

Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas





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I. INTRODUCTION

1. The western hemisphere is home to the largest number of indigenous peoples living in voluntary isolation and initial contact in the world. They are the last peoples who were not colonized and who do not have permanent relations with today's predominant national societies. These peoples and their ancestors have lived in the Americas since long before current States came into existence. Today, very few of them survive, and many are at risk of disappearing entirely.

2. Indigenous peoples living in voluntary isolation and initial contact are holders of human rights in a unique situation of vulnerability, and among the few who cannot advocate for their own rights. This reality makes ensuring respect for their rights especially important. Given the impossibility of them advocating for their own rights, States, international organizations, members of civil society, and other actors in the defense of human rights must ensure that their human rights are respected to the same extent as those of all inhabitants of the Americas, taking into account the particularities of their situation.¹

3. Given the national and international demand for the natural resources—lumber, hydrocarbons, fossil fuels, minerals, and water resources—found in the territories with a presence of indigenous peoples living in voluntary isolation it is possible to appreciate the vulnerability to which these persons are exposed. In this context the challenge for States, human rights bodies and human rights defenders is to secure protection for the rights of indigenous peoples in voluntary isolation and initial contact or be witnesses to their disappearance.

4. For the inter-American system, the protection and respect of the rights of indigenous peoples is a matter of special importance. In 1972, the Inter-American Commission (hereinafter "IACHR", "Inter-American Commission" or "Commission") affirmed that for historical reasons, and based on moral and humanitarian principles, States had a sacred duty to provide special protection to

¹ IACHR. *Indigenous and tribal peoples' rights over their ancestral lands and natural resources: Norms and jurisprudence of the inter-American human rights system*. OEA/Ser.L/V/II, December 30, 2009, para. 81 ("[S]pecial care must be taken in adopting measures to guarantee territories of sufficient extent and quality to peoples in voluntary isolation, peoples in initial contact, binational or plurinational peoples, peoples at risk of disappearance, peoples in reconstitution processes, shifting cultivators or pastoralist peoples, nomadic or semi-nomadic peoples, peoples displaced from their territories, or peoples whose territory has been fragmented, *inter alia*.").

indigenous peoples². Since the 1980s, the Commission has systematically spoken on the rights of indigenous peoples in special reports; and through the case system, in admissibility reports, country reports, reports on friendly settlements, the mechanism of precautionary measures, as well as through requests for orders and provisional measures filed with the Inter-American Court of Human Rights (hereinafter “Court” or “Inter-American Court”). Furthermore, the Commission has addressed the situation of some indigenous peoples in isolation through precautionary measures, the system of petitions and cases, and thematic hearings.

5. The organs of the inter-American system for the protection of human rights have developed jurisprudence that recognizes the collective rights of indigenous peoples. Throughout, the Commission has insisted on the need for special protection for the right of indigenous peoples to their lands and resources, because the full exercise of that right not only implies the protection of an economic unit, but also the protection of the human rights of a community whose economic, social, spiritual, and cultural development is based on its relationship to the land.

6. As the Inter-American Commission has stated, in the case of indigenous peoples “there is a direct relation between self-determination and land and resource rights” that takes on particular importance in the case of peoples in voluntary isolation or initial contact.³ Respect for the human rights of the peoples in isolation and initial contact requires a framework fully respectful of their right to self-determination, the right to life and the right to physical, cultural, and mental integrity of the peoples and their members, the right to health, and their right to the lands, territories, and natural resources that they have occupied and used from ancestral times.

7. The Commission recognizes the need to continue strengthening the protection of human rights of indigenous peoples in voluntary isolation and initial contact in the Americas. In accordance with its commitment to contribute to such efforts, this Report presents a general introduction to the human rights situation of these peoples. It also compiles the main sources of law from the inter-American and universal human rights systems for their protection, identifies the threats to the full enjoyment of their human rights, and makes a series of recommendations to the member States of the Organization of American States (hereinafter “OAS”).

² IACHR, *Resolution on Special Protection for Indigenous Populations: Action to combat racism and racial discrimination*. Cited in: IACHR, Yanomami Case, Report 12/85, Annual Report 1984-1985, para. 8. IACHR, Report No. 75/02, Case 11.140, Mary and Carrie Dann (United States), December 27, 2002, par. 126. IACHR, Report No. 40/04, Case 12.053, Maya Indigenous Communities of the Toledo District (Belize), October 12, 2004, par. 96.

³ IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009, para. 165.

8. The preparation of a report on the human rights situation of indigenous peoples in voluntary isolation or initial contact necessarily presents a methodological difficulty: it is impossible to include the participation of the peoples and persons whose rights one seeks to safeguard. Without prejudice to the foregoing, the IACHR considers it necessary to identify the main threats these peoples face and the actions required to ensure respect for their rights and their physical and cultural survival.

9. This report was prepared with input obtained from various sources, including States, indigenous and civil society organizations, and experts. On April 24, 2013, the IACHR circulated two “Consultation Questionnaires in Relation to Thematic Report on Indigenous Peoples in Voluntary Isolation and Initial Contact”, one directed to members of civil society, including grassroots indigenous organizations, and another one directed to States.⁴ The responses received both from States and from indigenous and civil society organizations have been a valuable component for this report, and the IACHR is grateful for all the contributions.⁵ In addition, a workshop of experts was held at the headquarters of the Commission on May 6, 2013, which included the participation of anthropologists with extensive experience on the subject.⁶ Thematic hearings had been held on the issue at the 141st and 146th periods of sessions, in 2011 and 2012, respectively, as well as a hearing on the human rights situation of indigenous peoples in voluntary isolation in Peru in November 1, 2013, during the 149th period of sessions of the IACHR.

⁴ The questionnaire can be consulted at the webpage of the Rapporteurship on the Rights of Indigenous Peoples of the IACHR, at <http://www.oas.org/es/cidh/indigenas/informes/cuestionarios.asp>.

⁵ The Inter-American Commission received responses from the States of Bolivia, Brazil, Colombia, Ecuador, Guatemala, Guyana, Honduras, Panama, Paraguay, Peru, and Venezuela. As for civil society organizations, the Commission received responses from the *Asociación Interétnica de Desarrollo de la Selva Peruana*; Center for Political and Social Studies of Latin America, Working Group on Indigenous Affairs, of the Universidad de Los Andes of Venezuela; *Derecho, Ambiente y Recursos Naturales*; Earth Rights International; *Gente, Ambiente y Territorio* and *Organización Payipie Ichadie Totobiegosode*; Institute on Democracy and Human Rights of the Pontificia Universidad Católica del Perú; Pan American Health Organization, World Health Organization, and Office in Bolivia of the High Commissioner for Human Rights; and Mr. Osvaldo Kreimer.

⁶ The workshop included the participation of Beatriz Huertas Castillo of Peru, Antenor Vaz of Brazil, José Proaño of Ecuador, and Benno Glauser of Paraguay. The IACHR is grateful to each of the participants for their valuable contributions to the preparation of this Report.

II. DEFINITIONS AND BACKGROUND

10. For obvious reasons, it is not known how indigenous peoples living in isolation self-identify.⁷ For purposes of this report, this section explains what is understood by the names most commonly used to refer to them.⁸

A. Indigenous peoples in voluntary isolation

11. Indigenous peoples in voluntary isolation are indigenous peoples or segments of indigenous peoples⁹ who do not maintain sustained contacts with the majority non-indigenous population, and who generally reject any type of contact with persons not part of their own people.¹⁰ They may also be peoples or segments of peoples previously contacted and who, after intermittent contact with the non-indigenous societies, have returned to a situation of isolation and break the relations of contact that they may have had with those societies.¹¹

12. The IACHR notes that the use of the term “voluntary” to characterize the isolation of these indigenous peoples has been questioned with the argument that it minimizes the fact that the decision to remain in or return to isolation is actually a response or reaction to the pressures of the surrounding society on their territories, and not a free exercise of their will.¹² This report uses the term “voluntary” to highlight the

⁷ For example, in *wao terero* (or *wao tededo*), the language of the Huaourani people in initial contact in Ecuador, the word “huaoo” simply means “human.” In the language of the Ayoreo, in Paraguay, the term “cojñone” means “people without correct thinking” and is used to refer generally to non-Ayoreo persons. Information presented by the organizations Organización Payipie Ichadie Totobiegosode (OPIT) and Gente, Ambiente y Territorio (GAT) in response to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR on June 27, 2013.

⁸ In addition to the terms used here, these peoples have been called “uncontacted,” “isolated,” “free peoples,” “hidden peoples,” “invisible peoples,” “*maskos*,” “*calatos*,” “brave Indians,” “savages,” among other things. All the terms refer to the same concept. Beatriz Huertas Castillo, *Los pueblos indígenas en aislamiento. Su lucha por la sobrevivencia y la libertad*, IWGIA (2002), p. 23, available at : http://www.iwgia.org/iwgia_files_publications_files/0342_indigenas_en_aislamiento.pdf.

⁹ On the term “indigenous people,” see the report of the IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009, paras. 25-31.

¹⁰ Guidelines for the protection of indigenous peoples in voluntary isolation of the Amazon region, the Gran Chaco, and Eastern Paraguay. Result of the consultations by OHCHR in the region: Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, and Venezuela. May 2012, para. 8. Available at: <http://acnudh.org/wp-content/uploads/2012/03/Directrices-de-Protecci%C3%B3n-para-los-Pueblos-Ind%C3%ADgenas-en-Aislamiento-y-en-Contacto-Inicial.pdf>. See also Law No. 28736, for the Protection of indigenous or native peoples in isolation and initial contact, published in the Diario El Peruano, May 18, 2006, Article 2.

¹¹ Guidelines for the protection of indigenous peoples in voluntary isolation of the Amazon region, the Gran Chaco, and Eastern Paraguay. Result of the consultations by OHCHR in the region: Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, and Venezuela. May 2012, para. 8.

¹² Beatriz Huertas Castillo, “Los pueblos indígenas en aislamiento. Su lucha por la sobrevivencia y la libertad,” IWGIA (2002), p. 23 (citing Alonso Zarzar, *Tras las huellas de un antiguo presente. La problemática de los pueblos indígenas amazónicos en aislamiento y en contacto inicial. Recomendaciones para su supervivencia y bienestar*. Defensoría del Pueblo, Lima (1999)).

importance of the right to self-determination, since even if the decision to remain in isolation is a survival strategy resulting in part from outside pressures, it is an expression of the autonomy of these peoples as holders of human rights, and as such should be respected.¹³

13. Peoples in voluntary isolation cannot be considered “uncontacted,” strictly speaking, since many of them, or their ancestors, have had contact with persons from outside their peoples.¹⁴ Most of these contacts have been violent and have had serious consequences for the indigenous peoples, which have led them to reject contact and return to a situation of isolation or increase the degree of isolation.¹⁵

B. Indigenous peoples in initial contact

14. Indigenous peoples in initial contact are indigenous peoples or segments of indigenous peoples who maintain intermittent or sporadic contact with the majority non-indigenous population,¹⁶ generally used in reference to peoples or segments of peoples who have initiated a process of contact recently. However, “initial” should not necessarily be understood as a temporal term, but as a reference to the scant extent of contact and interaction with the majority non-indigenous society. Indigenous peoples in initial contact are peoples who were previously in voluntary isolation and who for some reason, voluntary or otherwise, came into contact with members of the surrounding population, and although they maintain a certain level of contact, they are not fully familiar with nor do they share the patterns and codes of social relations of the majority population.¹⁷

¹³ Beatriz Huertas Castillo, *Los pueblos indígenas en aislamiento. Su lucha por la sobrevivencia y la libertad*, IWGIA (2002), p. 22, available at: http://www.iwgia.org/iwgia_files_publications_files/0342_indigenas_en_aislamiento.pdf.

¹⁴ Beatriz Huertas Castillo, *Los pueblos indígenas en aislamiento. Su lucha por la sobrevivencia y la libertad*, IWGIA (2002), p. 23.

¹⁵ Anthropological studies indicate that the traumatic effects of the episodes of contact are transmitted over several generations, and several are important in the cultural identification of the peoples in voluntary isolation and initial contact. *See, for example*, Beatriz Huertas Castillo, *Los pueblos indígenas en aislamiento. Su lucha por la sobrevivencia y la libertad*, IWGIA (2002), p. 22; Alonso Zarzar, *Tras las huellas de un antiguo presente. La problemática de los pueblos indígenas amazónicos en aislamiento y en contacto inicial. Recomendaciones para su supervivencia y bienestar*. Defensoría del Pueblo, Lima (1999).

¹⁶ Guidelines for the protection of indigenous peoples in voluntary isolation of the Amazon region, the Gran Chaco, and Eastern Paraguay. Result of the consultations by OHCHR in the region: Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, and Venezuela. May 2012, para. 12.

¹⁷ Guidelines for the protection of indigenous peoples in voluntary isolation of the Amazon region, the Gran Chaco, and Eastern Paraguay. Result of the consultations by OHCHR in the region: Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, and Venezuela. May 2012, para. 12.

C. Indigenous peoples in voluntary isolation and initial contact in the Americas

15. In the Americas it is known that there are indigenous peoples in voluntary isolation or initial contact in Bolivia¹⁸, Brazil¹⁹, Colombia²⁰, Ecuador²¹, Paraguay²², Peru²³, and Venezuela.²⁴ There are also indications of their presence in Guyana and Suriname²⁵, near their respective borders with Brazil. Brazil is the country with the greatest diversity of indigenous peoples in isolation, followed by Peru and Bolivia.²⁶

¹⁸ Response of the Plurinational State of Bolivia to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR July 5, 2013.

¹⁹ Response of the Federative Republic of Brazil to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 14, 2013.

²⁰ Response of the State of Colombia to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR July 8, 2013.

²¹ Response by the State of Ecuador to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 23, 2013.

²² Declaration No. 15 of the Chamber of Deputies of the National Congress of Paraguay, November 17, 1994, First whereas (“the Ayoreo-Totobiegosode constitute the last indigenous group in the Paraguayan Chaco that continues living exclusively by its traditional forms of hunting, gathering, and horticulture, without contact with the surrounding society.”).

²³ Response from the State of Peru to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 4, 2013.

²⁴ In the Response to the Questionnaire received from the Ministry of People’s Power for Foreign Relations, the State of Venezuela stated that “in the Bolivarian Republic of Venezuela there are not at this time indigenous communities in voluntary isolation or initial contact.” Response by the State of Venezuela to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 23, 2013 (Ministry of People’s Power for Foreign Relations), p. 2. Nonetheless, the response received from the Office of the Ombudsperson of the Bolivarian Republic of Venezuela indicates that “in Venezuela there are communities belonging to three indigenous peoples, who remain in a certain relative isolation or initial contact. These indigenous peoples live in the south of the country in the states of Amazonas and Bolívar, they are the Hoti, Yanomami, and Piara.” Response of the Bolivarian Republic of Venezuela to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR on May 28, 2013 (Office of the Ombudsperson of the Bolivarian Republic of Venezuela), p. 3.

²⁵ Guyana and Suriname have participated, through the Amazon Cooperation Treaty Organization, in the Meeting of Focal Points of the Strategic Framework Program for the protection of the indigenous peoples in voluntary isolation and initial contact. In its Response to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR on June 18, 2013, the Ministry of Foreign Affairs of Guyana said that in Guyana that have been no sightings of indigenous peoples in isolation, and that “The National Toshias Council (NTC), which comprises the elected Toshias (Head of the Village Council) representing all the Amerindian Villages and Communities, meets every two years. The 2011 Resolution of the NTC Meeting stated that no village leader had any sighting of people living in isolation”.

²⁶ Response from the Federative Republic of Brazil to the Questionnaire on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 14, 2013, p. 1 (mentioning that the Amazon region is the region of the world with the largest number of peoples in isolation); *Gobierno boliviano aprobó histórica resolución sobre Pueblos Indígenas Aislados*, in (FOBOMADE), Pablo Cingolani, “Aislados,” 2011, p. 176 (“Bolivia is the third leading country in the world in terms of the diversity of peoples in voluntary isolation.”); Gloria Huamán Rodríguez, *Pueblos Indígenas en aislamiento voluntario de la Amazonía peruana: el derecho inherente al territorio ancestral y la explotación de hidrocarburos, Medio Ambiente & Derecho: Revista* Continues...

16. It is impossible to know how many indigenous peoples or persons remain in isolation, but some calculations refer to some 200 peoples and approximately 10,000 persons.²⁷ They live in the most remote and hard-to-access places in South America, in the Amazon jungle and the Great Chaco region.²⁸ Among the peoples in isolation or initial contact found in the region are the Akuntsu, Awá-Guajá, Gavião, Hi Merimã, Janinawá, Japá, Jururei, Kaiapó, Kanoe, Katawixi, Korubo, Kulina, Masco, Mashco Piro, Makú, Nambikuara, Pano, Pirititi, Tupi Kawahiv, Waiãmpi, Zo'é, and Zuruahã, in Brazil²⁹; the Abijira, Amahuaca, Arabela, Ashánika, Cacataibo, Caquinte, Curanjeño, Iñapari, Iscobaquebu (Remo), Isconahua, Iquito, Kapanahua, Kirineri, Korubo, Maraktoa, Marubo, Mashco Piro, Mastanahua, Matis, Matsés, Matsigenka, Mayoruna, Murunahua-Chitonahua, Nanti, Pananujuri, Pano, Sharanahua, Taushiro, Waorani, Yaminahua, Yine, and Zápara in Peru³⁰; the Araona, Ayoreo (Ayoróode), Baure, Cavineño, Chacobo, Esse Ejja, Guarasug'we, Machineri, More, Mosetene, M'bya Yuki, Pacahuara, Tapiete, Toromona, T'simanes (Chimanes), Sirionó, Uru Chipaya, Uru Iruito, Uru del Lago Poopo, Uru Murato, Yaminahua, Yora, Yuracaré, and Yuqui (Yuki) in Bolivia³¹; the Tagaeri, Taromenane and Waorani in Ecuador; groups of the Ayoreo people and the Mby'á in Paraguay; the Hoti, Piaroa, and Yanomami in Venezuela; the Nükak (Makú) and the Yuri, Arojes, or Carabayos in Colombia³², among others that have

...continuation

electrónica de derecho ambiental, ISSN-e 1576-3196, No. 24, 2013, Section 10 ("Peru has the second largest number of indigenous peoples in isolation of any country after Brazil.").

²⁷ Report of the Regional Seminar on indigenous peoples in voluntary isolation and in initial contact of the Amazonian Basin and El Chaco, Santa Cruz de la Sierra, Bolivia, (20-22 November 2006), Presented by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the International Work Group on Indigenous Affairs (IWGIA), E/C.19/2007/CRP.1, March 28, 2007, para. 1.

²⁸ Report of the Regional Seminar on indigenous peoples in voluntary isolation and in initial contact of the Amazonian Basin and El Chaco, Santa Cruz de la Sierra, Bolivia, (20-22 November 2006), Presented by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the International Work Group on Indigenous Affairs (IWGIA), E/C.19/2007/CRP.1, March 28, 2007, Annex I, Santa Cruz de la Sierra Appeal.

²⁹ The government of the State of Brazil indicates that the State has references that indicate the presence of at least 77 isolated indigenous peoples, 27 of which have been located and identified. In addition, 14 peoples in situation of initial contact have been identified in the country. Response of the Federative Republic of Brazil to the Questionnaire on Consultation on Indigenous Peoples in voluntary Isolation and Initial Contact, received by the IACHR on June 14, 2013, p. 2.

³⁰ Some sources indicate there are more than 29 indigenous peoples in voluntary isolation in Peru. Gloria Huamán Rodríguez, "*Pueblos Indígenas en aislamiento voluntario de la Amazonía peruana: el derecho inherente al territorio ancestral y la explotación de hidrocarburos*," *Medio Ambiente & Derecho: Revista electrónica de derecho ambiental*, ISSN-e 1576-3196, No. 24, 2013. Available at: <http://huespedes.cica.es/aliens/gimadus/24/04.html>.

³¹ Response from the Plurinational State of Bolivia to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR on July 5, 2013, p. 10, Annex, Preliminary Bill for Protection of Native Indigenous Nations and Peoples in danger of Extinction, in Voluntary Isolation, and Uncontacted, Article 2. See also Foro Boliviano sobre Medio Ambiente y Desarrollo (FOBOMADE), Pablo Cingolani, "Aislados," 2011, p. 198.

³² Response of the State of Colombia to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR on July 8, 2013, Section 1.

not been identified.³³ The IACHR is cognizant that each of these peoples has its own worldview, traditions, linguistic origins, and social and political organization, and it does not overlook the great diversity among peoples in isolation in the hemisphere. The foregoing notwithstanding, all these peoples have in common their situation of voluntary isolation or initial contact with respect to the majority national societies.

17. States in the Americas have recognized, in different terms and with different levels of protection, more than 9 million hectares in favor of indigenous peoples in voluntary isolation or initial contact. Despite these legal protections, in practice isolated peoples find themselves in highly vulnerable situations, and many of them are in grave danger of disappearing completely. As explained below, the level of protection accorded the lands varies considerably, both in terms of the laws establishing them as well as in practice.³⁴ According to the National Environment Commission of Peru, from 1950 to 1957, a total of 11 indigenous peoples disappeared from the Amazon, and of the peoples remaining, 18 are in grave danger of disappearing, as they each have fewer than 225 persons.³⁵

III. GENERAL CONSIDERATIONS ON THE RIGHTS OF INDIGENOUS PEOPLES IN VOLUNTARY ISOLATION OR INITIAL CONTACT

18. As a starting point, the IACHR is aware that the legal framework of international human rights law, developed by contemporary Western societies, is based on concepts with which indigenous peoples in voluntary isolation are certainly not familiar. Nonetheless, this framework of respect for life, integrity, and the fundamental freedoms of all human beings is the best tool for protecting the way in which these peoples express their humanity.

19. The IACHR considers that in analyzing the human rights situation of indigenous peoples in voluntary isolation and initial contact, it is fundamental to bear in mind the devastating impact for them of the destruction of a field, the pollution of a river, the deforestation of a forest, and other negative impacts on the environment in which they live and on which they depend. In the 1993 Report on the Situation of Human Rights in Guatemala the Inter-American Commission said: "From the standpoint of human rights, a small corn field deserves the same respect as the private property of

³³ These names are the result of anthropological studies, and in some cases contacts with neighboring communities. As mentioned earlier, any name is artificial and/or imprecise, because it is not known how these peoples self-identify. In some cases, the name given to these peoples simply means "persons" or "human beings" in their language.

³⁴ See Section IV.E.2, *infra*.

³⁵ Ombudsperson Report No. 101, Office of the Ombudsperson of the Republic of Peru. Record No. 2006-1282. Lima, January 2006, p. 51. The Report indicates that the National Commission on the Environment has reported that the peoples who disappeared were the Resígaro, Andoque, Panobo, Shetebo, Angotero, Omagua, Andoa, Aguano, Cholón, Munichí, and Taushiro, and notes as causes "the diseases and the colonizing and plundering assault, spontaneous or promoted officially, that has deprived them of their traditional lands and natural resources, as in the Huallaga basin with the construction of highways."

a person that a bank account or a modern factory receives.”³⁶ In the case of indigenous peoples in voluntary isolation and initial contact, this notion goes even further, since for them a field or plot may represent the only source of sustenance for several families.

20. It is also important to consider what contact means for the peoples.³⁷ As mentioned earlier, many of the isolated peoples and their ancestors have or have had some type of contact with persons from outside their people, and the experiences of contact, which have generally been negative, inform their reaction to it and are often transmitted in their oral histories.³⁸ Contact with others and with non-indigenous persons presupposes, above all, a fundamental challenge to their worldview, to their way of understanding the world around them. When contact occurs, an entire system of beliefs, traditions and assumptions that was taken for granted, and on which they have based their way of life and culture for many hundreds of years, is irreversibly shattered.³⁹ And if the contact takes place in a violent context, as is often the case, their whole world ceases to have any meaning. As explained below, the result is the loss of such beliefs and traditions, as they are no longer transmitted to the younger generations, possibly resulting in the disappearance of an entire human culture.⁴⁰

A. Self-determination and the principle of no contact

21. The IACHR considers that one of the fundamental premises of this report and of respect for the rights of indigenous peoples in voluntary isolation is respect for their decision not to have contact and their choice to remain in isolation. The

³⁶ IACHR, *Fourth Report on the Situation of Human Rights in Guatemala*, OEA/Ser.L/V/II.83, June 1, 1993, Chapter III.

