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THIRD PARTY PETITIONS AS A MEANS OF PROTECTING VOLUNTARILY ISOLATED INDIGENOUS PEOPLES

by Nickolas M. Boecher*

There are more than one hundred isolated indigenous groups worldwide with more than half living in Peru and Brazil.¹ Loggers, colonists, and oil companies are encroaching on the lands of these groups, which are at an additional risk of extinction from diseases to which they have no immunity.² A procedural element of the Inter-American Commission on Human Rights allowing the entry of petitions by third parties may provide an important means to ensure the future protection of these groups, their culture, and the forests they inhabit.

Oil and gas development in the western Amazon may soon increase rapidly.³ These blocks overlap some of the most biologically diverse regions on the planet that are still inhabited by native indigenous groups, many of which are voluntarily isolated.⁴ The combination of oil, primary rain forest, and isolated indigenous groups is a recipe for disaster.

A line of decisions from the Inter-American human rights system recognizing indigenous property rights offers hope. The Inter-American Commission on Human Rights (“Commission”) is a human rights body that exercises jurisdiction to hear contentious human rights cases over all Member States of the Organization of the American States (“OAS”).⁵ The Commission can submit a case to the Inter-American Court of Human Rights (“Court”) if the offending state has ratified the American Convention on Human Rights and has explicitly accepted the Court’s jurisdiction.⁶ The States encompassing the western Amazon - Brazil, Peru, Ecuador, Colombia and Bolivia - have all done so.⁷

In *The Mayagna (Sumo) Awas Tingni Community v. Nicaragua*,⁸ the Court ordered Nicaragua to grant property rights to the Awas Tingni people who faced threats of logging on their ancestral lands.⁹ This landmark case recognized the rights of indigenous groups to the land that they inhabit based on their need to sustain themselves and their culture.¹⁰ With this precedent, the Court has simultaneously permitted other indigenous groups to establish their rights to property, and presented a potential solution to the problem of environmental degradation in the Amazon.

Indigenous cultures have lived with the Amazon forest for millennia, and its composition is a result of their active management.¹¹ The UN has recognized the importance of indigenous culture and its ability to contribute to sustainable development.¹² Since *Awes Tingni*, other contacted indigenous groups have succeeded in asserting indigenous property rights before the Court.¹³ Studies have demonstrated that contacted tribes rapidly acquire modern technologies and after a single generation can

drastically move away from the lifestyles that maintained their population in closer balance with the surrounding environment.¹⁴

The Commission permits third parties to submit petitions on behalf of an injured party if the actual injured party is unable to submit a petition for itself.¹⁵ Concerned parties have submitted petitions in favor of isolated groups and have successfully elicited precautionary measures from the Commission in their favor.¹⁶ This procedural mechanism provides a means to simultaneously protect indigenous groups, their culture, and the forests they inhabit.

There are also challenges to the establishment of indigenous property rights for isolated groups, many associated with effective representation. First, it may be difficult to determine the true interests of isolated groups. Second, self-interested parties could enter a petition in the name of an isolated group to advance their own interests. Similarly, there is a risk that third party petitioners will not be zealous advocates. Finally, there are often severe difficulties in gathering evidence documenting human rights abuses of silent victims in remote regions.

Further, Inter-American Court precedent, while promising, also poses problems. The Court has limited indigenous land rights to the traditional use of the territory, therefore, state parties can still grant concessions for the extraction of natural resources after consultation with the affected group.¹⁷ Additionally, the Court has permitted state parties to make the ultimate determination of which lands are returned to indigenous groups after consultation with them.¹⁸ These rulings are incompatible with the nature of isolated groups, which face extinction on contact with foreign diseases, are not available for consultation, and live an itinerant lifestyle irrespective of established boundaries.

