados/Tren-Maya-duplica-tendencia-de-deforestacion-en-el-sureste-mexicano-20221215-0115.html>

<sup>9</sup> Maya Train: 3.4 million trees have been felled or removed, <https://www.animalpolitico.com/politica/arboles-talados-removidos-obras-tren-maya-gobierno>

<sup>10</sup> Environmentalists: 10 million trees cut down by the Maya Train, <https://www.animalpolitico.com/politica/ambientalistas-millones-arboles-talados-tren-maya?fbclid=IwAR0YAYv8IGw8LE8Wg-W9pWP1vsx4OzBIP6XkplnamRoyNouzDvPMrS3hApw>

<sup>11</sup> Amparo 1335/2021. First District Court of the Fourteenth Circuit.

24. Extinction of flora and fauna: The Tren Maya Megaproject will affect an area that is home to a wide variety of plant and animal species, including trees such as ramón, cedar and ciricote, various species of mangroves and palms, as well as animals such as jaguars, ocelots, tapirs, monkeys, turtles, opossums, raccoons, pumas, crocodiles, snakes, bats, iguanas, macaws, flamingos, quetzals, and many other species. Many of these species are endangered or have special protection under Mexican law. In addition, the project could disrupt the connectivity of the aquifer, which would put the mangroves, a protected species under Mexican law, at risk.
25. Destruction of cenotes: One of the aspects that has generated the most debate is the impact this project may have on the cenotes, which are natural subway water formations found in the region. Cenotes are a unique geological feature of the Yucatan Peninsula, and have been formed over millions of years. The cenotes are important for the conservation of biodiversity and for the preservation of the cultural and archaeological heritage of the region, as they have historically been considered sacred places and sites dedicated to ceremonies and rituals, because in the Maya culture they represent the access and connection to the underworld. One of the greatest risks is groundwater contamination due to the construction of the railway line and increased tourism in the area. Tourist exploitation will bring a greater influx of visitors and an increase in human activity, generating a demand for water resources above their recharge capacity, which could affect water quality and the biodiversity of the cenotes. In addition, the construction of the Maya Train may generate changes and disrupt the flow of subway water that feeds the cenotes, which may affect their natural balance and put their long-term survival at risk. The infrastructure needed for the train, such as roads and bridges, may also alter the ecosystem and reduce the capacity of the cenotes to maintain their water levels and quality, as well as their biodiversity. In addition, it has been warned that the world's second largest system of caves, cenotes and aquifers is in danger of being buried due to land leveling, generating risk to archaeological vestiges and unique ecosystems.
26. In particular, several environmental organizations have denounced that the construction of Section 5, which covers the municipalities of Benito Juárez, Solidaridad and Tulum, is one of the most damaging to the cenotes and caverns, since they have been filled and covered with stones and piles, causing irreversible damage to the ecosystems of the region and potentially collapsing their fragile geological layers. It should be noted that this Tribunal was able to visit the works of Section 5 south, meet with biologists and environmentalists and verify the serious impact that the works of the Train are causing on the ecosystem and geosystem of the region. The situation affecting the cenotes is so serious that recently the First District Court in the state of Yucatan issued a provisional suspension directed to both Fonatura and the Secretary of National Defense, to the effect that they refrain from covering, filling or obstructing cenotes, caverns, dolines, poljes, streams or subway rivers with any material or residue resulting from the construction of Section 5 south of the Tren Maya project<sup>12</sup>.

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<sup>12</sup> Amparo Lawsuit 773/2023. First District Court of the Fourteenth Circuit.

27. The cenotes and caverns represent living ecosystems by themselves, unique in the world and symbolize sources of life due to the importance they have for the water supply for the communities in the Yucatan Peninsula. They are directly related and dependent on a larger ecosystem of which they are part and of which other water formations closely related to the existence of the cenotes can be mentioned, such as mangroves and water eyes, in addition to the wildlife that inhabits them, including about 41 endangered wildlife species and more than 15 species endemic to the region<sup>13</sup>.
28. The importance of the cenotes as a unique ecosystem space and as a fundamental cultural element for the Maya people is such that there is currently a lawsuit to have the cenotes declared as subjects of rights in the face of the risk of contamination derived from industrial activity. In this process, the Fourth District Court has issued a definitive suspension given that "the intensive and large-scale use of megaprojects such as the pork industry, monocultures associated with transgenic crops, tourism and real estate expansion, and other extractive projects have contaminated the aquifer of the Yucatan Peninsula -in particular the cenotes- causing irreversible damage to the environment, thus affecting the fundamental rights of the Maya peoples and the balance of the territories they inhabit. It is evident that the failure of the responsible parties to respond to the petition may produce an ecological imbalance or damage to the environment or natural resources that is impossible to repair"<sup>14</sup>.
29. Waste generation: In the Yucatan Peninsula, waste collection is not well organized and in many municipalities residents burn waste in the open air. In addition, the sewage system does not function efficiently in all municipalities, resulting in wastewater discharges that contaminate groundwater. The Tren Maya and its associated works not only generate waste during construction, but will also attract millions of tourists and workers to the region, which will increase waste production and exacerbate the fragility of municipal systems.
30. Noise generation: The impact of noise generated by the Maya Train and related works may also be detrimental to wildlife in the Yucatan Peninsula. Many animal species have very sensitive hearing and can be adversely affected by noise, for example, bats and birds. Noise can also alter the behavioral patterns of animals and affect their ability to communicate, feed, and reproduce.

## **B. ON VIOLATIONS OF THE RIGHTS OF INDIGENOUS COMMUNITIES**

31. On November 15, 2019, an indigenous consultation process began, which was carried out simultaneously in the five (5) States involved in the Megaproject, with an informative session and a deliberative session, where authorities and people from indigenous communities participated. However, the Office in Mexico of the United Nations High Commissioner for Human Rights has qualified as negative the

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<sup>13</sup> Colli Sulú, Samantha (2021). "Los Cenotes de la Península de Yucatán como sujetos de derecho desde la perspectiva de los derechos de la Naturaleza". Due Process Foundation, DPLF. Pages 45 and 46

<sup>14</sup> Amparo 331/2023.

indigenous consultation process of the Maya Train, considering that it did not comply with all the international standards ratified by Mexico in this matter<sup>15</sup> .

32. The consultation carried out to obtain the consent of the communities affected by the Tren Maya Megaproject was deficient. It is alleged that the process was imposed and that the decision was already made prior to the consultation, which indicates a lack of true intention to listen to and consider the interests and concerns of the communities. It should be noted that the project was initiated prior to any type of consultation, since a year before the consultation, the President, in an official act, placed the first stone. In the same way there were dozens of acts of authority prior to the consultation. In addition, the lack of time and previous agreements on how the consultation would be carried out suggest that the forms of community organization and participation were not respected. Another concern is the lack of complete and balanced information on the potential impacts of the project, suggesting that the necessary studies to assess the environmental and social impacts of the project were not carried out prior to the consultation. It is alleged that only the positive aspects of the project were highlighted and the negative aspects were omitted, suggesting a lack of transparency and honesty in the information provided.
33. In relation to the foregoing, it is necessary to indicate that the Maya Train Megaproject is part of the National Development Plan, which in accordance with the provisions of Section IX of Article 2(B) of the Political Constitution of the United Mexican States, must be submitted to the consultation of the communities and indigenous peoples of the country. In this sense, the obligation to guarantee the participation of the communities and native peoples in the determination of the Six-Year Plan is a way of making effective the exercise of the right to self-determination of the peoples, a right that is allegedly violated by the communities when a development project is initiated without their due participation, opinion and perspective of their specific cultural vision.
34. The violation of the right to consultation and self-determination to implement a project of the nature of the Maya Train, are only the starting point of the massive violation of the rights of Indigenous Peoples that in its superlative degree can generate an ethnocide, understood as the systematic destruction of the ways of life, thoughts and culture of the Indigenous Peoples, an act prohibited by international human rights law, in particular by Articles X and XI of the American Declaration on the Rights of Indigenous Peoples and Article 8 of the United Nations Declaration on the Rights of Indigenous Peoples. On the contrary, having declared the Maya Train project as a matter of “national security” in July 2022, and in May 2023, the government intends to legitimize an action that exempts it from respecting the inalienable rights of peoples and communities to free, prior and informed consultation, and the legal instruments that bind the Mexican State, as well as the corresponding Environmental Impact Studies.

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<sup>15</sup> UN-DH: the indigenous consultation process on the Maya Train has not complied with all international human rights standards on the matter | UN-DH, <https://hchr.org.mx/comunicados/onu-dh-el-proceso-de-consulta-indigena-sobre-el-tren-maya-no-ha-cumplido-con-todos-los-estandares-internacionales-de-derechos-humanos-en-la-materia/>



35. The risk of ethnocide caused by the Maya Train Megaproject has already been warned not only by the representatives of the communities that testified before this Tribunal, but also by various experts who have pointed out the serious socio-cultural impacts that these communities will suffer from the consolidation and implementation of the project. Among the main impacts are the commercialization of the culture, knowledge and memory of the communities; the displacement of traditional forms of subsistence, such as the *milpa*, in the face of the urbanization process; territorial dispossession, migration, displacement, the rupture of the social fabric, the increase in crime and labor exploitation that comes with the promotion of mass tourism; to mention some of the main impacts that, together with the environmental impacts, the communities will suffer and that put the cultural survival of these Peoples at risk<sup>16</sup>.
36. Absence of environmental impact assessment and social participation. – It is important to mention that, although in some sections of the train project there was already a railroad track, this does not exempt the project from its obligation to carry out the corresponding socio-environmental impact studies, especially considering the magnitude and complexity of the Maya Train and its related works, as well as the potential impact on biodiversity and local communities. In addition, it is important to highlight that the Quality Infrastructure Law establishes that projects must undergo socio-environmental impact assessments for their authorization and that such law entered into force in 2018. It is therefore of concern that an exemption from submitting Socio-Environmental Impact Assessments has been obtained without a rigorous assessment of the project's impacts on the region.
37. In this regard, it should be noted that the Maya Train Megaproject was initiated without the existence of an environmental impact statement, in accordance with the provisions of the General Law of Ecological Equilibrium and Environmental Protection. It was the various lawsuits filed for violations of environmental and human rights that forced FONATUR to present the respective statements, after the start of the activities, which were approved by the Ministry of the Environment and Natural Resources without considering the opinions of experts, and without guaranteeing the social participation of the affected communities, in accordance with the Escazu Agreement.
38. The start of activities of the different sections of the Maya Train without the existence of an Environmental Impact Statement has been a constant. In all the sections that have been built, the start of activities has been prior to the existence of an Environmental Impact Statement, a situation that not only means a violation of Mexican regulations, but also of international law, and specifically of what was established by the Inter-American Court of Human Rights when it issued Advisory Opinion 23-17 on Human Rights and the Environment.

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<sup>16</sup> Group formed by CONACYT for the analysis of risks in the territories where the Maya Train is projected (GC-TTM) Maya territories in the path of the train: current situation and foreseeable risks (Executive Summary)

39. It is important to note that the environmental impact statements do not consider the cumulative impact, that is to say, the impact generated by existing projects and those to be generated by proposed projects. In this sense, if a project is related to another, the environmental impact assessment must take into account the impact of the main project and associated projects<sup>17</sup>. The impact caused by other existing projects should also be taken into account<sup>18</sup>. This analysis makes it possible to conclude more accurately whether the individual and cumulative effects of existing and future activities imply a risk of significant harm<sup>19</sup>.
40. A concern is raised about the acquisition of the land needed to carry out the project, which would imply a change in land ownership and tenure regulations and could harm the rights of indigenous peoples over their territories. In addition, the implementation of the project would require the eviction of several families and communities living in the areas adjacent to the roads and the areas where the development poles are planned to be built.
41. Lack of conditions for access to environmental justice. In response to the various violations alleged by indigenous communities and civil society organizations arising from the Tren Maya Megaproject, several legal remedies have been filed, mainly through *amparo* proceedings<sup>20</sup>. Although several federal judges granted suspensions against the various sections of the train, these were not respected by the Mexican Government, which systematically violated the precautionary measures issued by various judicial bodies that ordered a halt to the project in view of the potential environmental and social risks that the works would cause. The failure to comply with the precautionary measures did not generate any action on the part of the judicial bodies that issued them<sup>21</sup>.
42. On July 7, 2021, the Federal Judiciary Council determined, through agreement SECNO/STCCNO/362/2021, to concentrate all *amparo* lawsuits filed against the Megaproject called "Tren Maya", in the First District Court (first instance) and in the Collegiate Court in Labor and Administrative Matters (second instance), both of the Fourteenth Circuit, located in the city of Merida, Yucatan. Such a decision was made based on a request filed by Nacional Financiera, Sociedad Nacional de Crédito, Institución de Banca de Desarrollo, as trustee in the trust named Fondo Nacional de Fomento al Turismo and Fonatur Tren Maya S.A. de C.V.

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<sup>17</sup> Cf. UNEP, Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach, 2004, p. 52: <http://unep.ch/etu/publications/textonubr.pdf>.

<sup>18</sup> Cf. UNEP, Environmental Impact Assessment and Strategic Environmental Assessment: Towards an Integrated Approach, 2004, p. 52: <http://unep.ch/etu/publications/textonubr.pdf>.

<sup>19</sup> Cf. Case of the Saramaka People v. Suriname. Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs, supra, para. 41.

<sup>20</sup> In most legal systems of the Spanish-speaking world, the writ of *amparo* ("writ of protection"; also called *recurso de amparo*, "appeal for protection", or *juicio de amparo*, "judgement for protection") is a remedy for the protection of constitutional rights, found in certain jurisdictions.

<sup>21</sup> For example, the First District Court failed to process the incidents of violation of the suspensions, when they still existed. Said motions were filed before the Court of origin in June and July 2021. However, since said date, the First District Court had not opened such incidents, thus leaving the door open for the authorities to continue the work on the Maya Train despite the suspension.

43. The decision to concentrate the lawsuits in a single court was made without considering the opinion of the various communities and organizations that have filed *amparos* in at least four (4) of the federal entities affected by the aforementioned project. This means not only ignoring the characteristics and peculiarities of each case, but also that by concentrating all the trials in the city of Merida, access to justice for the communities that have filed *amparos* and that are located in the states of Campeche, Chiapas and Quintana Roo is hindered, since in fact it is difficult for them to appear or to be represented in court given the distances between these states and the capital of the state of Yucatan and the consequent economic costs that this entails.
44. Many of the suspensions initially granted against the project were later revoked by the Collegiate Tribunal in Labor and Administrative Matters of the Fourteenth Circuit, based in the city of Merida, Yucatan, which justified these decisions with criteria that contravene the obligations of protection and justice in environmental matters.
45. An example of this was what happened in *amparos* 1341/2021, 1342/2021 and 1346/2021, filed by indigenous communities against the approval of the Environmental Impact Assessment related to Section 3, which at the time obtained definitive suspensions by the Fourth and Fifth District Courts before being sent to the First Court, and where the Collegiate Court in Administrative and Labor Matters revoked the three suspensions applying a restrictive interpretation. In its arguments, said collegiate pointed out that the communities had not accredited even indirectly the environmental damages that the Maya Train project would cause, in addition to pointing out that it was not serious that one of the allegations in the *amparo* lawsuits had been the lack of information and participation of the communities, despite these rights being cornerstones of the Escazu Agreement, ratified by the Mexican State in 2020.
46. Although new suspensions have now been issued due to the serious deforestation and damage to the cenotes caused by the Megaproject, the President of the Republic has insisted that the work on the Train will continue, despite the precautionary measures issued by the First District Court<sup>22</sup>.
47. This Tribunal had access to testimonies and documents that show the lack of conditions to make effective the right to a healthy environment and to enforce the Rights of Nature and of the communities and indigenous peoples<sup>23</sup>.
48. Militarization of the territory and violation of the rights of environmental defenders, indigenous peoples and land rights. One of the most worrisome aspects of the Maya

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<sup>22</sup> López Obrador insists that work on the Maya Train will not stop despite a judge's order to suspend deforestation on four sections | EL PAÍS Mexico, <https://elpais.com/mexico/2023-05-29/lopez-obrador-insiste-en-que-las-obras-del-tren-maya-no-se-detendran-pese-a-la-orden-de-un-juez-de-suspender-la-deforestacion-en-cuatro-tramos.html>

<sup>23</sup> Amicus curiae: Violations of the Right to Judicial Protection and Due Process in the Context of the "Maya Train" Megaproject : DPLF, <https://www.dplf.org/es/resources/amicus-curiae-violaciones-del-derecho-la-proteccion-judicial-y-al-debido-proceso-en-el>

Train is the growing participation of the Mexican Army in the construction and surveillance process. Since its inception, the President of the Republic has been giving greater power and decision-making capacity to the Ministry of National Defense in the construction of the Maya Train.