³⁷ Although it is not possible to know for sure how the peoples in isolation interpret contact with persons outside their people, it has been possible to see the reaction to contact of indigenous peoples in initial contact. On the Akuriyo people contacted in Suriname in the 1960s and 1970s, see Peter Kloos, *The Akuriyo of Surinam: A Case of Emergence from Isolation*, IWGIA Document 27, 1977. On the Nükak people contacted in Colombia in 1984, see Dany Mahecha R. and Carlos Eduardo Franky C. (ed.), *Colombia: The Nükak: The last nomadic people officially contacted in Colombia*, in “Indigenous Peoples in Voluntary Isolation and Initial Contact,” IWGIA (2012). On the Yora (Nahua) people contacted in Peru, see Beatriz Huertas Castillo, “Los pueblos indígenas en aislamiento. Su lucha por la sobrevivencia y la libertad,” IWGIA (2002), pp. 102-104.

³⁸ Human Rights Council, Report of the Special Rapporteur on the human rights and fundamental freedoms of the indigenous, Mr. Rodolfo Stavenhagen, A/HRC/4/32, February 27, 2007, para. 42. The Special Rapporteur notes that contrary “to the image portrayed by some media, these groups are not the original settlers “who have never had contact with civilization”, but population groups that for generations have been avoiding contacts that have been extremely violent and deadly for them, leading them to seek refuge in forests.”

³⁹ Workshop of Experts on Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas, May 6, 2013, presentation by Benno Glauser. Peter Kloos, *The Akuriyo of Surinam: A Case of Emergence from Isolation*,” p. 23.

⁴⁰ See Eugene Linden, “Lost Tribes, Lost Knowledge,” Time, September 23, 1991, pp. 46-56. As Linden explains, as some communities previously in isolation are contacted and gradually become integrated to other societies, the youth lose interest in their own cultures and traditions, and on occasion may cease to value them, which in turn leads them to stop practicing them, and within one or two generations millenary cultures disappear.

United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people has indicated in this regard that “one must respect the principle of no contact, which implies implementing a public policy that protects their vital spaces and preserves them from pressures by extractive companies, illegal logging, and unauthorized settlement in the area.”⁴¹ The different threats to the rights of peoples in voluntary isolation and initial contact share a common cause: contact, whether direct or indirect, with persons who are foreign to their people. Direct physical assaults, incursions into their territories for the purpose of extracting natural resources, epidemics, food scarcity, and the loss of their culture, all presuppose contact. If undesired contact is prevented, most of the threats are eliminated and respect for the rights of the peoples is guaranteed. Therefore, in the view of the Commission, it is fundamental that every effort be made to reinforce respect for the principle of no contact, and that contact should happen only at the initiative of the peoples in isolation.

22. The principle of no contact is the expression of the right of indigenous peoples in voluntary isolation to self-determination. One of the reasons for protecting the rights of the indigenous peoples in voluntary isolation is cultural diversity: the loss of a culture is a loss to all humankind.⁴² As the IACHR and the Inter-American Court of Human Rights have noted on other occasions, indigenous peoples have a right to their cultural identity and to have the States guarantee their right to live in their ancestral territories to be able to preserve that identity.⁴³ The Commission also considers that in evaluating the human rights situation of indigenous peoples in voluntary isolation and initial contact, it should be borne in mind — in addition to cultural diversity — that they have all the rights and freedoms that non-indigenous persons enjoy, as well as individual

⁴¹ United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of the indigenous, Professor James Anaya, “Ecuador: Special Rapporteur calls for end to violence between Waorani and Tagaeri-Taromenane indigenous peoples,” May 16, 2013, available at: <http://unsr.jamesanaya.org/statements/ecuador-experto-de-la-onu-pide-el-fin-de-la-violencia-entre-indigenas-tagaeri-taromenane-y-waorani>.

⁴² The World Conservation Congress has expressed its concern “that the disappearance of indigenous groups living in voluntary isolation in the Amazon region and Chaco signifies a loss of the irreplaceable cultural heritage of the last indigenous groups that have maintained harmony with their surroundings, as well as their invaluable knowledge of biodiversity and forest management.” Recommendation No. 3.056, “Indigenous peoples living in voluntary isolation and conservation of nature in the Amazon region and Chaco,” World Conservation Congress, Bangkok, Thailand, November 17 to 25, 2005, available at: http://cmsdata.iucn.org/downloads/wcc_res_rec_esp.pdf. See also Universal Declaration on Cultural Diversity, adopted at the 31st Session of the General Conference of UNESCO, November 2, 2001.

⁴³ IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009, paras. 160-161. See also IACHR, Arguments before the Inter-American Court of Human Rights in the case of *Yakye Axa v. Paraguay*. Referred to in: I/A Court HR. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of June 17, 2005. Series C No. 125, para. 157(c). I/A Court HR. *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparations and Costs. Judgment of August 24, 2010, Series C No. 214, paras. 171-182. In the case of the *Kichwa Indigenous People of Sarayaku v. Ecuador*, the Inter-American Court indicated that “ the right to cultural identity is a fundamental right - and one of a collective nature - of the indigenous communities, which should be respected in a multicultural, pluralistic and democratic society .” I/A Court HR, *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and reparations. Judgment of June 27, 2012. Series C No. 245, para. 217.

and collective rights to self-determination.⁴⁴ For indigenous peoples in voluntary isolation and initial contact, the right to self-determination is directly and profoundly related to the rights to their lands, territories, and natural resources.⁴⁵

23. The IACHR also considers that a distinction should be made between voluntary isolation as a survival strategy of some indigenous peoples or segments of indigenous peoples, and isolation as the result of exclusion and social marginalization. In response to the Consultation Questionnaire circulated for the preparation of this Report, the Commission received troubling information that indicates that the indigenous communities of Tolupan de El Higuerito and El Hoyo were in a situation of “semi-isolation” in the department of Francisco Morazán, in Honduras.⁴⁶ The information indicates that since 2010, members of these communities have been displaced by non-indigenous persons associated with the lumber trade, who burned some of their dwellings, and both communities “have entered into decline due to the pressure by groups of small landowners and by loggers.”⁴⁷ The State also indicated that it does not have any regulation for protecting these communities.⁴⁸ In the opinion of the IACHR, the situation of “isolation” of these communities reflects a situation of extreme lack of protection and exclusion that exacerbates their vulnerability, and not their own decision to remain in isolation. In this regard, the Commission has indicated that the American Convention on Human Rights (hereinafter “American Convention”) protects the right to a dignified life,⁴⁹ and that when a State learns of serious situations being suffered by those living in marginalized areas, it has the duty to adopt measures to

⁴⁴ See section IV, *infra*. IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009, paras. 165-166. Both the United Nations Declaration on the Rights of Indigenous Peoples and ILO Convention 169 in Indigenous and Tribal Peoples in Independent Countries, 1989, recognize the right of indigenous peoples to self-determination.

⁴⁵ IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009, para. 165. See also Recommendation No. 3.056, “Indigenous peoples living in voluntary isolation and conservation of nature in the Amazon region and Chaco”, World Conservation Congress, Bangkok, Thailand, November 17 to 25, 2005, para. 2, stating that indigenous peoples who live in voluntary isolation have the right “to the protection of their lives, ownership of their lands and territories, and sustainable utilization of natural resources located within these lands and territories” and “to freely decide to remain isolated, maintain their cultural values, and to freely decide if, when and how they wish to integrate into national society.”

⁴⁶ Response by the State of Honduras to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 24, 2013.

⁴⁷ Response by the State of Honduras to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 24, 2013, p. 2. The information also indicates that these communities have an intermediary who provides them with basic subsistence needs through commerce.

⁴⁸ Response by the State of Honduras to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 24, 2013, p. 2.

⁴⁹ I/A Court HR, *The “Street Children” Case (Villagrán Morales et al.)*. Judgment of November 19, 1999. Series C No. 63, para. 144; I/A Court HR, *Case of the Yakye Axa Indigenous Community v. Paraguay*. Judgment of June 17, 2005. Series C No. 125, para. 161; I/A Court HR, *Case of the Indigenous Community of Sawhoyamaya v. Paraguay*. Judgment of March 29, 2006. Series C No. 146, para. 153.

mitigate the harm being caused, and to impose the applicable sanctions.⁵⁰ “[T]he failure to take such measures, despite knowledge of the severity of the situation [triggers] international responsibility for the effects on life and personal integrity flowing from those conditions.”⁵¹

B. Participation and prior, free, and informed consultation

24. One consequence of the respect for self-determination and their choice to remain isolated is that indigenous peoples in voluntary isolation do not intervene in the conventional channels of participation.⁵² This impossibility makes the protection of their rights by States, international organizations, and other actors in the defense of human rights all the more important.

25. In addition, it is not possible to conduct a prior, free, and informed consultation in keeping with the standards established by the Commission and the Inter-American Court of Human Rights in relation to development and investment projects and extractive concessions over natural resources that may affect the rights of indigenous peoples in voluntary isolation.⁵³ As detailed below, the peoples in voluntary isolation generally reject contact and the presence of persons who do not belong to their people in their lands and ancestral territories.⁵⁴ The United Nations Special Rapporteur on the human rights and fundamental freedoms of indigenous peoples (“Special Rapporteur”) has also recognized the difficulty of engaging a direct consultation with the peoples in isolation as it “could force a contact against the will of

⁵⁰ IACHR, *Report on Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, OEA/Ser.L/V/II, June 28, 2007, para. 253.

⁵¹ IACHR, *Report on Access to Justice and Social Inclusion: The Road towards Strengthening Democracy in Bolivia*, OEA/Ser.L/V/II, June 28, 2007, para. 253 (citing I/A Court HR, *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Judgment of March 29, 2006. Series C No. 146, para. 178).

⁵² See, for example, Alex Rivas Toledo, “Los pueblos indígenas en aislamiento desde los derechos humanos y la conservación de la biodiversidad: Informe de participación en el Primer Encuentro sobre Pueblos Indígenas Aislados de la Amazonía y El Chaco, Belém do Pará, Nov. 8-11 de 2005,” World Conservation Union (IUCN). Quito, December 2005, p. 7.

⁵³ I/A Court HR, *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245. I/A Court HR, *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172. See also IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009.

⁵⁴ The IACHR has received abundant information that reflects this rejection, including in the Workshop of Experts on Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas, May 6, 2013. Guidelines for the protection of indigenous peoples in voluntary isolation of the Amazon region, the Gran Chaco, and Eastern Paraguay. Result of the consultations by OHCHR in the region: Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, and Venezuela. May 2012 (hereinafter “United Nations Guidelines”), paras. 8-13. Available at: <http://acnudh.org/wp-content/uploads/2012/03/Directrices-de-Protecci%C3%B3n-para-los-Pueblos-Ind%C3%ADgenas-en-Aislamiento-y-en-Contacto-Inicial.pdf>. Response of the Federative Republic of Brazil to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 14, 2013, p. 1.

these groups.”⁵⁵ In this regard, the Special Rapporteur has expressed that States may coordinate efforts with indigenous organizations representing contacted segments of the same people if their "actions by the general claim of the traditional [indigenous] territory includes the protection of these groups in isolation." This as part of a continuous process of consultation and territorial protection of all sectors of the same people, including isolated groups.⁵⁶ The IACHR considers that in keeping with the *pro homine* principle and considering the principle of no contact as a fundamental condition,⁵⁷ the main factors to consider when analyzing whether the peoples in voluntary isolation do or do not give their consent to the presence of persons from outside their people in their ancestral territories are (i) the manifest rejection of the presence of persons who are not members of their people in their territories, and (ii) their decision to remain in isolation with respect to other peoples and persons.⁵⁸

26. The IACHR considers that in relation to indigenous peoples in initial contact, States should apply the standards developed by the IACHR and the Inter-American Court in a culturally appropriate manner, in keeping with the circumstances of each specific case and taking into account the level of contact of the people in question.⁵⁹ Unlike peoples in voluntary isolation, peoples in a situation of initial contact do have a relationship with other indigenous peoples and, in some cases, with the non-indigenous or majoritarian society, which makes it possible to conduct a prior, free,

⁵⁵ Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, Addendum: Cases examined by the Special Rapporteur (June 2009 – July 2010), A/HRC/15/37/Add.1, September 15, 2010, para. 335, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.37.Add.1.pdf>.

⁵⁶ Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, Addendum: Cases examined by the Special Rapporteur (June 2009 – July 2010), A/HRC/15/37/Add.1, September 15, 2010, para. 335, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.37.Add.1.pdf>.

⁵⁷ The Inter-American Court of Human Rights has noted that its work is governed by the *pro homine* principle. I/A Court HR. *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations, and Costs. Judgment of March 29, 2006. Series C No. 146, para. 162.

⁵⁸ The United Nations Guidelines consider: “In the case of indigenous peoples in voluntary isolation, the right to consultation to obtain their prior, free, and informed consent should be interpreted mindful of their decision to remain in isolation and the need for the greatest protection of the indigenous peoples in voluntary isolation given their situation of vulnerability, which may be reflected in their decision not to use such mechanisms of participation and consultation.” Guidelines for the protection of indigenous peoples in voluntary isolation of the Amazon region, the Gran Chaco, and Eastern Paraguay. Result of the consultations by OHCHR in the region: Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, and Venezuela. May 2012, para. 66. The Commission recalls that, as the Inter-American Court has indicated, the protection of the rights of indigenous peoples should be interpreted in keeping with the evolution and development of international human rights law in this area. I/A Court HR. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations, and Costs. Judgment of June 17, 2005. Series C No. 125, para. 127. IACHR, Report No. 40/04, Case 12,053, Maya Indigenous Community of the Toledo District (Belize), October 12, 2004, para. 118, n. 123.

⁵⁹ IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009, Section VIII.

informed, and good-faith consultation aimed at obtaining their consent.⁶⁰ In those cases in which there is such consultation with indigenous peoples in initial contact, the IACHR considers that the following aspects must also be taken into account: their particular situation of vulnerability and interdependence with their territories and natural resources, their worldview, and how they may interpret a consultation process. Above all, they should be considered active subjects and holders of rights capable of deciding in a prior, free, and informed manner how to carry out the consultation and its outcome.

IV. SOURCES OF LAW AND LEGAL FRAMEWORKS

27. The rights of indigenous peoples in voluntary isolation and initial contact are set forth in several international treaties, conventions, and declarations, in regional instruments in the inter-American human rights system, as well as in the domestic legislation of some countries and through various regional efforts. Indigenous peoples in isolation and initial contact have all the same rights as the indigenous peoples already contacted and integrated into the majority societies, as well as the human rights that every person enjoys. In addition, given their particular situation of vulnerability due to their isolation, some rights take on special importance. This section analyzes legal sources that enshrine the basic content of the human rights most relevant for indigenous peoples in voluntary isolation and initial contact, both in the inter-American human rights system and in other areas of international law, as well as the domestic systems of the countries that have adopted specific legislation and policies on indigenous peoples in voluntary isolation or initial contact.

A. Protections in the inter-American human rights system

28. The inter-American human rights system comprises a series of instruments that protect a vast array of human rights, including specific rights with respect to indigenous peoples. Some of these are particularly relevant for indigenous peoples in voluntary isolation and initial contact.

1. American Declaration of the Rights and Duties of Man

29. The American Declaration of the Rights and Duties of Man (hereinafter “American Declaration”) establishes legal obligations for the member states of the Organization of American States that derive from the human rights obligations contained in Article 3 of the Charter of the OAS.⁶¹ The obligations contained in the American Declaration must be interpreted “in the light of developments in the field of

⁶⁰ See Guidelines for the protection of indigenous peoples in voluntary isolation of the Amazon region, the Gran Chaco, and Eastern Paraguay. Result of the consultations by OHCHR in the region: Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, and Venezuela. May 2012, paras. 66-67. See also Response by the State of Peru to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 4, 2013, p. 14.

⁶¹ American Declaration of the Rights and Duties of Man (hereinafter “American Declaration”), adopted at the Ninth International Conference of American States, Bogotá, Colombia, 1948.

international human rights law since the Declaration was first composed and with due regard to other relevant rules of international law applicable to member states....”⁶²

30. Article XXIII of the American Declaration protects the right to private property, and the IACHR and the Inter-American Court of Human Rights have interpreted this article so as to protect the property rights of indigenous and tribal peoples to their lands, territories, and natural resources.⁶³ This right includes “precepts on the protection of indigenous and tribal peoples’ traditional forms of ownership and cultural survival and on their right to lands, territories and natural resources.”⁶⁴ The Commission considers that the protection of their lands, territories, and natural resources is fundamental for the physical and cultural survival of the indigenous peoples in voluntary isolation and initial contact.

2. American Convention on Human Rights

31. Like the American Declaration, the American Convention on Human Rights protects the right to property, at Article 21. The IACHR and the Inter-American Court have explained that Article 21 of the American Convention protects the right of indigenous and tribal peoples to their lands, territories, and natural resources, since not recognizing that right “would render protection under Article 21 of the Convention illusory for millions of people.”⁶⁵ As the Inter-American Commission has indicated, “Article 21 of the American Convention calls for the right of members of indigenous and tribal communities to freely determine and enjoy their own social, cultural and economic development, which includes the right to enjoy their particular spiritual relationship with the territory they have traditionally used and occupied.”⁶⁶

32. The Convention does not contain specific provisions on indigenous peoples in voluntary isolation, but it does enshrine the rights to life (Article 4), to physical, mental, and moral integrity (Article 5), freedom of conscience and religion (Article 12), freedom of thought and expression (Article 13), freedom of association (Article 16), the right to form a family (Article 17), the rights of the child (Article 19),

⁶² IACHR, Report No. 75/02, Case 11,140, Mary and Carrie Dann (United States), December 27, 2002, para. 96. See also I/A Court HR, *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*. Advisory Opinion OC-10/89 of July 14, 1989. Series A No. 100, para. 37.

⁶³ IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009, para. 5.

⁶⁴ IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009, para. 9.

⁶⁵ I/A Court HR. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245, para. 145.

⁶⁶ IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009, para. 166.

freedom of movement and residence (Article 22), and equality before the law (Article 24), among others. The IACHR emphasizes that all these rights and fundamental freedoms are potentially relevant for indigenous peoples living in voluntary isolation and initial contact.

33. In addition, the Inter-American Court of Human Rights has developed standards under the American Declaration and the American Convention on the rights of indigenous peoples to their lands, territories, and natural resources, and on their right to consultation and prior, free, and informed consent, which States must respect when they consider projects that could have a detrimental impact on these rights.⁶⁷ To date, the Inter-American Court has not ruled on the right to consultation and consent in the context of indigenous peoples in voluntary isolation and initial contact. In this respect, the United Nations Special Rapporteur has said that “a process of direct consultation [with peoples in voluntary isolation] would be difficult for the State since [the State] could not force a contract against the will of these groups.”⁶⁸ The Special Rapporteur also observed that there are several indigenous organizations whose actions to claim ancestral territories include the protection of peoples and communities in isolation: “Therefore, the State could only coordinate efforts with such [indigenous] organizations as part of an ongoing process of consultation and territorial protection of all sectors of this people, including the groups in isolation.”⁶⁹

3. Draft American Declaration on the Rights of Indigenous Peoples

34. On November 18, 1989, the General Assembly of the OAS approved a resolution in which it asked the IACHR to prepare a legal instrument on the rights of indigenous peoples.⁷⁰ On March 17, 1997, the IACHR submitted a Draft American

⁶⁷ See, among others, I/A Court HR. *Case of the Awas Tingni Mayagna (Sumo) Community v. Nicaragua*. Preliminary Objections. Judgment of February 1, 2001; I/A Court HR. *Case of the Yakye Axa Indigenous Community v. Paraguay*. Merits, Reparations, and Costs. Judgment of June 17, 2005. Series C No. 125; I/A Court HR. *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations, and Costs. Judgment of March 29, 2006. Series C No. 146; I/A Court HR. *Case of the Saramaka People v. Suriname*. Judgment of November 28, 2007. Series C No. 172; I/A Court HR. *Case of the Xákmok Kásek Indigenous Community v. Paraguay*. Merits, Reparations, and Costs. Judgment of August 24, 2010 Series C No. 214; I/A Court HR. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245. See also IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009.

⁶⁸ Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, Addendum: Cases examined by the Special Rapporteur (June 2009-July 2010), A/HRC/15/37/Add.1, September 15, 2010, para. 335, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/15session/A.HRC.15.37.Add.1.pdf>.

⁶⁹ Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, Addendum: Cases examined by the Special Rapporteur (June 2009-July 2010), A/HRC/15/37/Add.1, September 15, 2010, para. 335. The Special Rapporteur made these observations in the context of the Ayoreo people and its communities in isolation in Paraguay.

⁷⁰ AG/Res.1022 (XIX-O/89), adopted at the nineteenth plenary session, November 18, 1989.

Declaration on the Rights of Indigenous Peoples (hereinafter “Draft American Declaration”) to the Permanent Council.⁷¹ The draft declaration is currently being negotiated by the member states of the OAS; the most recent negotiating session was held on April 20, 2012.⁷²

35. The current version of the Draft American Declaration includes a specific article on indigenous peoples in voluntary isolation, the text of which has been agreed by consensus:

Article XXVI. Indigenous peoples in voluntary isolation or initial contact

1. Indigenous peoples in voluntary isolation or initial contact have the right to remain in that condition and to live freely and in accordance with their cultures. (Agreed upon by consensus in October, 2005 – Sixth Meeting of Negotiations in the Quest for Points of Consensus)

2. The states shall adopt adequate policies and measures with the knowledge and participation of indigenous peoples and organizations to recognize, respect, and protect the lands, territories, environment, and cultures of these peoples as well as their life, and individual and collective integrity. (Agreed upon by consensus in October, 2005 – Sixth Meeting of Negotiations in the Quest for Points of Consensus)⁷³

36. This article would make this the first international instrument that contains a specific article about indigenous peoples in voluntary isolation and initial contact. The Draft American Declaration also contains provisions on rejecting assimilation (Article X), protection from genocide (Article X bis), the right to cultural identity and integrity (Article XIII), the right to freely exercise one’s own spirituality and beliefs (Article XV), protection of a healthy environment (Article XVIII), right to autonomy and self-government (Article XX), and the right to freely determine one’s own political, economic, social, and cultural development (Article XXIX).⁷⁴ The adoption of

⁷¹ Note from the Executive Secretary of the Inter-American Commission on Human Rights on the “Draft American Declaration on the Rights of Indigenous Peoples,” CP/doc.2878/97 corr.1, April 1, 1997.

⁷² See Working Group To Prepare the Proposed American Declaration on the Rights of Indigenous Peoples, Compendium of Proposals, available at: <http://www.oas.org/consejo/CAJP/Indigenous%20documents.asp#2013>.

⁷³ Record of the Current Status of the American Declaration on the Rights of Indigenous Peoples, Fourteenth Meetings of Negotiations in the Quest for Points of Consensus (Washington, D.C., April 18 to 20, 2012. OEA/Ser.K/XVI, doc. GT/DADIN/doc.334/08 rev.7 (May 2, 2012). Notes to Article XXVI(2): The Delegation of Argentina reserves acceptance of the terms “lands and territories” until such time as their scope throughout the text of the Declaration is considered, during the Sixth Meetings of Negotiations. The Delegation of Mexico joins the consensus reached on this article during the Sixth Meeting of Negotiations; nonetheless, it reserves the right to request reconsideration of the last part of the second paragraph of this article, which reads: “These policies shall include measures to prevent, prohibit, and punish any unauthorized intrusion into their lands and territories,” if this is not taken up in another article of the Declaration.

