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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. 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. 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. 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. 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"). 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. The States encompassing the western Amazon - Brazil, Peru, Ecuador, Colombia and Bolivia - have all done so.

In The Mayagna (Sumo) Awas Tingni Community v. Nicaragua, the Court ordered Nicaragua to grant property rights to the Awas Tingni people who faced threats of logging on their ancestral lands. 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. 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. The UN has recognized the importance of indigenous culture and its ability to contribute to sustainable development. Since Awas Tingni, other contacted indigenous groups have succeeded in asserting indigenous property rights before the Court. 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.

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. Concerned parties have submitted petitions in favor of isolated groups and have successfully elicited precautionary measures from the Commission in their favor. 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. Additionally, the Court has permitted state parties to make the ultimate determination of which lands are returned to indigenous groups after consultation with them. 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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3 See id.

4 See id. at 5.


9 See id. at 5, 80.


18 Id. at 84.

ENdNOTES: SUSTAINABILITY AND THE COURTS: A SNAPSHOT OF CANADA IN 2009
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25 See, e.g., British Columbia Environmental Appeal Board, available at http://www.eab.gov.bc.ca/waste/2003waste002a.pdf (noting one of many decisions of the British Columbia Environmental Appeal Board on applications brought by responsible parties seeking to have governments and government entities added as responsible parties under a provincial site clean-up order).

26 See DAVID R. BOYD, UNNATURAL LAW: RETHINKING CANADIAN ENVIRONMENTAL LAW AND POLICY 239 (2003) (explaining that federal departments with environmental responsibilities saw their budgets cut by up to seventy-two percent in the 1990s).


35 See NAAEC, art. 6.1 (ensuring that private citizens have a right to request the competent authorities to investigate allegations of environmental law violations).


37 Id. § 22(a) (noting orders preventing action, orders requiring the cessation of action, and orders to create mitigation or correction plans as valid forms of injunctive relief).

38 Id. § 25.