49. This is due to the determination of the Train as a national security project, by means of an agreement approved in November 2021 that declared "of public interest and national security" the priority infrastructures in the charge of the Executive, whether they were tourist, environmental, border, railway, energy or airport infrastructures. The intention of the agreement was to justify not only the participation of the Army, but also the safeguarding of the information derived from such projects. In spite of the fact that on May 18 of this year said Agreement was declared unconstitutional by the Supreme Court of Justice of the Nation, that same day in the afternoon, in the Official Gazette of the Federation a single article decree was notified in which the President again shields the Maya Train, the Inter-Oceanic Corridor and the airports of Chetumal, Tulum and Palenque, once again, as projects of national security and public interest.
50. In this context, on January 16, 2023, members of the Security Cabinet of the Government of Mexico, headed by C. Andrés Manuel López Obrador, President of Mexico, and General Luis Cresencio Sandoval González, Secretary of National Defense, presented the Integral Security Plan for the Maya Train. Andrés Manuel López Obrador, President of Mexico and General Luis Cresencio Sandoval González, Secretary of National Defense, presented the Integral Security Plan for the Maya Train, through which they announced the operational deployment of 6,583 elements of the Mexican Army, Mexican Air Force and National Guard, to cover the 1,554 kilometers of railroad that make up the Maya Train and all the infrastructure that is part of this project<sup>24</sup>.
51. This plan is in addition to the participation of the Mexican Army in the construction and operation of all sections of the Tren Maya, as well as the intention to reform various laws to grant control of the Tren Maya project to the Army, the main objective of the recent reforms approved in the Chamber of Deputies to the laws of General Roads of Communication, the Railroad Service Regulations and the Federal Law of the Federal Entities, to grant control of the Tren Maya and other works to the Army.
52. This represents a violation of Article 30 of the United Nations Declaration on the Rights of Indigenous Peoples and Article 30 of the American Declaration on the Rights of Indigenous Peoples, which establish that military activities shall not be carried out on the lands or territories of indigenous peoples, unless justified by a relevant reason of public interest or with the free consent of the indigenous peoples concerned or at their request.

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<sup>24</sup> Mexican Army, Mexican Air Force and National Guard will make up the Integral Security Plan for the Maya Train | Secretaría de la Defensa Nacional | Government, <https://www.gob.mx/sedena/prensa/ejercito-mexicano-fuerza-aerea-mexicana-y-guardia-nacional-conformaran-el-plan-integral-de-seguridad-para-el-tren-maya?idiom=es>

53. In this sense, according to several reports from international organizations for the defense of human rights defenders, Mexico is one of the most dangerous countries for those who are committed to defending human rights, indigenous peoples and the environment. The latest report by Frontline Defenders<sup>25</sup> identifies Mexico as the fourth country in the world in terms of murders of human rights defenders, with a total of 45 homicides, 18 of which were of defenders of the rights of indigenous peoples. The situation of harassment, threats, restriction of spaces for social and political initiatives by communities, organizations and movements is a constant that accompanies the development and implementation of the Maya Train project, further aggravated by the decision to militarize the territory and construction sites.
54. According to a recent report by the United Nations Human Rights Rapporteurs, the Maya Train could lead to a situation in which the rights of communities, organizations and movements to defend human rights, indigenous peoples' rights, and land and environmental rights are violated with impunity<sup>26</sup> constantly. Additionally, there has been a constant and growing presence of elements of the National Guard in several states where the project is being implemented and the military is actively participating in the construction of several sections of the train, as well as in the redistribution of revenues derived from the Train's operations.<sup>27</sup> The growing presence of military connected to the Tren Maya has been questioned in the same UN Rapporteurs' report.
55. This decision not only has the potential to allow human rights abuses to go unaddressed, but also undermines the project's purpose of bringing inclusive and sustainable social and economic development to the five Mexican states involved. In this context, the increasing involvement of the military in the construction and management of the project also "raises serious concerns", said Fernanda Hopenhaym, chair of the UN Working Group on Business and Human Rights<sup>28</sup>.

### **III. HEARING BEFORE THE TRIBUNAL**<sup>29</sup>

56. On March 11, 2023, the day of hearings before the tribunal took place. The conveners called witnesses from communities affected by the Tren Maya Megaproject and experts and representatives of organizations that have worked in the area to give their testimonies. The following are the main arguments made by the persons appearing at the hearing:

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<sup>25</sup> Defenders Global Analysis 2022, [https://www.frontlinedefenders.org/sites/default/files/1535\\_fld\\_ga23\\_web.pdf](https://www.frontlinedefenders.org/sites/default/files/1535_fld_ga23_web.pdf)

<sup>26</sup> <https://news.un.org/es/story/2022/12/1517337>

<sup>27</sup> Observatorio Mexicano de Geopolítica, "MILITARIZACION DEL SURESTE MEXICANO", UNAM, 2021 <https://geopolitica.iiec.unam.mx/sites/geopolitica.iiec.unam.mx/files/202109/Militarization%20of%20the%20Southeast%20of%20Mexico.pdf>

<sup>28</sup> Maya Train could affect the rights of indigenous peoples in Mexico, warn experts | UN News, <https://news.un.org/es/story/2022/12/1517337>

<sup>29</sup> In addition, this Tribunal incorporates as evidence the different complaints filed by social actors before different Mexican organizations.

**Testimony of Giovanna Gasparello - Directorate of Ethnology and Social Anthropology, National Institute of Anthropology and History.**

During her appearance, the expert indicates that, according to the Mexican government, the Maya Train is a project of territorial planning, infrastructure, economic growth and sustainable tourism, under a State vision that bases its institutional and political presence on large infrastructure works, on the physical and deep marks it imprints on the territories. She indicates that it is basically an imposed project that disqualifies the worldviews and the ways and means of life of indigenous and peasant peoples, where nature and the environment are ornaments for the tourist infrastructure; its scenic beauty is appreciated as long as it can be offered as a tourist product. In this line, nature, territories, societies and cultures are merchandise to be sold in order to "improve" the economic income of the inhabitants of these territories with the resources obtained.

In terms of impacts to nature, the applicant indicates that the project will cause degradation and fragmentation of ecosystems and biological corridors, interference in the recharge of the Great Maya Aquifer, the Cenote Ring and the water harvested by the Calakmul Forest, interruption of water flows, impacts on cenotes and subway caves, and a boost to deforestation and agribusiness; in addition affecting 15 federal Natural Protected Areas; 20 state Natural Protected Areas; 24 wetlands recognized as Ramsar sites; 24 Areas Voluntarily Designated for Conservation; 1 Municipal Ecological Reserve, Cuxtal, which supplies 50% of the water for Mérida, Yucatán.

In relation to the social impacts, it is indicated that this project will generate an increase in insecurity and criminal violence linked to: illegal economies; growing inequality and exclusion produced by the tourism economy; dispossession of agricultural and forestry lands; protected and socially owned areas destined for real estate developments for tourism; urbanization; a boost to the tertiarization of the economy and the transition from agricultural economies to service economies (tourism); ruralization of the indigenous and peasant population, turning it into free land for agribusiness and extractive (hydrocarbons) and energy (photovoltaic, wind) projects. Additionally, it is indicated that there will be a tendency to commodify the culture of the Maya peoples as a tool for the development of the tourism industry.

Among the irregularities that have occurred for the development of the Tren Maya project, it is worth mentioning the contravention of international standards on consultation with indigenous peoples; that the authorities must grant provisional authorization within a maximum of 5 days of receiving the request from the companies and construction companies in order to obtain definitive authorization.

Finally, it is indicated that the Maya Train project will affect the following rights of Mother Earth: the right to life and to exist; the right to be respected; the right to the regeneration of its biocapacity and the continuation of its vital cycles and processes free of human alterations; and the right to maintain its identity and integrity as differentiated, self-regulated and interrelated beings.

### **Testimony of Oscar Chan from the community of Sanahcat**

Oscar Chan appears on behalf of the Yucatan Peninsula. He indicates that the communities are fighting, as some people want to sell their land and others do not. He mentions that the main environmental impacts would be on the cenotes, affecting subway water bodies, noise and contamination. Likewise, tourism activities could bring important changes to the dynamics of the communities.

### **Testimony of Alexis Hu from the community of Tihosuco**

He points out that the forest, water, rocks, air, plants and trees are part of the community, part of its life, and part of its territory. Any attack on nature is an attack on the people themselves. The communities were deceived because they were told that the Train would not affect them, but one section crosses their community. He points out that in a neighboring community 10 hectares of jungle were destroyed to build a station for Section 6.

In addition, this testimony indicates that animal ecosystems are affected, trees have been cut down, and animal and insect habitats are destroyed. The substation under construction is part of a 2,000 hectare solar park, affecting a large number of trees and plants. Thus, they have seen the effects on the surrounding communities.

Finally, he indicates that there has been an increase in violence between the national guard and the communities; people are disappearing and there is an increase in violent deaths. Water is a transcendental element and has been affected because the cenotes are being covered and filled with materials. Cultural and archeological vestiges are being destroyed and disappearing, and with it the historical memory.

### **Testimony of Aldair Tuut from the community of Bacalar**

The Maya people are against the Train because it totally hurts what nature implies for the Maya people. This project also destroys their cultural identity. In Bacalar no information has been given about the station that is beginning to be built. It is painful to see the machinery destroying everything in its path. In addition, a large amount of vegetation and forest has been affected by the passing of the train. Natural wells that filter water to the cenotes and other springs are being filled with earth.

Bacalar used to be a very peaceful place, but now there are kidnappings and violent deaths, which have their origin in the effects on the social dynamics of the communities.

In response, Judge Maristella Svampa asked the last two witnesses:

Is there a registry of missing persons?

- They do not know if there is any record of missing persons.

Was there a consultation process?

- One was not formally given with truthful and timely information, they had no information at all, only the supposed benefits were reported, but they convinced people through promises so that people would agree with it.

### **Testimony of Feliciano Ucan of the community of Ich Ek, Hopelchen**

He pointed out that agribusiness is destroying relations between people and communities, in addition to deforestation and the crops that are grown. More than 25,000 hectares of forest have been deforested. The rice crops need a lot of water and it is done with a pump that draws water day and night. The spraying uses agrochemicals that harm people's health. Now there is contaminated water and people drink it. They have filed complaints with the authorities but have received no response.

### **Testimony of Juana Gómez and Juana Méndez from the communities of Palenque and Salto del Agua.**

They state that the main impact is the deforestation caused by the Tren Maya project, and they are saddened to see how nature is being destroyed. They are afraid that they will have to leave their homes and that their land will be taken to build structures related to the project. In addition, they indicate that medicinal plants are being lost due to the construction of infrastructure. They also indicate that it is causing unrest within the communities and is generating division among the people. In addition, defenders of the land and nature are being persecuted.

Judge Vera asks, is the Maya Train the cause of these situations?

Answer: Yes.

Judge Svampa asks, is the imprisonment of comrades linked to the Tren Maya project?

Answer: Yes.

Judge Perez asks, how long have the land defenders been incarcerated?

Answer: They do not know.

### **Testimony of Ana Poot - Maya woman**

She states that the waters and medicinal plants are being destroyed because of this project. The communities are divided because many people want different things. They make them think that money is the most important thing. Food is being affected. Plants are disappearing. The project does not have an environmental impact study so people are not informed about all the effects of this project. The cenotes are being filled with garbage.

Food security is also affected by the inclusion of non-native plants to feed tourists. And for this, hectares of trees and forests are thrown away. If the territory gets sick,



so do we. By virtue of this, she asks the Tribunal to recognize the Rights of Nature within the Mexican Constitution.

**Testimony of Genomelin López Velazquez and Cinthia Janeth from the Xpujil Council.**

It is an area full of archeological vestiges that are being destroyed; organized crime is beginning to take place in their communities. The national guard has arrived in our territory and they have detained many farmers who have been treated like criminals. Their presence harasses the social dynamics of the community. The train has caused a decrease in the number of animals because of the noise. The community is going to be divided in two so they will no longer be able to walk freely. The people who will work on the project will do so in precarious conditions.

**Testimony of Raquel Flota of the Indigenous Council of U Yo'ol Lu'um**

The project is not Maya, there was no consent for them to use the name Maya. She indicates that her community is being affected by the different infrastructure works for the project. Although her community is not directly affected, food sovereignty is being modified. Similarly, their bodies of water are being affected by mega-farms, and they fear that the contamination from this industry will reach the groundwater. The municipal authorities have requested permission to build a 10-hectare landfill to dump all the garbage that comes out of the project. Thousands of hectares of forest are also being cut down. The project affects the culture of the population in addition to provoking conflicts within the communities. There is no autonomy, it was taken away by the government for fear of losing their support. There was no consultation process; they simply told the communities what the benefits were going to be, but never the negative impacts that the project would generate. She also indicates that there has been an increase in violence in the communities.

**Testimony of Vilma Esquivel Pat de U Kúuchil K Ch'i'ibalo'on de Felipe Carrillo Puerto**

The project has totally changed their lives, in their family and in the community. Those who are against the train are discriminated against. The people are divided by unfulfilled promises. There has been dispossession of land and precariousness of the people working on the project. To talk about nature is to talk about our people and our spirituality. In the false consultation we were told only lies, which is what always happens; the State cannot be trusted. The project destroys the forest. They have not calculated the damages that the arrival of thousands of tourists will generate in the community fabric. There is violence generated by the project.

**Testimony of Francisco López Bárcenas, Indian lawyer, journalist and intellectual.**

The expert indicates that the Maya Train Megaproject places us in the presence of an ethnocide and an ecocide. He points out that according to the San José Declaration, issued in December 1981:

1. Ethnocide means that an ethnic group, collectively or individually, is denied its right to enjoy, develop and transmit its own culture and language. This implies an extreme form of massive violation of human rights, particularly of the right of ethnic groups to respect for their cultural identity, as established by numerous declarations, covenants and conventions of the United Nations and its specialized agencies, as well as by various regional intergovernmental bodies and numerous non-governmental organizations.<sup>30</sup>
2. Another clear effect of the Maya Train is ecocide, expressed in the violation of the right of indigenous peoples to their territory and natural resources. As has been exposed in the testimonies we have heard, indigenous peoples do not separate society and nature: this is a division imposed on us by capitalist modernity to convert natural goods into merchandise. On the contrary, indigenous peoples see themselves as part of nature, and consider the earth as their mother, mother earth. They do not use it as one does with a good, since they maintain reciprocal relations with it.

This is what international law refers to when it determines that governments "shall respect the special importance for the cultures and spiritual values of the peoples concerned of their relationship with the lands or territories, or both as applicable, which they occupy or otherwise use, and in particular the collective aspects of this relationship. In the same sense, the international standard prescribes that "the right of ownership and possession of the peoples concerned over the lands which they traditionally occupy shall be recognized. In addition, in appropriate cases, measures shall be taken to safeguard the right of the peoples concerned to use lands not exclusively occupied by them, but to which they have traditionally had access for their traditional and subsistence activities."

Of particular importance is the provision that the rights of indigenous peoples to the natural resources existing on their lands be specially protected, a protection that extends to the use, administration and conservation of said resources. And in the case that such resources belong to the State, as is the case of several of them in the territory where the Maya Train is imposed, "governments shall establish or maintain procedures with a view to consulting the peoples concerned, in order to determine whether and to what extent their interests would be prejudiced, before undertaking or authorizing any program of prospecting or exploitation of the resources existing on their lands".

3. Violation of the right to consultation. None of the above has been respected in the implementation of the Maya Train, and as the Office of the United Nations High Commissioner for Human Rights found at the time, the consultation held in December 2019 deviated from the standards of

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<sup>30</sup> Declaration of San José on ethnocide and ethno-development, adopted at the end of a meeting organized between December 7 and 11, 1981 by the Latin American Faculty of Social Sciences (Flacso), under the auspices of UNESCO, with the participation of some fifty indigenous leaders, academics and government and international officials.

international law to be acceptable. Among other things, the international human rights body said that: "In the information given to those consulted, it was expressed that the project would be carried out regardless of the results; that the information offered made reference to the possible benefits, but not to the affectations and that the people who expressed their agreement with the project, did so as a way to obtain attention and benefits from governmental social assistance projects".<sup>31</sup>

### **Testimonial by Luis Zambrano - Researcher at the Institute of Biology, National Autonomous University of Mexico.**

The Megaproject called the Maya Train by the government encompasses the entire Yucatan Peninsula and its effects must be analyzed for the entire peninsula. In other words, the analysis cannot be divided into regions, as has been done with the Environmental Impact Assessments. The expert maintains that the protection tools have not been adequate. For example, the fragmentation caused by the train can reduce pollination capacity in a completely different region.