⁷⁴ Consensus has yet to be reached on the text of Article XXIX of the Draft American Declaration on the right to development.

these provisions in the Draft American Declaration, and above all their application and observance in practice, would significantly bolster the protection of the human rights of indigenous peoples in voluntary isolation and initial contact in the Americas.

B. ILO Convention 169 on Indigenous and Tribal Peoples in Independent Countries

37. Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries, of 1989, also contains provisions potentially relevant for indigenous peoples living in voluntary isolation and initial contact.⁷⁵ The IACHR has considered that Convention No. 169 is “the international human rights instrument most relevant to the protection of indigenous rights.”⁷⁶ The Inter-American Court has indicated that on analyzing the content and scope of the right to collective property of indigenous communities, “the Court has taken into account Convention No. 169 of the ILO in the light of the general interpretation rules established under Article 29 of the [American] Convention [...] in accordance with the evolution of the Inter-American system considering the development that has taken place regarding these matters in international human rights law.”⁷⁷ Of the countries in which there are indications of the presence of indigenous peoples in voluntary isolation and initial contact, Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, and Venezuela have ratified Convention No. 169.⁷⁸

38. Convention No. 169 does not contain an article exclusively on indigenous peoples in voluntary isolation and initial contact. Nonetheless, it has numerous provisions that may be relevant to them. Among those provisions, special mention should be made of Article 14, which recognizes indigenous peoples’ rights “of ownership and possession ... over the lands which they traditionally occupy...”⁷⁹ In addition, it provides that “measures shall be taken in appropriate cases 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 subsistence and traditional activities. Particular attention shall be paid to the situation of nomadic peoples and shifting cultivators in this respect.”⁸⁰ The Convention also states: “Governments shall take steps

⁷⁵ Convention of the International Labor Organization on indigenous and tribal peoples in independent countries, No. 169 (1989), adopted June 27, 1989, by the General Conference of the International Labor Organization in its seventieth meeting, which came into force on September 5, 1991, in keeping with its Article 38 (hereinafter “Convention No. 169”).

⁷⁶ IACHR, *Third Report on the Situation of Human Rights in Paraguay*. Doc. OEA/Ser./L/VII.110, Doc. 52, March 9, 2001, Chapter IX, para. 12.

⁷⁷ I/A Court HR. *Case of the Sawhoyamaya Indigenous Community v. Paraguay*. Merits, Reparations, and Costs. Judgment of March 29, 2006. Series C No. 146, para. 117.

⁷⁸ Bolivia ratified Convention No. 169 on December 11, 1991; Brazil on July 25, 2002; Colombia on August 7, 1991; Ecuador on May 15, 1998; Paraguay on August 10, 1993; Peru on February 2, 1994; Venezuela on May 22, 2002.

⁷⁹ Convention No. 169, Article 14(1).

⁸⁰ Convention No. 169, Article 14(1).

as necessary to identify the lands which the peoples concerned traditionally occupy, and to guarantee effective protection of their rights of ownership and possession.”⁸¹

39. The Convention also contains provisions regarding the right to prior consultation and prior consent (Articles 6 and 16), the right to maintain their own customs and institutions (Article 8), the right for representative organizations to advocate for the protection of their rights (Article 12); lands and territories (Articles 13-19); and the right not to be transferred from the lands they occupy (Article 16). In addition, as a general principle, the Convention provides that in its implementation, “the social, cultural, religious and spiritual values and practices of these [*i.e.*, indigenous and tribal] peoples shall be recognised and protected, and due account shall be taken of the nature of the problems which face them both as groups and as individuals” and “the integrity of the values, practices and institutions of these peoples shall be respected.”⁸²

C. Instruments of the universal human rights system

40. In the United Nations system, some treaties contain provisions relevant to the rights of indigenous peoples in voluntary isolation and initial contact. The United Nations Charter, for example, recognizes the principle of the self-determination of peoples.⁸³ In addition, the Universal Declaration of Human Rights also recognizes the individual right to life, liberty, and security (Article 3), the right to property, both individual and collective (Article 17), and the right to health (Article 25), among other relevant rights.⁸⁴

1. The international covenants

41. Both the International Covenant on Civil and Political Rights (“ICCPR”) and the International Covenant on Economic, Social and Cultural Rights (“ICESCR”) recognize the right to self-determination: “All peoples have the right of self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”⁸⁵ The Human Rights Committee has stated that this right “is of particular importance because its realization

⁸¹ Convention No. 169, Article 14(2).

⁸² Convention No. 169, Article 5.

⁸³ United Nations Charter, signed June 26, 1945 at the United Nations Conference on International Organization, which entered into force on October 24, 1945, Article 1(2).

⁸⁴ Universal Declaration of Human Rights, adopted by the General Assembly December 10 1948, 117th plenary session, AG/RES/217A(III).

⁸⁵ International Covenant on Civil and Political Rights [ICCPR], Article 1, adopted by the General Assembly in resolution 2200 A (XXI), December 16, 1966, came into force: March 23, 1976; International Covenant on Economic, Social and Cultural Rights [ICESCR], Article 1, adopted by the General Assembly in resolution resolución 2200 A (XXI), December 16, 1966, came into force: January 3, 1976.

is an essential condition for the effective guarantee and observance of individual human rights and for the promotion and strengthening of those rights.”⁸⁶

42. In addition, Article 1(2) of both Covenants provides: “All peoples may, for their own ends, freely dispose of their natural wealth and resources without prejudice to any obligations arising out of international economic co-operation, based upon the principle of mutual benefit, and international law. In no case may a people be deprived of its own means of subsistence.”⁸⁷ And Article 27 of the ICCPR provides: “In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language.”⁸⁸ In its 2000 report *The Human Rights Situation of Indigenous Peoples in the Americas* the IACHR noted that the “approach to the rights of indigenous peoples via the concepts of ‘minorities’ or ‘prohibition on discrimination,’ while the only mechanism in some cases, is incomplete and reductionist, and therefore inadequate.”⁸⁹

43. In the Americas, all the member states in which there are indicia of the presence of indigenous peoples in voluntary isolation or initial contact have ratified both international covenants, and therefore are subject to the obligations that derive therefrom.⁹⁰

⁸⁶ General Comment No. 12, General Comments adopted by the Human Rights Committee, Article 1 – Right to self-determination, 21st session, U.N. Doc. HRI/GEN/1/Rev.7 at 152 (1984). The Human Rights Committee has indicated that the right to self-determination “applies to all peoples and not merely to colonized peoples.” Concluding observations of the Human Rights Committee: Azerbaijan, adopted August 3, 1994. CCPR/C/79/Add.38; A/49/40, para. 296. The Inter-American Court of Human Rights has indicated that “under Article 1 common to both agreements, indigenous peoples may ‘pursue their economic, social and cultural development’ and ‘freely dispose of their natural wealth and resources’ so that they are not ‘deprived of their own means of subsistence.’” I/A Court HR. *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245, para. 171, n. 223. The Inter-American Commission has also stated that the right to self-determination is applicable to indigenous peoples. IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009, para. 166. In addition, some academics hold that common Article 1 of the two covenants recognizes that indigenous peoples have the right to self-determination. See Antonio Cassese, SELF-DETERMINATION OF PEOPLES 55-57 (1995).

⁸⁷ ICCPR, Article 2; ICESCR, Article 2.

⁸⁸ ICCPR, Article 27.

⁸⁹ IACHR, *The Human Rights Situation of Indigenous Peoples in the Americas*, Doc. OEA/Ser.L/V/II.108, Doc. 62, October 20, 2000.

⁹⁰ Bolivia acceded to the ICESCR and to the ICCPR on January 24, 1992. Colombia signed the ICESCR and the ICCPR on December 21, 1966, and ratified them on October 29, 1969. Ecuador signed the ICESCR on September 29, 1967, and the ICCPR on April 4, 1968, ratified both on March 6, 1969. Guyana signed the ICESCR and the ICCPR on August 22, 1968, and ratified them on February 15, 1977. Paraguay acceded to the ICESCR and the ICCPR on June 10, 1992. Peru signed the ICESCR and the ICCPR on August 11, 1977, and ratified them on April 28, 1978. Suriname acceded to the ICESCR and the ICCPR on December 28, 1976. Venezuela signed the ICESCR and the ICCPR on June 24, 1969, and ratified them on May 10, 1978. See United Nations, Treaty Collection, status of signatures, accessions, ratifications and successions, available at: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-3&chapter=4&lang=en; and http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-4&chapter=4&lang=en.

2. Convention against Genocide

44. The United Nations Convention on the Prevention and Punishment of the Crime of Genocide establishes the obligation of the states parties to prevent and punish the crime of genocide, whether committed by governments, public servants, or private persons.⁹¹ This Convention defines genocide as any of the following acts “committed with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such: (a) killing members of the group; (b) causing serious bodily or mental harm to members of the group; (c) deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; (d) imposing measures intended to prevent births within the group; and (e) forcibly transferring children of the group to another group.”⁹²

45. In certain circumstances, the Convention against Genocide could be relevant for the situation of some indigenous peoples in voluntary isolation or initial contact. All the countries in which there are indicia of the presence indigenous peoples in voluntary isolation or initial contact, with the exception of Guyana and Suriname, have ratified or acceded to the Convention against Genocide.⁹³

3. United Nations Declaration on the Rights of Indigenous Peoples

46. On September 13, 2007, the United Nations General Assembly approved the Declaration on the Rights of Indigenous Peoples.⁹⁴ Even though the United Nations Declaration does not contain a specific article on indigenous peoples in voluntary isolation or initial contact, it does contain several relevant articles.

47. At Article 3 the Declaration reiterates the right to self-determination, which is of particular importance for the peoples who decide to remain in isolation — and it picks up on the spirit of Article 1 of the ICCPR and the ICESCR as follows:

⁹¹ The Convention on the Prevention and Punishment of the Crime of Genocide, Article IV, adopted by the General Assembly in its resolution 260 A (III), December 9, 1948, came into force January 12, 1951.

⁹² Convention on the Prevention and Punishment of the Crime of Genocide, Article III.

⁹³ Bolivia: signed December 11, 1948, ratified on June 14, 2005. Brazil: signed December 11, 1948, ratified on April 15, 1952. Colombia: signed August 12, 1949, ratified October 27, 1959. Ecuador: signed December 11, 1948, ratified December 21, 1949. Paraguay: signed December 11, 1948, ratified October 3, 2001. Peru: signed December 11, 1948, ratified February 24, 1960. Venezuela: acceded July 12, 1960. See: http://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-1&chapter=4&lang=en.

⁹⁴ United Nations Declaration on the Rights of Indigenous Peoples, A/RES/61/295, adopted by the General Assembly at its 107th plenary session, September 13, 2007. The Declaration was approved with 144 votes in favor, 4 votes against, and 11 abstentions. Of the OAS member states, the United States and Canada voted against it, and Colombia abstained. After its adoption the government of Canada has stated its support for the Declaration, and the President of the United States declared that the United States would sign it. Second White House Tribal Nations Conference, December 16, 2010, see: http://www.whitehouse.gov/sites/default/files/Tribal_Nations_Conference_Final_0.pdf. In addition, on April 29, 2009, Colombia declared its support of the Declaration. Permanent Forum on Indigenous Issues. *Situation of indigenous peoples in danger of extinction in Colombia. Summary of the report and recommendations of the mission by the Permanent Forum to Colombia*, Doc. E/C.19/2011/3, February 11, 2011, para. 5.

“Indigenous peoples have the right to self-determination. By virtue of that right they freely determine their political status and freely pursue their economic, social and cultural development.”⁹⁵ Along the same lines of self-determination: “Indigenous peoples have the collective right to live in freedom, peace and security as distinct peoples and shall not be subjected to any act of genocide or any other act of violence, including forcibly removing children of the group to another group.”⁹⁶ In addition, “Indigenous peoples and individuals have the right not to be subjected to forced assimilation or destruction of their culture.”⁹⁷

48. The right not to be subject to forced assimilation is accompanied by the obligation of States to prevent such assimilation. Accordingly, States undertake to prevent, among other things, any act whose purpose or consequence is to deprive them of their integrity as distinct peoples or of their cultural values or ethnic identity, any acts whose purpose or consequence is to dispossess them of their lands, territories, or resources, and any form of assimilation or forced integration.⁹⁸ The performance of these obligations by the states is fundamental for the physical and cultural survival of the indigenous peoples in voluntary isolation.

49. The United Nations Declaration expressly protects the rights of indigenous peoples to their lands, territories, and natural resources. Article 26 specifically provides that indigenous peoples have the right “to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired” and “to own, use, develop and control the lands, territories and resources that they possess by reason of traditional ownership or other traditional occupation or use, as well as those which they have otherwise acquired.”⁹⁹ The States undertake to ensure “legal recognition and protection to these lands, territories and resources. Such recognition shall be conducted with due respect to the customs, traditions and land tenure systems of the indigenous peoples concerned.”¹⁰⁰ As explained in detail in other parts of this report, the effective protection of the rights of indigenous peoples, and especially those in voluntary isolation and initial contact, to their lands, territories, and natural resources, is key to ensure their survival and way of life.

⁹⁵ United Nations Declaration on the Rights of Indigenous Peoples, Article 3.

⁹⁶ United Nations Declaration on the Rights of Indigenous Peoples, Article 7(2). In some countries the peoples in voluntary isolation are called “free peoples” (*pueblos libres*), since they have not submitted to the conventions of the majority society.

⁹⁷ United Nations Declaration on the Rights of Indigenous Peoples, Article 8(1).

⁹⁸ United Nations Declaration on the Rights of Indigenous Peoples, Article 8(2).

⁹⁹ United Nations Declaration on the Rights of Indigenous Peoples, Article 26(1) and 26(2).

¹⁰⁰ United Nations Declaration on the Rights of Indigenous Peoples, Article 26(3).

50. The Declaration also provides that indigenous peoples will not be displaced by force from their lands or territories.¹⁰¹ They also have the right to practice their traditions and cultural customs in their different manifestations.¹⁰² In addition, the Declaration protects the right of indigenous peoples to the conservation and protection of the environment, including the right not to have hazardous materials stored in their lands or territories without their free, prior, and informed consent.¹⁰³ Article 20 protects the right “to maintain and develop their political, economic and social systems or institutions, to be secure in the enjoyment of their own means of subsistence and development,” whatever these may be. In addition, the indigenous peoples have the right to “their traditional medicines and to maintain their health practices, including the conservation of their vital medicinal plants, animals and minerals.”¹⁰⁴ For the peoples in isolation this right is of the utmost importance, for they derive the elements for their subsistence, including plants and other medicinal elements, from their natural environment.

4. Guidelines of protection for the indigenous peoples in isolation and initial contact of the Amazon region, the Gran Chaco, and the Eastern Region of Paraguay

51. In 2005, the United Nations Secretary General presented a draft program of action for the Second International Decade of the World’s Indigenous Peoples. The draft recommended establishing “a global mechanism ... established to monitor the situation of indigenous peoples in voluntary isolation and in danger of extinction.”¹⁰⁵ Internally, the program of action recommended adopting “a special protection framework for indigenous peoples in voluntary isolation ... and that Governments should establish special policies for ensuring the protection and rights of indigenous peoples with small populations and at risk of extinction.”¹⁰⁶ In response to these recommendations, a seminar was held in Bolivia in 2006 in which representatives of States, international agencies, public institutions, indigenous organizations and experts participated. This seminar culminated with what became known as the “Santa Cruz de la Sierra Appeal.”¹⁰⁷ The Appeal made a series of recommendations on issues of

¹⁰¹ United Nations Declaration on the Rights of Indigenous Peoples, Article 10. The article also states: “No relocation shall take place without the free, prior and informed consent of the indigenous peoples concerned....” As explained in detail below, on issues of prior consultation, the rejection of contact by the indigenous peoples in voluntary isolation should be understood as their response to a hypothetical consultation: they do not wish to have contact, much less a possible relocation.

¹⁰² United Nations Declaration on the Rights of Indigenous Peoples, Article 11.

¹⁰³ United Nations Declaration on the Rights of Indigenous Peoples, Article 29.

¹⁰⁴ United Nations Declaration on the Rights of Indigenous Peoples, Article 24.

¹⁰⁵ General Assembly, Draft Programme of Action for the Second International Decade of the World’s Indigenous People, Report of the Secretary General, A/60/270 (August 18, 2005), para. 45.

¹⁰⁶ General Assembly, Draft Programme of Action for the Second International Decade of the World’s Indigenous People, Report of the Secretary General, A/60/270 (August 18, 2005), para. 51.

¹⁰⁷ Report of the Regional Seminar on indigenous peoples in voluntary isolation and in initial contact of the Amazonian Basin and El Chaco, Santa Cruz de la Sierra, Bolivia, (20-22 November 2006).

respect for no contact, protection of territories and natural resources, international cooperation, and contingency health plans, among others.

52. In the wake of the Santa Cruz de la Sierra Appeal, in 2007 the Permanent Forum on Indigenous Issues recommended to the Office of the United Nations High Commissioner for Human Rights (“OHCHR”) that it address, in consultation with indigenous organizations, experts, non-governmental organizations (“NGOs”), States, and international organizations, the preparation of guidelines for protecting the indigenous peoples in isolation and initial contact.¹⁰⁸ In October 2007, a second regional seminar was held in Quito, Ecuador, whose main theme was the design of public policies and action plans to guarantee the right to health of indigenous peoples in voluntary isolation and initial contact.¹⁰⁹ In May 2012, OHCHR released the “Guidelines for the protection of indigenous peoples in voluntary isolation and initial contact of the Amazon region, Gran Chaco and Eastern Paraguay.”¹¹⁰ The Guidelines constitute the first document issued by a United Nations agency specifically on indigenous peoples living in voluntary isolation and initial contact.

53. The Guidelines contain a series of principles and action programs arrived at by consensus of all those who participated in drafting them, a group that included anthropologists, historians, State representatives, and indigenous organizations, among others. The Guidelines are governed mainly by the principles of respect for the right to life and physical and cultural integrity, the right to self-determination and no contact, and protection of the lands, territories, and natural resources traditionally occupied and used by indigenous peoples in voluntary isolation and initial contact. The right of the peoples to their own culture, the right to health, and to consultation and prior, free, and informed consent are also fundamental considerations in the Guidelines.¹¹¹

...continuation

Permanent Forum on Indigenous Issues, Doc. E/C.19/2007/CRP.1, March 28, 2007. The seminar was organized by OHCHR, the Vice-Ministry of Lands of the Plurinational State of Bolivia, the *Confederación de Pueblos Indígenas de Bolivia* (CIDOB), and the International Work Group on Indigenous Affairs (IWGIA).

¹⁰⁸ Permanent Forum on Indigenous Issues, Report of the Sixth Session (May 14 to 25, 2007), Economic and Social Council, Supplement No. 23, Doc. E/2007/43-E/C.19/2007/12, para. 40 (“The Permanent Forum recommends that OHCHR conduct in 2007, in consultation with indigenous peoples’ organizations, non-governmental organizations, experts, States and multilateral and bilateral agencies, the formulation of guidelines directed to all actors, both governmental and non-governmental, dealing with the respect and protection of the rights of indigenous peoples in voluntary isolation and initial contact.”).

¹⁰⁹ OHCHR, Press release on the publication of the Guidelines for the protection of indigenous peoples in voluntary isolation and initial contact, May 22, 2012, available at: <http://acnudh.org/2012/05/directrices-de-proteccion-para-los-pueblos-indigenas-en-aislamiento-y-en-contacto-inicial-de-la-region-amazonica-el-gran-chaco-y-la-region-oriental-de-paraguay/>.

¹¹⁰ Guidelines for the protection of indigenous peoples in voluntary isolation of the Amazon region, the Gran Chaco, and Eastern Paraguay. Result of the consultations by OHCHR in the region: Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, and Venezuela. May 2012.

¹¹¹ See Guidelines for the protection of indigenous peoples in voluntary isolation of the Amazon region, the Gran Chaco, and Eastern Paraguay. Result of the consultations by OHCHR in the region: Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, and Venezuela. May 2012, paras. 18-22.

54. As regards the right to prior consultation with peoples in isolation, the Guidelines provide that it “should be interpreted mindful of their decision to remain in isolation and the need for greater protection of indigenous peoples in voluntary isolation given their situation of vulnerability, which can be seen reflected in their decision not to use such mechanisms of participation and consultation.”¹¹² In relation to this right in the context of peoples in a situation of initial contact, the Guidelines recommend that “they be considered active subjects in all actions that may be carried out in relations with the surrounding society, as active subjects and persons with rights, and as peoples with the right to decide by themselves their present and their future, they should have the capacity to decide the actions that will be carried out and what form their participation should take.”¹¹³ In addition, the Guidelines contain other specific recommendations aimed at governmental and non-governmental players involved in protecting the rights of these peoples.¹¹⁴

D. Other regional protection efforts

55. The IACHR notes some efforts in the region to protect the rights of the peoples in voluntary isolation and initial contact. From November 8 to 11, 2005, the first International Meeting on Isolated Indigenous Peoples of the Amazon and the Gran Chaco was held in Belém do Pará, Brazil. At that meeting the *International Alliance for the Protection of the Indigenous Peoples in Isolation* was formed; it issued the Declaration of Belém do Pará on the indigenous peoples in isolation.¹¹⁵ This Declaration set forth a series of demands and recommendations for the protection of such peoples, including notably the legal recognition for the territories of indigenous peoples in isolation, the suspension or immediate modification of projects that cause harm to the territories or the environment occupied by indigenous peoples in isolation, urgent public health measures that are culturally appropriate, and the immediate suspension of financing by multilateral agencies for projects that threaten their physical, cultural, or territorial integrity.¹¹⁶

¹¹² Guidelines for the protection of indigenous peoples in voluntary isolation of the Amazon region, the Gran Chaco, and Eastern Paraguay. Result of the consultations by OHCHR in the region: Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, and Venezuela. May 2012, para. 66.

¹¹³ Guidelines for the protection of indigenous peoples in voluntary isolation of the Amazon region, the Gran Chaco, and Eastern Paraguay. Result of the consultations by OHCHR in the region: Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, and Venezuela. May 2012, para. 67.

¹¹⁴ Guidelines for the protection of indigenous peoples in voluntary isolation of the Amazon region, the Gran Chaco, and Eastern Paraguay. Result of the consultations by OHCHR in the region: Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, and Venezuela. May 2012, paras. 73-93.

¹¹⁵ See, for example, Carlos Camacho Nassar, “Bolivia: Violence and ethnocide in the Bolivian lowlands,” in *Indigenous Peoples in Voluntary Isolation and Initial Contact*, IWGIA (2012), p. 100.

¹¹⁶ Declaration of Belém do Pará on indigenous peoples in isolation, demands 3, 6, 7 and 10.

56. The Commission received information that in 2009 the governments of Bolivia and Paraguay signed a Joint Declaration in which they expressed the need to incorporate the issue of indigenous peoples in their bilateral agenda.¹¹⁷ In particular, with respect to the Ayoreo communities in voluntary isolation “whose ancestral lands are located on both sides of the border, [they agreed that] the two States shall act in coordination to ensure respect for their way of life.”¹¹⁸ Similarly, information was received on the bilateral discussions between the governments of Brazil and Colombia in 2011, through a mission for methodological exchange between a team from National Indian Foundation (“FUNAI”) of Brazil in the Vale do Javari Indigenous Land and Colombian park rangers from the Río Puré Natural National Park, where there are references regarding the presence of peoples in isolation.¹¹⁹

57. The Amazon Cooperation Treaty Organization (“OTCA”) is currently implementing a program geared towards protecting the rights of peoples in voluntary isolation and initial contact. OTCA is made up of the eight countries that share the Amazon region: Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname, and Venezuela.¹²⁰ Among other initiatives, OTCA held a regional seminar in Quito, Ecuador, from June 3 to 6, 2009, that included the participation of ministers and governmental authorities in charge of indigenous affairs and some of their delegates, representatives of the ministries of foreign affairs, and representatives of other organs of the governments of Bolivia, Brazil, Ecuador, Guyana, and Suriname.¹²¹

58. In collaboration with the Inter-American Development Bank (“IDB”), OTCA has designed a Strategic Framework for developing a regional agenda for the protection of the indigenous peoples in voluntary isolation and initial contact.¹²² The

¹¹⁷ Response of the Plurinational State of Bolivia to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR on July 5, 2013, p. 9.

