



Tribunal Latinoamericano del

Public Hearing. Latin American Water Tribunal
ANTIGUA, GUATEMALA. SEPTEMBER 12TH 2008

Case: Construction of large scale hydroelectric power dams on Madeira River. State of Rondonia, Brazil

Opposing parties: Associação de Defesa Etnoambiental Kanindé

In opposition to: Gobierno Federal de la República del Brasil, a través de Advocacia Geral da União (AGU)
Iniciativa para la Integración de la Infraestructura Regional Sudamericana (IIRSA)

FACTS

1. The Madeira river basin, with a 1.244.500 km² area, is one of the main Amazon river basin's tributaries, and is shared by Brazil, Bolivia and Peru;
2. The Brazilian government has issued construction permits for large scale dams for hydroelectric purposes as a part of its Growth Acceleration Plan (PAC in Portuguese);
3. The water usage plans in the Madeira River were approved through Brazil's National Water Agency's resolutions ANA No. 555 (for the Jirau Project) and ANA No. 556 (for the Santo Antônio Project);
4. These dams are known as Santo Antônio, with a 271,3 km² impounded area and Jirau, with a 258 km² impounded area;
5. The Santo Antônio and Jirau hydroelectric power projects belong to the South American Regional Initiative for the Infrastructure's Integration (IIRSA in Spanish), established in 2000;
6. Both dams will hold a combined capacity capable of supplying 8% of Brazil's current power demand;
7. These dams would start operating in 2012;
8. The Bolivian government appealed to the prior information's principle, since the Jirau and Santo Antônio projects are located 84 and 190 kilometers away from Bolivia's territorial boundaries;
9. The Santo Antônio dam will be located 7 kilometers away from Porto Velho city, while Jirau dam will be located 127 kilometers away from that city.



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WHEREAS:

1. The universal acknowledgment of water in adequate quantity and quality as a fundamental human right whose plain exercise must be enforced by the Governments (Mexico City's Public Hearing, 2006);
2. The social right to water must not be exercised in detriment of those in close proximity to the water source of contention (Guadalajara's Public Hearing, 2007);
3. Water as a dominant element in the indigenous beliefs surpasses material and utilitarian preconceptions which prevail in the productive activities over it. Therefore, it must be addressed as a fundamental element in all conflicts involving the indigenous peoples' identity;
4. The traditional and close dependence of indigenous peoples whose traditional way of life's systems are based on biological resources, and the convenience of equally sharing the benefits derived from the uses of traditional knowledge, the innovations and adequate practices for the conservation of the biodiversity and sustainable use of its components (The Covenant on Biodiversity (June, 1992));
5. The Law State is based on respecting and promoting human dignity of all and every one of its inhabitants;
6. Neither one of the projects' environmental impact assessments have considered the indirect impacts on very little known and isolated indigenous peoples, such the Karitana, Karipuna, Oro Bom, Cassupá, Salamai, Katawixi, Uru-eu-Wau-Wau;
7. The consultation processes were flawed and the affected communities requests were unattended;
8. A social participation, oriented to facilitate the social and environmental impacts' participation in the decision making process, is not recognized in either one of the projects;
9. The aforementioned projects are large scale ones, with significant impacts on the hydrological cycle, which will affect the livelihood of several thousands of fishermen from the State of Rondonia, the farming activities of the populations settled downstream from the dams, the historical, archaeological and cultural heritage of the indigenous populations settled in the region as well as on the aquatic and terrestrial biodiversity identified in the areas to be inundated;
10. The Santo Antônio and Jirau dams' impoundment surface implies the submergence of large areas of the Amazon jungle;
11. The construction of the aforementioned dams presupposes a potential boundary conflict, since the Madeira river basin is shared with Bolivia and



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given the opposition expressed by the Bolivian government to the hydroelectric projects construction;