Another example is the change in water flow that can be generated superficially or subway as a result of infrastructure. Being a karst aquifer, the change in water flow from the center of the peninsula to the coast can dry some areas and flood others. Like these examples, there may be many changes that affect the quality of life such as the quality and quantity of water, pollination, distribution of plants and animals that we cannot imagine because we do not understand the complete dynamics of ecosystems and their changes as a result of effects of this type.

The problem is not limited to the Train, but to the development poles that the same promoters intend to detonate from the construction of the tracks. The development poles of greatest concern are intensive agriculture, which has already destroyed a large part of the jungle found in the central zone of the peninsula. An analysis suggests that in the last decade an average of 60,000 hectares per year were destroyed in the entire region; this figure may have increased in recent years, and with the Maya Train project, which will allow the product to leave the region faster, it is possible that deforestation will increase exponentially.

The second pole of development is tourism. The destruction of mangrove regions throughout the north and east of the peninsula has already taken a heavy toll, particularly with the effects of hurricanes in the region.

The devastation of jungles and mangroves is one example. Preliminary results of a model that seeks to evaluate changes in the peninsula's ecosystem services as a result of the Maya Train suggest that the quality of the peninsula's habitat will be reduced by 15 to 20%. However, if the development poles do not consider the

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<sup>31</sup> UN-DH: el proceso de consulta indígena sobre el Tren Maya no ha cumplido con todos los estándares internacionales de derechos humanos en la materia", 19 December 2019. At: <https://hchr.org.mx/comunicados/onu-dh-el-proceso-de-consulta-indigena-sobre-el-tren-maya-no-ha-cumplido-con-todos-l-os-estandares-internacionales-de-derechos-humanos-en-la-materia/#:~:text=La%20ONU%2DDH%20destaca%20la,imple mentaci%20C3%B3n%20del%20proyecto%20Tren%20Maya.>

protection tools of the Natural Protected Areas (which is common, considering that the construction of the train itself is not considering them), then this figure can increase up to 50%.

Habitats are fundamental for species to survive. For example, the diversity of fish in the wetlands of the Sian Ka'an Biosphere Reserve depends on the dynamics of rainfall and drought, where the bodies of water contract and expand, as if they were breathing, and this results in a great diversity rather than certain dominant species. The destruction of this habitat, which means not only the drying up but also the modification of this contraction and expansion, can reduce the number of native species and the expansion of exotic species. This is already happening in the *Everglades* in the United States, which is an ecosystem very similar to the wetlands of the eastern peninsula.

The carbon sequestration capacity of the forests would also be reduced by 20%, making everyone on the planet more vulnerable to climate change.

At the local level, when people think of the devastation caused by hurricanes in a place, they always think of the affected infrastructure. However, nature also has to restore itself after an extreme event. Normally it does so without help, as it has done so for millions of years, but when habitat is lost, nature loses the tools to restore itself and the dynamics of ecosystems are modified. This not only negatively affects human beings, but also the organisms that live in that place.

Judge Maristella Svampa asked if the witness was consulted by the government and wanted to know if he had access to the project's master plan and how many hectares have been deforested as a result of the Maya train,

Response: He was not consulted and did not have access to the master plan. There is no exact number of hectares of forest affected.

Judge Perez asks if there is a license issued by the State.

Response: In this regard, he points out that all environmental protection regulations have been violated; environmental impact assessments are done late and never before the project.

**Testimonial by Rodrigo A. Medellín, conservation biologist, Institute of Ecology, National Autonomous University of Mexico.**

The expert stated that in September 2020 he received a couple of communications requesting him to join the project and collaborate with it. He asked for the master plan in order to establish his criteria and make an informed decision. They confirmed that they would send it to him. He never received it. Again in April 2021 he was asked for support and again requested the master plan. They assured him they would send it to him, but never did. Given the constant changes in the routes, in the type of train, in the fuel to be used, in the proposals for new population centers, he points out, it is clear that not only is there NO master plan, but that they

are adjusting and improvising on the fly according to political and economic interests, but never adjusting to social, community or ecological interests".

With respect to ecological impacts, he states that they can be divided into three types:

1. Destruction and fragmentation of the ecosystems of the peninsula's medium and high jungles. The Yucatan Peninsula supports the largest population of jaguars in Mexico; some 2,000 of the approximately 3,800 jaguars living in Mexico inhabit this region. The linear and absolute deforestation and fragmentation caused by the construction of the train already isolates very important areas, separating the central parts of the peninsula from the peripheral parts. Without wildlife crossings, wildlife will be isolated and unable to maintain the demographic continuity so necessary for conservation. Families of spider and howler monkeys have also been separated on either side of the train line. All other animal species follow the same pattern.

2. Destruction of the Maya Aquifer. Water in the Yucatan Peninsula is found underground. There is almost no water available on the surface of the peninsula. It is precisely the geology of the Peninsula that determines the dynamics of the water in it: The limestone rock of the Yucatan Peninsula is very soft, brittle, porous, and degrades with water. This type of rock does not support great pressures or great weights, because it fractures. And for the same reason, in the subsoil there are subway rivers connected to each other but they require the presence of the jungle and a very special care to ensure their future. All the life of the peninsula depends on this subway aquifer being maintained as it is. Flora, fauna and of course humans depend on the aquifer not degrading. The train is already affecting and destroying many cenotes, with serious consequences that we are just beginning to glimpse.

3. Degradation of ecosystem services. In addition to the aquifer, the Yucatan Peninsula is home to countless caverns and cenotes that are home to enormous populations of bats. Conservatively, according to the expert, it has been estimated that at least 5 million bats live in Yucatan. Calakmul's Volcán de Murciélagos cave alone is home to 3 million bats. Each million bats destroy ten tons of insects every night, most of which are agricultural pests. To date, 18 caves have already been destroyed in Section 5 of the train line alone. Their respective bat populations have disappeared or have been greatly decimated. One cannot even imagine what would happen if these enormous pest controllers were suddenly lost, allowing an additional 50 tons of insects to accumulate every day.

Finally, he adds that the wildlife crossings, so promised and announced, have not materialized. The destruction of the jungle, cenotes, caves, and aquifer continues unpunished. Remediation and mitigation measures are conspicuous by their absence. There is no short, medium, or long term planning for the Train.

**Testimonial by Ana Esther Ceceña, Senior Researcher at the Institute of Economic Research of the National Autonomous University of Mexico.**

She points out that neoliberalism opened up a process of territorial redefinition that sought to guarantee the integration and fluidity of all the continent's wealth and potential. Most of the regulatory systems protecting the patrimony of nations were cancelled, facilitating the unrestricted entry of foreign capital for the exploitation of hydrocarbons and mines; land, basic services and even border security and care were privatized (also at the disposal of foreign capital). Breaking these obstacles, the next step was to promote a communications network capable of transferring the continent's wealth to the world market.

The geopolitical scope of a project of this nature and the strategic effects of the transformation of the Southeast region of Mexico are placed as a nodal point of transit of the world market and therefore as a nodal point of the war for the control of the world. The belt of America is the narrowest hinge between the Atlantic and the Pacific, with the added bonus of being located on a large island where the greatest world power ever known is located. For the United States, but also for its competitors, control of this region can make the difference in the global power hierarchy.

From the sum of productive processes installed in most of the industrialized or semi-industrialized countries of the world, or those with important deposits of basic raw materials, there is a shift to integral mega-processes of production, articulated on a planetary scale. Capital is becoming globalized, detaching itself from national ties or restrictions, and changing the profile of the world market, establishing intra-firm trade as an increasingly significant variant. The traffic of finished products, of goods, is accompanied by a growing traffic of parts in the process of processing or assembly that only become goods through transit. The transit space is incorporated into the production spaces and the transfer routes are at the same time the factory floor.

As the processes of generating marketable wealth in the world grow, and as the world market expands geographically and encompasses more and more dimensions of reproduction, the level and importance of transfers is increasing. Communication between the Atlantic and Pacific economies, always significant but increasingly intense, can no longer be sustained by the Panama Canal, despite its recent expansion. The Maya-Tehuantepec route could multiply the speed of the crossing, joining Panama, with the virtue of being located in the geographic and economic North of the world, and offering conditions in the South for the installation of maquila corridors with wages among the lowest in the world. Tehuantepec has a length of 200 km, a little more than twice the length of Panama with 80 km.

The conversion of nature and population into things, into resources, into forms of capital, makes it possible to organize and order them beyond their own decisions and wills or with induced wills. The capacity of generating consensus, of shaping these wills through a discourse that places development, progress and modernization as the road to happiness or utopia, through the elaboration and

dissemination of a narrative, of an argumentation of history that shows this not only as the best but as the only way, is precisely the capacity to build hegemony, to set the course of the process and to define its intellectual and material leadership.

Hence, both for the dispute for hegemony within the system and for the maintenance of the hegemony of this system over other possible ones, a growing use of disciplinary force of all kinds is indispensable. The most evident, due to its immediacy and over dimension, is the military force oriented against any manifestation of systemic subversion and deployed in the field of definition of internal leaderships.

From a responsible historical and political perspective, it is not possible to avoid a documented, informed and rigorous reflection on the importance of a possible global route through the Maya-Tehuantepec region. The potential devastating effects (ecological, social, cultural) of an infrastructural intervention such as the one proposed with the Tren Maya-Transisthmian Corridor megaproject have abundant evidence in the field of scientific and other knowledge. This project, with its "development poles" and industrial parks, if implemented, will deepen the damage already caused in the region by progress in its multiple forms. The foreseeable immediate impacts are already of a historical gravity that will lead to unpredictable ecological rearrangements. Both the Isthmus of Tehuantepec and the Yucatan Peninsula have the virtue of being places of crossing and diversification of species that would be irreversibly damaged by the passage of the train, in addition to the impacts on the human sphere, on lifestyles and on social and cultural dynamics.

A train, and worse a fast train, with the "poles of development" that it drags and with the necessary modification of land use at least in the entire adjacent strip, cannot guarantee neither the care of the archeology that contributes to the historical and cultural recovery of the peoples, still alive, of this region of America and Mexico, nor the respect for decisions, community customs and ecological practices sometimes millenarian and certainly much more friendly with the environmental care. If we add to this the financing mechanisms promoted for the availability of land, we can foresee a massive process of dispossession. Indeed, the financing mechanism through Infrastructure and Real Estate Trusts (FIBRAS) will turn owners into dispossessed, because although the land does not change ownership, it is given as a material support for the trust. Hotels, condominiums, industrial parks or any other building foreseen in the Tren Maya will be built on that land, which does not belong to the owner of the land but to the partners or shareholders among which he may have a participation. The landowner can no longer make use of his land, he has no decision-making capacity over it except in the proportion that his shareholding allows him. As the farmer or landowner will foreseeably have only a minimal portion of the shares, he will also have no margin of decision.

**Testimonial by Gabriela Torres Mazuera, Researcher at the Centro de Investigaciones y Estudios Superiores en Antropología Social.**

She indicates that the Maya people recognize different types of land, and that in their cosmovision there is no difference between human beings and nature. Also, the

land must be cared for, for the services it provides. Maya lands have been privatized and most of the territory is under the *ejido* regime which is a communal land tenure regime. Under this regime the lands could not be sold, but after 1992 the opportunity to sell some communal lands was introduced. Since then, *ejido* land has been parceled out. The whole peninsula is being sold to agrarian mafias that promote land sales. Since the Maya Train, land sales have increased and there is an interest in commodifying the peninsula.

For the past two decades, *ejidos* and the peasant way of life have been under attack. Various small, medium and large-scale projects are pushing towards individualization, commercialization and deforestation of *ejido* forests.

Between 1994 and 2018, 355 304 hectares of *ejido* common-use lands were parceled out in the region and appropriated by various actors in the *ejido*, government and business sectors. At the same time, another considerable area has passed into private hands: that of vacant land and national land, which is land with deciduous forest.

The conversion of both certified plots and national lands to full ownership, as well as the legal parceling of common lands, are processes of privatization and commercialization, and in many cases, of dispossession of Maya communities, actively promoted by various actors, among which those belonging to the business sector stand out.

"The peninsula is for sale" is what I hear on a daily basis when I do my field research.

In relation to the Maya Train, she points out that this project, which was presented as a land reordering project, is in effect transforming the region and accelerating the process of individualization and commercialization of these lands. Not only the construction or rehabilitation of the train tracks, but also the creation of stations, initially called development poles, which in some cases led Fonatur officials to request up to a thousand hectares of land; the expansion or construction of new airport infrastructure, particularly the construction of the Tulum airport; the extraction of stone material that involves the devastation of extensive areas of forest; the arrival of new investors who see the Peninsula as a virgin territory ready to be exploited.

In this logic, the federal government has been complicit in the process of dispossession of Maya communal lands in the Peninsula, and specifically of the agrarian authorities, through 5 main channels:

- 1) Absence or poor advice from the agrarian ombudsman's office (the ombudsperson) in the negotiations of the communal lands in the region when negotiating with Fonatur for access to the land. Worse yet, in the first year of the project, Fonatur hired a company, Barrientos y Asociados, which was presumed to be an expert in "liberating" *ejido* lands for infrastructure projects, which led to fraudulent transactions, which were achieved under threat and coercion against *ejido* representatives.



- 2) The approach to communal lands has entrenched an individualized perspective of land to the detriment of settlers, especially women, youth and children, in the Train negotiations.
- 3) Weakening the agrarian sector in general, by negotiating with weak *ejidos*.
- 4) Failure to resolve agrarian conflicts promoted by an agrarian mafia made up of businessmen, lawyers and notaries who have dispossessed the *ejidos* through legal simulations systematically denounced by the *ejidos* in the region.
- 5) Failure to implement land use planning with a sustainable and truly participatory development approach in the most conflictive regions. An emblematic case is the communal land and municipality of Valladolid. One of the crown jewels of the Maya Train project where a businessman appropriates the communal land. Other emblematic examples are the *ejidos* of Tulum and Holbox.

### **Testimony of Sergio Madrid of the Mexican Civil Council for Sustainable Forestry**

The Maya Train project has wiped out 91,000 hectares of forest annually. The process of forest loss is linked to the growth of agro-industrial crops, mega pig and bird farms, the creation of mega parks, and tourist development poles. It is a project designed to transport the products of the mega-industry to supply the tourist industry. In view of this, they request the Tribunal to declare the suspension of the project.

Judge Martone requests to specify what is meant by suspension of the project.  
Answer: That the different processes associated with the Maya Train be suspended.

### **Testimonial by Enrique Leff, Senior Researcher at the Institute for Social Research of the National Autonomous University of Mexico.**

He states in his appearance that the development of the Maya Train project has not respected the Rights of Nature or the existential and territorial rights of the communities that ancestrally inhabit the Yucatan Peninsula. The sovereignty of capital and the sovereignty of those who exercise political power in the country are two powers that are affecting and violating the territorial rights of the Maya People.

He considered that the present government has missed the historic opportunity to revive the Maya civilization, combining the power of nature with the creativity of the people, especially their wisdom on the management of the power of nature. However, the free will of the communities has been fraudulently violated, passing over the cultural, autonomic and collective rights of the communities. The sovereignty of the state is passing over the inalienable rights to life of the Maya people. It must be emphasized that the territorial planning undertaken by this Megaproject, associated with the Megaprojects of the southern border, with the purpose of bringing modernity to the people, does not correspond to the traditional values of the Maya culture nor to the conditions of preservation of the biological richness of the ecosystems of their territory. We are facing an act of ethnocide and ecocide of the Maya territories, and the domination of power over the right to life.

The resistance of the communities, expressed throughout this hearing, and which has been silenced, is nothing more than their struggle for life.

### **Appearance of a community leader<sup>32</sup>**

Finally, the jury received several testimonies denouncing the persecution and harassment of those who opposed or could oppose the construction of the Maya train, during visits to the communities, as well as during the hearing. Along these lines, before the deliberation in the city of Valladolid, the jury wishes to place on record the testimony of one person, a community defender, who denounced the following to the judges:

- That during 2018, the Fondo Nacional de Fomento del Turismo (FONATUR) conducted a "political diagnosis" in the communities, that is, a mapping of actors -community leaders- that could oppose or represent some risk to the project.

- That on December 15, 2019, the *ejido* Don Samuel was chosen as the site for the regional assemblies regarding the misnamed Maya Train. That day municipal and federal officials spoke about the benefits of the Megaproject such as jobs and development for the forgotten communities of the Mexican southeast. Less than 100 people from 10 communities voted, as the invitation was not extended and therefore only a few community representatives arrived.

- That on March 7, 2020 a second regional assembly was held. The follow-up committee unknowingly validated the consultation processes carried out by the State and not the prior, free and informed consultation, in good faith and multiculturally appropriate according to international standards.

