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BALANCING INDIGENOUS RIGHTS AND A STATE'S RIGHT TO DEVELOP IN LATIN AMERICA:

THE INTER-AMERICAN RIGHTS REGIME AND ILO CONVENTION 169

by David C. Baluarte*

INTRODUCTION

Latin America is a unique continent in many respects. Its vicious colonial history, characterized by the enslavement of indigenous peoples and the extraction of limitless wealth by occupying powers, left modern society to cope with a legacy of oppression. However, many critics believe that post-colonial marginalization of Native Latin Americans is largely equivalent to the oppression attributed to the colonial architects.¹ Much of this abuse has occurred in the name of development: expansive industrialization projects that overtake indigenous lands and decimate cultures. However, in Latin America, which is a patchwork of nations plagued by large populations of rural and urban poor, development is both a right and a responsibility of all national governments.²

Many Latin American governments view the exploitation of the continent's natural wealth as their only escape from poverty. Latin America sits atop the second largest petroleum reserves in the world, and the vast Amazon is home to a variety of other valuable resources. Petroleum is one of the most reliable revenue producers in the world, and the prevailing property rights regime gives the government complete control over sub-surface resources, regardless of land title.³ Building dams and roads and clearing forests is a necessary step not only in the exploitation of petroleum, but in the exportation of products such as timber and precious metals. Many of these projects, however, negatively affect the environments of indigenous communities where these valuable products are found. The question is then one of balancing indigenous rights to land and culture with the State's right, as representative of the national population, to develop. The notion of prior informed consent effectively captures this balance.

In Latin America, the American Convention on Human Rights ("American Convention") provides a coherent framework for the promotion and protection of human rights in the continent. Over the past decade, the Inter-American Court of Human Rights ("Inter-American Court" or "Court") and the Inter-American Commission on Human Rights ("Inter-American Commission" or "Commission") have used this document to develop a significant body of jurisprudence concerning the rights of indigenous communities in the Americas.⁴ This paper proposes using ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries ("ILO 169") as an interpretive tool to advance that body of jurisprudence. One of the central principles of ILO 169 is the right of indigenous communities to prior informed consent based on their participation in the formation and

implementation of development projects that will impact their territories. The right to prior informed consent, however, has yet to make its way into the Inter-American Commission and Court's interpretation of indigenous land rights under the American Convention. Establishing ILO 169 as an interpretive document in the inter-American human rights system would create the possibility for advocates to solicit emergency protective measures from the system's adjudicatory bodies when governments fail to respect the right of indigenous peoples to prior informed consent.

The first section of this paper articulates the content of the indigenous land right under ILO 169. It provides specific cases in which the ILO Committee of Experts ("ILO Committee" or "Committee") has found Latin American governments in violation of ILO 169 and explains the importance of applying ILO 169 principles to the process of Latin American development. The second section provides the basis for using ILO 169 to interpret the indigenous right to land under the American Convention. It outlines the jurisprudence from the Inter-American Commission and Court relating to indigenous rights and explains how the notion of prior informed consent can be imported into the American rights regime. Finally, the last section proposes that activists solicit precautionary and provisional measures from the Inter-American Commission and Court to protect the right of indigenous peoples to prior informed consent. These emergency measures could provide a means to address potential abuses of indigenous land rights by ordering governments to comply with their international obligations before damage becomes irreparable.

THE LEGAL FRAMEWORK PROVIDED BY ILO 169

ILO 169 was adopted during the International Labour Conference in 1989, and it entered into force two years later, updating ILO Convention No. 107, adopted 30 years earlier.⁵ The first part of ILO 169, entitled "General Policy," is composed of twelve articles that govern the six subsequent parts of the convention, each of which discusses a substantive area of rights.⁶ The first substantive right discussed, the right to land, is the focus of this analysis. That part includes seven articles that, when read together with the first twelve, articulate an elaborate framework of a state's responsibilities when it plans to carry out development projects that will affect indigenous lands. Allegations of violations of those provisions are heard by the ILO Committee.