¹¹⁸ Response of the Plurinational State of Bolivia to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR July 5, 2013, p. 9. Without prejudice to this Joint Declaration, the Plurinational State of Bolivia indicated that “the Ministry of Foreign Affairs has not stated its will to give continuity to the aforementioned Declaration.”

¹¹⁹ Response of the Federative Republic of Brazil to the Questionnaire for Consulting on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 14, 2013, p. 7.

¹²⁰ The Amazon Cooperation Treaty [TCA] was signed in July 1978 by the governments of Bolivia, Brazil, Colombia, Ecuador, Guyana, Peru, Suriname, and Venezuela. In 1995, a Permanent Secretariat was established to strengthen the TCA institutionally, and the Protocol of Amendment of the TCA was approved, officially instituting the Amazon Cooperation Treaty Organization as the mechanism responsible for furthering and strengthening the cooperation process under the TCA.

¹²¹ OTCA, Quito Report, June 5, 2009, available at: http://www.otca.info/portal/admin/_upload/documentos/informe_quito_esp.pdf.

¹²² See http://www.otca.org.br/portal/admin/_upload/documentos/Historico_proyecto_web.pdf. According to information from the IDB, the financing for this project comes to US\$800,000, in the form of a “non-reimbursable technical cooperation,” and the total cost of the program comes to US\$952,000. Project ATN/OC-11423-RG; RG-T1503, Strategic Framework for Developing a Regional Agenda, Protection of Indigenous Peoples in Voluntary Isolation and Initial Contact, approved February 15, 2011. The documents on the project are published at the IDB website: http://www.iadb.org/en/projects/project-description-title_1303.html?id=RG-T1503.

main objective of the Strategic Framework is to contribute to the protection of the indigenous peoples in voluntary isolation and initial contact by defining effective policies and consensus-based actions among the governments, indigenous peoples and organizations, and non-governmental organizations with experience working on the subject.¹²³ The Commission notes that it has five structural components: (1) a regional mechanism for inter-institutional coordination; (2) regional guidelines for a consensus-based strategic framework; (3) a regional action plan; (4) a regional strategy for attending to health issues; (5) and tools for sustainability.¹²⁴ In its 2013 working plan OTCA included specific activities to implement the Strategic Framework.¹²⁵ In the context of this Strategic Framework a National Workshop for Exchange of Methodologies and Legislation on Indigenous Peoples in Isolation and Initial Contact was held, organized by the Ministry of Foreign Affairs and the Ministry of Culture of Peru.¹²⁶

59. According to information received by the IACHR, OTCA expects to publish a regional protocol of guidelines for designing national protection policies as well as a health contingency plan that addresses vulnerabilities in situations of contact, in August 2014.¹²⁷ The IACHR notes that it is pleased to see such regional efforts aimed at achieving greater protection and respect for the rights of indigenous peoples in voluntary isolation and initial contact in South America.

E. Domestic legislation

60. Some countries of the region have adopted laws and administrative measures domestically to protect indigenous peoples in voluntary isolation or initial contact.

61. The Constitutions of Ecuador and Bolivia, for example, directly address the rights of indigenous peoples in voluntary isolation. The Constitution of the Republic of Ecuador recognizes the rights of indigenous peoples in voluntary isolation to their ancestral territories. It also recognizes the right of indigenous peoples to freely

¹²³ OTCA, Strategic Framework for Developing a Regional Agenda Protection of Indigenous Peoples in Voluntary Isolation and Initial Contact, Purpose, (August 11, 2011), available at: <http://www.otca.info/portal/projetos-programas.php?p=agd>.

¹²⁴ OTCA, Strategic Framework for Developing a Regional Agenda Protection of Indigenous Peoples in Voluntary Isolation and Initial Contact.

¹²⁵ The working plan has been published at the OTCA website, at: http://www.otca.info/portal/admin/upload/plano_trabalho/379-PLAN-DE-TRABAJO-2013_b.indigenas.pdf.

¹²⁶ Information submitted by the State of Peru in relation to the Questionnaire for Consulting on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR July 31, 2013.

¹²⁷ Response from the Federative Republic of Brazil to the Questionnaire for Consulting on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 14, 2013, p. 7.

maintain, develop, and strengthen their identity, as well as their ancestral traditions and forms of social organization.¹²⁸ The article 57 of the 2008 Constitution establishes that:

The territories of the peoples in voluntary isolation are of ancestral possession, irreducible, and intangible, and all extractive activity is prohibited therein. The State shall adopt measures to ensure their lives, see to it that their self-determination and decision to remain in isolation are respected, and to see to the observance of their rights. The violation of these rights will constitute the crime of ethnocide, which will be defined by law.

The State will ensure the enforcement of these collective rights with no discrimination whatever in conditions of equality and equity as between women and men.¹²⁹

62. The Constitution of the Plurinational State of Bolivia recognizes that indigenous peoples have the right to exist freely, to self-determination and territoriality¹³⁰, and also provides:

I. The native indigenous nations and peoples in danger of extinction, in voluntary isolation and not contacted, will be protected and respected in their individual and collective ways of life.

II. The indigenous nations and peoples in isolation and uncontacted enjoy the right to remain in that condition, to the delimitation and legal consolidation of the territory they occupy and inhabit.¹³¹

63. The Constitution of the Federative Republic of Brazil, at Article 231, recognizes the social organization, customs, languages, beliefs, and traditions of the indigenous peoples as well as the rights to the lands they have traditionally occupied. It also provides that the indigenous peoples will have permanent possession of these lands traditionally occupied as well as the exclusive right to usufruct of the riches in the soil, rivers and lakes found there.¹³² Similarly, the Constitution of the Republic of Paraguay recognizes the right of indigenous peoples to preserve and develop their

¹²⁸ Constitution of the Republic of Ecuador, published in Official Register 449, October 20, 2008, Article 57, paragraph 1.

¹²⁹ Constitution of the Republic of Ecuador published in the Official Register 449, October 20, 2008, Article 57, paragraph 21, second section. Response by the State of Ecuador to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 23, 2013.

¹³⁰ Constitution of the Plurinational State of Bolivia, published in the Official Gazette of the Plurinational State of Bolivia, February 7, 2009, Article 30.

¹³¹ Constitution of the Plurinational State of Bolivia, published in the Official Gazette of the Plurinational State of Bolivia, February 7, 2009, Article 31.

¹³² Constitution of the Federative Republic of Brazil, 1988, Article 231, §2.

ethnic identity in their own habitat and to freely apply their systems of social organization, and prohibits the removal or transfer of indigenous peoples from their habitat without their express consent.¹³³ The 1999 Constitution of the Bolivarian Republic of Venezuela also recognizes the rights of indigenous peoples to their social organization, cultures, uses and customs, “as well as their habitat and original rights to the lands that they occupy ancestrally and traditionally and which are necessary to develop and guarantee their ways of life[...]”¹³⁴. The 1993 Constitution of Peru refers to “peasant and native communities” (“*comunidades campesinas y nativas*”), and not to *indigenous peoples*. The Peruvian State informed the Commission that “it has strengthened in recent years, its legal and institutional framework for the protection of the rights of indigenous peoples” and that “it has signed and ratified a number of instruments on human rights to provide special protection for indigenous and tribal peoples [...] that are part of the domestic law”, according to provisions of the Constitution.¹³⁵ Title XI, Chapter 4, of the 1991 Colombian Constitution addresses the special regime of indigenous territories, but does not address the issue of peoples in isolation or initial contact. The Constitution of the Cooperative Republic of Guyana does not contain specific provisions on indigenous peoples in voluntary isolation.¹³⁶ Nor does the Constitution of Suriname directly address the rights of indigenous peoples.¹³⁷

1. Specific legislation and policies

64. The States of Brazil, Ecuador, and Peru have adopted specific domestic legislation aimed at protecting the rights of indigenous peoples. In addition, the IACHR notes that some of the States with presence of isolated peoples have adopted laws on

¹³³ Constitution of the Republic of Paraguay, June 20, 1992, Chapter V, On indigenous peoples, Articles 62 to 67.

¹³⁴ Constitution of the Bolivarian Republic of Venezuela, 1999, Article 119. The constitution also recognizes other rights for indigenous peoples, among them the right “to maintain and develop their ethnic and cultural identity, worldview, values, spirituality, and sacred sites and places of worship.” Article 121.

¹³⁵ The State informed that the Article 55 of the Constitution establishes that the treaties in force entered into by the State are part of domestic law. The Fourth Final and Transitory Provision of the Constitution of Peru also provides: “Provisions regarding the rights and freedoms that the Constitution recognizes are interpreted in keeping with the Universal Declaration of Human Rights and with the treaties and international agreements on the same subjects ratified by Peru.” Constitution of Peru, published December 30, 1993, in force as of December 31, 1993, Article 55. Response by the State of Peru to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 4, 2013.

¹³⁶ Nonetheless, the State has told the IACHR that the Amerindian Act, Act No. 6 of 2006, “provides strong legislative protection and stipulates the processes for indigenous peoples when addressing investment in the extractive industries, for example, mining”. Response of the Cooperative Republic of Guyana to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 18, 2013.

¹³⁷ See I/A Court HR, *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172, para. 106.

genocide in the terms of the UN Convention against Genocide; others, such as Paraguay, have adopted broader provisions granting greater protection.¹³⁸

65. In Brazil, since 1973 the presence of indigenous peoples in isolation was recognized in the Indigenous Statute, Law 6001.¹³⁹ This law defines isolated indigenous peoples as those who “live in unknown groups or on whom there are scant and vague reports of possible contacts with members of the national community.”¹⁴⁰ It also defines indigenous peoples in the “process of integration” as those who have entered “into intermittent or permanent contact with other groups, preserve more or less of their native living conditions, yet accept some practices and modes of existence common to the other sectors of the national community, which they need more and more for their own survival.”¹⁴¹ This nomenclature reflects the integrationist policy of the time on referring to groups “in the process of integration” which today could be equated to the peoples in a situation of initial contact.

66. Brazil officially abandoned the policy of integration and attracting peoples in voluntary isolation in 1987, and FUNAI issued the “Guidelines for Coordination with Isolated Indians” and the “System for the Protection of the Isolated Indian.”¹⁴² At present, the Statute and Regulations of the FUNAI establish the attributions of the technical sectors and teams responsible for carrying out the execution of the State policies regarding peoples in isolation and initial contact managed by the General Coordinating Body of Indigenous Communities in Isolation and Initial Contact (“CGIIRC,” the Portuguese acronym).¹⁴³ There are also 12 Fronts of Ethno-Environmental Protection (“FPE”); these are technical teams that perform activities to protect peoples in isolation, such as collecting information, confirming references of

¹³⁸ Article 319 of the Criminal Code of Paraguay establishes the crime of genocide as follows: “The one that with the intention to destroy, total or partially, a community or national, ethnic, religious or social group: 1. killed or injured to members of the group seriously; 2. partially put under the community to cruel processings or conditions of existence that can destroy it total or; 3. transferred, by force or intimidation to children or adults towards other groups or places other peoples to those of their habitual address; 4. disabled the exercise of their cults or the practice of their customs; 5. imposed measures to prevent the births within the group; and 6. forced to the dispersion of the community, it will be punished with privative pain of nonsmaller freedom of five years”.

¹³⁹ Law No. 6,001, “Law that regulates the Indigenous Statute,” December 19, 1973.

¹⁴⁰ Law No. 6,001, “Law that regulates the Indigenous Statute,” December 19, 1973, Article 4(I).

¹⁴¹ Law No. 6,001, “Law that regulates the Indigenous Statute,” December 19, 1973, Article 4(II).

¹⁴² Decisions by the President of FUNAI Nos. 1900 and 1901, July 6, 1987. See also Antenor Vaz, *Brasil. Política de Estado: De la tutela a la política de derechos - ¿una cuestión resuelta?* in *Pueblos Indígenas en Aislamiento Voluntario y Contacto Inicial*, IWGIA (2012), p. 16.

¹⁴³ Response of the Federative Republic of Brazil to the Questionnaire for Consultation on Indigenous peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 14, 2013, p. 4. Article 192 of the bylaws of FUNAI establishes the functions of the CGIIRC, among which special mention can be made of protection for the territories and rights of indigenous peoples in isolation and initial contact, coordinating the work of location and monitoring, and participation in drawing up the plan for management and usufruct of indigenous territories, among others. Response by the Federative Republic of Brazil to the Questionnaire for Consultation of Indigenous peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 14, 2013, pp. 4-5.

presence, drawing up ethno-historical records, territorial monitoring, and surveillance to stop the entry of third persons to areas with a presence of indigenous peoples in isolation.¹⁴⁴ The FPEs are distributed in eight states, and are generally made up of coordinators, field auxiliaries, and health experts.¹⁴⁵

67. Peru, for its part, promulgated the “Law for the protection of indigenous or native peoples in isolation and in situation of initial contact”, Law No. 28736, on April 24, 2006. The purpose of the law is “to establish the special transectoral regime of protection for the rights of the Indigenous Peoples of the Peruvian Amazon who are in a situation of isolation or initial contact, guaranteeing in particular their rights to life and to health, safeguarding their existence and integrity.”¹⁴⁶ In the law, the State undertakes to protect the life, health, culture, and traditional ways of life of the peoples in isolation and initial contact, as well as to recognize their right to possess the lands they occupy and to restrict the entry of outsiders.¹⁴⁷ Some of the contributions of this law include creating indigenous reserves in which population settlements may not be established other than those of the peoples in isolation or initial contact, and all activity other than the ancestral uses and customs of the indigenous peoples who live there is prohibited.¹⁴⁸ In addition, the law provides that activities to exploit natural resources will not be authorized, except those performed by the indigenous peoples for their survival, and those that use methods that do not have a detrimental impact on the rights of the peoples in isolation.¹⁴⁹ Nonetheless, the law allows an exception: “In case a natural resource susceptible to being used is located whose exploitation is a matter of public necessity for the State, it shall be proceeded in accordance with the law.”¹⁵⁰ The possible application of this public necessity exception could be decisive in the efforts to ensure respect for the rights of indigenous peoples in voluntary isolation in Peru, therefore the Commission calls on competent bodies to ensure strict observance to their rights. In this regard, the IACHR welcomes the information provided by the Peruvian State in relation to the binding nature of the technical opinions of the Vice Ministry of Interculturality concerning environmental impact assessments related to

¹⁴⁴ Response of the Federative Republic of Brazil to the Questionnaire for Consultation on Indigenous peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 14, 2013, p. 6.

¹⁴⁵ Response of the Federative Republic of Brazil to the Questionnaire for Consultation on Indigenous peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 14, 2013, p. 6. See also Antenor Vaz, *Brazil. State Policy: From custody to the policy of rights – a solved issue?* in *Indigenous Peoples in Voluntary Isolation and Initial Contact*, IWGIA (2012).

¹⁴⁶ Law No. 28736, for the Protection of indigenous or native peoples in isolation and initial contact, published in the official gazette *Diario El Peruano* May 18, 2006, Article 1.

¹⁴⁷ Law No. 28736, for the Protection of indigenous or native peoples in isolation and initial contact, published in the official gazette *Diario El Peruano* May 18, 2006, Article 4.

¹⁴⁸ Law No. 28736, for the Protection of indigenous or native peoples in isolation and initial contact, published in the official gazette *Diario El Peruano* May 18, 2006, Article 5(a) and (b).

¹⁴⁹ Law No. 28736, for the Protection of indigenous or native peoples in isolation and initial contact, published in the official gazette *Diario El Peruano* May 18, 2006, Article 5(c).

¹⁵⁰ Law No. 28736, for the Protection of indigenous or native peoples in isolation and initial contact, published in the official gazette *Diario El Peruano* May 18, 2006, Article 5(c).

extractive activities in the reserves, entity that has a Specialized Department on Indigenous Peoples in Isolation and Initial Contact¹⁵¹. In this scenario, the Commission considers that is particularly relevant to ensure that the body responsible for this important function can carry out it autonomously and independently, and with strict respect to technical, specialized and multidisciplinary approaches.

68. The Regulation of Law No. 28736 was approved by Supreme Decree 008-2007, published in the official gazette the Diario El Peruano on October 5, 2007.¹⁵² The Regulation establishes the specific mechanisms and procedures for implementing Law No. 28736, as well as for categorizing the indigenous reserves. It also provides that the peoples in a situation of initial contact “are entitled to the rights recognized in the Law[...] [and may] obtain the natural resources found within the indigenous reserve, for their traditional and subsistence activities, without interference from third persons, whether indigenous or non-indigenous.”¹⁵³ The regulation, like the Law, provides that indigenous reserves are transitorily intangible, which means for as long as the peoples in isolation continue in that situation.¹⁵⁴ And like the Law, the regulation provides for the “public necessity” exception, which makes it possible to exploit the natural resources in an indigenous reserve on an exceptional basis when the State considers such exploitation to be a public necessity.¹⁵⁵ In such cases, exploitation will be preceded by a technical opinion from the Ministry of Women and Social Development and by the corresponding environmental studies.¹⁵⁶ In addition, according to the information provided by the State of Peru, the Peruvian Constitutional Court has established “the obligation of the State to implement rigorous procedures to keep the extractive industries from harming indigenous peoples in isolation and initial contact.”¹⁵⁷

¹⁵¹ IACHR, Hearing on the human rights situation of indigenous peoples in voluntary isolation in Peru, November 1st, 2013, available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=132>.

¹⁵² Supreme Decree 008-2007, Diario El Peruano, October 5, 2007.

¹⁵³ Supreme Decree 008-2007, Diario El Peruano, October 5, 2007, Article 25.

¹⁵⁴ Supreme Decree 008-2007, Diario El Peruano, October 5, 2007, Article 28. Article 31 of the Regulation considers the possible “[e]xtinction of the indigenous reserve” when (a) the people in isolation or initial contact become a native community; (b) the people in isolation or initial contact have migrated to other areas outside of the indigenous reserve; (c) the people in isolation or initial contact have integrated to a larger society; or (d) the indigenous people in isolation or initial contact has disappeared.

¹⁵⁵ Supreme Decree 008-2007, Diario El Peruano, October 5, 2007, Article 35.

¹⁵⁶ Supreme Decree 008-2007, Diario El Peruano, October 5, 2007, Article 35.

¹⁵⁷ Response by the State of Peru to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 4, 2013, p. 14. Judgment of the Constitutional Court of Peru, Case No. 06316-2008-PA/TC, Loreto, Asociación Interétnica de Desarrollo de la Selva Peruana (AIDSESP), November 11, 2009, available at: <http://www.tc.gob.pe/jurisprudencia/2010/06316-2008-AA.html>. In this case, AIDSESP filed a constitutional *amparo* action against the Ministry of Energy and Mines, Perupetro S.A., and two private companies alleging that the contracts for exploration and exploitation of Lots 39 and 67 were violating the rights of the indigenous peoples in voluntary isolation in the Napo Tigre Proposed Natural Reserve, near the border with Ecuador, and it was alleged there was no consultation. The Constitutional Court considered that “the right to consultation should be implemented in this case gradually by the companies involved and under the supervision of the competent entities” (para. 30), but it decided “To declare the *amparo* action INADMISSIBLE, because the existence of a community in voluntary isolation or not
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69. In the case of Ecuador, the IACHR was informed that on April 18, 2007 the government published the “National Policy on Peoples in a Situation of Voluntary Isolation.” This policy is aimed mainly at ensuring respect for the rights of the Tagaeri and Taromenane peoples in isolation in Ecuador, and is governed by the principles of intangibility of the territory, self-determination, reparation, the *pro homine* principle, no contact, cultural diversity, precaution, equality, and respect for human dignity.¹⁵⁸ Its implementation is based on the six strategic guidelines: (1) consolidate and strengthen the principle of intangibility; (2) ensure the existence and physical, cultural, and territorial integrity of the peoples in voluntary isolation; (3) balance the presence of outside actors in their areas of influence; (4) halt the external threats in the territory of the peoples in voluntary isolation; (5) consolidate the communication, participation, and cooperation; and (6) strengthen inter-institutional coordination. This policy continues to be implemented, and it has gone hand-in-hand with implementing the Precautionary Measures Plan, in the wake of precautionary measures 91-06, issued by the IACHR to protect the Tagaeri and Taromenane peoples on May 10, 2006.¹⁵⁹

2. Territorial protection

70. The Commission considers that one of the most effective ways of ensuring full respect for the rights of indigenous peoples in voluntary isolation and initial contact is by protecting their lands, territories, and natural resources. Some states, such as Ecuador, Peru, and Brazil, have created areas of territory with specifically restricted access to avoid intrusions and undesired contacts.

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contacted has not been shown, without prejudice to recognizing the inalienable right of Indigenous and Tribal Peoples to be consulted in keeping with ILO Convention 169.” Subsequently, the Constitutional Court declared the request for clarification filed by AIDESEP to be inadmissible, and confirmed “the obligatory nature of the consultation from the publication of STC 0022-2009-PI/TC, subjecting themselves to the considerations put forth in that pronouncement.” Judgment of the Constitutional Court of Peru in response to the Request for Clarification, Case No. 06316-2008-PA/TC, Loreto, Asociación Interétnica de Desarrollo de la Selva Peruana (AIDESEP), August 24, 2010, available at: <http://www.tc.gob.pe/jurisprudencia/2010/06316-2008-AA%20Aclaracion.html>. The IACHR finds it worrisome that the fact that the existence of a people in isolation was not shown – by reason of their very isolation – was considered by the Constitutional Court a reason for rejecting the *amparo* aimed at protecting their rights.

¹⁵⁸ National Policy on Peoples in Voluntary Isolation, April 18, 2007, available at: <http://chmecuador.ambiente.gob.ec/docs/Politicanacional.pdf>.

¹⁵⁹ *El Ministerio de Justicia continua con la aplicación del Plan de Medidas Cautelares a favor de los pueblos no contactados*, Ministry of Justice, Human Rights, and Worship, Noticias, January 3, 2013, available at: <http://www.justicia.gob.ec/el-ministerio-de-justicia-continua-con-la-aplicacion-del-plan-de-medidas-cautelares-a-favor-de-los-pueblos-no-contactados/> (consulted June 21, 2013).

(a) Brazil

71. Brazil is the country of the hemisphere where the largest amount of land has been allocated to indigenous peoples in isolation. Law 6,001 of 1973 created the category of “indigenous lands,” which are those occupied or inhabited by “forest/jungle dwellers” (*silvícolas*), the areas reserved under the same law, or the lands under the control of the indigenous or forest dwelling communities. In all of them it is “prohibited for any person from outside the tribal groups or indigenous communities to hunt, fish, or collect fruits, or to engage in farming or stockraising, or extractive activity.”¹⁶⁰ Decree 1.775 of January 8, 1996, established the administrative procedure for the demarcation of indigenous lands.¹⁶¹ Under these provisions Brazil has demarcated more than 2,400,000 hectares exclusively for peoples in voluntary isolation, in eight distinct indigenous lands: Hi-Merimã, Jacareuba/Katawixi, Omerê river, Massaco, Tanaru, Riozinho do Alto Envira (Xinane), Alto Tarauacá and Kawahiva do Rio Pardo.¹⁶²

72. Decree No. 1.775 also provides that the FUNAI may “control the entry and transit of third persons in areas in which the presence of isolated indigenous persons is found, as well as taking the measures necessary to protect the indigenous population.”¹⁶³ FUNAI has taken a series of initiatives to protect the territories of the peoples in isolation, including prohibiting economic and commercial activities within the indigenous lands inhabited by isolated indigenous groups.¹⁶⁴ In addition, FUNAI, through the CGIIRC and its Ethno-environmental Protection Fronts, is monitoring about 23 references to indigenous peoples in isolation and seven of indigenous peoples in initial contact.¹⁶⁵ To date, the presence of peoples or communities in voluntary isolation or initial contact has been confirmed in 17 indigenous lands, while their presence in another seven is in the study phase.¹⁶⁶ Such references are monitored and worked on by

¹⁶⁰ Law No. 6,001, “Law that regulates the Indigenous Statute,” December 19, 1973, Articles 17 and 18.