- That in March 2020, the company in charge of the release of roads, Barrientos y Asociados (ByA) and FONATUR, visited the communal lands announcing historic payment and not expropriation. The company ByA carried out a series of frauds on the *ejidos*, deceiving and threatening the *ejidos* representative bodies, who were transported against their will to the capital of Campeche, where they were forced to remain standing, without food or water for hours, with the pretext that the signatures were made little by little, and the argument of the pandemic, with the aggravating circumstance of torture, they were forced to sign without previously knowing what they were going to sign, without reading or receiving any document after signing. After this experience, they were forced under threats to their families and their lives, so that the resources destined for the *ejidos* of some millions of pesos, would be transferred to the accounts of B&A.

- In an attempt to demonstrate their innocence, the Union of *Ejidors* in Defense of the Maya Territory arose, as the commissaries and their families were criminalized by the company and representatives of the federal government.

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<sup>32</sup> The identity of the witness is being withheld to protect her integrity. The community leader gave her testimony directly to the judges, but not during the hearing but after it was over for fear of reprisals.

- That during the process of signing the expropriation agreements, the signing is conditioned to the return of the money stolen by B&A. A series of assemblies were held in which the communities requested: a) Final design of the project; b) Final layout of the project; c) Drainage, transit and connectivity works (the communities denounce that the train route physically divides them); d) Relocation of homes near the works; e) Relocation of schools and infrastructure affected by the works; f) Health risks due to dust and small particles, as well as noise and vibrations; g) Preventive measures to avoid affecting the fauna, flora, water and environment. FONATUR's response was that the project is dynamic. In other cases, there was no response.

- That organizing allowed them to understand that the train is not only a means of transportation, but the restructuring of capitalism in southern Mexico and the Yucatan peninsula, as it will boost agribusiness (African palm, soybeans, pig and poultry farms), will intensify the process of dispossession of sacred sites, promoting changes in social property to private property. That the first impacts seen in the name of development are the disarticulation of community organizational forms, de-peasantization, demobilization promoted by programs such as "Sembrando Vida"; criminalization by the government treating those who oppose it as "neoliberals" or "ultra-right", generating a stigma, and fragmenting the social fabric.

- With the declaration of national security comes a new blow to the communities, through surveillance and tours of schools, courts and public places are converted into military camps or art galleries where photographs of weapons, airplanes and war vehicles are exhibited. It is common to see the military walking the streets and being the first to respond to any type of protest or disagreement generated by the works.

That in this fragility and vulnerability of territories and natural assets, there are also other risks, such as organized crime, which operates hand in hand with companies, the military and the State.

With this, the community leader states that she wants to convey on behalf of her community what is happening in the *ejidos* and communities of the Maya territory. She demands that the President of the Republic be courageous, because the development of the peoples will not happen if autonomy and self-determination, cosmovisions or worldview and ancestral ways of coexisting with what is called nature are not respected.

### **Appearance of the Earth Prosecutor before the Tribunal, Jorge Fernández**

The Earth Prosecutor indicates that, based on the evidence presented before the Tribunal, as well as the opinion of the experts, this project is driven by a political, a legal, an economic and a military force. It is political in that its discourse expresses the visibility of the supposed benefits that the project would bring to the communities; it is legal because the law and the Constitution have been twisted; it is economic in that much more has been spent than planned when it could have been invested in the satisfaction of other rights; finally, it is military given that one of the

main beneficiaries is the army, because they participate in its construction, and also the proceeds will be used to pay pensions for the military.

He indicates that, in addition, both the Congress, for having approved the budget, and the Judiciary are accomplices in the failure to protect the Rights of Nature and the communities. He states that this project has been promoted with total disrespect for nature without environmental impact studies; there were no consultations, and no expert opinions were heard on the risks of this work. He says that they are facing an ethnocide, because this project did not involve the communities, that is, it was carried out without the participation of the communities and therefore there was never any intercultural dialogue.

He argues that increasing militarization has brought violence to the communities. This violence has generated the rupture of the social fabric and its dynamics. This violence also occurs in the face of the failure to address the impacts, especially the increase in population and its repercussions on the social fabric.

He points out that the Tribunal's ruling would represent an endorsement of the growing struggles against this project, as well as the cry of rebellion and resistance of the peoples and communities that have been in struggle since the project began.

Finally, and in the name of the wild boar, the mountains, the bats, and the environmental resources, he asks the Tribunal, through its judgment, to order the Mexican State to evaluate the impacts of the project.

Once the witnesses have been heard, the next step is to ask if there are any representatives of the institutions that were invited to participate present in the hearing (National Human Rights Commission (CNDH), National Tourism Development Fund (FONATUR), Ministry of the Environment and Natural Resources (SEMARNAT), National Institute of Indigenous Peoples (INPI), Tren Maya S.A. de C.V., Ministry of Welfare, Ministry of Agrarian, Territorial and Urban Development (SEDATU), and the Protected Areas Commission (CONANP)), Secretaría de Bienestar, Secretaría de Desarrollo Agrario, Territorial y Urbano (SEDATU), and Comisión de Áreas Protegidas (CONANP).

No representative of the aforementioned institutions attended.

#### **IV. MOTHER EARTH RIGHTS ALLEGED TO HAVE BEEN VIOLATED**

57. The participants in the hearing consider that the following rights contained in the Universal Declaration of the Rights of Mother Earth have been violated: the right to life and to exist; to be respected; to the regeneration of its biocapacity and the continuation of its vital cycles and processes free of human alterations; to water as a source of life; to integral health; to be free of contamination, pollution and toxic or radioactive waste; recognized in Article 2.1 paragraphs a) b) c) e) g) and h).
58. The rights mentioned above in the specific case are closely related to the international norms that protect the right of indigenous peoples and communities to

land, territory, natural resources, to build their own model of life and development, and, in general, to self-determination, all of which are protected, among other norms, by ILO Convention 169, the United Nations Declaration on the Rights of Indigenous Peoples and the American Declaration on the Rights of Indigenous Peoples.

59. Both elements, nature and indigenous peoples, constitute the basic elements of what is called biocultural heritage, defined by the Institute of Ecology as "the connection between biological diversity and the cultural diversity of indigenous peoples", which implies that there is an inseparable imbrication between nature and the cultural manifestations of indigenous peoples, who are recognized as having the right to participation, administration and conservation of natural resources (Article 15 of ILO Convention 169).
60. In this sense, the provisions of the aforementioned Article 15, in conjunction with paragraphs 16, 25, 26 and 29 of the United Nations Declaration on the Rights of Indigenous Peoples, constitute the rights of indigenous communities to administer and "autonomously exercise guardianship" over their territories, in accordance with their customary law, and the Nature that conforms it, where they develop their culture, traditions and way of life in special relationship with nature and biodiversity.
61. In this logic, the affectations to the Rights of Nature generate, in turn, cultural impacts on the indigenous peoples and communities, which is why it is fundamental that, in this case, the impacts to the Rights of Nature are analyzed in relation to the violation of the exercise of the right to self-determination, since the violations generated to the first one are, in turn, the result of the imposition of a development model that does not take into consideration the cultural perspective, the way of life and the own development modalities of the Maya peoples affected by the Maya Train project.

## **V. ANALYSIS OF THE TRIBUNAL**

### **A. THE RIGHTS OF NATURE**

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

64. It is recognized that nature is a living being and that it is the source of life; therefore, it is important for human beings to respect it and value its rights beyond its usefulness for people. It is considered that nature is the holder of rights and that its respect should take priority over any individual economic interest.
65. Thus, there is a difference between the traditional right to a healthy and ecologically balanced environment and the Rights of Nature. Their main difference lies in their ownership; in the former, the human being is the undisputed owner of nature. The Rights of Nature cannot be equated with this right, and must be analyzed from a different, autonomous and independent legal perspective. This implies that environmental permits, granted by the administrative authority, cannot be used as justification to deny violations to the Rights of Nature, this scheme being part of the right to a healthy environment. In other words, the fact of having an environmental permit or authorization does not imply simultaneous protection of the Rights of Nature.
66. The essence of the Rights of Nature is that nature has intrinsic value and deserves recognition of its own rights, regardless of its usefulness to humans. This perspective has an integral vision that seeks to protect natural processes for their own value. Ecosystems, such as rivers or forests, are considered life systems whose biological processes deserve legal protection through the recognition of inherent rights as a subject. This intrinsic valuation of nature is difficult to understand from an anthropocentric perspective that considers human beings as the most valuable species and all other species and nature itself as objects or resources to satisfy human needs, especially economic ones.
67. Nature is conceived as a community of life, in which all its components, including human beings, are interconnected and fulfill a specific function. The dynamics of the system depends on the relationship between the different elements, and the alteration of one of them affects the functioning of the whole. Thus, any change in the system influences each of the components of the community.
68. The Rights of Nature constitute the basis of a relational and biocentric paradigm, which proposes to displace the binary anthropocentric paradigm, which is at the basis of Western modernity, today questioned. The acceptance of a relational paradigm entails a resignification of the set of rights (human and biocultural), within it, based on the recognition of Nature as a subject of rights.
69. The concept of the Rights of Nature considers nature as a subject with intrinsic value, which means that it is not simply a means to achieve the goals of others, but has a value of its own and is seen as an end in itself.
70. In relation to the recognition of the Rights of Nature, the IACHR Court has made a first analysis through its advisory competence by issuing Advisory Opinion 23/17 entitled "Environment and Human Rights". Emphasizing that the right to a healthy environment as an autonomous right protects its components, such as forests, rivers, seas and others, as legal interests in themselves, even in the absence of certainty or evidence of risk to individuals. And it specified that "it is a matter of protecting

nature and the environment not only because of their connection with a utility for human beings or because of the effects that their degradation could cause on other rights of persons, such as health, life or personal integrity, but also because of their importance for the other living organisms with which the planet is shared, also deserving of protection in themselves". In this sense, the IACHR Court recognized the existence of a trend towards the recognition of the Rights of Nature and its legal personality in court rulings and constitutional orders.<sup>33</sup>

71. Subsequently, this pronouncement was reiterated by the IACHR Court in the judgment in the case of *Lhaka Honhat v. Argentina*. On that occasion it stated: "The Court has already referred to the content and scope of this right, considering various relevant norms, in its Advisory Opinion OC-23/17, and therefore refers to that pronouncement. It stated on that occasion that the right to a healthy environment "constitutes a universal interest" and "is a fundamental right for the existence of humanity", and that "as an autonomous right [...] it protects the components of the [...] environment, such as forests, seas, rivers and others, as legal interests in themselves, even in the absence of certainty or evidence of risk to individual persons. It is a matter of protecting nature", not only because of its "usefulness" or "effects" with respect to human beings, "but also because of its importance for the other living organisms with which the planet is shared". This does not prevent, of course, other human rights from being violated as a consequence of environmental damage".<sup>34</sup>
72. Several legal systems with democratic states and territories with Amazonian and indigenous peoples have recognized these rights, such as Ecuador, Bolivia, Colombia, United States, New Zealand, , Brazil, Australia, Argentina, and Uganda.
73. One of the first countries to recognize the Rights of Nature in the Americas is Bolivia, which developed the Rights of Nature in the concepts of *Pacha Mama* (Mother Earth) and *Sumak Kawsay* (Good Living), as well as in indigenous law.
74. In Bolivia, two laws that recognize the Rights of Nature are particularly noteworthy: the 2010 Law (Short) on the Rights of Mother Earth and the 2012 Framework Law on Mother Earth and Integral Development for Living Well. The first one recognizes "the rights of Mother Earth, as well as the obligations and duties of the Plurinational State and society to guarantee the respect of these rights" and the second one, the Framework Law of Mother Earth and Integral Development for Living Well of 2012, which aims to "establish the vision and foundations of integral development in harmony and balance with Mother Earth for Living Well". These laws represent important normative advances in the recognition of the rights of nature.<sup>35</sup>

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<sup>33</sup> I/A Court H.R., *Environment and Human Rights*, OC- 23/17, November 15, 2017, <https://bit.ly/3aVMKW2>

<sup>34</sup> Inter-American Court of Human Rights. Case of Indigenous Communities Members of the Lhaka Honhat Association (Nuestra Tierra) v. Argentina. Merits, Reparations and Costs. Judgment of February 6, 2020. Series C No. 400. Para. 203. Available at: <https://bit.ly/3yONOmD>

<sup>35</sup> United Nations. Resolution adopted by the General Assembly on July 27, 2012: The Future We Want. 27 July 2021. A/RES/66/288. Retrieved from: <https://bit.ly/3z2DFqJ>

75. In contrast to the legislative development of the Rights of Nature in Bolivia, in Colombia the Rights of Nature have been recognized through judicial decisions by the Colombian Constitutional Court through strategic litigation.
76. Among the emblematic cases are those of the Atrato River and the Amazon rainforest, which developed the normative framework of the Rights of Nature, based on Colombian, international and comparative legal sources, an approach that has been taken up in subsequent decisions, such as the case of the Cauca River, the case of the Magdalena River and the case of the Coello, Combeima and Cocora rivers.
77. On the other hand, in Ecuador, the Rights of Nature were constitutionally recognized after a constituent assembly in 2008, making it the first country in the world to do so. Thus, it establishes that "nature or Pacha Mama, where life is reproduced and realized, has the right to the full respect of its existence and the maintenance and regeneration of its vital cycles, structure, functions and evolutionary processes".
78. The Ecuadorian Constitutional Court, as the highest body for the administration of justice and interpretation of the Constitution, has determined in this regard that: "The intrinsic value of nature implies, therefore, a defined conception of the human being about himself, about nature and about the relations between both. According to this conception, the human being should not be the only subject of rights, nor the center of environmental protection. On the contrary, recognizing specificities and differences, the complementarity between human beings and other species and natural systems is proposed as they integrate common life systems".<sup>36</sup>
79. In the case of the United Mexican States, in 2014, the Sovereign State of Guerrero made a reform to its Political Constitution through Decree No. 433, where in its Title One, Article 2 recognizes the Rights of Nature in this State.
80. In 2017, Mexico City also reformed its Political Constitution. In this reform, article 13° literal A recognizes the right to a healthy environment where it specifies that not only people enjoy such right, but also nature, and protects it as a collective entity subject to rights, making it possible that such rights may be extended by a secondary law.
81. In order to protect the Rights of Nature, laws have also been promoted or modified, as is the case of the Environmental Law for the Protection of the Earth of 2013. In this Law, Mexico City amends its Chapter I Bis, Article 86° BIS (3), to recognize the land as a collective entity and protect its natural resources and its various components.
82. In 2019, the state of Colima also reformed its Political Constitution, where in Article 2, it recognizes nature as a collective entity subject to rights. "Nature, conformed by all its ecosystems and species as a collective entity subject to rights, shall be respected in its existence, in its restoration and in the regeneration of its natural cycles, as well as the conservation of its ecological structure and functions..."

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<sup>36</sup> Constitutional Court of Ecuador Ruling No. 1149-19-JP/21



83. Another advance in the recognition of the Rights of Nature was made in the state of Oaxaca, which, through Decree 2429, modified Articles 12 and 22 of the Political Constitution of the Free and Sovereign State of Oaxaca, to recognize the Rights of Nature, the environment and biodiversity, stating: "Nature, the environment and its biodiversity are subjects of rights and have the right to full respect for their existence, maintenance and regeneration of their vital cycles, structure, functions and evolutionary processes. The state shall guarantee the Rights of Nature to be fully respected, preserved, protected and restored".
84. For its part, the First Chamber of the Supreme Court of Justice of the Nation has concluded that the human right to the environment has a double dimension: an objective or ecological dimension, which protects the environment as a fundamental juridical good in itself, which attends to the defense and restoration of nature and its resources independently of its repercussions on human beings; and a subjective or anthropocentric dimension, according to which the protection of this right constitutes a guarantee for the realization and validity of the other rights recognized in favor of the individual. Emphasizing that the effective protection of third-generation rights cannot be analyzed on the basis of the approach that has traditionally corresponded to another category of rights, whose axiological basis and purposes are completely different<sup>37</sup>.
85. This same line of jurisprudence is recovered in *amparo* in review 54/2021 (expansion of the port of Veracruz), where the First Chamber of the SCJN recognizes that the scope of the protection of the right to a healthy environment seeks to regulate human activities to protect nature, which implies that its essential core of protection even goes beyond the immediate objectives of human beings.<sup>38</sup> In other words, this right not only attends to the right of human beings to live in a healthy and dignified environment, but also protects nature for the value it has in itself. Adding that the effective safeguarding of nature not only rests on the utility it represents for human beings, but also on the conviction that the environment requires protection *per se*, specifying that the violation of either of these two dimensions - objective or ecologist and subjective or androcentric - constitutes a violation of the environment.<sup>39</sup>
86. In this sense, the Mexican Supreme Court of Justice has consistently ruled on the need to apply the Precautionary Principle as a measure to protect the environment, stating, among other things, that in order to protect the environment, the States must apply the precautionary criterion in accordance with their capacities and when there is a danger of serious or irreversible damage. *In* this logic, the Mexican Supreme Court has indicated that when empirical experience shows that an activity is risky for the environment, it is necessary to adopt all necessary measures to avoid or mitigate it, even when there is no certainty about the environmental damage<sup>40</sup>.