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PRIOR INFORMED CONSENT

The notion of prior informed consent pervades ILO 169, but the idea can be found specifically articulated in Articles 6 and 7, commonly considered the central principles of the convention.⁷ Article 6 requires states party to ILO 169 to consult indigenous peoples through appropriate procedures whenever administrative or legislative measures are being considered that will affect them directly, to aid in the development of institutions for that purpose, and to carry out consultations in good faith. It further requires states to establish means by which indigenous peoples can participate freely and meaningfully at all levels of government decision-making and policy formation that concern them. Though there is no requirement that the state and the indigenous communities reach a consensus, full participation is imperative.⁸ Article 7 bestows on indigenous peoples the right to determine and pursue their own priorities in their process of development and to exercise control over their own social, economic, and cultural development. Further, that article

Many Latin American governments view the exploitation of the continent's natural wealth as their only escape from poverty.

expressly grants indigenous peoples the right to “participate in the formulation, implementation and evaluation of plans and programs for national and regional development which may affect them directly.”⁹ These two articles, read together, reflect the spirit of prior informed consent, and apply to each provision of ILO 169 that follows.

DEMARCATON OF LANDS

In 1996, the Union of Huichol Indigenous Communities of Jalisco (“Union”) submitted a claim against Mexico through the National Trade Union of Education Workers to the ILO Committee alleging violations of ILO 169. In that case, indigenous communities represented by the Union alleged that the government had illegally adjudicated 22,000 hectares of historic land to mixed (mestizo) agrarian communities in the 1960s.¹⁰ This case was brought under Article 13, which calls on governments to respect the cultural and spiritual relationship of indigenous groups to their land, and Article 14, which requires governments to demarcate indigenous lands and create procedures by which land claims can be resolved.¹¹ The Committee analyzed these alleged violations in the context of Article 2, namely that

governments: (1) will have the responsibility for developing, with the participation of the peoples concerned, coordinated and systematic action to ensure indigenous people are not discriminated against under national laws; (2) will promote the economic, social, and cultural rights of those people; and (3) will assist in closing any socio-economic gaps that exist between the indigenous peoples and the rest of the national population.¹²

In finding that Mexico had violated ILO 169, the Committee highlighted two fundamental principles of the convention. The first is embodied in Article 4, which directs governments to adopt special measures as appropriate for safeguarding the persons, institutions, property, labor, cultures, and environment of the people affected by any project. The second was Article 6 and the requirement of a good faith consultation when an administrative measure could directly affect them.¹³ These are some of the most prevalent issues in indigenous rights.

NATURAL RESOURCES

As mentioned above, indigenous land rights are extremely relevant in the context of petroleum exploration. Perhaps one of the saddest catastrophes relating to the exploitation of Latin American petroleum reserves occurred in Ecuador, where Texaco, in the late 1960s, dumped 4.3 million gallons of toxic waste into the rainforest and created 627 open-air toxic waste pits that have negatively affected approximately 80 indigenous communities in the Amazon region.¹⁴ It was in that historical context that the Committee evaluated a claim by the Ecuadorian Confederation of Free Trade Union Organizations (“CEOSL”) against Ecuador in 2000. CEOSL alleged that the government entered into a share agreement with the company Arco Oriente, Inc. for the exploration of hydrocarbons in a region where 70 percent of the territory of the Independent Federation of the Shuar People is located. According to CEOSL, the government had entered into this agreement without consulting the Shuar, and therefore had violated Article 15 of ILO 169, among others.¹⁵

Article 15(1) provides that the rights of indigenous peoples to their natural resources should be “specially safeguarded.” This includes the right of these peoples to “participate in the use, management and conservation of these resources.” Article 15(2) makes specific reference to petroleum as state patrimony, as is the case throughout Latin America, but reiterates the need for governments to create and maintain procedures for consultation and means of ascertaining whether and to what extent the interests of the indigenous populations would be prejudiced by the exercise of these sub-surface rights.