¹⁶¹ Decree No. 1.775 Which regulates the administrative procedure for the demarcation of indigenous lands and other issues, January 8, 1996, available at: http://www.planalto.gov.br/ccivil_03/decreto/D1775.htm. Response of the Federative Republic of Brazil to the Questionnaire for Consultation of the Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 14, 2013, p. 4.

¹⁶² Antenor Vaz, *Brazil. State Policy: From custody to the policy of rights – a solved issue?* in *Indigenous Peoples in Voluntary Isolation and Initial Contact*, p. 56, IWGIA (2012). Vaz indicates that in these eight indigenous lands some 2,402,819 hectares have been demarcated.

¹⁶³ Decree No. 1.775 Which regulates the administrative procedure for the demarcation of indigenous lands and other issues, of January 8, 1996, Article 7.

¹⁶⁴ Decision No. 281/PRESI/FUNAI, April 20, 2000. Antenor Vaz, *Brazil. State Policy: From custody to the policy of rights – a solved issue?* in *Indigenous Peoples in Voluntary Isolation and Initial Contact*, p. 53, IWGIA (2012).

¹⁶⁵ Antenor Vaz, *Brazil. State Policy: From custody to the policy of rights – a solved issue?* in *Indigenous Peoples in Voluntary Isolation and Initial Contact*, p. 27-28, IWGIA (2012).

¹⁶⁶ Antenor Vaz, *Brazil. State Policy: From custody to the policy of rights – a solved issue?* in *Indigenous Peoples in Voluntary Isolation and Initial Contact*, p. 27-28, IWGIA (2012).

the FPEs, which work both in the lands demarcated and in those that have not yet been protected. Once the presence of isolated peoples is confirmed, the corresponding FPE issues a Use Restriction Ordinance to protect the relevant territory.¹⁶⁷

(b) Peru

73. In Peru there are five territorial areas protected to benefit indigenous peoples in isolation or initial contact, which have been established in the framework of Decree Law No. 22175 of 1978.¹⁶⁸ According to the information provided by the Peruvian State to the IACHR, these reserves are:

(1) Territorial Reserve of the State in favor of the Kugapakori, Nahua, Nanti, and other ethnic groups in voluntary isolation and initial contact, created February 14, 1990 by Ministerial Resolution No. 0046-90-AG/DGRAAR;

(2) Territorial Reserve in favor of the Murunahua ethnic group created by Regional Director Resolution No. 000189-97-CTARU-DRA, issued April 1, 1997, by the Regional Agrarian Office of the Ucayali Region¹⁶⁹;

(3) Territorial Reserve in favor of the Mascho Piro ethnic group, created by Regional Director Resolution No. 000190-97-CTARU-DRA, issued April 1, 1997 by the Regional Agrarian Office of the Ucayali region;

(4) Territorial Reserve in favor of the Isconahua ethnic group by Regional Director Resolution No. 000201-98-CTARU-DRA, issued on June 11, 1998, by the Agrarian Regional Director of the Ucayali Region; and

(5) Territorial Reserve in favor of the indigenous peoples in voluntary isolation situated in the department of Madre de Dios, created by Ministerial Resolution No. 0427-2002-AG, issued April 22, 2002, by the Ministry of Agriculture.¹⁷⁰

¹⁶⁷ Response of the Federative Republic of Brazil to the Questionnaire for Consultation on Indigenous in Voluntary Isolation and Initial Contact, received by the IACHR June 14, 2013, p. 2.

¹⁶⁸ Response by the State of Peru to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 31, 2013, p. 20; *see also* Response of the Institute for Democracy and Human Rights of the Pontificia Universidad Católica del Perú (IDEH-PUCP) to the Questionnaire for Consultation for the thematic report on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 24, 2013, p. 13.

¹⁶⁹ Modified by Sector Director Resolution No. 453-99-CTAR-UCAAYALI-DRSA, September 24, 1999.

¹⁷⁰ Response by the State of Peru to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 31, 2013, p. 20; Response of the Institute for Democracy and Human Rights of the Pontificia Universidad Católica del Perú (IDEH-PUCP) to the Questionnaire for Consultation for the Thematic Report on Indigenous Peoples in Voluntary Isolation and

74. Together, these five reserves cover approximately 2,800,000 hectares of the Peruvian Amazon.¹⁷¹ It should be noted that the restrictions on entry to these Territorial Reserves are not uniform, as they were created by different legal mechanisms. For example, in the Territorial Reserve for the Kugapakori, Nahua, Nanti and others, “it is prohibited to establish human settlements different from the ethnic groups [Kugapakori, Nahua, Nanti and others] within the territorial reserve as well as the development of economic activities. It is also prohibited to grant new rights that imply extracting natural resources.”¹⁷² This Resolution does not include a public necessity exception, like the subsequent Law No. 28736 of 2006. The Territorial Reserve for the peoples in isolation in Madre de Dios stipulates that the reserve is created for the purpose “of preserving the right of the native groups in voluntary isolation situated in the areas described, which are lands they occupy traditionally, to make use of the natural resources in that area,” but it does not establish an explicit prohibition on entry.¹⁷³

75. According to Law No. 28736 and its Regulation, these five Territorial Reserves should become Indigenous Reserves.¹⁷⁴ This would standardize restrictions on the entry to Indigenous Reserves, as well as the exceptions.

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Initial Contact, received by the IACHR May 24, 2013, p. 13; Response of the Asociación Interétnica de Desarrollo de la Selva Peruana (AIDESEP) to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 24, 2012.

¹⁷¹ Gloria Huamán Rodríguez, “Pueblos Indígenas en aislamiento voluntario de la Amazonía peruana: el derecho inherente al territorio ancestral y la explotación de hidrocarburos,” Medio Ambiente & Derecho: Revista electrónica de derecho ambiental, ISSN-e 1576-3196, No. 24, 2013.

¹⁷² Ministerial Resolution No. 0046-90-AG/DGRAAR, published in the Diario Oficial El Peruano on July 25, 2003, Article 3. Despite this prohibition, in the Kugapakori, Nahua, Nanti and others Territorial Reserve at least two lots in exploitation partially overlap, 88 and 58. See Map of Contract Lots, Sedimentary Basins and Protected Natural Areas, PeruPetro, May 2013, available at: <http://www.perupetro.com.pe/wps/wcm/connect/perupetro/site/InformacionRelevante/MapaLotes/Mapa%20de%20Lotes>. Information received during the Workshop of Experts on Indigenous Peoples in Voluntary Isolation and Initial Contact, Washington, D.C., May 6, 2013. Letter from the Office of the United Nations high Commissioner to the Permanent Representative of Peru to the United Nations and other International Organizations in Geneva, March 1, 2013, CERD/82nd/GH/MC/SW, available at: http://www2.ohchr.org/english/bodies/cerd/docs/early_warning/Peru1March2013.pdf. Gloria Huamán Rodríguez, “Pueblos Indígenas en aislamiento voluntario de la Amazonía peruana: el derecho inherente al territorio ancestral y la explotación de hidrocarburos,” Medio Ambiente & Derecho: Revista electrónica de derecho ambiental, ISSN-e 1576-3196, No. 24, 2013, Section 8.

¹⁷³ Ministerial Resolution No. 0427-2002-AG, published in the Diario Oficial El Peruano April 22, 2002, Article 2.

¹⁷⁴ Law No. 28736, for the Protection of indigenous or native peoples in isolation or initial contact, published in the Diario El Peruano May 18, 2006, Second Final Provision; Supreme Decree 008-2007, Diario El Peruano, October 5, 2007, First Complementary and Transitory Provision.

76. In addition to these five Territorial Reserves there are five other processes of legalization in progress.¹⁷⁵ In addition, there are natural areas protected by the State in which there are indicia of the presence of indigenous peoples in voluntary isolation, and which have several levels of territorial protection. The Alto Purús, Manú, Cordillera Azul, and Otishi National Parks are environmental protection zones in which peoples in isolation live or transit.¹⁷⁶ In addition are the Machiguenga¹⁷⁷ and Asháninka¹⁷⁸ Community Reserves, the Sierra del Divisor Reserved Zone¹⁷⁹, and the Megantoni National Sanctuary.¹⁸⁰ Though these parks and reserves establish protections for indigenous peoples in isolation who live in them, they were created for purposes other than the Territorial Reserves mentioned above.

¹⁷⁵ These are: Proposed Territorial Reserve to benefit the Cashibo-Cacataibo peoples; Proposed Territorial Reserve of the State of Tapiche Blanco Yaquerana to benefit the Isconahua, Remos, and Matsés ethnic groups; Proposed Territorial Reserve of the State Yavarí Mirim to benefit the Remos, “Pelo Largos,” and Matsés ethnic groups; Proposed Territorial Reserve of the State to benefit the Tagaeri, Taromenane, Pananujuri and Aushiris or Abijiras peoples, and the Pucacuro Reserve Zone, in the districts of Napo and Tigre; and Proposed Territorial Reserve of the State Sierra del Divisor Oriental and the Sierra del Divisor Reserved Zone, to benefit the Isconahua and Remos ethnic group. Response of the State of Peru to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 31, 2013, pp. 9, 22. Response of the *Asociación Interétnica de Desarrollo de la Selva Peruana* (AIDSESP) to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 24, 2012, p. 3. See also Beatriz Huertas Castillo, *Peru: Plundered land, conflict and extinction*, in *Indigenous Peoples in Voluntary Isolation and Initial Contact*, p. 58 (IWGIA 2012).

¹⁷⁶ The Alto Purús National Park includes among its specific objectives: “To protect the area inhabited by indigenous persons in voluntary isolation and/or in initial or sporadic contact who are inside a protected natural area, in order to guarantee their physical and cultural integrity.” Human settlements other than the populations in isolation or initial contact who live there are prohibited, as is granting new rights that entail the direct exploitation of non-renewable natural resources or the extension or renewal of the term of the already-existing ones. The Manú National Park Manú has as its objective “To contribute to the recognition and protection of cultural diversity as well as to the self-determination of the indigenous peoples of the area, consistent with the Park’s other objectives” and as a general policy respect for the right to self-determination of the indigenous peoples in voluntary isolation. The Cordillera Azul National Park has as its main objective conserving the spaces with indicia of the presence of indigenous peoples in isolation. The Otishi National Park recognizes the existence of peoples in voluntary isolation. Response of the State of Peru to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 31, 2013, p. 22.

¹⁷⁷ Created by Supreme Decree No. 003-2003-AG. In this Communal Reserve there are indications of the presence of indigenous peoples in isolation who probably belong to the Machiguenga or Caquinte ethnic group. Response of the State of Peru to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 31, 2013, p. 23.

¹⁷⁸ Supreme Decree No. 003-2003-AG that created this Communal Reserve indicates that one must respect the autonomy and rights to self-determination of the Asháninka indigenous people in isolation. Response of the State of Peru to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 31, 2013, p. 23.

¹⁷⁹ Its specific objective is to safeguard the resources that support the Isconahua indigenous people in isolation and it prohibits new human settlements other than the peoples in isolation who live in them. Response by the State of Peru to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 31, 2013, p. 22.

¹⁸⁰ Created by Supreme Decree No. 030-2004-AG, this National Sanctuary prohibits human settlements other than the indigenous peoples in isolation who are within it, for whom contingency plans should be put in place. Response of the State of Perú to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 31, 2013, p. 23.

77. In the framework of the project “Institutional, Environmental, and Social Strengthening – Camisea Project,” financed by the Inter-American Development Bank, the State of Peru undertook, among other things, to improve the legal and regulatory framework of the Nahua-Kugapakori Territorial Reserve, including protection for the communities in voluntary isolation.¹⁸¹ According to the project completion documents, this commitment was implemented throughout the Plan for the Protection and Defense of the peoples in voluntary isolation, drawn up, validated, and updated to ensure the defense and rights to health and the territory of these peoples, but its implementation has reportedly suffered interruptions.¹⁸²

(c) Ecuador

78. In 1999, the State of Ecuador created the intangible conservation zone of the peoples in voluntary isolation Tagaeri and Taromenane¹⁸³, where all types of extractive activity were banned. In 2007, by Executive Decree No. 2.187, the State delimited the Tagaeri-Taromenane Intangible Zone, in an area of approximately 758,051 hectares.¹⁸⁴ The decree also established a “buffer zone” 10 kilometers wide around the entire intangible zone where there is a prohibition on all extractive activity of forest products for commercial purposes, granting mining concessions, infrastructure works such as highways, hydroelectric plants, centers for oil facilities, and other works that the technical studies deem incompatible with the purpose of the intangible zone.¹⁸⁵ The indigenous communities living in the buffer zone – which in this case are mostly communities part of the Huaorani people – are authorized to engage in moderate and controlled tourism under a system marked by restrictions and low impact.¹⁸⁶

¹⁸¹ Inter-American Development Bank, Project PE0233, Institutional, Environmental and Social Strengthening Camisea Project, Contract No. 1441/OC-PE, available at: <http://www.iadb.org/es/proyectos/project-information-page.1303.html?id=PE0233#doc>. See also Response of the State of Peru to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 31, 2013, p. 26.

¹⁸² Inter-American Development Bank, Project PE0233, Institutional, Environmental and Social Strengthening Camisea Project, Contract No. 1441/OC-PE, Project Completion Report, PCR, pp. 10, 12-13, available at: <http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=1918613>. The Report recounts the difficulties encountered due to the “constant reorganizations of the state apparatus for indigenous issues from CONAPA (up to 2005), transformed into INDEPA (up to 2007), merged in a General Bureau of the MIMDES (2007-2008), said merger having been questioned and annulled by the Congress (2008), once again becoming INDEPA.”

¹⁸³ Executive Decree 552, Official Register Supplement No. 121, February 2, 1999. See also National Policy on the Peoples in Voluntary Isolation, April 18, 2007, available at: <http://chmecuador.ambiente.gob.ec/docs/Politicacional.pdf>, p. 5.

¹⁸⁴ Decree National Policy on the Peoples in Voluntary Isolation, April 18, 2007, available at: <http://chmecuador.ambiente.gob.ec/docs/Politicacional.pdf>, p. 5. Response of the Republic of Ecuador to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 23, 2013, p. 6.

¹⁸⁵ Executive Decree 2,187, Official Register No. 1, January 16, 2007, Articles 2 and 3.

¹⁸⁶ Executive Decree 2,187, Official Register No. 1, January 16, 2007, Article 2.

79. In the legislative arena, the Ecuadoran Organic Code of Territorial Organization, Autonomy, and Decentralization provides that “the territories of the peoples in voluntary isolation are of irreducible and intangible ancestral possession, and all types of extractive activities are prohibited. The State will adopt measures to guarantee their lives, respect their self-determination and decision to remain in isolation, and safeguard the observance of their rights.”¹⁸⁷

(d) Bolivia

80. In Bolivia, on August 15, 2006, the National Service of Protected Areas approved Resolution 48 to create the Toromona Intangible and Integral Protection Zone of Absolute Reserve.¹⁸⁸ With an approximate area of 1,900,000 hectares, this intangible zone is within the Madidi National Park, along the border with Peru, and was established to protect the territorial integrity of a people in isolation, presumably of Toromona origin. Within the intangible zone “all activities of prospecting, exploitation, and extraction of any natural resource are absolutely prohibited”¹⁸⁹ as is “the entry of any outside agent, thereby preserving the health of the population in isolation, avoiding placing the life of the indigenous group at risk.”¹⁹⁰ The resolution that created the Intangible Zone also prohibits all “population settlements other than those of the indigenous peoples who live in them, as well as any people-to-people intervention; one must respect the territory and habitat of each one.”¹⁹¹

81. On July 4, 2012, the Plurinational State of Bolivia issued Supreme Decree No. 1286, which establishes the parameters for carrying out a Multidisciplinary Technical Study in the area defined by the same Supreme Decree, where there are

¹⁸⁷ Organic Code of Territorial Organization, Autonomy, and Decentralization, Article 101, cited in Response of the State of Ecuador to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 23, 2013, p. 7.

¹⁸⁸ Response of the Plurinational State of Bolivia to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR July 5, 2013, p. 5. *Gobierno boliviano aprobó histórica resolución sobre Pueblos Indígenas Aislados*, in FOBOMADE, Pablo Cingolani, “Aislados” (2011), p. 173.

¹⁸⁹ Administrative Resolution No. 48 of August 15, 2006, National Service of Protected Areas, Republic of Bolivia, Article Five; Response of the Plurinational State of Bolivia to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR July 5, 2013, p. 6; *Gobierno boliviano aprobó histórica resolución sobre Pueblos Indígenas Aislados*, en Pablo Cingolani, “Aislados” (2011), p. 173.

¹⁹⁰ Administrative Resolution No. 48 of August 15, 2006, National Service of Protected Areas, Article Six; Response of the Plurinational State of Bolivia, Article Six; Response of the Plurinational State of Bolivia to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR July 5, 2013, p. 6.

¹⁹¹ Administrative Resolution No. 48 of August 15, 2006, National Service of Protected Areas, Article Six; Response of the Plurinational State of Bolivia, Article Four; Response of the Plurinational State of Bolivia to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR July 5, 2013, p. 6.

indicia of the presence of Ayoreo indigenous peoples in voluntary isolation.¹⁹² The study is to be conducted in an area of 536,568 hectares in the Kaa-lyá del Gran Chaco National Park and Integrated Management Area, in southern Bolivia, near the border with Paraguay.¹⁹³ The purposes of the study are to identify the presence of groups of Ayoreo in voluntary isolation and the areas they occupy and move through, and to determine mechanisms that ensure the exercise of their right to remain in voluntary isolation, with the recommendation of the corresponding measures of protection.¹⁹⁴ Supreme Decree 1286 also provides: “In order to impede any type of disturbance of the presence or transit of Ayoreo groups in voluntary isolation during the performance and up to the conclusion of the Multidisciplinary Technical Study that is the subject of this Supreme Decree and to guarantee that objective results are attained, Yacimientos Petrolíferos Fiscales Bolivianos – YPFB may not carry out any exploration or exploitation in the Areas of Interest of Hydrocarbon Reserve and Adjudication to YPFB that includes an area of approximately three hundred fifty-eight thousands hectares (358,000 ha) [...]”¹⁹⁵ The Decree specifies certain minimum elements that the Multidisciplinary Technical Study should contain¹⁹⁶, but does not clarify whether the prohibition on exploration and exploitation activities within the relevant area will be maintained once the Technical Study is concluded.¹⁹⁷

(e) Paraguay

82. In 2001, a territorial area in Paraguay was declared to be the Natural and Cultural (Tangible and Intangible) Patrimony of the Ayoreo Totobiegosode, by Resolution No. 1/2001, issued by the General Bureau of Cultural Properties, Vice-Ministry of Culture, Ministry of Education and Culture.¹⁹⁸ The area declared and

¹⁹² Supreme Decree No. 1286 of July 4, 2012, in favor of the Ayoreo Indigenous People in Voluntary Isolation. Response of the Plurinational State of Bolivia to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR July 5, 2013, p. 7.

¹⁹³ Supreme Decree No. 1286 of July 4, 2012, in favor of the Ayoreo Indigenous People in Voluntary Isolation, Article 1, and Annex; Response of the Plurinational State of Bolivia to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR July 5, 2013, p. 7.

¹⁹⁴ Supreme Decree No. 1286 of July 4, 2012, in favor of the Ayoreo Indigenous People in Voluntary Isolation, Article 1.

¹⁹⁵ Supreme Decree No. 1286 of July 4, 2012, in favor of the Ayoreo Indigenous People in Voluntary Isolation, Article 4.

¹⁹⁶ Supreme Decree No. 1286 of July 4, 2012, in favor of the Ayoreo Indigenous People in Voluntary Isolation, Article 5.

¹⁹⁷ Article 5 of Supreme Decree No. 1286 also provides: “The results of the study should be presented officially within eighteen (18) months from the approval of the methodology defined and the contracting of the multidisciplinary team...” Up to the date of approval of this Report, the IACHR has not succeeded in obtaining information on whether the Multidisciplinary Technical Study has been done.

¹⁹⁸ Resolution No. 1/2001, issued by the General Bureau of Cultural Property of the Vice Ministry of Culture of the Ministry of Education and Culture. Response of the State of Paraguay to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR July 11, 2013. Response of the organizations *Gente, Ambiente y Territorio* and *Organización Payipie Ichadie* Continues...

registered, part of the “Ancient Traditional Habitat of the Totobiegosode Group of the Ayoreo ethnicity,” is situated in the department of Alto Paraguay, and encompasses some 550,000 hectares.¹⁹⁹ The resolution recognizes that the Ayoreo Totobiegosode constitute the last indigenous group in the Paraguayan Chaco without contact with the national society “who have been able to continue living exclusively in keeping with their traditional ways [...] in a limited zone – part of their ancient habitat – that remains in a natural state, in a process of effective protection by the Paraguayan State, with precautionary measures adopted by the Judicial branch in keeping with Law 43/89.”²⁰⁰ Nonetheless, the resolution does not establish express prohibitions on access or on carrying out certain activities within the established area. This resolution was ratified in 2009 by the National Secretariat of Culture by Resolution No. 491/2009, in which it rejected a motion filed by a ranching enterprise that sought to annul the 2001 declaration of Cultural Patrimony.²⁰¹ The Inter-American Commission received information that indicates that despite this resolution, in practice there have been repeated incursions by private third parties into areas where communities of the Ayoreo Totobiegosode people in voluntary isolation and initial contact live and transit, provoking forced contacts from time to time.²⁰²

83. Since 1993 a group of Ayoreo who have made initial contact seek the delimitation of a territory in the department of Alto Paraguay. The Rural Welfare Institute (“IBR”: *Instituto del Bienestar Rural*), today the Rural Development and Land Institute (“INDERT”: *Instituto de Desarrollo Rural y de la Tierra*), opened administrative case No. 6073/93, and the National Indigenous Institute (“INDI”: *Instituto Nacional del Indígena*) initiated Legal-Administrative Case No. 673/93, “Processing of Ayoreo

...continuation

Totobiegosode to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 23, 2013.

¹⁹⁹ Resolution No. 1/2001, issued by the General Bureau of Cultural Property of the Vice Ministry of Culture, Ministry of Education and Culture, operative paragraph.

²⁰⁰ Resolution No. 1/2001, issued by the General Bureau of Cultural Property, Vice Ministry of Culture, Ministry of Education and Culture.

²⁰¹ Ministry of Foreign Affairs, Response of the State of Paraguay to the Questionnaire of the Permanent Forum on Indigenous Issues of the United Nations, 10th Session of the Permanent Forum on Indigenous Issues, May 16-27, 2011, available at: http://www.un.org/esa/socdev/unpfii/documents/session_10_paraguay.pdf. See also Mandu’a, Memoria de la Secretaría Nacional de Cultura 2009, p. 78, available at: <http://www.cultura.gov.py/wp-content/uploads/2011/05/memoriaSNC2009.pdf>.

²⁰² This information was said to have been presented, among other sources, through a testimonial account that refers to the process of contact presented to the Truth and Justice Commission of the Republic of Paraguay. Response of the organizations *Gente, Ambiente y Territorio* and *Organización Payipie Ichadie Totobiegosode* to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 23, 2013, pp. 7-8, 17-18 (citing the Public Hearing – Indigenous Peoples and Dictatorship, of the Truth and Justice Commission of the Republic of Paraguay. National Congress, July 2008).