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<sup>37</sup> SCJN, First Chamber, Amparo en Revisión 307/2016. Available at <https://bit.ly/2UabtiY>

<sup>38</sup> Betancor Rodríguez Andrés, Derecho Ambiental, Spain, LA LEY, 2014, p. 88.

<sup>39</sup> SCJN, First Chamber, Amparo en Revisión 54/2021. Available at: <https://bit.ly/3QQIzR7>, precedent that is reiterated by the same Chamber in Amparo en Revisión 543/2022.

<sup>40</sup> Thesis: 1a./J. 10/2022 (11th.) HUMAN RIGHT TO A HEALTHY ENVIRONMENT. BY VIRTUE OF THE PRECAUTIONARY PRINCIPLE, IT IS CONSTITUTIONAL TO ADOPT JURISDICTIONAL DECISIONS IN

87. At the national level in Mexico, there are other regulations that protect ecosystems and punish their destruction as a crime. For example, the General Law of Ecological Balance and Environmental Protection (LGEEPA) establishes the legal framework for the protection and conservation of the environment throughout Mexico and covers aspects such as environmental impact assessments, protected natural areas and the regulation of activities that may affect ecosystems and wildlife. The Federal Wildlife Law (Ley General de Vida Silvestre, LGVS) focuses on the conservation, protection and sustainable use of wildlife species in Mexico and includes provisions for the protection of endangered and endemic species and regulates activities related to their habitat, capture, transport and commercialization. The Federal Law on Archaeological, Artistic and Historic Monuments and Zones (Ley Federal sobre Monumentos y Zonas Arqueológicas, Artísticas e Históricas) safeguards Mexico's cultural heritage sites, including caves that may have cultural or historic significance. It prohibits unauthorized excavation, alteration, or destruction of these sites. These norms are fundamental to guarantee natural environments and endangered species such as the Cueva del Volcán de los Murciélagos in Calakmul, Campeche, a biocultural heritage site at serious risk from the Maya Train Megaproject.
88. The recognition of the intrinsic value of Nature is an essential part of the Declaration of the Rights of Mother Earth, as it determines that "just as human beings have human rights, all other beings of Mother Earth also have rights that are specific to their condition and appropriate to their role and function within the communities in which they exist".<sup>41</sup>
89. Based on the above, it should be noted that the Declaration of the Rights of Mother Earth, adopted in Cochabamba, Bolivia, on April 22, 2010, from its preamble states that human beings are part of Nature, being "a vital indivisible community of interdependent and interrelated beings with a common destiny" recognizing the intrinsic value of Mother Earth as "source of life, food, education, and provides everything we need to live well".
90. In this line, Article 1 *ibidem*, determines that Mother Earth is a living being and as such "a unique, indivisible and self-regulated community of interrelated beings that sustains, contains and reproduces all the beings that compose it".
91. Among the inherent rights of Mother Earth recognized in the declaration are: the right to life and to exist; to be respected; to the regeneration of its biocapacity and the continuation of its vital cycles and processes free of human alterations; to maintain its identity and integrity as differentiated, self-regulated and interrelated beings; and to water as a source of life; these being applicable to the specific case of the Maya Train project.
92. For the effective enjoyment of the rights recognized in the declaration, it establishes certain obligations for both human beings and the State. These individual and state

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SITUATIONS THAT MAY PRODUCE ENVIRONMENTAL RISKS, EVEN IN THE ABSENCE OF SCIENTIFIC OR TECHNICAL CERTAINTY IN THIS REGARD.

<sup>41</sup> Declaration of the Rights of Mother Earth, Article 1(6)

obligations pursue a common goal: to respect and live in harmony with Mother Earth.

### **Impacts demonstrated during the hearing**

93. In this context, the Tribunal will now proceed to review the main impacts (damages) to nature alleged by the individuals and communities that appeared at the hearing.
94. First, the general principles and rules that apply to all the headings mentioned below will be considered. For the purposes of this judgment, environmental damage will be understood as "an adverse change in the components of an ecosystem, their functioning or their interaction, caused by an external factor of anthropogenic origin."<sup>42</sup> In addition, on previous occasions, this Tribunal<sup>43</sup> has referred to the right of states to use their resources. However, this exploitation must be sustainable and comply with certain rules and principles that allow the use of resources not to generate environmental damage.<sup>44</sup> For example, the precautionary principle, the principle of prevention, and the obligation to carry out an environmental and social impact study have been discussed; concepts that are contained within the state's obligation of "due diligence" that states must observe in the activities they develop or allow to be carried out within their territory.<sup>45</sup>
95. Fragmentation of the territory: The Maya Train project will affect several regions along the Yucatan Peninsula that are interconnected through corridors for different animals; its implementation would generate the loss of ecological connectivity between conservation areas, reducing forest cover, isolation of flora and fauna populations, interruption of biological corridors, change of microclimates, habitat transformation and species extinction. All of which leads to an immeasurable loss of biodiversity to the point of making these areas degraded and inhospitable.
96. In this regard, as indicated by this Tribunal, Nature is a community that harbors life; and, therefore, all its elements contribute to its functioning as an electrical network that requires all its points to be interconnected in order to function. Such is the case that, if one of the parts that form this community is affected by external factors, the community would be affected as a whole.
97. The loss of ecological connectivity will mean that the animals that use the areas affected by the project will not be able to move freely from one place to another, affecting their reproductive, nesting and feeding cycles, among other needs inherent

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<sup>42</sup> De La Fayette, Louise, "The Concept of Environmental Damage in International Liability Regimes", in *Environmental Damage in International and Comparative Law: Problems of Definition and Valuation* (Bowman and Boyle eds) Oxford University Press, 2002.

<sup>43</sup> The International Tribunal for the Rights of Nature had its first session in Quito in 2014 and has had 5 international hearings (Quito, Lima, Paris, Bonn, Glasgow), 2 regional hearings (Chile-Latin America, Europe) and 10 local hearings (Brisbane, 3 for Yasuni-Quito, 2 in San Francisco, Chiquitania, Lago Vättern-Sweden, Rio Doce-Brazil and Tren Maya-Mexico), in addition to 3 visits of judges' delegations in situ in Tipnis-Bolivia, Amazonia-Brazil and Vaca Muerta-Argentina. For more information on the Tribunal and access to its verdicts, please visit: [www.rightsofnaturetribunal.org](http://www.rightsofnaturetribunal.org).

<sup>44</sup> International Tribunal for the Rights of Nature, Paris (2015), para 40 et seq. 68 et seq.

<sup>45</sup> International Tribunal for the Rights of Nature, Lima (2015), para 67ff; International Tribunal for the Rights of Nature, Paris (2015), para 42ff.

to each species. The free movement of animals, without obstacles, and the flow of natural processes sustain life on Mother Earth.<sup>46</sup> Therefore, interference in the need for movement of the different species of animals is fundamental for their life and for the perpetuation of the species.

98. The interruption of this connectivity causes species to become unhealthy, unable to survive, pointing to a direct path to extinction.
99. For this reason, the fragmentation of the territory that the Maya Train will cause in the Yucatan Peninsula would directly violate the following rights of Mother Earth: Right to life and to exist; Right to be respected; Right to the regeneration of its biocapacity and continuation of its vital cycles and processes free of human alterations; and, Right to integral health.
100. Depletion and contamination of the aquifer of the Yucatan Peninsula: Water is a source of life, and in turn is a required good for all projects that directly affect the life of Mother Earth. In the case of the Peninsula, the only source of water it possesses is groundwater found in aquifers. The largest amount of fresh water, not considering that encapsulated in the polar caps, is found in aquifers. This water is found underground, in cracks and hollows in the ground, sand and rocks, and can be extracted through wells, or when it bubbles naturally through a spring, or when it is discharged into lakes or streams.
101. Echoing again that nature is a community of life, groundwater helps replenish and maintain surface water levels, while allowing rivers to flow freely, allowing both natural elements and migratory animals to move up and downstream freely. In addition, free-flowing rivers also replenish groundwater sources by naturally widening and contracting. Additionally, and more importantly, the cenotes will be affected where harvested waters are transported and accumulated to eventually flow into the main coastal systems of the Yucatan Peninsula.
102. The construction of the Maya Train has already generated the construction of roads and buildings. However, there are still alterations pending the completion of the project, the main one being the increase in population and activities generated around the entire project. These human activities will cause an increase in the generation of waste, which will also affect the aquifers due to the type of highly permeable soil in the area and the shallow depth of these water sources. All the rain that falls on the Yucatan Peninsula infiltrates into the subsoil, which, due to the project's economic activities, will cause contaminants to seep into the cenotes, with rapid propagation in the aquifer and serious risks to human health.
103. Destruction of cenotes: From an ecosystem perspective, the construction of the Tren Maya has a significant impact on cenotes and the surrounding ecosystem. The limestone rock of the Yucatan peninsula is very soft, brittle, porous, and degrades with water. This type of rock does not withstand great pressures or heavy weights, as

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<sup>46</sup><https://www.worldwildlife.org/descubre-wwf/historias/por-que-la-conectividad-es-tan-importante-para-la-vida-silvestre-y-las-personas#:~:text=The%20ecological%20connectivity%20is%20to%20reproduce%20and%20establish%20new%20territories.>

it fractures. And for the same reason, in the subsoil there are subway rivers connected to each other but they require the presence of the jungle and a very special care to ensure their future. All the life of the peninsula depends on this subway aquifer to maintain its geo-ecosystemic functions. Flora, fauna and of course humans depend on the aquifer not degrading.

104. Increased human activity may lead to increased water contamination and alteration of the natural balance of the ecosystem, which may affect biodiversity and water quality in the cenotes. The construction of the railway line and associated infrastructure, such as roads and bridges, can also generate changes in groundwater flow and alter the region's ecosystem. In addition, cenotes are important to the culture and history of the region from a cultural perspective. Cenotes are considered sacred sanctuaries by Maya and local cultures, and are important for the preservation of the region's cultural and archaeological heritage. Tourism in the area will undoubtedly generate an increase in human activity in the cenotes, which may affect their cultural value and jeopardize their long-term survival.
105. This Tribunal was able to verify, during its visit to part of Section 5, the destruction of the system of cenotes and caves as a result of the construction of the train route. The filling of cenotes and caves with stones and piles will cause irreversible damage, not only to bodies of water that are important for supplying the cities, but also to the endemic fauna that is unique in the world. Each cenote is not only an isolated member of an ecological community, but are complex ecosystems in themselves, harmoniously integrated into the functioning of the whole, belonging to a great web of life. So serious is the situation of damage to the cenotes due to the Maya Train Megaproject, that recently the First District Court in the state of Yucatan, issued a provisional suspension directed to both Fonatura and the Secretary of National Defense, to the effect that they refrain from covering, filling or obstructing cenotes, caverns, dolines, poljes, streams or subway rivers with any material or waste product of the construction within section 5 south of the aforementioned project<sup>47</sup>.
106. The importance of the cenotes as unique natural elements on the planet and their close relationship with the cultural development of the Maya people, is such that there is a request from Maya communities that live in the Geohydrological Reserve of the Cenotes Ring, addressed to the three levels of government, so that these bodies of water are declared as Subject of Rights. Although this request has not been answered by the authorities, a lawsuit has already been initiated in which a Federal Court has determined to grant a suspension to prevent industrial activities from continuing to affect these bodies of water that are the biocultural heritage of the Maya people<sup>48</sup>.
107. Water has an infinite number of uses for human beings and for the different species that inhabit Mother Earth. However, its importance lies in its inherent condition of being the fundamental element for life to flow in Nature. Without water,

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<sup>47</sup> Amparo Lawsuit 773/2023. First District Court of the Fourteenth Circuit.

<sup>48</sup> Amparo 331/2023, Fourth District Court of the Fourteenth Circuit.

life would not exist. For this reason, affecting aquifers would cause havoc to all ecosystems that are directly and indirectly related to them, i.e., flora and fauna that live and depend on these water sources, as well as those animals and plants that depend on other water sources on which aquifers influence their existence, such as nearby surface waters. To damage water is to cause integral damage to all of Mother Earth.

108. At the same time, access to water is also a human right. The UN General Assembly has recognized that "the right to safe drinking water and sanitation is a human right essential to the full enjoyment of life and all human rights."<sup>49</sup> Human societies that do not respect water as life, and that do not take the necessary measures to protect ecological systems and cycles, destroy life and destroy themselves. The Tribunal points out that it is essential to apply scientific hydrological and ecological knowledge, as well as indigenous wisdom to reach the same conclusion: water is life.
109. At the international level, the Convention on the Law of the Non-Navigational Uses of International Watercourses (hereinafter referred to as the Water Uses Convention) contains the main general principles for the use and exploitation of international water resources. Although its application refers to international water resources, it is necessary to take into account the connection that exists between all the elements of Mother Earth, regardless of borders; therefore, this instrument is perfectly applicable.
110. In this sense, Article 2 of the Water Uses Convention includes groundwater as a watercourse within its scope of application. Within its principles, it highlights the equitable, reasonable, optimal and sustainable use that is with the adequate protection of the watercourse.<sup>50</sup> In the same sense, Article 7 of the Convention details the obligation of States to prevent and avoid causing significant damage to other States with respect to the watercourse. This obligation is further developed in articles 20 to 23 and 27, which include the following obligations: a) Protection and preservation of ecosystems; b) Prevention, reduction and control of pollution; c) Introduction of foreign or new species; d) Protection and preservation of the marine environment; and, e) Prevention and mitigation of harmful conditions.
111. In addition, the International Court of Justice has identified the imperative need to use a State's water resources in a sustainable manner by monitoring and preventing possible irreversible damage.<sup>51</sup> Furthermore, in the "Pulp Mills on the River Uruguay" case, the Court reaffirmed the close relationship between the "equitable and reasonable utilization of a shared resource [in this case,] and the balance between economic development and environmental protection that is the

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<sup>49</sup> United Nations General Assembly, Res. A/RES/64/292, 03 August 2010

<sup>50</sup> Convention on the Law of the Non-navigational Uses of International Watercourses, concluded in New York, 21 May 1997, Art. 5.

<sup>51</sup> Nagymaros Project (Hungary v Slovakia) (Judgment) [1997] ICJ Rep, p. 7, para. 140. For a supplementary view of the Court's decision, see: Separate Opinion of Vice-President Weeramantry, <http://www.icj-cij.org/docket/files/92/7383.pdf>

essence of sustainable development,"<sup>52</sup> emphasizing, in addition, the obligation of States not to alter the ecological balance of the water resource.<sup>53</sup>

112. In this context, international law has developed, through its sources, several principles and norms that seek to prevent environmental damage to water resources. The protection that has been provided, although still far from ideal, is aimed at a more environmentally friendly perception; this is evidenced by certain instruments currently in force. However, these obligations must be observed by the States, taking into account the principles and other norms that have been created for the sustainable use of water resources.
113. For this Tribunal, and according to the evidence presented, the Maya Train project would generate serious damage to the water resources that would be affected, mainly to the groundwater found along the territory where the project is planned, as in the case of the cenotes.
114. For this reason, the depletion and contamination of the aquifer of the Yucatan Peninsula would directly violate the following rights of Mother Earth: Right to life and to exist; Right to be respected; Right to the regeneration of its biocapacity and continuation of its vital cycles and processes free of human alterations; Right to water as a source of life; and, Right to integral health.
115. Deforestation: The construction of the Tren Maya project has undoubtedly generated and will continue to generate loss of forest cover. The route or road along which the train would run has already been totally deforested. In addition, the project, as indicated above, would attract populations that have settled around it. For this reason, it remains to be indicated the negative effects that deforestation has on Mother Earth, as well as the obligations that the States have regarding this issue.
116. There is no doubt about the certainty of the damage caused by deforestation to Mother Earth; for example, the increase in the earth's temperature, the alteration of interrelated ecosystems, the extinction or threat to various species of flora and fauna, changes in water cycles and prolonged droughts. All of which generate serious and irreversible damage to ecological integrity.
117. The climate crisis currently afflicting the planet has also deepened due to the growth of deforestation rates worldwide. According to the Global Forest Resources Assessment 2020 prepared by the Food and Agriculture Organization of the United Nations (FAO), "the global forest area continues to decrease, by an average of 4.7 million hectares per year"<sup>54</sup>, concluding that it is unlikely that the goal of increasing the global forest area by 3% by 2030 will be achieved.
118. Robert Nasi, Director General of the Center for International Forestry Research, in relation to the FAO report, has stated that, although "plantations provide critical timber and fibers, they are not intact forests that generate vital planetary biodiversity

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<sup>52</sup> Pulp Mills on the River Uruguay (Argentina v. Uruguay) (Judgment) [2010] ICJ Rep, p. 14, para 177.