Despite the requirements of Article 15, the Ecuadorian government stated that it did not believe consultations to be an appropriate part of granting share agreements for activities involving petroleum exploration and exploitation.¹⁶ In responding to this, the Committee stressed that it was fully aware of the difficulties relating to land rights and the exploration of sub-surface resources, “particularly when differing interests and points of view are at stake such as the economic and development interests represented by the hydrocarbon deposits and the cultural, spiritual, social, and economic interests of the indigenous peoples situated in the zones where those deposits are situated.”

However, the Committee continued to stress that consultation and participation were the very essence of ILO 169, and that parties were required to “establish a dialogue allowing them to find appropriate solutions in an atmosphere of mutual respect and full participation.”¹⁷ This framework is particularly significant due to the prevalence of petroleum exploration and the severity of the damage that can result.

REMOVAL AND RELOCATION

Occasionally, due to the scale of a development project, state authorities may need to temporarily or permanently remove indigenous peoples from their lands. Article 16 of ILO 169 governs the necessity and legitimacy of such procedures. The interpretation of this article was raised before the Committee in 1999 when it evaluated a claim by the Central Unitary Workers’ Union (“CUT”) and the Colombian Medical Trade Union Association (“ASMEDAS”) against Colombia.¹⁸ The primary complaint in this case concerned the failure of the Colombian government to adequately consult the Embira Katfú community before building a dam which flooded their historic lands. In finding that the State had violated its obligation to consult the community under Article 6 of ILO 169, the Committee had cause to discuss the relocation of families whose land was flooded due to the construction of the dam.

Article 16 of ILO 169 provides that peoples shall only be removed from their lands as an exceptional measure. There are also several explicit requirements: 1) the government must obtain consent when removal is necessary, or establish procedures governed by national laws when consent cannot be obtained; 2) peoples must always be returned to their lands, or given functionally equivalent lands or monetary compensation when return is not possible; and 3) relocated peoples should be fully compensated for any resulting loss or injury.

In the case against Colombia, the Committee appeared to approve of the government’s efforts to fix a food and transportation subsidy, which the owners of the project would pay to each of the affected members of the indigenous community for the next 15 years. The Committee emphasized the importance of ensuring the physical and cultural survival of the Embera Katfú people while they adapted their customs to the new circumstances, weathered the inevitable political and economic changes caused by the relocation, and educated the next generation about its culture so that it would survive in the medium term.¹⁹ The Committee also noted with approval that the government, together with indigenous representatives, had produced written agreements that granted additional land to the Embera Katfú people and made provision for other compensa-

tory measures.²⁰ The Committee’s sanctioning of these measures gives a concrete example of what compliance with the requirements under Article 16 might actually look like.

TRANSFER OF LAND

Another important aspect of indigenous land rights included in ILO 169 is the transfer of those rights among members of the peoples concerned. Article 17 requires consultation whenever there is a proposed change in the legal recognition of a peoples’ right to alienate or transfer land rights. The Committee had cause to interpret the parameters of this right in 1997, when the General Confederation of Workers in Peru (“CGTP”) alleged that Peru had violated ILO 169 when the Congress of the Republic passed Act No. 26845 (“Act”), which changed indigenous lands from communal to individual title based on its determination that the latter regime was more productive.²¹

In finding that the Peruvian government had violated ILO 169 with the passage of the Act, the Committee held that it was not for the government to decide whether communal or individual ownership is most appropriate for an indigenous group. Though Article 17 does create the possibility for governments to make decisions about the rights of indigenous peoples to alienate their lands, those decision-making processes must conform

with the consultation requirements found in Articles 6 and 7 of the Convention.²²