Totobiegosode Lands,” related to this claim for delimitation and demarcation.²⁰³ According to the information received by the Inter-American Commission, these claims have not been formally resolved, and in practice the entry of persons from outside the territories where peoples in isolation live would not be effectively put on notice.²⁰⁴

(f) Colombia

84. Colombia has also established protected areas by means of what are called “indigenous reserves” (“*resguardos indígenas*”), but these are not reserved exclusively for peoples in voluntary isolation or initial contact. For example, by Resolutions No. 136 of November 23, 1993 and No. 00056 of December 18, 1997, the Colombian State created the Nükak reserve, in favor of the Nükak people in initial contact, covering an area of approximately 945,480 hectares of moist forest used by Nükak Makú families.²⁰⁵ Despite the existence of this reserve, as the Constitutional Court of Colombia has explained, the Nükak people has suffered recurrent displacements as a result of the armed conflict, and today are “in danger of extinction.”²⁰⁶ In the face of this risk, the Ministry of Interior of Colombia has developed a methodological route for the establishment of a “Plan for Ethnic Safeguarding of the Nükak people.”²⁰⁷

85. In addition, according to information provided by the State, it has been confirmed that there is a people in isolation in the Río Puré Natural National Park, in the department of Amazonas.²⁰⁸ This Park was created by Resolution No. 0764 of the Ministry of Environment of August 5, 2002, covering approximately 999,880 hectares, with the objective of protecting the territory of the Yuri, Arojes or ‘Carabayo’ people (“*etnia*,” or ethnic group) “with the objective of guaranteeing their survival and their

²⁰³ Response of the organizations *Gente, Ambiente y Territorio* and *Organización Payipie Ichadie Totobiegosode* to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 23, 2013, p. 17. *See also* Ministry of Foreign Affairs, Response of the State of Paraguay to the Questionnaire of the Permanent Forum on Indigenous Issues of the United Nations, 10th Session of the Permanent Forum on Indigenous Issues, May 16-27, 2011, p. 2.

²⁰⁴ Response of the organizations *Gente, Ambiente y Territorio* and *Organización Payipie Ichadie Totobiegosode* to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 23, 2013, pp. 17-18.

²⁰⁵ Order 004 of 2009 of the Constitutional Court of Colombia, January 26, 2009, p. 230, available at: <http://www.corteconstitucional.gov.co/relatoria/autos/2009/a004-09.htm>.

²⁰⁶ Order 004 of 2009 of the Constitutional Court of Colombia, January 26, 2009, p. 229. *See also* Order 173 of 2012 of the Constitutional Court of Colombia, July 23, 2012.

²⁰⁷ Response of the State of Colombia to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR July 8, 2013, p. 3.

²⁰⁸ Response of the State of Colombia to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR July 8, 2013, p. 1.

decision not to have contact with the majority society.”²⁰⁹ The resolution prohibits any scientific, recreational, tourism, or any other activity in the traditional territory of the Yuri, Aroje or ‘Carabayo’ people that entails contact with them.²¹⁰ It also recognizes that they have “the full right to the use and permanent management of their ancestral territories. Similarly, one may not make any decision to intervene in these territories without prior coordination and acceptance with prior coordination and acceptance by said ethnic group.”²¹¹ On January 26, 2007, the Management Plan for the Río Puré Natural National Park was adopted by Resolution No. 035 of the Ministry of Environment, Housing, and Territorial Development.²¹² The resolution proposes that its strategic lines include advancing knowledge of the culture of the Yuri, Arojes, or Carabayo people “to contribute to the protection of their territory, their self-determination that includes no contact, survival, and identity,” and strengthening the exercise of control and surveillance in response to illegal extraction activities.²¹³ The State also reported that in 2013 the zoning of the Río Puré Natural Park was being redrawn, since “new settlements of the isolated peoples have been discovered.”²¹⁴

86. As this chapter reflects, States have obligations under international law and domestic law to protect the lands, territories, and natural resources of the indigenous peoples in isolation or initial contact, and to see to it that all their other human rights are fully respected. It is fundamental for the physical and cultural survival of these peoples that such obligations be fully carried out in practice.

V. MAIN THREATS TO THE FULL ENJOYMENT OF THE HUMAN RIGHTS OF THE PEOPLES IN VOLUNTARY ISOLATION AND INITIAL CONTACT

87. The main threats to the full enjoyment of the human rights of the peoples in voluntary isolation and initial contact result from contact. If contact with

²⁰⁹ Response of the State of Colombia al Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR July 8 2013, p. 7. Resolution 0764 of August 5, 2002, Ministry of Environment, By which the Río Puré Natural National Park is reserved, delimited, and declared, Articles 1 and 2, available at: <http://www.parquesnacionales.gov.co/PNN/portel/libreria/pdf/ResolucionPure31Julio.pdf>.

²¹⁰ Resolution 0764 of August 5, 2002, Ministry of the Environment, by which the Río Puré Natural National Park is reserved, delimited, and declared, Article Six.

²¹¹ Resolution 0764 of August 5, 2002, Ministry of the Environment, by which the Río Puré Natural National Park is reserved, delimited, and declared, Article Seven.

²¹² Response by the State of Colombia to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR July 8, 2013, p. 8; Resolution No. 035 of the Ministry of Environment, Housing, and Territorial Development, January 26, 2007, By which the management plan for the Río Puré Natural National Park is adopted, available at: <http://www.parquesnacionales.gov.co/PNN/portel/libreria/pdf/Res.Adop035RoPur.pdf>.

²¹³ Resolution No. 035 of the Ministry of Environment, Housing, and Territorial Development, January 26, 2007, by which the management plan for the Río Puré Natural National Park is adopted, Article Four.

²¹⁴ Response by the State of Colombia to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR July 8, 2013, p. 8.

persons from outside these peoples can be avoided, indigenous peoples in voluntary isolation are in better capacity to meet their subsistence needs from their surroundings and be self-sufficient, as they have done for hundreds of years.

A. Contact

88. Most of the situations of risk to the life and integrity of these peoples are caused by direct or indirect contact. In the view of the IACHR, the most emblematic and at the same time most preventable cases occur when the contact is provoked directly and deliberately, as in the case of the religious missions that have sought to evangelize peoples in isolation. Such is the case of the New Tribes Mission and the Summer Institute of Linguistics, among others, that deliberately contacted peoples in isolation in Bolivia, Colombia, Ecuador, Paraguay, Peru, and Venezuela, among other countries, in the second half of the 20th century.²¹⁵ Information has been received about members of these organizations who prohibited the traditional religious and cultural practices of the peoples they contacted, labeling them as diabolic and impairing the right of these peoples to their own culture.²¹⁶

89. In addition, some scientific projects have been aimed at contacting indigenous peoples in voluntary isolation. Such was the case of the mission of the Natural History Museum of London, which in 2010 organized an expedition to the Chaco region in Paraguay, in particular to the regions of Cabera Timane and Chavoreca.²¹⁷ That expedition was suspended after the intervention of civil society organizations who

²¹⁵ On Ecuador, see National Policy on the Peoples in Voluntary Isolation, National Government, Republic of Ecuador, April 18, 2007, p. 3. On Bolivia, see Response of the Plurinational State of Bolivia to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR July 5, 2013, p. 2; Response of the Pan American Health Organization and the World Health Organization in the city of La Paz, Bolivia, to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 27, 2013, p. 2. Foro Boliviano sobre Medio Ambiente y Desarrollo (FOBOMADE), Pablo Cingolani, "Aislados", 2011, p. 126. On Paraguay, Response of the *Organización Payipie Ichadie Totobiegosode* (OPIT) and *Gente, Ambiente y Territorio* (GAT) to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 23, 2013, p. 13. On Venezuela, see Response of the Bolivarian Republic of Venezuela to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 28, 2013 (Office of the Ombudsperson of the Bolivarian Republic of Venezuela), p. 5. In Suriname, the Suriname Interior Fellowship was also present since 1954. IWGIA, Peter Kloos, "*The Akuriyo of Surinam: A Case of Emergence from isolation*", Document IWGIA 27, 1977, p. 15.

²¹⁶ Response of the Bolivarian Republic of Venezuela to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 28, 2013 (Office of the Ombudsperson of the Bolivarian Republic of Venezuela), p. 5. Response of the *Organización Payipie Ichadie Totobiegosode* (OPIT) and *Gente, Ambiente y Territorio* (GAT) to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 23, 2013, p. 14.

²¹⁷ Press Release "*Expedition to explore biodiversity of the Dry Chaco region in Paraguay*," Natural History Museum, November 8, 2010, available at: <http://www.nhm.ac.uk/about-us/news/2010/november/expedition-to-explore-biodiversity-of-the-dry-chaco-region-in-paraguay87762.html>.

informed the Museum of the grave risks it would entail for the Ayoreo in isolation.²¹⁸ The Commission has also received information that indicates that in 1997 a Norwegian agronomist entered the Madidi National Park and Natural Integrated Management Area, by the border between Bolivia and Peru, an area transited by members of the Toromona people in isolation, and did not return.²¹⁹ In addition in Paraguay in 2004 there was an incident of contact with a group of approximately 17 persons from the Areguede–urasade community of the Ayoreo Totobiegosode people.²²⁰ On that occasion, according to the information received, there was an urgent intervention by representatives of the judicial branch, the Public Ministry, the Paraguayan Indigenous Institute, the Ministry of Public Health and Social Well-being, and members of the Executive, as well as civil society organizations, to safeguard the psycho-physical, cultural, and clinical integrity of the indigenous persons that were contacted.²²¹

90. Another incident of direct contact occurred in March 2013, when after a violent incident two girls, presumably belonging to the Tagaeri or Traomenane people in voluntary isolation, were retained by persons from outside their community.²²² According to information that is a matter of public knowledge, the girls were subjected to medical studies by specialists to ensure their health and physical well-being.²²³ The Commission observes that such incidents of contact represent an irreparable cultural loss. Once contact occurs, it is essential to guarantee the life, integrity and physical and psychological well-being of the persons contacted, but their condition of isolation prior to contact has been lost forever.

²¹⁸ Letter from Iniciativa Amotocodie to the British Museum, dated October 27, 2010. At the hearing the issue of the situation of the peoples in voluntary isolation in the Amazon Region the Gran Chaco held March 25, 2011, the IACHR received information that this expedition had been suspended, but that the project had not been canceled. IACHR, Hearing on the situation of peoples in voluntary isolation in the Amazon Region and the Gran Chaco, March 25, 2011, available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=122>. See also Press Release “Museum Paraguay field work postponed,” Natural History Museum, July 5, 2011, available at: <http://www.nhm.ac.uk/about-us/news/2011/july/museum-paraguay-field-work-postponed98893.html>.

²¹⁹ Foro Boliviano sobre Medio Ambiente y Desarrollo (FOBOMADE), Pablo Cingolani, “Aislados”, 2011, pp. 110 ff.

²²⁰ Response of the *Organización Payipie Ichadie Totobiegosode* (OPIT) and *Gente, Ambiente y Territorio* (GAT) to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 23, 2013, p. 7.

²²¹ Response of the *Organización Payipie Ichadie Totobiegosode* (OPIT) and *Gente, Ambiente y Territorio* (GAT) to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 23, 2013, pp. 6-9.

²²² United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Prof. James Anaya, “Ecuador: Special Rapporteur calls for end to violence between Waorani and Tagaeri-Taromenane indigenous peoples,” May 16, 2013, available at: <http://unsr.jamesanaya.org/statements/ecuador-experto-de-la-onu-pide-el-fin-de-la-violencia-entre-indigenas-tagaeri-taromenane-y-waorani>.

²²³ “Las niñas taromenane fueron chequeadas por medicos,” *El Comercio*, April 5, 2013, available at: http://www.elcomercio.com/pais/ninas-taromenane-medicos-ataque-huorani-contactado-Orellana-tagaeri-Amazonia_0_895710505.html.

91. Contact can also happen indirectly, for example when persons who enter the territories transited by peoples in isolation leave objects that may be found by members of the indigenous communities. Those articles may include tools, clothing, trash, or food, which can pose a risk as they may transmit certain infectious diseases.²²⁴

92. Another indirect effect of contact is the negative psychological effect that the members of previously isolated peoples may suffer. For example, when the Akiruyo indigenous people was contacted in Suriname in the late 1960s, the impact on their worldview was such that many became depressed or showed signs of psychological disturbance, some simply refused to live, and some women did not menstruate for over a year.²²⁵ The IACHR considers that the effects of contact can also be seen at the collective level. In the case of the Akiruyo people, they went from being self-sufficient in the jungle to being almost entirely dependent on those who provide them with food, medicines, and others means of subsistence,²²⁶ which has had a major demoralizing effect on the identity of the people.²²⁷

B. Pressures on their lands and territories

93. In the view of the Inter-American Commission, one of the main threats the peoples in isolation face and that often leads to contact is the enormous pressure on the territories in which they live and transit, and which often stems from incursions into these territories.²²⁸ As the IACHR and the Inter-American Court have indicated, indigenous peoples maintain a special relationship with their lands, territories, and natural resources in material, social, cultural, and spiritual terms. Protecting this relationship is fundamental for the enjoyment of other human rights of the indigenous

²²⁴ Beatriz Huertas Castillo, *Peru: Plundered land, conflict and extinction*, in *Indigenous Peoples in Voluntary Isolation and Initial Contact*, IWGIA (2012), pp. 62-63 (explaining that it is not necessary for third persons to contact the indigenous peoples in isolation to spread disease to them).

²²⁵ IWGIA, Peter Kloos, “*The Akuriyo of Surinam: A Case of Emergence from Isolation*,” Document IWGIA 27, 1977, p. 21. After less than two years from the contact, more than 25% of the members of the Akuriyo people died due to these and other impacts.

²²⁶ IWGIA, Peter Kloos, “*The Akuriyo of Surinam: A Case of Emergence from Isolation*,” Document IWGIA 27, 1977, p. 23; ECODESS, Jesús Castro Suárez, *De aislados a refugiados por operaciones petroleras: El caso de los Mashco-Piros del parque Nacional del Manu*, p. 12, available at: http://servindi.org/pdf/De_Aislados_a_Refugiados2013.pdf.

²²⁷ Workshop of Experts on Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas, May 6, 2013, Presentation of Benno Glauser.

²²⁸ Response of the Federative Republic of Brazil to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 14, 2013, p. 1 (“Another risk factor is pressure on the land, which may give rise to situation of conflict, confinement, and robbery, with the consequent breakup of the communication.”).

peoples, and therefore merits special measures of protection.²²⁹ The IACHR considers that territorial protection is a fundamental condition for protecting the physical, cultural, and psychological integrity of the indigenous peoples in voluntary isolation and initial contact²³⁰, and has stated that “special care must be taken in adopting measures to guarantee territories of sufficient extent and quality to peoples in voluntary isolation, peoples in initial contact, binational or plurinational peoples, peoples at risk of disappearance, [...] shifting cultivators or pastoralist peoples, nomadic or semi-nomadic peoples, peoples displaced from their territories, or peoples whose territory has been fragmented, *inter alia*.”²³¹

94. As indicated earlier, some countries have established intangible or reserve areas for protecting the territories where the peoples in voluntary isolation live and transit.²³² Despite their existence, in practice the prohibitions on access to those areas are not fully respected or enforced. It is important to highlight that the notion of territory of the indigenous peoples tends to be based on natural borders, such as rivers or mountain ranges, and not on the political boundaries between countries or their subdivisions.²³³ For example, there are indicia of the presence of peoples in isolation or initial contact in the border areas between Ecuador and Peru, Bolivia and Peru, Brazil and Peru, Paraguay and Bolivia, and Brazil and Venezuela, and they cross back and forth

²²⁹ IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009, paras. 55-57; I/A Court HR. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007, Series C No. 172, para. 91 (“States must respect the special relationship that members of indigenous and tribal peoples have with their territory in a way that guarantees their social, cultural, and economic survival.”).

²³⁰ See Guidelines for the protection of indigenous peoples in voluntary isolation of the Amazon region, the Gran Chaco, and Eastern Paraguay. Result of the consultations by OHCHR in the region: Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, and Venezuela. May 2012, para. 72. See also Report of the Regional Seminar on Indigenous Peoples in Isolation and Initial Contact in the Amazon Region and the Gran Chaco, Santa Cruz de la Sierra, Bolivia: 20-22 November 2006. Permanent Forum on Indigenous Issues, Doc. E/C.19/2007/CRP.1, March 28, 2007, para. 18 (“Among the factors that have led to the situation of extreme vulnerability they find themselves in, the pressure to which their lands and territories are being subjected must be particularly emphasised.”).

²³¹ IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009, para. 81. The IACHR has also indicated that States have “an obligation to adopt special measures to recognize, respect, protect and guarantee the communal property right of the members of indigenous and tribal communities to such territory.” IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009, para. 166.

²³² See paragraphs I.A.70 - I.A.86.

²³³ See, for example, IWGIA, Peter Kloos, “*The Akuriyo of Surinam: A Case of Emergence from Isolation*,” Document IWGIA 27, 1977, p. 13 (explains that the Akuriyo people do not recognize territories as delimited areas).

frequently.²³⁴ In addition, as the United Nations Special Rapporteur has indicated, there are indicia of the presence of peoples in isolation outside the territories demarcated for their protection, which reflects that the territory originally established may not be the appropriate one, if they were not defined considering traditional patterns of use and occupation of the territory, and that consideration should be given to expanding it.²³⁵

95. In addition, many of these peoples are nomadic, semi-nomadic, or shifting cultivators, and maintain ancestral patterns of movement in search of food, water, and other elements of subsistence that vary seasonally, which means that the territories in which they move about are extensive and have changing boundaries.²³⁶ As part of their migratory patterns, it is common for them to occupy a territory for a time, and return after several months. This way of life is part of their identity as a people, and the IACHR has said that these traditional systems for the “control and use of territory are in many instances essential to the individual and collective well-being, and indeed the survival of, indigenous peoples.”²³⁷ The IACHR also considers that in the case of peoples in voluntary isolation, these modalities of possessing territory should be respected as part of their rights over their territories and the right to self-determination.

96. One example of the effects of the pressures on the territories of peoples in isolation occurred in Peru, when in May 2011 a group of Mashco Piro indigenous living in isolation appeared on the banks of the upper Madre de Dios River, in the sector known as Yanayacu, according to the information received.²³⁸ Given these

²³⁴ Foro Boliviano sobre Medio Ambiente y Desarrollo (FOBOMADE), Pablo Cingolani, “Aislados”, 2011, p. 87; Response of the Bolivarian Republic of Venezuela to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 28, 2013 (Office of the Ombudsperson of the Bolivarian Republic of Venezuela), p. 4; IWGIA, Beatriz Huertas Castillo, *Peru: Plundered land, conflict and extinction*, in *Indigenous Peoples in Voluntary Isolation and Initial Contact*, 2012, pp. 68-72; Relatório: violência contra os povos indígenas no Brasil [“Report on violence against indigenous peoples in Brazil”]. 2012 data, Conselho Indigenista Missionário, 2012, p. 128.

²³⁵ Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, Addendum – Observations on the progress and challenges in implementing the guarantees of the Constitution of Ecuador on the rights of indigenous peoples, A/HRC/15/37/Add.7, September 13, 2010, para. 47.

²³⁶ Response by the State of Peru to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 4, 2013, p. 6 (“Indigenous peoples in isolation live in small groups in nomadic or semi-nomadic conditions, obtaining the resources of the forest by hunting, gathering, fishing, and in some cases making small plots with native species (such as cassava). During the period of rainfall they generally remain in the upper parts of creeks, and in dry periods they migrate to lower areas to collect turtle eggs and materials for producing arrows for hunting, among other things.”). Observatorio de Derechos Colectivos del Ecuador – Boletín de Alerta. David Chávez, *La situación de los pueblos indígenas aislados en el Ecuador*, p. 3. Available at: <http://observatorio.cdes.org.ec/images/docs/la-situacion-de-los-pueblos-indigenas-aislados-en-el-ecuador.pdf>.

²³⁷ IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009, para. 73 (citing IACHR, Report No. 75/02, Case 11,140, Mary and Carrie Dann (United States), December 27, 2002, para. 128).

²³⁸ IWGIA, Beatriz Huertas Castillo, *Peru: Plundered land, conflict and extinction*, in *Indigenous Peoples in Voluntary Isolation and Initial Contact*, 2012, p. 72. Workshop of Experts on Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas, May 6, 2013, Presentation by Beatriz Huertas Castillo.

facts, the National Service of Protected National Areas (“SERNANP”) emphasized the highly vulnerable situation and susceptibility of these peoples to common illnesses, and announced a series of emergency preventive actions in conjunction with the Regional Government of Madre de Dios and the organization *Federación Nativa del río Madre de Dios y Afluentes*.²³⁹ On more than one occasion this group rejected persons from outside their group who were approaching, shooting arrows at them.²⁴⁰ According to the information available, in February and June 2013 another group of Mashco Piro appeared on the banks of a river in Madre de Dios.²⁴¹ Although the reason for the appearance of the members of this people in such a visible area is not known, some hypotheses indicate that it may be due to the pressure of logging and oil and gas activities in the area, internal splits within the people, or the attraction to metal objects in neighboring communities.²⁴² The Commission observes that these events so close to areas of transit expose the peoples in isolation to possible contact, with all the consequences this may have, and reflect the growing pressure due to the presence of third persons in their territories.

97. Another source of direct pressure on the territories where the peoples in voluntary isolation move about is the construction of highways, hydroelectric projects, and other infrastructure works. In Peru, to cite one example, the SERNANP has reported that along the route where a highway is to be built between Puerto Esperanza, in the department of Ucayali, and Iñapari, in Madre de Dios, members of peoples in isolation have been spotted.²⁴³ According to the information available, the construction of this 270-kilometer highway, which cuts through two protected natural areas, would be made possible by a declaration that the connection by land between these two cities is a matter of “public necessity” and “priority national interest,” with which it would fit

²³⁹ “Joint plan announced for the protection of isolated indigenous peoples in Alto Madre de Dios” [*Dan a conocer plan conjunto para la protección de los aislados en Alto Madre de Dios*], Noticias SERNANP, Source: Regional Government of Madre de Dios, FENAMAD, and Manú National Park, n/d, available at: <http://www.sernanp.gob.pe/sernanp/noticia.jsp?ID=835>.

²⁴⁰ IWGIA, Beatriz Huertas Castillo, *Peru: Plundered land, conflicto and extinction*, in *Indigenous Peoples in Voluntary Isolation and Initial Contact*, 2012, p. 72.

²⁴¹ Response by the State of Peru to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 4, 2013, p. 6. “Peoples in isolation leave the bush pressured by illegal activities” [Pueblos en aislamiento dejan el monte presionados por actividades ilegales], *El Comercio*, July 21, 2013, available at: <http://elcomercio.pe/actualidad/1606939/noticia-video-pueblos-aislamiento-dejan-monte-presionados-actividades-ilegales?ft=grid>.

²⁴² IWGIA, Beatriz Huertas Castillo, *Peru: Plundered land, conflicto and extinction*, in *Indigenous Peoples in Voluntary Isolation and Initial Contact*, 2012, p. 72.

²⁴³ “SERNANP ratifies presence of indigenous people in voluntary isolation in the proposed area for ground inter-connection between Puerto Esperanza and Iñapari” [SERNANP ratifica presencia de indígenas en aislamiento voluntario en el área propuesta para interconexión terrestre entre Puerto Esperanza-Iñapari], Communications MINAM-SERNANP, August 2, 2012, available at: <http://www.sernanp.gob.pe/sernanp/noticia.jsp?ID=1164>.

under an exception under the law.²⁴⁴ In this respect, SERNANP stated in due course that these “protected natural areas were established to protect indigenous peoples in isolation and/or initial contact” and that “the legislative proposal would tend to break up the integrity of their territory.”²⁴⁵ Some opponents of the construction of the highway in territories where the indigenous peoples in isolation live and transit also note that it would facilitate illegal logging and gold mining in the region.²⁴⁶ As of the writing of this Report, the bill seeking such a declaration of “national interest” is pending in the legislative process of the Peruvian Congress.²⁴⁷ The Commission notes that this reflects the difficulty establishing exceptions of public interest to effective protection for the human rights of the indigenous peoples in voluntary isolation.