<sup>53</sup> Ibid, paras 183-185

<sup>54</sup> Global Forest Resources Assessment 2020, Food and Agriculture Organization of the United Nations, Rome, (2021) p. 149.

and ecosystem services. Therefore, the data on 'net forest loss' in the report (...) (raises) some questions, as it seems to conflate apples (natural intact forests) with oranges (regrowth, secondary forests) and bananas (plantations)."<sup>55</sup>

119. From both criteria, this Tribunal concludes that it is essential to reduce the rate of deforestation to minimum levels, and at the same time, protect primary or intact forests, which are those that maintain healthy ecosystems and biodiversity in their respective areas.

120. As indicated above, deforestation is one of the main causes of climate change. In this regard, the United Nations Framework Convention on Climate Change (UNFCCC) has established that, among the commitments of all parties, they must, among others: (a) generate and implement policies aimed at mitigating climate change, taking into account emissions by sources and removals by carbon sinks,<sup>56</sup> and, (b) promote the sustainable use, conservation and enhancement of carbon sinks and reservoirs, including biomass, forests, oceans, and other coastal, marine and terrestrial ecosystems.<sup>57</sup>

121. In the same vein, the Paris Agreement has established as an obligation for States Parties to take "measures to conserve and enhance, as appropriate, the sinks and reservoirs of greenhouse gases referred to in Article 4, paragraph 1(d), of the Convention, including forests."<sup>58</sup>

122. As indicated, forests and jungles, apart from providing a large number of ecosystem services for the rest of Nature and for humans, are also important carbon reservoirs. In this regard, to better understand the importance of forests within climate change and the reference to the Rights of Nature, it is essential to refer to the Colombian Supreme Court of Justice and its ruling regarding the levels of deforestation in the Amazon.

123. In this regard, there is a close relationship between deforestation, as a cause of climate change, and the rights of Mother Earth. Such is the case, for example, in how they can be used in climate litigation processes.<sup>59</sup>

124. As indicated in the section on Impacts to Nature, and according to data obtained from the Mexican federal government, up to 3.4 million trees have been cut down as a result of the works derived from the Maya Train. The data show that the fifth Section of the Maya Train, Cancun-Tulum, is the one in which the most trees had to be removed or cut down, 2 million 239 thousand. In second place is Section four, Izamal-Cancun, with 505,000, figures as of February 2023<sup>60</sup>. This figure, however, has been questioned by various environmental organizations, who estimate the

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<sup>55</sup> Molins, Julie, "2020, the year deforestation should have been halved" *Forests in the News* (25 May 2020), <https://forestsnews.cifor.org/65627/2020-el-ano-en-que-la-deforestacion-debio-reducirse-a-la-mitad?fnl=en>.

<sup>56</sup> United Nations Framework Convention on Climate Change (1992) Art. 1.

<sup>57</sup> *Ibid*, Art. 1.D

<sup>58</sup> Paris Agreement Art. 5.1

<sup>59</sup> For an extensive reference, see Delgado Galarraga, Mario "Climate Change Law and the Rights of Nature: A Colombian Example Through an International Perspective", *Revista Catalana de Dret Ambiental*, Vol. XIII Núm. 2 (2022): 1 -44.

<sup>60</sup> Maya Train: 3.4 million trees have been felled or removed (animalpolitico.com)



number of trees removed or cut down as a result of the Megaproject at approximately 10 million.

125. The evidence of indiscriminate deforestation has led the First District Court to grant a definitive suspension to the effect that "any act that has as its purpose the continuation of logging or clearing on the land comprising Section 3 (Calkiní - Izamal), Stretch 4 (Izamal-Cancun) Stretch 5 North (Cancun-Playa del Carmen) and Stretch 6 (Tulum-Chetumal) is suspended or paralyzed, so that the removal of forest vegetation is not allowed in the areas that are outside the surface in which the change of land use in forest lands was authorized....".<sup>61</sup>
126. Therefore, deforestation caused by the Tren Maya project would directly violate the following rights of Mother Earth: Right to life and to exist; Right to be respected; Right to the regeneration of its biocapacity and continuation of its vital cycles and processes free from human alterations; and, Right to integral health.
127. Flora and Fauna Extinction: As indicated, the deforestation caused by the Maya Train, in turn would also have a negative impact on several species of flora and fauna, by way of example ramon tree, cedar, ciricote, mangrove species, palm species; jaguar, ocelot, tapir, howler monkey, spider monkey, turtle species, tlacuache, cacomixtle, raccoon, puma, crocodile, snake species, bat species, iguana species, macaw, flamingo, quetzal, toucan, a great variety of resident and migratory birds, among many others, including some that have been catalogued as endangered or under special protection.
128. Species protection is an issue that has been addressed for several decades. In simple terms, life on the planet depends on the conservation of nature. According to the Convention on Biological Diversity (CBD), biological diversity (or biodiversity) can be defined as "the variability among living organisms from all sources including, inter alia, terrestrial, marine and other aquatic ecosystems and the ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems."<sup>62</sup> Each of the organisms encapsulated in this definition are valuable because they are the result of a four-billion-year evolutionary process, not because of the variety itself.<sup>63</sup> Their ability to adapt to the different changes that have occurred over millions of years, as well as their resistance to future attacks, gives them a value of their own. However, humans have always interfered in the evolution of species, through domestication, genetic modification, and cultivation, to mention a few examples.
129. The damage that humans have caused exceeds the regenerative capacity of Mother Earth. This is confirmed by several scientific studies: biodiversity is being lost. For example, the latest Global Biodiversity Outlook 5 report demonstrates how human activities directly influence the steady rate of species extinction and ecosystem degradation.<sup>64</sup> All the goals set by the international community have been

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<sup>61</sup> Amparo Suit 1335/2021, First District Court of the Fourteenth Circuit.

<sup>62</sup> Convention on Biological Diversity, (1992) Art. 2 (Hereinafter CBD)

<sup>63</sup> Swanson, Global Action for Biodiversity (London, 1997) 9.

<sup>64</sup> <https://www.cbd.int/gbo/gbo5/publication/gbo-5-spm-es.pdf>

unsuccessful and ineffective, as all their targets have not been met. Quite the contrary, a 2019 UN report concluded that biodiversity is declining at a rate unprecedented in human history, the rate of species extinction is accelerating to the point where we will find ourselves with at least 1 million species extinct in a few decades.<sup>65</sup>

130. The main cause of the whole problem of biodiversity loss is and has been the capitalist and neoliberal development model, characterized by overexploitation of resources, pollution, introduction of invasive species, and climate change, which are causing the planetary environmental crisis. In the same sense, but indirectly, other factors have also contributed to this problem, such as economic activities, demographic changes, as well as socio-political, cultural and religious factors, and scientific and technological changes.<sup>66</sup>
131. Again, it is necessary to refer to the precautionary principle, both to identify serious threats to biodiversity and to take the necessary measures to counteract them, bearing in mind that, in a sense, we are responsible for the survival of nature, not only for present and future generations, but also for other existing and potential species.<sup>67</sup>
132. In relation to fauna, at the international level there are several general and bilateral treaties that protect different species, either individually, for example the vicuña,<sup>68</sup> or a specific group of species, such as whales.<sup>69</sup> However, globally, there are four main international instruments that deal with the conservation of animal species: the Ramsar Convention (1971), the Convention Concerning the Protection of the World Cultural and Natural Heritage (1972), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) (1973), and the Convention on the Conservation of Migratory Species of Wild Animals (1974).
133. In relation to plant protection, apart from the aforementioned CBD, two other instruments can be considered as major ones: the International Plant Protection Convention (1951) and the International Treaty on Plant Genetic Resources for Food and Agriculture (2001). The CBD can be considered the cornerstone for the protection of species and their habitats, as it contains generally applicable rules and principles for the protection of species in general.
134. In general, the aforementioned instruments maintain the human being as the end of environmental protection, since the anthropocentric discourse of the usefulness of each species is kept alive in each of them. The treatment of living beings as "natural resources" is evident. However, this vision has evolved over the years, based on an ancestral cosmivision that rightly links Mother Earth and human beings, including the latter as part of Pachamama, leaving aside their self-conception of human beings as "superior" beings.

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<sup>65</sup> Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES), Global Assessment Report on Biodiversity and Ecosystem Services-Summary for policymakers IPBES/7/10/Add.1, 29 May 2019, 4.

<sup>66</sup> Ibid

<sup>67</sup> Birnie, Boyle, and Redgwell, "International Law and the Environment", (Oxford University Press, 2022) p. 620.

<sup>68</sup> 1979 Andean Convention for the Conservation and Management of Vicuña.

<sup>69</sup> 1946 International Convention for the Regulation of Whaling

135. For example, terms such as "common heritage", "common interest" and "common concern" are included in several international instruments and already in common use among the international community, already evidence a step towards a paradigm shift with respect to the concepts of individual property. In fact, the Inter-American Court of Human Rights (IACHR) has already recognized in several of its judgments the communal property rooted in the cosmovision of indigenous peoples.<sup>70</sup>
136. Unfortunately, in relation to animals and their rights, very little has been discussed at the international level. Except for a couple of non-binding declarations,<sup>71</sup> this issue is still pending for environmental law.
137. In this context, it is clear that, although there is a trend in the international community of separation from anthropocentrism, it is still far from effectively conserving and protecting fauna and flora from human activities that destroy ecosystems and habitats of various species for entirely economic purposes, as there are still deep seated roots in the usefulness of Nature for human beings and seeing it only as a commodity for profit. Despite this, the sources of international environmental law, as reviewed, form a fundamental basis for the decisions of this Tribunal, due to their relevance for the redesign of a jurisprudence that allows the effective projection of nature as a sustainable source for life on the Planet.
138. In general terms, then, the main state obligations within the framework of protection of biological diversity, including flora and fauna, can be summarized as the conservation of species and the sustainable use of natural resources. According to the CBD, state parties shall develop "national strategies, plans or programs for the conservation and sustainable use of biological diversity or adapt existing strategies, plans or programs for that purpose" (as well as) "integrate, as far as possible and as appropriate, the conservation and sustainable use of biological diversity into sectoral or cross-sectoral plans, programs and policies."<sup>72</sup>
139. In relation to the present case, in addition to the transcribed articles, it is relevant to refer to the obligations that the CBD imposes on each state party with respect to *in situ* conservation<sup>73</sup> of ecosystems. In general, states must, among other things, a) create a system of protected areas for the purpose of protecting biological diversity; b) manage important biological resources within and outside protected areas; c)

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<sup>70</sup> E.g., Advisory Opinion on Environment and Human Right OC-23/17, Inter-American Court of Human Rights Series A No. 23 (15 November 2017); Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Merits, Reparations and Costs, Judgment, Inter-American Court of Human Rights Series C No. 79 (31 January 2001); Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and Reparations, Judgment Inter-American Court of Human Rights Series C No. 245 (27 June 2012); Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Merits, Reparations and Costs, Judgment, Inter-American Court of Human Rights Series C No. 79 (31 January 2001); Case of the Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Judgment, Inter-American Court of Human Rights Series C No. 125 (17 June 2005). For further discussion, see "Exploring the connection between indigenous peoples' human rights and international environmental law", Delgado Galarraga, Mario Alejandro, REVISTA CHILENA DE DERECHO Y CIENCIA POLÍTICA, 2018 VOL. 9, N° 2, p 118

<sup>71</sup> See Universal Declaration of Animal Rights (<https://www.filosofia.org/cod/c1977ani.htm>)

<sup>72</sup> CBD, art 6.

<sup>73</sup> CBD art 2: "In situ conservation" means the conservation of ecosystems and natural habitats and the maintenance and recovery of viable populations of species in their natural surroundings and, in the case of domesticated and cultivated species, in the surroundings where they have developed their distinctive properties."

promote the protection of ecosystems and natural habitats and the maintenance of viable populations of species in natural surroundings; and, d) promote environmentally sound development in protected areas and adjacent areas.<sup>74</sup>

140. In the case at hand, the reality of what happened, and the damages yet to occur, have been carried out outside of compliance with the State's international environmental obligations. It should be noted that Mexico is a State Party to the CBD and to the rest of the main instruments previously referred to by this Tribunal.
141. It is evident that the Maya Train is not in accordance with the international obligations that the Mexican State has acquired through the ratification of each one of them. This project did not take into account the conservation of species in their natural habitats, as well as the flora and fauna that develop their life cycles along the project's route. Migratory and non-migratory species have been affected by this construction, as they have lost their space to develop and continue their reproductive and life cycles. Destroyed animals and plants are the result of poor management by the authorities, who are only looking for a mechanism to generate wealth from the Maya Train, regardless of the environmental consequences it may bring.
142. Therefore, the deforestation caused by the Tren Maya project would directly violate the following rights of Mother Earth: Right to life and to exist; Right to be respected; Right to the regeneration of its biocapacity and continuation of its vital cycles and processes free of human alterations; and, Right to integral health.
143. Waste Generation: The Tren Maya project carries with it the burden of waste disposal resulting from the activities involved in the construction of the project, and those that will be generated after its completion and start-up, such as tourism and new human settlements.
144. In this regard, it is imperative to note that the Yucatan Peninsula does not have a capillary waste collection system. Currently, the municipalities are responsible for the destruction (burning) of waste in the open air. In the same sense, several municipalities in the area do not have an efficient sewage system; some do not even have them in operation, causing waste discharges to directly contaminate groundwater throughout the peninsula.
145. The most direct consequences of waste pollution are the release of toxic substances that contaminate water or air and affect all living organisms and organic matter in the open air. Landfills, considered the last resort in the waste hierarchy, release methane, a very potent greenhouse gas that contributes negatively to climate change. This gas is composed by the microorganisms present in landfills from biodegradable waste, such as food, paper and yard waste. In addition, landfills can also contaminate soil and water. Burning large amounts of garbage in the open air also emits dangerous levels of carbon dioxide, which, like methane, is a greenhouse gas that is warming our planet. It has been estimated that approximately 40% of the

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<sup>74</sup> CBD art. 7

world's garbage is burned in this way,<sup>75</sup> which would generate large-scale risks to both our atmosphere and the ecosystems near these burning sites.

146. Some ecosystems, such as marine and coastal ecosystems, can be severely affected by poor waste management or littering. Marine debris is a growing concern because entanglement and ingestion pose serious threats to many marine species.

147. Waste that is not biodegradable and cannot be properly recycled is filling our oceans and landfills. A clear example is plastic waste. According to a recent study, of the 6.3 billion metric tons of plastic waste that has been produced, only 9% has been recycled.<sup>76</sup>

148. As indicated above, on previous occasions this Tribunal has already had the opportunity to refer to climate change, its causes, consequences, and measures to be taken to mitigate it.<sup>77</sup> Therefore, it only emphasized the need for States to contribute to combat the damage caused by climate change, as well as to refrain from continuing with activities that cause it.

149. In the present case, the terrible waste management by the municipalities located within the Yucatan Peninsula generates great concern; with the construction of the Maya Train project, this waste will increase considerably, but its management will remain unchanged, creating even more risks to the health of Mother Earth, affecting the soil, water and air, contributing to climate change and the interruption of the life cycles of the species in the area. In addition, these risks will increase as the population density around the area grows, as well as with the tourism that the project generates.

150. Although there are no international standards that directly deal with the management of non-toxic wastes, due to their environmental importance, the principles governing that system can be applied by analogy. In this sense, the main obligation of the states is to manage waste in an environmentally friendly manner.<sup>78</sup> In addition, the reduction and minimization of waste, recycling, self-sufficiency and proximity of disposal are sought. States are also obliged to take measures, including the adoption of laws and regulations, to prevent, reduce and control pollution.<sup>79</sup>

151. In other words, poor resource management in the region is, and will be, one more cause of the climate crisis that Mother Earth is currently experiencing. This, directly and indirectly, contributes to the extinction of species of flora and fauna in the region, whose obligations have already been clearly delimited by this Tribunal.

152. Therefore, the generation of waste and its mismanagement caused by the Tren Maya project would directly violate the following rights of Mother Earth: Right to

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<sup>75</sup> Thompson, Andrea, "Burning Trash Bad for Humans and Global Warming," *Scientific American*, (2014) <https://www.scientificamerican.com/article/burning-trash-bad-for-humans-and-global-warming/>

<sup>76</sup> Roland Geyer, Jenna R. Jambeck, and Kara Lavender "Production, use, and fate of all plastics ever made", *Sciences Advance*, Vol 3, Issue 7, 2017.

<sup>77</sup> See generally, International Tribunal for the Rights of Nature, *False Solutions to Climate Change*, Glasgow (2022).