PENALTIES & NATIONAL PROGRAMS

The last two articles in the land rights part of ILO 169 are Articles 18 and 19. Article 18, rarely invoked before the Committee, is the punitive corollary to the remedial regime created both implicitly and explicitly by the five preceding articles. It requires governments to establish adequate penalties for unauthorized intrusion on or

use of indigenous lands. It is not clear whether allegations of violations of this Article are rare because States have generally complied, or because States are often implicated and simply do not have the capacity to punish themselves. Finally, Article 19 calls on governments to establish national agrarian programs where the needs of growing indigenous groups are taken into consideration. This includes the provision of more land when the land holding cannot sustain them and their normal activities and the provision of means required to develop the lands they already possess.

The indigenous right to land found in Part Two of ILO 169 offers a significantly more complete articulation of that right than any international instrument currently in effect in the Americas. At this point, this paper has established the content of the indigenous land right under ILO 169 as interpreted by the ILO Committee. What follows is an explanation of how that

... indigenous property rights are precarious, and causing irreparable damage to property can cause “irreparable damage to persons.”

jurisprudence could be used in the inter-American human rights system to help further the rights of Latin American indigenous populations.

USING ILO 169 IN THE INTER-AMERICAN SYSTEM

In its Advisory Opinion 10/89, the Inter-American Court discussed the interpretation of the American Declaration on the Rights and Duties of Man (“American Declaration”) through the American Convention. There, the Court held that the American law of human rights “must be interpreted and applied within the overall framework of the juridical system in force at the time of the interpretation,” which naturally includes international treaties.²³

THE RIGHT TO PROPERTY UNDER THE AMERICAN CONVENTION

Article 21(1) of the American Convention states that “[e]veryone has the right to the use and enjoyment of his property,” but that “[t]he law may subordinate such use and enjoyment to the social interest.” In *Awas Tingni v. Nicaragua*, the Inter-American Court interpreted Article 21 to protect indigenous land rights and ordered Nicaragua to legislate a procedure for the demarcation and titling of indigenous lands.²⁴ This monumental decision, however, did not go so far as to clarify the extent of the indigenous right to property. Indeed, the claim arose out of a timber concession that the Nicaraguan state had awarded to a corporation through an administrative process.²⁵ At no point did the Court rule on the legitimacy of that administrative process, though it is clear that the lands, once demarcated, would most likely encompass the concession. The Court’s express denial of any reparations beyond the order to demarcate the community’s lands leaves the question of where the line is drawn between the indigenous right to land and the State’s right to develop.²⁶

USE OF “OTHER TREATIES”

Though OAS Member States have long argued against the applicability of treaties that do not explicitly confer power on the adjudicatory bodies of the inter-American system,²⁷ the interpretive power of such “other treaties” is widely accepted.

In its Advisory Opinion 1/82, the Inter-American Court held that the Inter-American Commission “properly invoked other treaties concerning the protection of human rights in the American states, regardless of their bilateral or multilateral character, or whether they have been adopted within the framework or under the auspices of the inter-American system.”²⁸ It is conceivable that the Court, in approving of the Commission’s application of other treaties, authorized its own use of the full body of international law when interpreting rights guaranteed under the American Convention. Indeed, the Court has consistently done so in deciding contentious cases.

In *Baena Ricardo et. al.*, the Court, in its discussion of the alleged violation of Article 16 (freedom of association) of the American Convention, made reference to the ILO Constitution, ILO Convention No. 87 Concerning Freedom of Association and Protection of the Right to Organise, and ILO Convention

No. 98 Concerning the Application of the Principles of the Right to Organise and Bargain Collectively.²⁹ The Court also cited the reasoning of the ILO Committee, seemingly opening the door to the interpretive power of such jurisprudence.³⁰ These examples are not unique, but they effectively show the extent to which the Inter-American Court will rely on “other treaties” and the decisions of the bodies that monitor those treaties as persuasive interpretations of rights protected by the American Convention.