98. In addition, the information received by the IACHR indicates that some of the projects of ground interconnection that may endanger the life and integrity of the indigenous peoples in voluntary isolation fall within the Initiative for the Integration of the Regional Infrastructure in South America (“IIRSA”).²⁴⁸ IIRSA is an inter-governmental technical forum that plans the physical regional integration of South America through infrastructure projects that include highways, railways, airports, and adaptations to river interconnections, among other plans.²⁴⁹ One of the ground interconnection projects that comes under IIRSA is the roadway connecting Pucallpa, in Peru, to Cruzeiro do Sul,

²⁴⁴ “SERNANP ratifies presence of indigenous people in voluntary isolation in the proposed area for ground inter-connection between Puerto Esperanza and Iñapari” [SERNANP ratifica presencia de indígenas en aislamiento voluntario en el área propuesta para interconexión terrestre entre Puerto Esperanza-Iñapari], Communications MINAM-SERNANP, August 2, 2012; Bill No. 1035/2011-CR, “Law that declares the public necessity and priority national interest in the overland connection from the city of Puerto Esperanza, in the border province of Purús in the Ucayali Region, with the city of Iñapari in the border province of Tahuamanu, Madre de Dios Region, by means of a highway or railway linking Puerto Esperanza, the capital of Purús, with the city of Iñapari, capital of Tahuamanu, introduced April 19, 2012.

²⁴⁵ “Nota aclaratoria sobre construcción de carretera Puerto Esperanza – Iñapari,” Noticias SERNANP, June 12, 2012, available at: <http://www.sernanp.gob.pe/sernanp/noticia.jsp?ID=1096>.

²⁴⁶ See, for example, Global Witness, *Un arduo camino: cómo la Amazonía peruana y sus pueblos se ven amenazados por el incumplimiento de la ley y los intereses creados que defienden la carretera de Purús*, May 2013. Available at: http://www.globalwitness.org/sites/default/files/library/UnArduoCamino_GlobalWitness_lo_0.pdf

²⁴⁷ As of the date of the writing of this Report, Bill No. 1035/2011-CR was awaiting an opinion by the Committee on Andean, Amazonian, and Afro-Peruvians, Environment and Ecology of the Congress of the Republic, according to the website of the Congress of the Republic of Peru. See <http://www2.congreso.gob.pe/Sicr/TraDocEstProc/CLProLey2011.nsf>.

²⁴⁸ For more information on IIRSA, see <http://www.iirsa.org/>. The introduction to IIRSA describes as one of its tasks: “Develop and apply methodologies to enhance the Project Portfolio, considering sustainable social and economic development criteria, and preserving the environment and the balance of ecosystems.”

²⁴⁹ See South American Council on Infrastructure and Planning (COSIPLAN), IIRSA, available at: <http://www.iirsa.org/Page/Detail?menutemId=27>.

in Brazil, in the Amazon jungle.²⁵⁰ There are indicia that in this zone there is a presence of indigenous peoples in voluntary isolation and initial contact, particularly in the Sierra del Divisor Reserve Zone, located between these two cities.²⁵¹ Available information indicates that in Brazil, financing for the IIRSA project called “Network of River Terminals in the Amazon Region” has already been approved; it includes building new river ports in the states of Amazonas, Pará, Rondônia, and Acre.²⁵² According to information provided by the State, references of the “presence of isolated and recently-contacted indigenous communities” have been reported throughout the Amazon region of Brazil, especially in areas of economic expansion in the states of Mato Grosso and Rondônia.²⁵³ The United Nations Special Rapporteur has also indicated the presence of indigenous peoples in isolation and initial contact in the state of Amazonas and the importance of guaranteeing the right of these peoples to remain in isolation and to the integrity of their territories.²⁵⁴

99. The IACHR has received information indicating that in Bolivia there are indicia of the presence of Yucararé indigenous peoples in isolation or initial contact in the area of influence of the highway proposed to run from Villa Tunari to San Ignacio de Moxos, which would cut through the Isiboro Sécuré Indigenous Territory/National Park.²⁵⁵ According to information provided by the State, the “Yucararé (intermittently in isolation)” people are in the area of the Chapare river, which is situated near the locality

²⁵⁰ Project AMA 28: Overland Roadway Interconnection Pucallpa – Cruzeiro do Sul, Group G04: G4 – Access to the Ucayali hydrovia. Project data sheet available at: http://www.iirsa.org/proyectos/detalle_proyecto.aspx?h=29. This project involves a road interconnection between Pucallpa and Cruzeiro do Sul by rail or highway. See also Jaime Valdés Castro and Matías Parimbelli, “Ejes de Integración: Elementos para el desarrollo sostenible del territorio, Eje del Amazonas ampliado” COSIPLAN/IIRSA, p. 42, available at: http://www.iirsa.org/admin_iirsa_web/Uploads/Documents/ama_montevideo13_informe_amazonas_ampliado.pdf.

²⁵¹ Response by the State of Peru to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 31, 2013, pp. 9, 22.

²⁵² Project AMA 57: Network of riverine terminals in the Amazon Region, Group G06: G6 – Network of Amazonian Hydrovias. Project data sheet available at: http://www.iirsa.org/proyectos/detalle_proyecto.aspx?h=922. The map of influence of the group of projects “Network of Amazonian Hydrovias” can be accessed at: http://www.geosur.info/geosur/iirsa/pdf/es/grup_ama.pdf.

²⁵³ Response of the Federative Republic of Brazil to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 14, 2013, p. 2.

²⁵⁴ Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, Addendum: Report on the situation of human rights of indigenous peoples in Brazil, Doc. A/HRC/12/34/Add.2, para. 10, available at: http://unsr.jamesanaya.org/docs/countries/2009_report_brazil_sp.pdf.

²⁵⁵ Carlos Camacho Nassar, “Entre el etnocidio y la extinción: Pueblos indígenas aislados, en contacto inicial e intermitente en las tierras bajas de Bolivia,” IWGIA Report 6 (2010), p. 17 (“In the Isiboro Sécuré Indigenous Territory National Park, by the border where the departments of Santa Cruz, Beni, and Cochabamba come together: it could also hide some uncontacted Yucararé families.”).

of Villa Tunari, which is one of the points that the proposed highway would connect.²⁵⁶ As detailed below, the activities related to the construction of a highway in Brazil in the 1970s without adequate preventive protocols entailed grave consequences for the life and health of the Yanomami indigenous people, at that time in isolation and initial contact.²⁵⁷ The existence of preventive and contingency protocols is fundamental for avoiding such impacts in the context of infrastructure projects in areas with a presence of peoples in isolation or initial contact. The Commission recalls that the Inter-American Court has established clear parameters that States should look to for guidance on considering restrictions on the rights of indigenous peoples to their lands, territories, and natural resources.²⁵⁸ In addition, according to the standards established by the organs of the inter-American system, “in implementing large-scale development or investment projects that would have a major impact within [the indigenous] territory, the State has a duty, not only to consult with the [indigenous peoples], but also to obtain their free, prior, and informed consent, according to their customs and traditions.”²⁵⁹

100. In addition to direct incursions to their territories, activities carried out in nearby areas can also have a negative impact on the territorial integrity of indigenous peoples in voluntary isolation and initial contact. For example, activities that pollute rivers and other waterways may have a serious detrimental impact on the habitat of the peoples in isolation, even if carried out outside their territories. In addition, exploration and seismic prospecting in areas near the territories peoples in isolation inhabit or transit may cause noises and other impacts which, for example, cause the fauna to flee from the area, fauna on which these peoples depend for their food and survival. These pressures on the territory are often the result of projects for extracting natural resources, as discussed next.

²⁵⁶ Response of the Federative Republic of Brazil to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 14, 2013, p. 3 (citing Alvaro Diez-Astete, “Compendio de etnias indígenas y eco regiones: Amazonía, Oriente y Chaco.” La Paz, CESA, Plural, 2011, p. 505). See also IACHR, Thematic hearing on the Situation of human rights of the indigenous peoples who inhabit the Indigenous Territory of the Isiboro Sécore National Park in Bolivia, 147th Period of Sessions, March 15, 2013, available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=131&page=2>.

²⁵⁷ See paragraph I.A.118, *infra*. See also IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009, p. 107; IACHR, Resolution No. 12/85, Case 7615 –Yanomami People (Brazil), March 5, 1985, para. 10.

²⁵⁸ See, for example, I/A Court HR, *Case of the Kichwa Indigenous People of Sarayaku v. Ecuador*. Merits and Reparations. Judgment of June 27, 2012. Series C No. 245.

²⁵⁹ I/A Court HR. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172 para. 134. See also: IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009. See *infra*, section of recommendations on the application of the duty to consult in the case of indigenous peoples in voluntary isolation and initial contact.

C. Extraction of natural resources

101. Most incursions by third parties into the territories of the peoples in isolation take place in the context of extraction of natural resources. Peoples in voluntary isolation and initial contact live in and transit through lands and territories rich in natural resources in the Amazon and the Gran Chaco, with which they maintain a material relationship of sustainable consumption, as well as a profound spiritual and cultural connection.²⁶⁰ The extraction of natural resources in these territories has included precious stones and metals at the time of the conquest, rubber in the late 19th and early 20th centuries, to lumber, minerals, and hydrocarbons nowadays.²⁶¹ The legal and illegal extraction of these and other natural resources pose a grave threat to the physical and cultural integrity of these peoples, and their survival “requires recognition of their rights to the resources found on their lands and territories on which they depend for their economic, spiritual, cultural, and physical well-being.”²⁶² The Inter-American Court has explained that international law protects the right to natural resources situated in the territories of the indigenous peoples that they have “traditionally used and [that are] necessary for the very survival, development and continuation of such people’s way of life.”²⁶³ The Commission considers that the relationship of the indigenous peoples in voluntary isolation and initial contact with the environment and their natural resources is so integral and complete that the logic pointed out by the Inter-American Court extends to all elements of their surroundings, as they are necessary for their physical, cultural, and spiritual survival and development and for the continuity of their way of life.

²⁶⁰ Ombudsperson Report No. 101, Office of the Ombudsperson of the Republic of Peru. Register No. 2006-1282. Lima, January 2006, p. 14. Recommendation No. 3.056, “Indigenous peoples living in voluntary isolation and conservation of nature in the Amazon region and Chaco,” World Conservation Congress, Bangkok, Thailand, November 17 to 25, 2005, available at: http://cmsdata.iucn.org/downloads/wcc_res_rec_esp.pdf.

²⁶¹ Ombudsperson Report No. 101, Office of the Ombudsperson of the Republic of Peru. Register No. 2006-1282. Lima, January 2006, p. 14. Recommendation No. 3.056, “Indigenous peoples living in voluntary isolation and conservation of nature in the Amazon region and Chaco,” World Conservation Congress, Bangkok, Thailand, November 17 to 25, 2005. Gloria Huamán Rodríguez, “Pueblos Indígenas en aislamiento voluntario de la Amazonía peruana: el derecho inherente al territorio ancestral y la explotación de hidrocarburos,” Medio Ambiente & Derecho: Revista electrónica de derecho ambiental, ISSN-e 1576-3196, No. 24, 2013.

²⁶² IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009, para. 179.

²⁶³ I/A Court HR. *Case of the Saramaka People v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs. Judgment of November 28, 2007. Series C No. 172 para. 122.

102. The extraction of timber with a high commercial value, such as cedar (*cedrela odorata*²⁶⁴), mahogany (*swietenia macrophylla*²⁶⁵) or holy wood (*bursera graveolens*), and the exploration and exploitation of hydrocarbons, pose two of the main threats to the peoples in voluntary isolation. For example, the Inter-American Commission has received information that indicates that in Ecuador there have been several instances of violent confrontation between illegal loggers and members of the Tagaeri or Taromenane isolated peoples, most recently in 2003, 2006, and 2009.²⁶⁶ The United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people has indicated that illegal logging, among other factors, has put the peoples in voluntary isolation at risk of disappearing completely.²⁶⁷ The Inter-American Commission has also received information on violent confrontations between loggers and members of the Awá Guajá people, in initial contact, in the state of Maranhão, in Brazil.²⁶⁸ In addition, the IACHR has received information through thematic hearings on the presence of illegal loggers, known as “*garimpeiros*,” along the banks of the Madeira and Xingu rivers, in the Brazilian Amazon.²⁶⁹ In Peru, the Office of the Ombudsperson in 2006 considered that the main threat to the peoples in voluntary isolation and initial contact is the invasion of illegal loggers, since illegal logging brings deforestation and destruction of their habitat and gives rise to contact and possible confrontations with the loggers.²⁷⁰ The National Service of Protected Natural Areas has repeatedly reported the detention of illegal loggers in territories in which there is evidence of indigenous peoples in isolation.²⁷¹ In addition, the area of the Yurúa river,

²⁶⁴ Beatriz Huertas Castillo and Alfredo García Altamirano, “*Los Pueblos Indígenas de Madre de Dios. Historia, Etnografía y Coyuntura*,” IWGIA (2003), p. 354.

²⁶⁵ Beatriz Huertas Castillo and Alfredo García Altamirano, “*Los Pueblos Indígenas de Madre de Dios. Historia, Etnografía y Coyuntura*,” IWGIA (2003), p. 9.

²⁶⁶ Paola Colleoni and José Proaño, “*Caminantes de la Selva: los pueblos en aislamiento de la amazonía ecuatoriana*,” IWGIA Report 7 (2010), pp. 9-10, cited in Response by the State of Ecuador al Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 23, 2013, p. 3. Workshop of Experts on Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas, May 6, 2013, Presentation of José Proaño. Observatorio de Derechos Colectivos del Ecuador – Boletín de Alerta. David Chávez, *La situación de los pueblos indígenas aislados en el Ecuador*, p. 12.

²⁶⁷ Human Rights Council, Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, Addendum -Mission to Ecuador, A/HRC/4/32/Add.2, December 28, 2006, p. 2 (“The situation of uncontacted or voluntarily isolated populations merits special attention, as they are adversely affected by the illegal felling of trees and other illicit activities in their territories, which in some cases could put them in danger of extinction.”).

²⁶⁸ Relatório: violência contra os povos indígenas no Brasil. Dados de 2012, Conselho Indigenista Missionário, 2012, p. 128.

²⁶⁹ IACHR, Thematic hearing on the situation of the peoples in voluntary isolation in the Amazon Region and the Gran Chaco, 141st regular period of sessions, March 25, 2011. Available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=es&session=122>.

²⁷⁰ Ombudsperson Report No. 101, Office of the Ombudsperson of the Republic of Peru, Register No. 2006-1282. Lima, January 2006, pp. 10-14, 61.

²⁷¹ “Guardaparques del SERNANP recuperan más de 7 mil pies tablares de madera extraída ilegalmente de la Reserva Nacional Tambopata,” SERNANP communications, February 22, 2013, available at: <http://www.sernanp.gob.pe/sernanp/noticia.jsp?ID=1379>. See also “Taladores ilegales fueron capturados en zona de nativos no contactados,” El Comercio, February 8, 2012, available in: Continues...

where the Chitonahua people lives in voluntary isolation, has been a territory with a high incidence of illegal logging, according to available information.²⁷² The IACHR has also had access to publicly available information regarding the threat that illegal logging represents to the peoples in voluntary isolation in Bolivia²⁷³ and Paraguay.²⁷⁴

103. The case of logging in the Territorial Reserve created to benefit the Murunahua people, in Peru, is a paradigmatic example of the need to protect the right of the indigenous peoples in isolation over their natural resources. As indicated earlier, this Reserve was established in 1997, and covered more than 481,000 hectares.²⁷⁵ According to the Office of the Ombudsperson, in 1991 and 1992, before its establishment, concessions were granted for logging in territories that later came to form part of the Reserve.²⁷⁶ When some civil society organizations reported to the authorities that illegal logging was taking place in the Reserve, the concession holder reportedly alleged that his concessions were valid, and that he had not been given notice of the creation of the Reserve. In 1999, the Regional Bureau of Agriculture of Ucayali issued a Regional Director's Resolution by which the original extent of the Murunahua Reserve was modified, reducing it by more than 23,000 hectares, which had been given in concession in 1991 and 1992 for logging.²⁷⁷ These facts reflect how the extraction of natural resources can place at risk the full enjoyment of the human rights of the peoples in isolation to their lands, territories, and natural resources.

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<http://elcomercio.pe/peru/1371752/noticia-taladores-ilegales-fueron-capturados-zona-nativos-no-contactados>; Beatriz Huertas Castillo, "Los pueblos indígenas en aislamiento. Su lucha por la sobrevivencia y la libertad," IWGIA (2002), pp. 68, 71.

²⁷² Ombudsperson Report No. 101, Office of the Ombudsperson of the Republic of Peru. Register No. 2006-1282. Lima, January 2006, pp. 11-12. Beatriz Huertas Castillo, *Peru: Plundered land, conflicto and extinction*, in *Indigenous Peoples in Voluntary Isolation and Initial Contact*, IWGIA (2012), pp. 78-79; Beatriz Huertas Castillo, "Los pueblos indígenas en aislamiento. Su lucha por la sobrevivencia y la libertad," IWGIA (2002), p. 102.

²⁷³ Report to the People's Defender: Situation of some of the indigenous peoples or segments of indigenous peoples in isolation in the Plurinational State of Bolivia. La Paz, Bolivia, December 12, 2010, in (FOBOMADE), Pablo Cingolani, "Aislados", 2011, p. 47.

²⁷⁴ Unión de Nativos Ayoreo de Paraguay and Iniciativa Amotocodie, "El caso Ayoreo," IWGIA Report 4 (2009), p. 25.

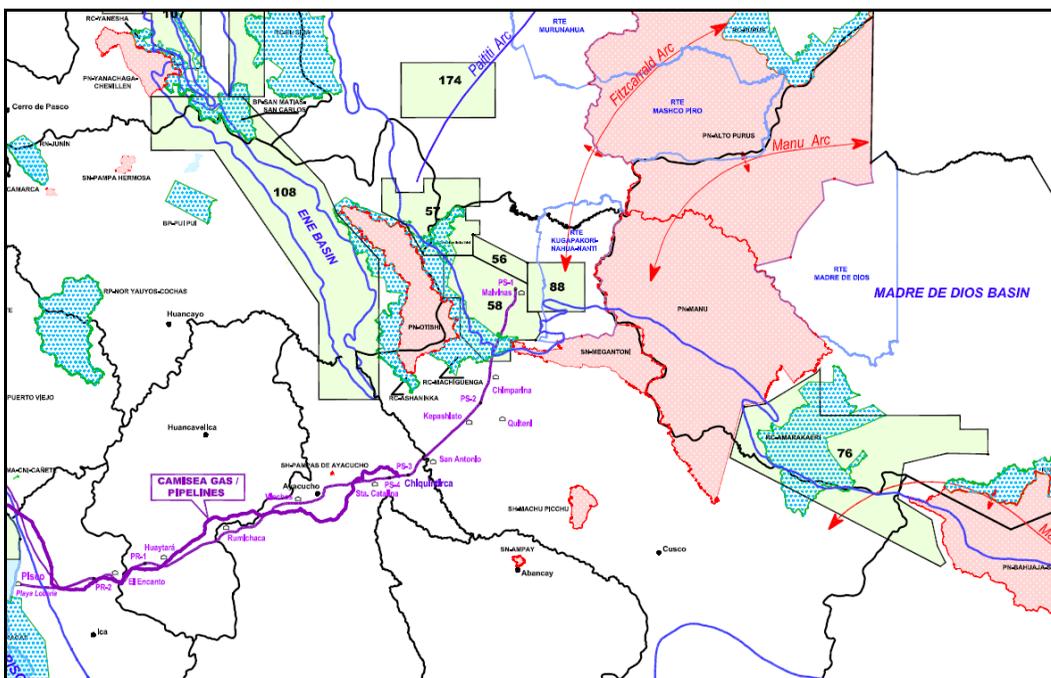
²⁷⁵ See paragraph I.A.73.

²⁷⁶ Ombudsperson Report No. 101, Office of the Ombudsperson of the Republic of Peru. Register No. 2006-1282. Lima, January 2006, p. 40.

²⁷⁷ Regional Director Sectoral Resolution No. 00453-99-CTAR-UCAYALI-DRSA, September 24, 1999. Ombudsperson Report No. 101, Office of the Ombudsperson of the Republic of Peru. Register No. 2006-1282. Lima, January 2006, p. 39. Once the concessions lapsed, the Office of the Ombudsperson recommended that they not be renewed in order to protect the rights of the peoples in voluntary isolation in the area. According to the Director's Report, a series of actions were taken to prevent the concessions from being granted again. Ombudsperson Report No. 101, Office of the Ombudsperson of the Republic Perú. Register No. 2006-1282. Lima, January 2006, pp. 38-41.

104. In some countries despite the existence of intangible zones or protected areas in favor of indigenous peoples, the maps of oil blocks published by state agencies indicate that some oil exploration and exploitation blocks overlap or are immediately adjacent to the protected areas, which generates a high risk of contact. Such is the case of Lot 88 in Peru, which according to the map of oil blocks of Perupetro and information from the Office of the Ombudsperson significantly overlaps the Territorial Reserve of the Kugapakori, Nahua, Nanti and others.²⁷⁸

*Map of the Region of Madre de Dios, Lot 88, and Territorial Reserve of the Kugapakori, Nahua, Nanti and others*²⁷⁹



²⁷⁸ Ombudsperson Report No. 101 of the Office of the Ombudsperson of the Republic of Peru notes that two-thirds of Lot 88 are overlapping the Kugapakori, Nahua, Nanti and others Territorial Reserve. Ombudsperson Report No. 101, Office of the Ombudsperson of the Republic of Peru. Register 2006-1282. Lima, January 2006, p. 15. The Office of the Ombudsperson has also found that in the part of Lot 88 that overlaps the Territorial Reserve there have been confrontations between indigenous persons in isolation and workers from the companies engaged in activities related to oil operations. Ombudsperson Report No. 101, Office of the Ombudsperson of the Republic of Peru. Register 2006-1282. Lima, January 2006, p. 34.

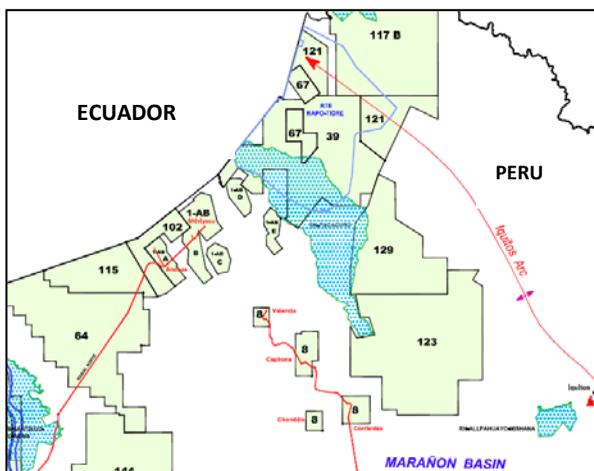
²⁷⁹ Source: Perupetro, Contract Blocks Map, Sedimentary Basins and Natural Protected Areas, May 2013. Available at: <http://www.perupetro.com.pe/wps/wcm/connect/perupetro/site/InformacionRelevante/MapaLotes/Mapa%20de%20Lotes>.

105. In this regard, the Committee on the Elimination of Racial Discrimination (“CERD”) sent a letter to the government of Peru dated March 1, 2013, in which it expressed its concern over the plans to expand the activities in Lot 88 and the impact these could have on the indigenous peoples in isolation within the Territorial Reserve of the Kugapakori, Nahua, Nanti and others.²⁸⁰ CERD asked the State of Peru “to suspend immediately the extraction activities provided for in the Reserve that may threaten the physical and cultural survival of the indigenous peoples and impede the complete well-being of their economic, social and cultural rights.”²⁸¹ According to information that has been made available to the IACHR, in the process of approving the expansion of Lot 88 the criteria for evaluating the impact on the life and health of the indigenous peoples in voluntary isolation and initial contact, particularly through the technical opinion of the Vice Ministry of Interculturality, which has a binding nature, as was informed by the Peruvian State.²⁸²

²⁸⁰ Letter from the Office of the United Nations High Commissioner to the Permanent Representative of Peru to the United Nations and other International Organizations in Geneva, March 1, 2013, CERD/82nd/GH/MC/SW, p. 2.

²⁸¹ Letter from the Office of the United Nations High Commissioner to the Permanent Representative of Peru to the United Nations and other International Organizations in Geneva, March 1, 2013, CERD/82nd/GH/MC/SW, p. 2.