<sup>78</sup> 1989 Basel Convention

<sup>79</sup> United Nations Convention on the Law of the Sea, (1982) art 207

life and existence; Right to be respected; Right to the regeneration of its biocapacity and continuation of its vital cycles and processes free of human alterations; Right to water as a source of life; Right to clean air; Right to integral health; and, h. Right to be free of contamination, pollution and toxic or radioactive waste.

153. Noise generation: Noise generated by machinery, transportation and other activities related to the construction of the Maya Train has not been taken into account by the authorities that have approved its construction. The Mexican government does not have adequate information about the noise that the project will generate during its construction and operation, nor has it discussed the measures it will take to mitigate it. In addition to being a potential human health problem, the noise could seriously affect El Volcán de los Murciélagos cave (located within the Balam-kú State Reserve), one of the largest bat colonies in southeastern Mexico.
154. In relation to noise and its effects on human beings, the European Court of Human Rights has already discussed this issue on a couple of occasions,<sup>80</sup> concluding that the State is the entity called upon to adopt the necessary measures to guarantee respect for privacy and the home even in relationships between private individuals. One of the main elements developed by the Court was the level of noise generated by each of the challenged activities. Sound is measured in decibels. There are many sounds in the environment, from rustling leaves (20 to 30 decibels) to thunder (120 decibels) to the sound of an ambulance siren (120 to 140 decibels). Sounds that reach 85 decibels or more can damage a person's ears.
155. Noise pollution also affects the health and well-being of wildlife. Studies have shown that loud noises can speed up the beating of caterpillar dorsal vessels (the insect equivalent of the heart) and cause bluebirds to have fewer chicks. Animals use sound for a variety of reasons, such as navigating, finding food, attracting mates, and avoiding predators. Noise pollution makes it difficult for them to perform these tasks, which affects their ability to survive.<sup>81</sup> Drilling, trucking, logging and other activities have made the habitat of several species chaotic.
156. According to the U.S. National Park Service, noise pollution has a huge environmental impact and causes serious damage to wildlife. According to experts, noise pollution can interfere with reproduction and breeding cycles and is even accelerating the extinction of some species.
157. Noise pollution also violates the obligations of the states with respect to the protection and conservation of wildlife, as previously indicated by this Tribunal. The effect of the sound caused by the construction of the Maya Train on the animals of the region conditions their habitats and ecosystems, causing a disruption in their life cycles.
158. Therefore, the generation of noise and acoustic pollution generated by the Maya Train project would directly violate the following rights of Mother Earth: Right to

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<sup>80</sup> Hatton and Others v. the United Kingdom [GC], no. 36022/97, ECHR 2003-VIII - (8.7.03); Moreno Gómez v. Spain, no. 4143/02 (Sect. 4), ECHR 2004-X - (16.11.04)

<sup>81</sup> National Geographic, "Noise Pollution" <https://education.nationalgeographic.org/resource/noise-pollution/>

life and existence; Right to be respected; Right to the regeneration of its biocapacity and continuation of its vital cycles and processes free of human alterations; and, Right to integral health.

159. This set of impacts of the Maya Train Megaproject leads to the risk of ecocide due to the severe destruction of the environment and the large scale of the impacts.

160. F. Broswimmer, describes ecocide as "the set of actions carried out with the intention of disturbing or destroying in whole or in part the human ecosystem", and adds that although the concept of ecocide was born linked to war, associated with the use of lethal weapons or weapons of mass destruction, "the concept of ecocide should be extended analytically to describe contemporary destructive patterns of global environmental degradation and anthropogenic mass extinction of species".<sup>82</sup>

161. The definition that renowned jurist Polly Higgins presented to the United Nations International Law Commission in 2010 describes ecocide as "the severe loss, damage or destruction of the environment, to the point where it drastically reduces the peaceful enjoyment by the inhabitants of a territory."<sup>83</sup>

162. For their part, from Latin America, Neira, Rubio and Subraire (2019) reflect on ecocide from political philosophy, and offer a systematization of the concept: "It is possible to tentatively conclude that the notion of ecocide covers a semantic field that, although varied, points in all cases to anthropic damage so serious in the environment that it endangers the basis of the survival of human beings and many species and constitutes, philosophically, a crime, and that legally it is not easily reducible to national or international environmental legislation that addresses these environmental issues in a partial way....<sup>4</sup>. We can add that the concept presents some special characteristics in relation to other ecocides or massive environmental destructions, which allows us to characterize it by these eight aspects:

1. Its consequences do not affect only one locality, but can damage areas far beyond the borders of the country where the activities are carried out;

2. It is not limited to only one aspect of the environment and livelihoods, but affects them as a whole, similar to a total war.

3. Its repercussions will also be suffered by future generations of humans and other living species.

4. It originates in an action or omission.

5. It may include homicide as a more or less direct and delayed consequence of environmental destruction, but homicide is not indispensable to characterize the concept.

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<sup>82</sup> F. Broswimmer, *Ecocidio. Breve Historia de la extinción en masa de las especies*, Ed.Laetoli, Pamplona, 2025, p,186.

<sup>83</sup>P. Higgins, *Eradicating Ecocide*, 2nd edition, 2016.

6. Damage is difficult to compensate and restoration may be impossible, regardless of the means available; from a financial point of view, the value lost is infinite and nothing can pay for it.

7. The extent and seriousness of this problem strains powerful local and international, private or public interests, sometimes with the capacity to impede or delay prosecutions at the national or international level.

8. The criminal typification and the philosophical concept of ecocide are not reduced to a case or sum of cases of environmental damage foreseen in some codes, since its effect is global, systemic and potentiated (one damage starts a new exponential chain of damages)".<sup>84</sup>

163. These authors also argue that, although there are antecedents of characterization of ecocide as a common environmental crime in Mexico (Article 457 of the Penal Code of the State of Chiapas, Mexico defines it as "willful conduct, consisting of causing serious damage to the environment [...] of the competence of the State of Chiapas", without addressing the issue of massive destruction), it does not integrate the essential: the totalizing and exponential character of the damage".

164. This is the case of the Tren Maya Megaproject, which has multiple impacts, the exponential nature of which has been detailed by the testimony of those affected and the experts involved.

165. It is also important to add, following Polly Higgins, that ecocide should be a "liability offense" because "(1) it is the consequence, not the conduct, that is at issue; (2) the severity of the destruction and damage justifies conviction without proof of criminal intent; (3) without strict liability, enforcement would be largely ineffective; and (4) strict liability rightly focuses on the prevention of the crime rather than the culpability of the defendant."

## **B. ON THE RIGHTS OF INDIGENOUS PEOPLES AND DEFENDERS OF MOTHER EARTH**

### **B.1. On the rights to free determination and participation of indigenous peoples**

166. As already mentioned, there are multiple international instruments that protect the access of indigenous peoples to self-determination, to their land, territory and natural resources, in particular ILO Convention 169, the United Nations Declaration on the Rights of Indigenous Peoples and the American Declaration on the Rights of

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<sup>84</sup> Neira, H., Russo, L. I., & Álvarez Subiabre, B. (2019). Ecocide. *Revista de filosofía*, 76, 127-148. [https://www.researchgate.net/publication/339037866\\_Ecicidio#:~:text=that%20the%20no%20notice%C3%B3n,de%20mode%20partially](https://www.researchgate.net/publication/339037866_Ecicidio#:~:text=that%20the%20no%20notice%C3%B3n,de%20mode%20partially).



Indigenous Peoples<sup>85</sup>. At the level of the Mexican State, Article 2 of the Political Constitution recognizes the right to self-determination.

167. The right to self-determination is fundamental because it recognizes, among other things, that indigenous peoples have the right to decide their own models and forms of development based on their historical and cultural reality. It is for this reason that the right to self-determination is established as a framework that brings together the rights to land, territory, natural resources, cultural integrity, autonomy, consultation and consent, among others. In this sense, no State can impose a development project that is incompatible with the cultural and historical perspective of Indigenous Peoples.

168. The Rio Declaration contains among its principles the procedural rights of access to environmental information, the rights of participation and access to justice.<sup>86</sup> So does the Convention on Access to Information, Public Participation in Decision-Making and Access to Justice in Environmental Matters.<sup>87</sup>

169. On January 22, 2021, Mexico ratified the Regional Agreement on Access to Information, Public Participation and Access to Justice in Environmental Matters in Latin America and the Caribbean (Escazú Agreement). This instrument aims to "guarantee the full and effective implementation in Latin America and the Caribbean of the rights of access to environmental information, public participation in environmental decision-making processes and access to justice in environmental matters (...)." <sup>88</sup>

170. Among the peninsular Maya, the link between humans and nature is signified in a category, *chi'i'balil*, which translates as "the family that unites us" and includes all manifestations of animal and plant life, united by a relationship of interdependence. The cultural characterization of the Maya territory implies considering in an integral way the different spaces (mountain, milpa, village and solar) that make up the *yóok'olkab* (territory) and preserving, through ritual practice and respect, the relationship with the *yumtsilo'ob* (guardian spirits or lords), on which the socio-ecological balance of the community depends.

171. The different spaces (mountain-milpa-village-solar) that make up the Maya territory have been signified by the Maya culture according to a particular notion of the cosmos, which is evident in daily and ritual life. While the village or urban area is the place where humans live and carry out their activities, in the mountain dwell the other non-human members of the community, such as animals and supernatural entities whose function is to take care of the territory, regulate the cycles and maintain the relationship between humans and the environment in which they live. The *yumtsilo'ob* protect the places considered sacred such as the *muúles*

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<sup>85</sup> For a list of international instruments on indigenous peoples' rights: <https://www.iprights.org/index.php/en/component/content/article/a-compilation-of-un-treaty-body-jurisprudence-special-procedures-of-the-human-rights-council-and-the-advice-of-the-expert-mechanism-on-the-rights-of-indigenous-peoples-volume-ix?catid=9&Itemid=102>

<sup>86</sup> Rio Declaration (1992) Principle 10

<sup>87</sup> Aarhus Convention (1998) arts. 4-9.

<sup>88</sup> Escazú Agreement (2018) art. 1

(archaeological remains), cenotes, caves and in general the community's environment. These entities are in charge of the dynamics and sustainability of the land; they are providers of maintenance and health, but also cause diseases and misfortunes when humans do not respect the ritual pact of reciprocity and care, that is, when they make unjustified affectations to the territory, or take advantage of the natural common goods without dialoguing with the yumtsilo'ob by performing the corresponding ceremonies.

172. The link between all beings and entities that inhabit a territory is part of an ancient knowledge, called in Maya uuchben k'aajolal. This poses a communion, interrelation and balance between each element of the yóok'olkab (territory): water with the earth, earth with the jungle, sky with the earth, man with nature. Therefore, human actions require to be executed with respect and always asking permission, due to the fundamental unity of all the elements of nature/cosmos.

173. The right to participation is directly related to the self-determination of indigenous peoples, a collective right.<sup>89</sup> This right, enshrined in international law, plays a fundamental role within the rights of IPs, as it leads to the realization of other closely related rights, for example, sovereignty over their lands, territories and natural resources,<sup>90</sup> consultation and participation, development, benefit sharing, among others.

174. The link between self-determination, the environment and intellectual property can be considered as the right that protects their cultural practices based on their relationship with their territory.

## **B.2. On the right to Cultural Integrity**

175. Additionally, IPs' right to self-determination includes, in turn, the right to cultural integrity,<sup>91</sup> which allows them to develop their customs in consideration of their worldview. In this regard, the UN Committee on the Elimination of Racial Discrimination has called on States to recognize and preserve the distinctive culture of IPs, guaranteeing the exercise of their cultural traditions and customs.<sup>92</sup> Likewise, the Permanent Court of International Justice expressed, in the advisory opinion on *Minority Schools in Albania*, that the basis for the protection of minority groups, including, for this Court, IPs, is to protect the population that differs from the rest of society, while preserving their distinctive characteristics, and to meet their special needs.<sup>93</sup>

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<sup>89</sup> *Saramaka v. Suriname*, Merits, Reparations and Costs, Judgment, Inter-American Court of Human Rights Series C No 172 (28 November 2007), para 93.

<sup>90</sup> Gentian Zyberi, 'Self-determination through the Lens of the International Court of Justice' [2009] 56 *Netherlands International Law Review*, p 439.

<sup>91</sup> James Anaya, *Indigenous Peoples in International Law* (2nd edn, Oxford University Press 2004), p 3.

<sup>92</sup> International Human Rights Instruments, 'Compilation of General Comments and General Recommendations Adopted by Human Rights Treaty Bodies' General Recommendations Adopted by the Committee on the Elimination of Racial Discrimination, XXIII - Rights of indigenous peoples [1997] (12 May 2003) UN Doc HRI/GEN/1/Rev.6, pp. 212-213.

<sup>93</sup> *Minority Schools in Albania* (Advisory Opinion) PCIJ Rep Series A/B No 64, p. 17

### **B.3. On the right to Land, Territories and Resources**

176. These procedural rights must be guaranteed in those projects to be carried out within their ancestral territories. The right to property, for several IPs, is collective<sup>94</sup> and with respect to its ownership, the IACHR has stated that possession of the land should be sufficient for indigenous communities that lack real title to the land to obtain official recognition of such ownership.<sup>95</sup> The Court itself recognized the material and spiritual dimensions of their lands. The former relates to economic aspects of IPs, such as access to natural resources, while the latter is based on their religiosity and worldview.<sup>96</sup> The Court, in conclusion, has determined that States should adopt positive measures to guarantee IPs' access to a dignified existence and to their life projects, which entails the protection of their close link to their lands and resources.<sup>97</sup>

177. In the matter at hand, the IACHR has identified three requirements that must be applied in any investment plan to be initiated by States, in order to "preserve, protect and guarantee the special relationship that [indigenous peoples] have with their territory".<sup>98</sup> Firstly, States must guarantee the effective participation of IPs in activities that may affect the integrity of their lands; secondly, States must guarantee a system for sharing the benefits resulting from these activities; and, thirdly, States must ensure that a social and environmental impact assessment is carried out before any concession is granted. All these rights refer to the participation of IPs in environmental issues.

### **B.4. On the Right to Prior Consultation and Free, Prior and Informed Consent**

178. Consulting IPs will give them the right to effectively and actively participate in decision-making processes regarding environmental projects. The international framework of IPs, the ILO Convention No. 169 on Indigenous and Tribal Peoples,<sup>99</sup> as well as the UN Declaration on the Rights of Indigenous Peoples,<sup>100</sup> and the American Declaration on the Rights of Indigenous Peoples<sup>101</sup> contain similar provisions of this right.

179. In order to comply with this right, there must be a constant channel of communication, and the consultation must be in good faith, carried out before the start of the project, put into consideration the environmental benefits and risks for

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<sup>94</sup> Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Merits, Reparations and Costs, Judgment, Inter-American Court of Human Rights Series C No. 79 (31 January 2001) para. 149.

<sup>95</sup> Case of the Mayagna (Sumo) Awas Tingni Community v. Nicaragua, Merits, Reparations and Costs, Judgment, Inter-American Court of Human Rights Series C No. 79 (31 January 2001) para 151. In this respect, see also Case of the Sawhoyamaxa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Judgment Inter-American Court of Human Rights Series C No. 146 (29 March 2006) para 128.

<sup>96</sup> Case of the Yakye Axa Indigenous Community v. Paraguay, Merits, Reparations and Costs, Judgment, Inter-American Court of Human Rights Series C No. 125 (17 June 2005) para 164.

<sup>97</sup> Advisory Opinion on Environment and Human Right OC-23/17, Inter-American Court of Human Rights Series A No. 23 (15 November 2017), para 48.

<sup>98</sup> Case of the Saramaka People v. Suriname, Merits, Reparations and Costs, Judgment, Inter-American Court of Human Rights Series C No. 172 (28 November 2007) para 129.

<sup>99</sup> ILO Convention No. 169 on Indigenous and Tribal Peoples, arts. 6, 7(1), 15(2), 22, 27-28.

<sup>100</sup> United Nations Declaration on the Rights of Indigenous Peoples, arts. 10-11, 17-19, 27-30, 32, 36, 38;

<sup>101</sup> American Declaration on the Rights of Indigenous Peoples, arts. 6, 13-14, 18, 20-21, 23, 28(3), 29, 31, 33-34.

IPs, and be culturally appropriate.<sup>102</sup> However, apart from this consultation, when the proposed plan involves a large-scale project, it will be mandatory for States to obtain the free, prior and informed consent of IPs, in accordance with their traditions.<sup>103</sup>

180. The IACHR also concluded that consultation is an obligation considered as a General Principle of International Law,<sup>104</sup> thus, its non-compliance leads to a case of international responsibility of the State.