USING ILO 169 TO INTERPRET THE AMERICAN CONVENTION

Although the Court itself has never used ILO 169 as an interpretive tool, in its reparations decision in *Aloeboetoe et. al.*, it briefly made reference to ILO 169, saying that Suriname was not party to the convention. This language seems to imply that the Court would have considered ILO 169 in its decision if Suriname had been party to the convention.³¹ One can speculate, based on the Court’s treatment of “other treaties” and the language in *Aloeboetoe et. al.* that it would be receptive to an argument using provisions from ILO 169 to interpret the American Convention.

Activities of the Inter-American Commission lend credence to this supposition. The Commission used ILO 169 to interpret the right to property guaranteed under the American Declaration in its merits decision in *Mary and Carrie Dann*, a case concerning Western Shoshone land claims in the United States. In that case, the Commission spoke of a set of general international legal principles applicable in the context of indigenous human rights. The Commission drew heavily from ILO 169, specifically Articles 13, 14, and 15, in articulating those principles which include the right of indigenous groups to exercise legal ownership over the lands they have traditionally occupied, in the manner in which they have traditionally occupied them, and that such title can only change through mutual consent and with due compensation.³² This is significant due to both the Commission’s use of “other treaties” to interpret the American Declaration and because the United States, while bound by the American Declaration, is not a signatory of ILO 169.

The Commission spoke specifically about ILO 169 in its Second Report on the Situation of Human Rights in Peru. After reiterating the principle that “international human rights instruments of both the inter-American and universal systems contain provisions relevant to the analysis of the situation of indigenous communities,”³³ the Commission goes on to say that,

“[t]he most relevant international instrument is ILO Convention 169 on indigenous and tribal peoples, ratified by Peru on February 2, 1994. That Convention establishes obligations to consult and include the participation of indigenous peoples in respect of matters that affect them... On ratifying this instrument, the Peruvian State undertook to take special measures to guarantee the indigenous peoples of Peru the effective enjoyment of human rights and fundamental freedoms, without restrictions, and to make efforts to improve living conditions, participation, and development in the context of

respect for their cultural and religious values.”³⁴

Peru, with 9.3 million indigenous people (47 percent of the national population), is not the only country in Latin America to ratify ILO 169. In fact, Latin America is the region that boasts the most ratifications of this relatively new convention. Bolivia, 71 percent indigenous, ratified in 1992; Guatemala, 66 percent indigenous, ratified ILO 169 in 1996 after integrating many of its principles in that country’s 1995 Agreement on the Identity and Rights of Indigenous Communities; Ecuador, 43 percent indigenous, ratified in 1998; Honduras, 15 percent indigenous, ratified in 1995; Mexico, 14 percent indigenous, ratified ILO 169 in 1990 and subsequently integrated many of its principles into the 1996 peace accords with the Zapatistas (*Acuerdo de San Andrés Larráinzar*); Paraguay, 3 percent indigenous, ratified in 1993; Colombia, 2 percent indigenous, ratified in 1991; Costa Rica, 1 percent indigenous, ratified in 1993; and Argentina, 1 percent indigenous, ratified in 2000.³⁵

It is therefore likely that the Inter-American Commission and Court have both the power and the inclination to use ILO 169 to interpret the American Convention and treat the decisions of the ILO Committee of Experts as instructive in doing so. It is also apparent from the above mentioned statistics on populations and ratification that Latin American governments recognize the importance of ILO 169 as a tool to govern their relationships with the indigenous populations that live within their borders. It is now important to look at specific mechanisms within the inter-American system that advocates can utilize to promote indigenous rights by compelling governments to take their responsibilities seriously.