A possible solution includes referencing neighboring contacted groups as a proxy for the interests of uncontacted groups, as well as for a source of information about where traditional territories lie. Additionally, natural boundaries such as rivers or settlements of contacted groups can assist in delimiting land rights. If similar solutions are not implemented soon, it could be to the detriment of the rights of isolated groups, their culture, and the forests they inhabit. Any future Court decision, therefore, must be tailored to the groups’ unique and compelling situation.



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¹ See Press Release, Survival International, Uncontacted tribe photographed near Brazil-Peru border (May 29, 2008), *available at* <http://www.survivalinternational.org/news/3340> (showing photo of an uncontacted Amazonian tribe launching a frenzied arrow attack on an airplane).

² See Press Release, Survival International, One year on – New report reveals five uncontacted tribes most at risk (May 29, 2009), *available at* <http://www.survivalinternational.org/news/4597>.

³ See *id.*

⁴ See *id.* at 5.

⁵ See Inter-American Commission on Human Rights, What is the IACHR?, <http://www.cidh.oas.org/what.htm> (last visited Oct. 28, 2009).

⁶ Organization of American States, American Convention on Human Rights arts. 51, 62, Nov. 22, 1969, O.A.S.T.S No. 36, 1144 U.N.T.S. 123, *available at* <http://www.cidh.oas.org/Basicos/English/Basic3.American%20Convention.htm>.

⁷ See Inter-American Commission on Human Rights, Signatures and Current Status of Ratifications, <http://www.cidh.oas.org/Basicos/English/Basic4.Amer.Conv.Ratif.htm>.

⁸ *Mayagna (Sumo) Awas Tingni Community V. Nicaragua*, 2001 Inter-Am. Ct. H.R., (ser. C) No. 79 (Aug. 31, 2001).

⁹ See *id.* at 5, 80.

¹⁰ Claudio Grossman, *Awes Tingni v. Nicaragua: A Landmark Case for the Inter-American System*, 8 HUM. RTS. BRIEF 2, 2 (2001).

¹¹ John G. Robinson & Elizabeth L. Bennett, *Carrying Capacity Limits to Sustainable Hunting in Tropical Forests*, in HUNTING FOR SUSTAINABILITY IN TROPICAL FORESTS 15 (John G. Robinson & Elizabeth L. Bennett eds., 2000).

¹² United Nations Declaration on the Rights of Indigenous Peoples, Sept. 13, 2004, 61 U.N.T.S. 295, *available at* <http://www.un.org/esa/socdev/unpfi/en/drip.html>.

¹³ See *Saramaka People v. Suriname*, 2007 Inter-Am. Ct. H.R. (ser. C) No. 172 (Nov. 28, 2007); *Sahoyamaya Indigenous Cmty. v. Paraguay*, 2006 Inter-Am. Ct. H.R. (ser. C) No. 146 (2006); *Sarayaku Indigenous Cmty. v. Ecuador*, 2004 Inter-Am. Ct. H.R. (ser. C) No. 62 (2004) (enforcing the property rights of indigenous groups in contact with local government prior to petitioning the Commission).

¹⁴ Patricio Mena V., Jody R. Stallings, Jhanira Regalado B., & Ruben Cueva, *The Sustainability of Current Hunting Practices by the Huaorani*, in HUNTING FOR SUSTAINABILITY 71, 77 (John G. Robinson & Elizabeth L. Bennett eds., 2000).

¹⁵ Inter-Am. C.H.R., Human Rights: How to Present a Petition in the Inter-American System 6 (2002).

¹⁶ See Press Release, Inter-American Commission on Human Rights, IACHR Concludes its 130th regular sessions, No. 54/07 (October 19, 2007) *available at* <http://www.cidh.oas.org/Basicos/English/Basic4.Amer.Conv.Ratif.htm>.

¹⁷ See Jo M. Pasqualucci, *International Indigenous Land Rights: A Critique of the Jurisprudence of the Inter-American Court of Human Rights in Light of the United Nations Declaration on the Rights of Indigenous Peoples*, 27 WIS. INT'L L.J. 51, 80-81, 85 (2009).

¹⁸ *Id.* at 84.