12. The Brazilian government, has not upheld the legislation and international treaties it has enacted in this process, more specifically the article 7.3 from the International Labor Organization's Covenant 169, which states that: "*The governments must guarantee, whenever necessary, the performance of studies, in close cooperation with the concerned peoples in order to assess the social, spiritual, cultural and environmental effects that the foreseen development activities may have upon these peoples. These studies results must be taken into consideration as fundamental criteria for the execution of the aforementioned activities*", nor the Rio de Janeiro Declaration on Development and Environment, whose principle No. 10, stipulates the citizenry's participation in development projects;
13. The Brazilian government has violated its Federal Constitution's articles 1, 225 and 231 in this process, as well as the article 2, item III, from the National Indian Foundation's ordinance (FUNAI in Portuguese) which establishes: to guarantee the indigenous and isolated indigenous groups their right to keep their customs while maintaining their territory's integrity;
14. The government issued the permits for the dams' construction on August 11th 2008.

In the view of the facts and considerations preceding, the jury of the Latin American Water Court

RESOLVES:

1. To censor the Brazilian government for its intention to build high impact projects at social and environmental levels, with a life span of less than 50 years, which imply an environmental destruction of uncalculated magnitude with subsequent risks to the social and individual wellbeing of the populations settled in the affected areas;
2. To censor the Brazilian government for not observing the indigenous peoples rights by not enforcing the International Labor Organization's Covenant 169, the Rio de Janeiro Declaration's principle No.10; the Federal Constitution of the Republic of Brazil (articles 1, 225 and 231) as well as the article 2º, item III, from the FUNAI's ordinance;
3. To censor the Brazilian government for not considering these projects impacts beyond Brazil's territorial boundaries.



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RECOMMENDS

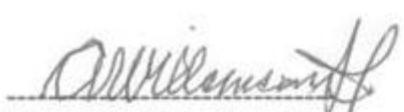
1. The Brazilian government, in strict accordance to the precautionary principle, to cancel the construction licenses approved for the two large scale hydroelectric power projects.
2. The Brazilian government to uphold its Federal Constitution, as well as the international covenants and treaties regarding indigenous and isolated indigenous peoples own rights.
3. The Brazilian government to execute the due studies with the participation of the resident indigenous peoples in the areas that could be affected, by guaranteeing the isolated peoples safety while maintaining their condition.
4. The Brazilian government to finish the environmental impact studies' process and to effectively implement their conclusions.
5. The Brazilian government to consider these projects' impacts on Bolivian territory, in accordance to the International Law regarding the international basin management's principle as an indivisible management unit.



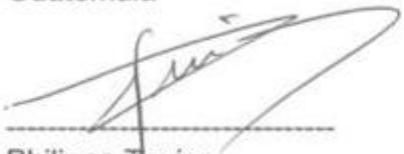
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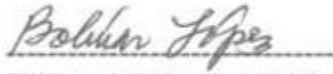
In the Auditorium of the Hotel La Real Plaza located in the city of Antigua, Guatemala, after the Latin American Water Tribunal's Hearings scheduled September 8th through September 12th, and once the declarations, evidences and notices from the parties involved were heard in a Public Hearing, the undersigned members of the jury of the Latin American Water Tribunal render the following verdict on the case of Construction of large scale hydroelectric power dams on Madeira River. State of Rondonia, Brazil.



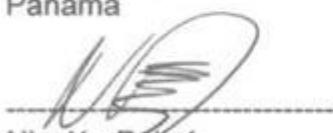
Augusto Willemsen Diaz
Guatemala



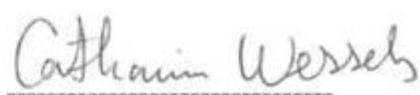
Philippe Texier
Francia



Bolívar López Cansuet
Panamá



Nicolás Pelicó
Guatemala



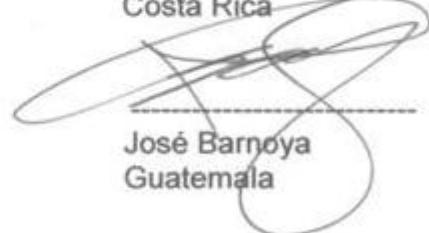
Catharina Wesseling
Costa Rica



Ángel Graña
Cuba



Alejandro Swaby
Costa Rica



José Barroga
Guatemala



David Barkin
México

* The member of the Jury, Alexandre Camanho de Assis, abstain from knowing this case