PRECAUTIONARY AND PROVISIONAL MEASURES

Article 25(1) of the Inter-American Commission’s Rules of Procedure provides that “[i]n serious and urgent cases, and whenever necessary according to the information available, the Commission may, on its own initiative or at the request of a party, request that the State concerned adopt precautionary measures to prevent irreparable harm to persons.”³⁶ Similarly, Article 25(1) of the Inter-American Court’s Rules of Procedure, echoing Article 63(2) of the American Convention, provides that “[a]t any stage of the proceedings involving cases of extreme gravity and urgency, and when necessary to avoid irreparable damage to persons, the Court may, at the request of a party or on its own motion, order such provisional measures as it deems pertinent...” Article 25(2) continues “[w]ith respect to matters not yet submitted to it, the Court may act at the request of the Commission.”³⁷

Both precautionary and provisional measures offer a way for parties to call on the authority of the inter-American bodies and shed light on government activity that is violative or potentially violative of the guarantees provided by the American Convention. Often times, the diplomatic pressure that accompanies such measures or the simple reminder that the international community sits in judgment of a government’s actions can be enough to alter State activities to the benefit of the citizenry.

In September 6, 2002, the Inter-American Court ordered

provisional measures for the Awas Tingni community, approximately one year after issuing its decision in that case (discussed above). In July 2002, the community filed a brief with the Court alleging that, contrary to the Court’s explicit order, the Nicaraguan government was not preventing third parties from causing detriment to the community’s property and thus hindering the process of demarcation and titling.³⁸ As a result, the Court ordered the Nicaraguan government to adopt measures to protect the community’s land, particularly from irreparable damage, and ordered the State to allow representatives from the community to help in the planning and implementation of those measures.³⁹ Similar to the important precedent that the *Awas Tingni* decision set, this award of provisional measures represents the Court’s understanding that indigenous property rights are precarious, and that causing irreparable damage to property in that context can cause “irreparable damage to persons.”

In May 2003, the Inter-American Commission awarded precautionary measures to members of the Sarayaku indigenous community in Ecuador. These measures were originally awarded because community members who opposed the presence of petroleum companies in the area were being threatened and assaulted. In October 2003, the community once again requested a hearing due to the Ecuadorian Government’s failure to comply with the original order.⁴⁰ In that hearing, counsel for the community highlighted Article 84 of the Ecuadorian Constitution, which articulates the responsibility of the state to consult with indigenous communities about the exploitation of non-renewable resources located in their traditional territories. Counsel for the Sarayaku emphasized that the rights of the community included the right to participate in the government decision to award contracts for petroleum exploration and exploitation so as to attempt to prevent their own exposure to oil activities. The Inter-American Commission extended the precautionary measures for an additional six months at the hearing.

It is important to note that the argument made by counsel for the Sarayaku community is analogous to the argument under ILO 169 suggested by this paper. The single difference is that the measures awarded were awarded primarily on the basis of the threats to the physical integrity of the community members. The goal is to have measures awarded on the sole basis of a failure to consult indigenous peoples at the initiation of a development project that will affect their environment. It would appear from the decisions cited throughout this paper that the Commission and the Court are prepared to award measures on this basis. Bringing the authority of the inter-American adjudicatory bodies to bear would provide another important outlet for the efforts of indigenous rights advocates, already very active on the domestic level.

CONCLUSION: DEMANDING A SEAT AT THE TABLE

As Latin American governments struggle with the question of development, simultaneously struggling with internal strife and the notes for overwhelming debts held by foreign lenders, they must constantly be reminded that some casualties are unacceptable. Prior informed consent represents the balancing of

indigenous rights to land and culture and the state's right to develop. This solution should be promoted on all levels of civil and political society.