181. These consultations should be carried out leaving aside any Eurocentric position,<sup>105</sup> taking into account the processes of participation that each of the peoples have; respecting their own customs in the decision-making processes.<sup>106</sup> These processes take time, because, according to their traditions, different communities should listen to their members and their ancestors.<sup>107</sup>

### **B.5. On the right to the distribution of profits**

182. This right has also been widely recognized in international law.<sup>108</sup> Additionally, the IACHR has emphasized that States must reasonably share the benefits of a project with Indigenous Peoples when the rights of use and enjoyment of their lands are threatened by proposed extractive projects.<sup>109</sup> In the words of the Court, this right is a form of compensation for the exploitation of their lands and resources necessary for their survival.<sup>110</sup> Thus, a benefit-sharing plan is mandatory for States, and, above all, this plan must be determined by the Indigenous Peoples themselves, and not an arbitrary decision by States.<sup>111</sup> This is in line with the letter of the Nagoya Protocol on "*Access to benefit sharing (ABS)*, which specifies the central role of Indigenous Peoples and their Free Prior and Informed Consent in any decision regarding benefit sharing relating to the utilization of genetic resources or in relation to traditional practices.

183. This reasoning is due to the fact that the benefit of economic activities on Indigenous Peoples' lands is an essential element of the right to property and should be focused on reinforcing the Indigenous Peoples' own decisions regarding the

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<sup>102</sup> Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and Reparations, Judgment Inter-American Court of Human Rights Series C No. 245 (27 June 2012) para 186.

<sup>103</sup> Case of the Saramaka People v. Suriname, Merits, Reparations and Costs, Judgment, Inter-American Court of Human Rights Series C No. 172 (28 November 2007) paras 134-137.

<sup>104</sup> Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and Reparations, Judgment Inter-American Court of Human Rights Series C No. 245 (27 June 2012) paras 159-164.

<sup>105</sup> Acosta, Alberto (2013) *El Buen Vivir: Sumak Kawsay, una oportunidad para imaginar otro mundo* (Barcelona, Icaira), p. 17.

<sup>106</sup> De Sousa Santos, Boaventura (2010) *Refounding the State in Latin America: Perspectives from an Epistemology of the South* (International Institute of Law and Society), pp. 13-14.

<sup>107</sup> *Ibid*, p. 122

<sup>108</sup> Convention Concerning Indigenous and Tribal Peoples in Independent Countries (ILO No. 169) (1991) art. 15(2); United Nations Declaration on the Rights of Indigenous Peoples (2007) art. 32; American Declaration on the Rights of Indigenous Peoples (2016) arts. 13(2), 29(5).

<sup>109</sup> Case of the Saramaka People v. Suriname, Merits, Reparations and Costs, Judgment, Inter-American Court of Human Rights Series C No. 172 (28 November 2007) paras 138, 139.

<sup>110</sup> *Ibid*, para 140

<sup>111</sup> Case of the Saramaka People v. Suriname, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-American Court of Human Rights Series C No. 125 (12 August 2008) para 25.

development and protection of their lands.<sup>112</sup> Therefore, for Indigenous Peoples, benefit sharing is also considered part of a prior agreement of compensation for the use of their territories and resources; consistent with social, economic and environmental realities.

### **B.6. On the right to social and environmental impact assessment**

184. This right has been widely recognized by international law.<sup>113</sup> For its part, in relation to IPs, ILO Convention No. 169 already mentions the need for participation in "the formulation, implementation and evaluation of national and regional development plans and programs likely to affect them directly."<sup>114</sup>

185. This State obligation, in the words of the IACHR, allows the protection of the relationship between IPs, Mother Earth and their survival<sup>115</sup> and aims to measure and report possible damages to indigenous communities,<sup>116</sup> as well as to warn them of potential health and environmental risks;<sup>117</sup> respecting the traditions and customs of the affected IPs.<sup>118</sup>

186. This study is linked to the consultation and participation rights of IPs, since it guarantees that they are duly informed of the projects to be carried out in their territories and can accept them or not.<sup>119</sup> Therefore, for the Court, an adequate Social and Environmental Impact Study must have at least three requirements: a) the participation of the IPs in its creation; b) be carried out by a technical and competent institution, with the supervision of the State; and, c) consider the social, cultural and spiritual impact it may have on the IPs.<sup>120</sup>

187. Finally, the IACHR has indicated that these studies should include the elements detailed in the "Akwé: Kon" guidelines<sup>121</sup>, as it is considered one of the most complete and widely used standards for carrying out this type of study.

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<sup>112</sup> Anaya, James and Williams, Robert (2001) 'The Protection of Indigenous Peoples' Rights over Lands and Natural Resources Under the Inter-American Human Rights System'. In Harvard Human Rights Journal 14 p 83

<sup>113</sup> Rio Declaration on Environment and Development (1992) principle 17; Convention on Environmental Impact Assessment in a Transboundary Context (1997); United Nations Framework Convention on Climate Change (1994) art. 4(1)(f); United Nations Convention on the Law of the Sea (1994) art. 206; Convention on Biological Diversity (1993) art. 14; United Nations General Assembly (1990a), para 11; International Law Commission Report (2001), art. 7.

<sup>114</sup> Convention No. 169 ILO, art. 7.1

<sup>115</sup> Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and Reparations, Judgment Inter-American Court of Human Rights Series C No. 245 (27 June 2012) para 205.

<sup>116</sup> Case of the Saramaka People v. Suriname, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-American Court of Human Rights Series C No. 125 (12 August 2008) para 40-41.

<sup>117</sup> Case of the Saramaka People v. Suriname, Merits, Reparations and Costs, Judgment, Inter-American Court of Human Rights Series C No. 172 (28 November 2007) para 133.

<sup>118</sup> Advisory Opinion on Environment and Human Right OC-23/17, Inter-American Court of Human Rights Series A No. 23 (15 November 2017), para 169.

<sup>119</sup> Case of the Saramaka People v. Suriname, Interpretation of the Judgment on Preliminary Objections, Merits, Reparations and Costs, Judgment, Inter-American Court of Human Rights Series C No. 125 (12 August 2008) paras 40-41.

<sup>120</sup> Case of the Kichwa Indigenous People of Sarayaku v. Ecuador, Merits and Reparations, Judgment Inter-American Court of Human Rights Series C No. 245 (27 June 2012) para 207.

<sup>121</sup> <https://www.cbd.int/doc/publications/akwe-brochure-es.pdf>

## **B.7. On the right to defend the environment and the Earth**

188. The rights to participation, access to information, and to justice, which are the pillars of the Escazu Agreement, are strictly connected and subordinated to the right to defend the environment and environmental rights. In this sense, Article 9 of the Escazu Agreement recognizes the rights of environmental defenders, the obligation of states to protect them and to ensure their freedom and safety.<sup>122</sup> Environmental human rights defenders are recognized as such in the 1988 UN Declaration on Human Rights Defenders, and in several other UN conventions and declarations. It is worth recalling that in their own official statements, several UN Special Rapporteurs, including the Rapporteurs on the rights of indigenous peoples, the environment, and human rights defenders have highlighted their concerns regarding the impacts of the Maya Train on human and indigenous peoples' rights.
189. In conclusion, this Tribunal states that this project has violated a series of rights related to the Maya people, for example, several inconsistencies have been found in the documents that have been presented to carry out the Maya Train, which casts doubt on the legality of the project and the legal and administrative processes that have been carried out to date.
190. Although these rights have been considered within the group of human rights, their non-compliance undoubtedly directly affects the rights of Mother Earth.
191. This Tribunal has heard and gathered ample evidence that further confirms how violations of the rights of Mother Earth are intrinsically connected to violations of the rights to self-determination, to land, territories and resources, to ancestral knowledge, to free, prior and informed consultation and consent, to violations of individual and collective social, political, economic and environmental rights.

## **C. BIOCULTURAL RIGHTS OF THE MAYA PEOPLES**

192. In connection with the above, according to the testimonies gathered at the hearing, there is a violation of the biocultural rights of the Maya peoples, since the damage caused to Nature also affects the rights associated with culture and territory, and the risk of ethnocide.
193. As one of the experts who testified in this Tribunal, the Indian lawyer and intellectual F. López Bárcenas, has rightly stated, according to the San José Declaration issued in December 1981: "Ethnocide means that an ethnic group, collectively or individually, is denied its right to enjoy, develop and transmit its own culture and its own language. This implies an extreme form of massive violation of human rights, particularly of the right of ethnic groups to respect for their cultural identity, as established by numerous declarations, covenants and conventions of the

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<sup>122</sup> Escazú Agreement, article 9.- numeral 1.- Each Party shall guarantee a safe and enabling environment in which persons, groups and organizations that promote and defend human rights in environmental matters may act without threats, restrictions and insecurity.

United Nations and its specialized agencies, as well as by various regional intergovernmental organizations and numerous non-governmental organizations.”<sup>123</sup>

194. Ethnocide, as anthropologist Pierre Clastres has argued, is "the systematic destruction of the ways of life and ways of thinking of peoples different from those who carry out the destruction. While “genocide kills the bodies of peoples, ethnocide kills them in their spirit”.<sup>124</sup> In both cases it is death, but the treatment is different: genocide seeks immediate physical suppression, while ethnocide seeks the cultural suppression of the group and this differs its effects over time, depending on the capacity of resistance of the oppressed society. This is currently happening with the Maya communities, as we have heard.
195. From this perspective, it should be noted that the Colombian Constitutional Court, in its judgment in the Río Atrato case, stated that biocultural rights imply, in general terms, an intrinsic link between Nature and culture, as well as the human species as part of Nature.
196. In this regard, we can read in the judgment of the cited case, on the concept and scope of biocultural rights: "The first thing to note is that the so-called biocultural rights, in their simplest definition, refer to the rights of ethnic communities to administer and exercise autonomous guardianship over their territories - according to their own laws and customs - and the natural resources that make up their habitat, where their culture, traditions and way of life are developed based on the special relationship they have with the environment and biodiversity. In effect, these rights result from the recognition of the profound and intrinsic connection that exists between Nature, its resources and the culture of the ethnic and indigenous communities that inhabit them, which are interdependent and cannot be understood in isolation. The central elements of this approach establish an intrinsic link between Nature and culture, and the diversity of the human species as part of Nature and manifestation of multiple forms of life. From this perspective, biodiversity conservation necessarily entails the preservation and protection of the ways of life and cultures that interact with it."<sup>125</sup>
197. And further on it states: “A central element within the biocultural rights paradigm is the concept of community or collective, which should be understood as a term that includes indigenous, ethnic, tribal and traditional communities whose ways of life are predominantly” territory-based and who have strong cultural and spiritual ties to their traditional lands and resources. While communities are qualified by various categories including ethnicity, shared resources, common interests and political structure, the term community here is used to denote groups of people whose way of life is determined by their ecosystem".

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<sup>123</sup> Pierre Clastres, "On Ethnocide", *Encyclopaedia Universalis*, Paris, Ed. Universalis, 1974, pp. 282b-86a.

<sup>124</sup> "Declaration of San José on ethnocide and ethno-development", adopted at the end of a meeting organized between December 7 and 11, 1981 by the Latin American Faculty of Social Sciences (Flacso), under the auspices of UNESCO, with the participation of some fifty indigenous leaders, academics and government and international officials.

<sup>125</sup> Chrome

extension://efaidnbmnnbpcajpegglefindmkaj/https://redjusticiaambientalcolombia.files.wordpress.com/2017/05/sentencia-t-622-de-2016-rio-atrato.pdfop. cit, p. 43-44.

198. In this line, it has stated that the central premise of biocultural rights is the recognition of a profound and interdependent relationship between Nature and the human species, through indigenous communities, which implies a new legal approach to be given to Nature and its relationship with human beings.
199. It is important to note that biocultural rights have been included in several international instruments such as ILO Convention 169, the Convention on Biological Diversity, the American Declaration on Indigenous Peoples, among others.
200. The Colombian Constitutional Court, in paragraph 9.32. stated that biocultural rights, are expressed according to the following: “(i) the multiple ways of life expressed as cultural diversity are inextricably linked to the diversity of ecosystems and territories; (ii) the richness expressed in the diversity of cultures, practices, beliefs and languages is the product of the co-evolutionary interaction of human communities with their environments and constitutes an adaptive response to environmental changes; (iii) the relationships of the different ancestral cultures with plants, animals, microorganisms and the environment actively contribute to biodiversity; (iv) the spiritual and cultural meanings of indigenous peoples and local communities about nature are an integral part of biocultural diversity; and (v) the conservation of cultural diversity leads to the conservation of biological diversity, so that the design of policy, legislation and jurisprudence should focus on the conservation of bioculturality.
201. From the testimonies gathered during the hearing, in addition to the visits carried out by this Tribunal, it has been possible to evidence the affectation produced by this project, called the Maya Train, to the biocultural rights of said people, since the destruction of Nature, of their sacred or archaeological sites, and of the resources found in their territory have caused a rupture of their intrinsic and cultural relationship with Nature. Thus, the biocultural rights of the Maya peoples are not being recognized or guaranteed by the Mexican State.
202. The Maya Train and other Megaprojects such as the Trans-Systemic Corridor, and plans for mineral and oil extraction, are not only alien to Nature and the Maya people, but represent a criminogenic model, in the sense that they generate systemic crimes against the existential rights of Mother Earth and the Peoples.
203. Neo-extractivism not only transforms Nature into merchandise, but also cultures, knowledge and ancestral practices, which become goods to be marketed by the tourism industry, in a sort of ontological or epistemic extractivism that removes roots and meaning from the cultures and practices of peoples through folklorization and commodification, to the advantage of the industry itself.

## **VI. SENTENCE**

204. Based on the foregoing, and in view of the evidence presented, this Tribunal decides:



- I. To recognize in an irrefutable way the violation of the Rights of Nature and the biocultural rights of the Maya People, who have been and continue to be the protectors and guardians of their territory. Of their cenotes, caves and coasts; their jungles, their biodiversity and traditional crops, and the non-human beings that inhabit their ecosystems, all of which constitute crimes of ecocide and ethnocide. The Tribunal holds the Mexican State responsible for the violation of these fundamental Rights of Nature and of the Maya People.
- II. To declare the violation of the rights of Mother Earth, the right to life and to exist; her right to be respected, the right to the regeneration of her biocapacity and the continuation of her vital cycles and processes free of human alterations; the right to water as a source of life; the right to integral health; the right to be free of contamination, pollution and toxic or radioactive waste, all of which are recognized in Article 2.1 paragraphs a) b) c) e) g) and h) of the Universal Declaration of the Rights of Mother Earth.
- III. Condemn the authorities of the United Mexican States to the immediate suspension of the Tren Maya Megaproject with all its components, as well as the demilitarization of indigenous territories. We demand that the State, particularly the Central Government and the Executive, cease the dispossession of communal lands and territory in general, as well as to end the persecution, threats, harassment and intimidation of nature defenders.
- IV. To declare the cenotes as a subject of rights because they constitute the most important water source for the survival of the people, communities, and animal and plant species in the region.
- V. As comprehensive reparation measures it is ordered:
  - a) Conduct an independent, inter- and transdisciplinary and intercultural audit, with the participation of the communities affected by the different sections of the Maya Train project and the Master Plan that has not yet been presented by the competent authorities. In this regard, the environmental impact statements should be systemic and not partial and include not only this project, but all those planned for the area.
  - b) Comprehensively repair and restore all ecosystems that have been affected by the execution of the Maya Train and its collateral facilities, as well as all social impacts generated by this work in terms of communal land tenure and territories.
  - c) Suspend the processes of dispossession and expropriation of communal land from the communities and review the processes of dispossession and expropriation already carried out.
  - d) Immediately demilitarize the territory and guarantee the lives of the people who have expressed their disagreement with the project and other programs linked to it.
- VI. Exhortations

Urge the companies and investors in the project to respect the collective rights of the peoples provided for in the Escazú Agreement and in the other norms established in the legal system aimed at guaranteeing the rights of the peoples.

Exhort the federal Executive and Legislative branches:

Revise the Agrarian Law that establishes the social ownership of land, so that it is replaced by a law that contemplates the socio-ecological function of the territory in its indissoluble relationship with the sustainable cultural practices of the peoples and communities that ancestrally inhabit them.

Carry out constitutional reforms to incorporate the recognition of Nature as a subject of rights.

Carry out constitutional reforms at the Federal level to recognize Indigenous Peoples as subjects of public law.

To the Judicial Branch of the Federation:

Apply the highest national and international standards of protection in environmental matters and the rights of Indigenous Peoples in all lawsuits that have been filed against the Maya Train Megaproject for violations of the Rights of Nature, water, as well as cultural rights.

## **JUDGES SIGNATURES**

Signed by the Presiding Judge and the judges of the Tenth Local Rights of Nature Tribunal- Maya Train Megaproject case:

Maristella Svampa  
Argentina  
President of the Tribunal

Raul Vera  
Mexico

Yaku Perez  
Ecuador

Francesco Martone  
Italy - Ecuador

Alberto Saldamando  
Chicano/Zapoteca - USA

**SIGNATURES HONORARY JUDGES**