As mentioned above, environmental and indigenous rights activists are already very active on the local level promoting positive legislation and urging governments to consult and negotiate with indigenous peoples. Currently, the UN and the OAS are drafting declarations on the rights of indigenous peoples. These declarations once adopted and opened for ratification, will provide additional international legal sources for the articulation of the rights and responsibilities implicated by prior informed consent. However, this problem cannot wait for the slow process of treaty negotiations. This is a problem of an urgent nature because destructive development projects cause irreversible damage to indigenous communities. This is the concern with resorting solely to the ILO Committee to resolve issues involving prior informed consent. A lengthy petitioning process simply takes too long. Similarly, this is not the type of problem that can endure the admissibility and merits phase of the Inter-American Commission, only to reach the Court years after filing the original petition. Indeed, it was in anticipation of immediate threats to fundamental rights like those that implicate prior informed consent that precautionary and provisional measures were created.

Consulting indigenous peoples before and during the implementation of development projects is essential to promote and protect indigenous rights within a workable model of sustainable development. By using ILO 169 as a basis for soliciting precautionary and provisional measures in the inter-American human rights system, advocates can educate the international community about their oppression, help articulate indigenous rights under the law, inform governments of their responsibilities to indigenous communities, shame governments that do not respect those rights, and pressure those governments to live up to their responsibilities.



ENDNOTES: Balancing Indigenous Rights and a State's Right

- ¹ Galeano, Eduardo, *OPEN VEINS OF LATIN AMERICA: FIVE CENTURIES OF THE PILLAGE OF A CONTINENT*, (Monthly Review Press, 1973).
- ² A critique of the predominant model for economic development, while an important and much needed endeavor, is beyond the scope of this paper.
- ³ Neugebauer, Gerald P, *Indigenous Peoples as Stakeholders: Influencing Resource-Management Decisions Affecting Community Interests in Latin America*; 78 N.Y.U. L. REV. 1231 (2003).
- ⁴ Picado, Sonia, "The Evolution of Democracy and Human Rights in Latin America: A Ten Year Perspective," HUMAN RIGHTS BRIEF, Volume 11, Issue 3, p. 28 (Spring 2004).
- ⁵ See "Pueblos Indígenas: Introduction to ILO Convention No. 169," Organization Internacional del Trabajo (1999) available at <http://www.ilo.org/public/english/region/ampro/mdtsanJose/indigenous/intro169.htm>.
- ⁶ See "Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries," Office of the High Commissioner for Human Rights available at <http://www.unhcr.ch/html/menu3/b/62.htm>.
- ⁷ See *supra* note 5.
- ⁸ Report of the Committee set up to examine the representation alleging non-observance by Ecuador of the Indigenous and Tribal Peoples Convention, 1989 (No. 169) made under article 24 of the ILO Constitution by the Confederación Ecuatoriana de Organizaciones Sindicales Libres (CEOSL), submitted 2000, para 39.
- ⁹ See *supra* note 6.
- ¹⁰ Report of the Committee set up to examine the representation alleging non-observance by Mexico of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), made under article 24 of the ILO Constitution by the Trade Union Delegation, D-III-57, section XI of the National Trade Union of Education Workers (SNTE), Radio Education, submitted 1996, para. 12.
- ¹¹ *Id.* at para. 34.
- ¹² Report of the Committee set up to examine the representation alleging non-observance by Mexico of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), made under article 24 of the ILO Constitution by the Trade Union Delegation, D-III-57, section XI of the National Trade Union of Education Workers (SNTE), Radio Education, submitted 1996, para. 34.
- ¹³ *Id.* at para. 43.
- ¹⁴ Donziger, Steven R.; *Rainforest Chernobyl: Litigating Indigenous Rights and the Environment in Latin America*, HUMAN RIGHTS BRIEF, Volume 11, Issue 2, Winter 2004.
- ¹⁵ Report of the Committee set up to examine the representation alleging non-observance by Ecuador of the Indigenous and Tribal Peoples Convention, 1989 (No. 169) made under article 24 of the ILO Constitution by the Confederación Ecuatoriana de Organizaciones Sindicales Libres (CEOSL), submitted 2000, para.10.
- ¹⁶ *Id.* at para. 34.
- ¹⁷ *Id.* at para. 36.
- ¹⁸ Report of the Committee set up to examine the representation alleging non-observance by Colombia of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), made under article 24 of the ILO Constitution by the Central Unitary Workers' Union (CUT) and the Colombian Medical Trade Union Association (ASMEDAS), submitted 1999, para. 10.
- ¹⁹ *Id.* at para. 66.
- ²⁰ *Id.* at para. 67.
- ²¹ Report of the Committee set up to examine the representation alleging non-observance by Peru of the Indigenous and Tribal Peoples Convention, 1989 (No. 169), made under article 24 of the ILO Constitution by the General Confederation of Workers of Peru (CGTP), submitted 1997, para. 9.
- ²² *Id.* at para. 30.
- ²³ Advisory Opinion OC-10/89, *Interpretation of the American Declaration of the Rights and Duties of Man within the Framework of Article 64 of the American Convention on Human Rights*. July 14, 1989. Series A No. 10. para. 37 (citing Advisory Opinion, I.C.J. Reports 1971, *Legal Consequences for States of the Continued Presence of South Africa in Namibia (South West Africa) notwithstanding Security Council Resolution 276 (1970)*, p. 16 ad 31).
- ²⁴ *Awat Tingni case*, Inter-Am. C.H.R., C Series No. 79, para. 173 (August 31, 2001).
- ²⁵ *Id.* at paras. 103j-103o.
- ²⁶ *Id.* at para. 166.
- ²⁷ *Las Palmeras case*, Inter-Am. C.H.R., Preliminary Objections Judgment Series C No. 67. para.35 (February 4, 2004).
- ²⁸ Advisory Opinion OC-1/82. "Other treaties" subject to the advisory jurisdiction of the Court (Art. 64 American Convention on Human Rights), September 24, 1982. Series A No. 1. para. 43.
- ²⁹ *Baena Ricardo et. al. Case*, Inter-Am. C.H.R., C Series No. 72, para. 157, note 4 (2001).
- ³⁰ *Id.* at para. 163.
- ³¹ *Aloeboetoe et al. case*, Inter-Am. C.H.R., Series C No. 15. para. 61. (1993) (concerning the Reparations Art. 63(1) American Convention on Human Rights).
- ³² Case 11, Inter-Am. C.H.R. 410, Report No 75/02, para. 130.
- ³³ Second Report on the Human Rights Situation in Peru, Chapter X: The Rights of Indigenous Communities, Inter-Am., C.H.R OEA/Ser.L/V/II.106, doc. 59 rev. para. 4 (June 2, 2000)
- ³⁴ *Id.* at para. 17.
- ³⁵ Comparing "Pueblos Indígenas: Ratificaciones del Convenio Nùm. 169, 1989," Organizacion Internacional del Trabajo (2000) available at <http://www.oit.or.cr/mdtsanjo/indig/lista169.htm> (ratifications of the convention as of 10/00), with "Pueblos Indígenas: Estimación de la Población Indígena en América Latina," Organizacion Internacional del Trabajo (1999) available at <http://www.oit.or.cr/mdtsanjo/indig/cuadro.htm>, estimated indigenous populations in 1990.
- ³⁶ See Inter-American Commission Rules of Procedure available at <http://www.cidh.oas.org/Basicos/basic16.htm>.
- ³⁷ See Inter-American Commission Rules of Procedure available at <http://www.cidh.oas.org/Basicos/basic18.htm>.
- ³⁸ *Awat Tingni case*, Inter-Am. C.H.R., Provisional Measures, Series E, para. 4 (September 6, 2002).
- ³⁹ *Id.* at paras. 1-2 of the decision.
- ⁴⁰ See Inter-American Commission on Human Rights Grants Extension of Precautionary Measure to Sarayaku", EarthRights International press release, 16 October 2003, available at <http://www.earthrights.org/news/sarayakuextensionofpm.shtml>.