²⁸² IACHR, Hearing on the human rights situation of indigenous peoples in voluntary isolation in Peru, November 1st, 2013, available at: <http://www.oas.org/es/cidh/audiencias/Hearings.aspx?Lang=es&Session=132>. Letter from the Coordinadora Nacional de Derechos Humanos de Perú (CNDDHH) to President Ollanta Humala on “Preocupación por el proceso del EIA para la ampliación del Programa de Exploración y Desarrollo del Lote 88,” July 17, 2013, available at: <http://derechoshumanos.pe/wp-content/uploads/2013/07/Carta-CNDDHH-al-Presidente-Humala.pdf>. According to information published by the CNDDHH, in Vice-Ministerial Resolution No. 005-2013-VMI-MC, which approved Reports 001-2013-LPA-LFTE-NPG-RRG-VDG-DGPI/VMI/MC and 004-2013-DGPI/VMI/MC, the Vice Minister for Interculturality of the Ministry of Culture indicated that the environmental impact study for the proposed expansion of Lot 88 lacked “technical criteria for established the real impact that the project will have on the life and health of the indigenous peoples in isolation and initial contact, the routes along which they move, as well as the use those populations make of their resources in the Kugapakori Nahua Nanti and others Territorial Reserve,” and that “the proposals contemplated in the EIS for 2D seismic prospecting that overlaps with the area of the upper Camisea, where the Nanti indigenous people is living in a situation of initial contact, in numerous population settlements, entails a several impact on the health of those populations; the Nanti indigenous people in isolation would also be negatively impacted....” Letter from the Coordinadora Nacional de Derechos Humanos de Perú (CNDDHH) to President Ollanta Humala on “Concerns regarding the EIA process for the expansion of the Exploration and Development Program for Lot 88,” July 17, 2013, p. 3. See also “Viceministerio de Interculturalidad cuestionó ampliación del Lote 88,” Lima, July 24, 2013, <http://www.inforegion.pe/medio-ambiente/163645/viceministerio-de-interculturalidad-cuestiono-ampliacion-del-lote-88/>. “Ampliación del Lote 88 tendrá impacto crítico en pueblos en aislamiento y contacto inicial,” Servindi, July 24, 2013, available at: <http://servindi.lamula.pe/2013/07/24/ampliacion-del-lote-88-tendra-impacto-critico-en-pueblos-en-aislamiento-y-contacto-inicial/Servindi/>.



106. Similarly, as illustrated in the map to the left, Lots 67, 39, and 121, situated very close to the border with Ecuador, are contiguous to the Tagaeri Taromenane Intangible Zone, and overlap the Napo-Tigre Territorial Reserve, in the Loreto region.²⁸³ According to Ombudsperson's Report No. 101 by the Office of the Ombudsperson of Peru (2006),

the State "does award lots in concession for carrying out projects for the exploration and exploitation of hydrocarbons" in "areas in which indigenous peoples in isolation move about" and in 2006 Lots 88, 57, 39, 67, and 35 overlapped these areas.²⁸⁴ As indicated above, the State of Peru has recognized its obligation to implement rigorous procedures to impede extractive activities from impairing the rights of indigenous peoples in isolation and initial contact.²⁸⁵

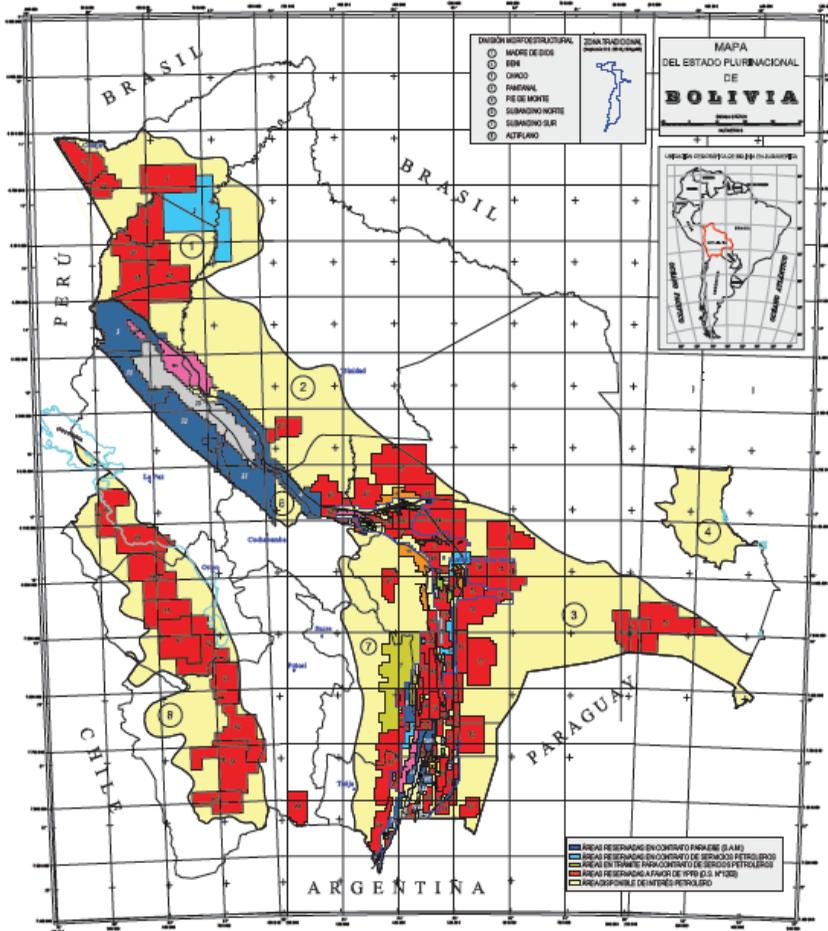
107. According to public information, something similar happens in Bolivia, where according to the map of the State corporation Yacimientos Petrolíferos Fiscales Bolivianos ("YPFB"), the Madidi oil block, marked number 3 on the map, overlaps the Madidi National Park and the Toromona Intangible and Integral Reserve and Protection Zone/Absolute Reserve.²⁸⁶

²⁸³ Source: Perupetro, Contract Blocks Map, Sedimentary Basins and Natural Protected Areas, May 2013. See also Judgment of the Constitutional Court of Peru, Case No. 06316-2008-PA/TC, Loreto, Asociación Interétnica de Desarrollo de la Selva Peruana (AIDSESP), November 11, 2009, available at: <http://www.tc.gob.pe/jurisprudencia/2010/06316-2008-AA.html>. See note 157, *supra*.

²⁸⁴ According to the Report, in 2006 lots 88 and 35 current operating licenses; lots 39 and 67 had current exploration licenses; and lot 57 was in the negotiation phase. Ombudsperson Report No. 101, Office of the Ombudsperson of the Republic of Peru. Record No. 2006-1282. Lima, January 2006, p. 14. In addition, according to the map of Perúpetro, Lot 138 partially overlaps the Territorial Reserve established to benefit the Isconahua ethnic group.

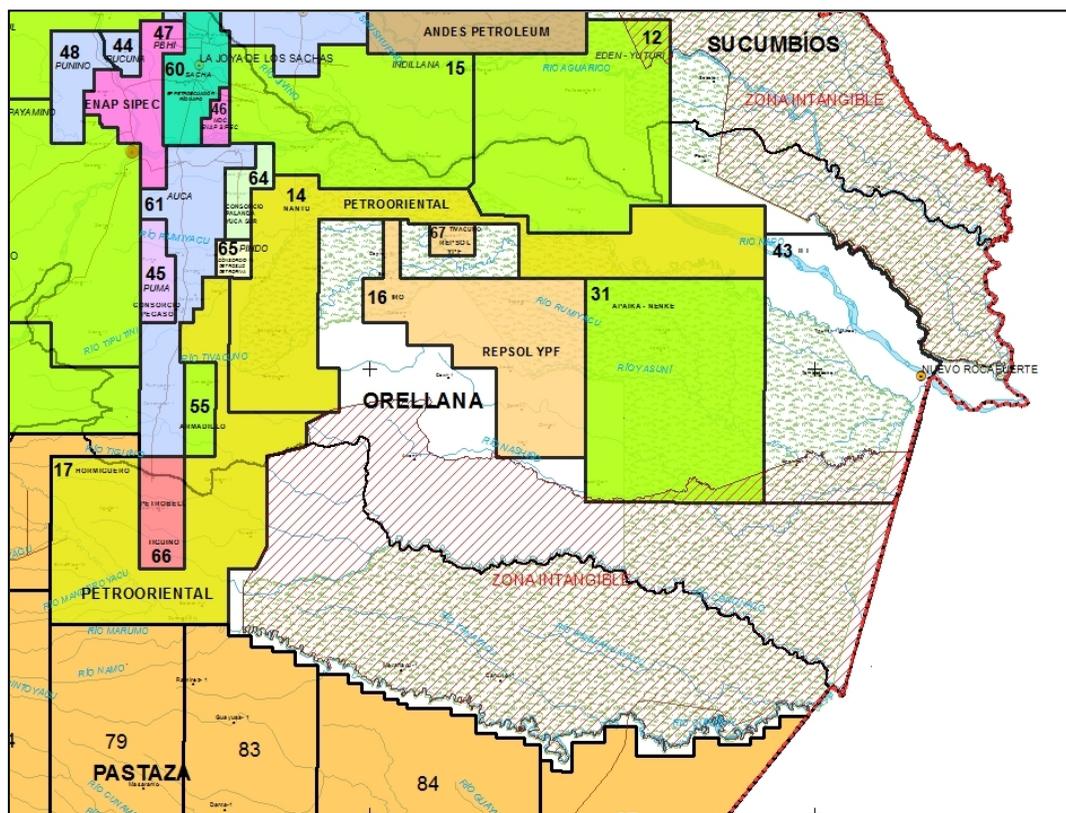
²⁸⁵ Response by the State of Peru to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 4, 2013, p. 14 (citing the Judgment of the Constitutional Court of Peru, Case No. 06316-2008-PA/TC, Loreto, Asociación Interétnica de Desarrollo de la Selva Peruana (AIDSESP), November 11, 2009). See para. I.A.68, *supra*.

²⁸⁶ Corporación Yacimientos Petrolíferos y Fiscales Bolivianos. Vice-presidency for administration, contracts, and inspection, Report of Activities January-June 2012, p. 34, available at: http://www.ypfb.gob.bo/documentos/2012_Informes/InformeActividadesVPACF Enero-Junio%202012.pdf. See also Foro Boliviano sobre Medio Ambiente y Desarrollo (FOBOMADE), Pablo Cingolani, "Aislados," 2011, p. 8



108. In Ecuador, according to a map of the Ministry of Non-Renewable Natural Resources, Block 31 partially overlaps the Tagaeri Taromenane Intangible Zone, while Blocks 16 and 17 extend to the boundary of the intangible zone, creating a sort of enclosure, and even overlap with the buffer zone.²⁸⁷

²⁸⁷ Republic of Ecuador, Map of Block, Ministry of Non-Renewable Natural Resources, September 7, 2012. Available at: <http://www.rondasuroriente.gob.ec/mapa-de-bloques/>.



109. Like incursions into the territories of peoples in voluntary isolation for other purposes, incursions for purposes of extracting natural resources pose a risk to the peoples in isolation not only because of the negative impact on their natural resources, but also because of the risk inherent in contact that these represent due to the presence of third persons and to the noise produced by engines, generators, and other machinery.²⁸⁸ The IACHR considers that these situations of overlap are an example of the pressures that extractive activities can place on and around the territories where indigenous peoples in voluntary isolation live and transit. As these areas have legal prohibitions in terms of access and the activities that can be legally conducted in them, the IACHR urges States to fully enforce these restrictions.

²⁸⁸ See, for example, Ombudsperson Report No. 101, Office of the Ombudsperson of the Republic of Peru. Register No. 2006-1282. Lima, January 2006, pp. 14, 17. Some experts consider that the indigenous peoples in isolation may interpret noises or disturbances as a communication from the population outside their territory. Workshop of Experts on Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas, May 6, 2013, Presentation by Benno Glaser.

110. With respect to mining, most of the incursions are by private actors operating without the State's authorization, but which elude existing prohibitions.²⁸⁹ Illegal gold mining activities, for example, are known of in Venezuela, Peru, and Brazil, where there have been cases of violent confrontations between miners and members of peoples in initial contact.²⁹⁰ In relation to the Yanomami people, by the Brazil-Venezuela border, the Commission has received information concerning illegal mining activities in the areas near Alto Siapa, Cerro Delgado Chalbaud-Parima, and Alto Ocamo-Putaco-Matacuni in the state of Amazonas, and in Alto Caura and Alto Paragua, in the state of Bolívar.²⁹¹

111. In Paraguay, according to the information received by the IACHR, the extraction of natural resources in the zones where the peoples in voluntary isolation live is related mainly to ranching and industrial production of soybean. In its 2001 Report on the Situation of Human Rights in Paraguay, the Commission received information that indicated that the environment was being destroyed by large ranching, farming, and forestry companies that had a negative impact on the traditional capacities of the indigenous peoples to secure their own food, and other economic activities.²⁹² In the thematic hearing on indigenous peoples in isolation in South America, held in 2011 during the 141st Period of Sessions, the IACHR was informed that deforestation in the Chaco region of Paraguay reached a rate of 100 hectares deforested per day, on average.²⁹³ The United Nations Special Rapporteur expressed his concern over the granting of environmental licenses that appear not to take into consideration some potential rights of the Ayoreo people, since the ranching, logging, and oil exploration activities were being conducted in the ancestral territory that the Ayoreo now claim and with which they maintain a special cultural and spiritual relationship.²⁹⁴

²⁸⁹ Report of the Regional Seminar on Indigenous Peoples in Isolation and Initial Contact in the Amazon Region and the Gran Chaco, Santa Cruz de la Sierra, Bolivia: 20-22 November 2006, Presented by the Office of the United Nations High Commissioner for Human Rights (OHCHR) and the International Work Group on Indigenous Affairs (IWGIA), E/C.19/2007/CRP.1, March 28, 2007, para. 20.

²⁹⁰ Workshop of Experts on Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas, May 6, 2013, Presentations by Antenor Vaz and Beatriz Huertas Castillo. IACHR, *Indigenous and Tribal Peoples' Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009, para. 107.

²⁹¹ Luis Jesús Bello, "Los Pueblos Indígenas aislados o con poco contacto en Venezuela," IWGIA Report 8 (2010), p. 32, cited by the State of Venezuela in the Response of the Bolivarian Republic of Venezuela to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 28, 2013 (Office of the Ombudsperson of the Bolivarian Republic of Venezuela), p. 7.

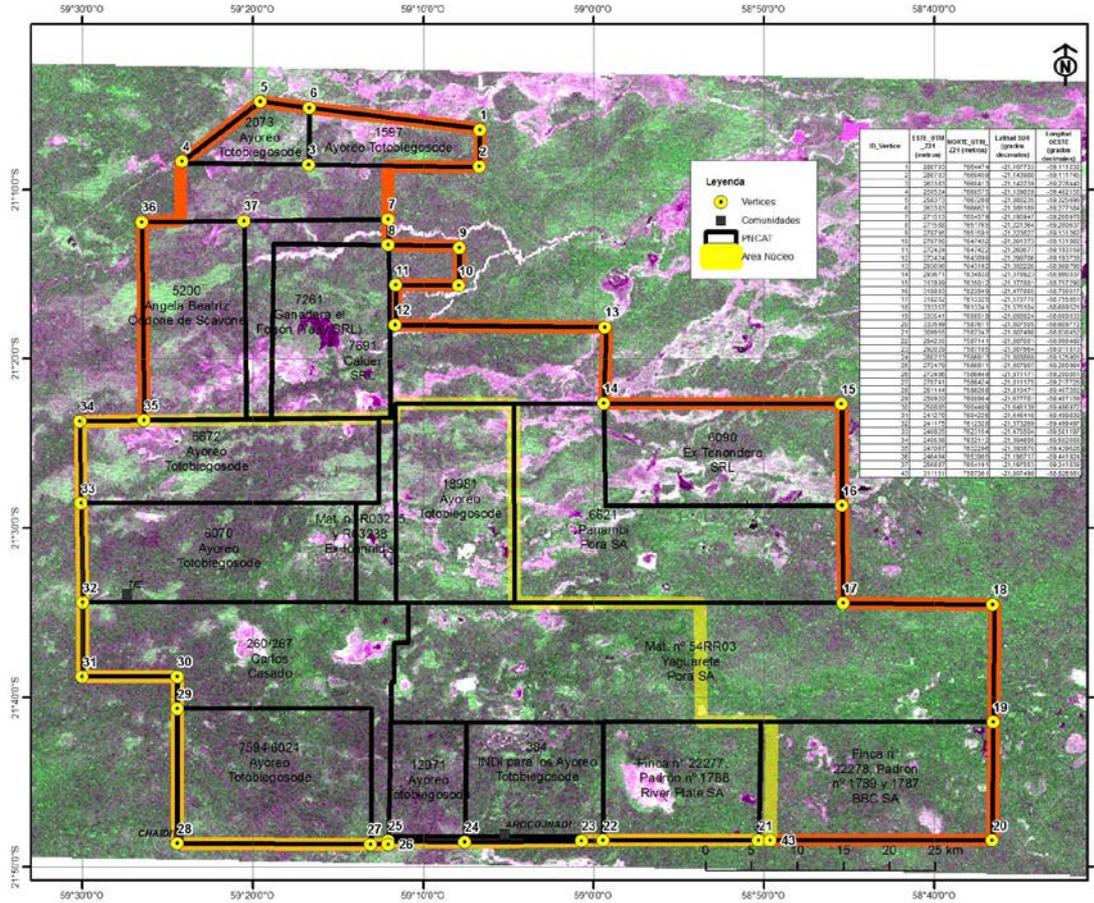
²⁹² IACHR, Third Report on the Situation of Human Rights in Paraguay, OEA/Ser./L/VII.110, March 9, 2001, Chapter IX, The rights of indigenous peoples, para. 38.

²⁹³ IACHR, Thematic hearing on the situation of peoples in voluntary isolation in the Amazon Region and Gran Chaco, 141st regular period of sessions, March 25, 2011.

²⁹⁴ Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, Addendum: Cases examined by the Special Rapporteur (June 2009-July 2010), A/HRC/15/37/Add.1, September 15, 2010, para. 334.

112. According to the information provided to the Commission, in the zones of east and west Amotocodie, a ranching company had cleared more than 8,000 hectares in 2007 and 2008, and is said to have a concession to clear another 16,000 hectares in territories transited by members of the Ayoreo people in isolation and initial contact. In the area to the west of the Paraguay river, inhabited by the Ayoreo Totobiegosode people in initial contact, and which is part of the Ayoreo Totobiegosode Natural and Cultural Patrimony, approximately 69,000 hectares were said to have been deforested in 2008 and 2009 alone.²⁹⁵ The following images, received as a response to the Consultation Questionnaire regarding indigenous peoples in voluntary isolation and initial contact, show the deforestation of the area inhabited by the Ayoreo Totobiegosode people in 1981 and in 2013. In the image, the purple areas indicate deforested zones. The IACHR emphasizes that this deforestation represents the destruction of the habitat of the peoples in voluntary isolation and initial contact, on which they depend for their physical and cultural survival.

²⁹⁵ Unión de Nativos Ayoreo de Paraguay and Iniciativa Amotocodie, “El caso Ayoreo,” Informe IWGIA 4 (2009), pp. 27-29.



Patrimonio Natural y Cultural Ayoreo Totobiegosode (Departamento de Alto Paraguay - Región del Chaco) Paraguay 2012.

Imagen Satelital (LANDSAT 2) del 06/julio/1981

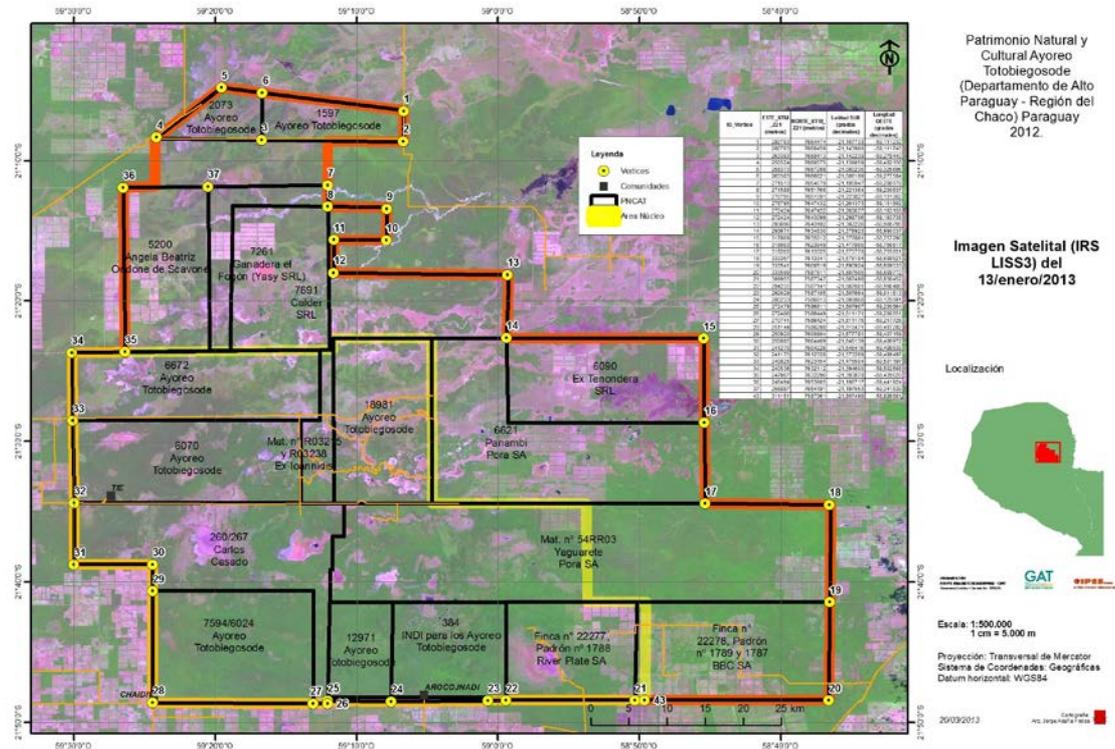


GAT
SIPSS

Escala: 1:500.000
1 cm = 5.000 m

Proyección: Transversal de Mercator
Sistema de Coordenadas: Geográficas
Datum horizontal: WGS84

20/03/2013
Geo prof. Ing. Jorge Raúl Pérez



Source: Organización Payipie Ichadie Totobiegosode (OPIT) and Gente, Ambiente y Territorio (GAT).²⁹⁶

²⁹⁶ Ayoreo Totobiegosode Natural and Cultural Patrimony (Department of Alto Paraguay – Chaco Region) Paraguay, satellite images (LANDSAT 2) of July 6, 1981 and January 13, 2013. Information submitted by the organizations Organización Payipie Ichadie Totobiegosode (OPIT) and Gente, Ambiente y Territorio (GAT) in response to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 27, 2013.

113. In addition, in the context of the 147th Period of Sessions, the IACHR received information on alleged acts of deforestation by heavy machinery on lands inhabited by members of the Ayoreo people in voluntary isolation, despite an injunction obtained in the domestic courts.²⁹⁷ The IACHR has also learned that some farms in the ancestral territory of the Ayoreo people were legally in the name of private persons and corporations and that several were being used for agriculture.²⁹⁸ Relatedly, information has been received on the harm that activities related to agroindustry were said to be having in the territories of the Ayoreo Totobiegosode people, such as fencing off segments of the territory in which its members transit, and the impact of fumigation on members of the Ayoreo people, and on the vegetation on which they depend for their subsistence.²⁹⁹

114. The pressures that stem from the extraction of natural resources, aimed mostly at satisfying the demand of non-indigenous societies, represent perhaps the greatest threat to the full enjoyment of the human rights of indigenous peoples in voluntary isolation and initial contact. The IACHR considers that the States, in carrying out their various international and domestic obligations, should ensure that extractive activities, if they are to be performed, are done with strict respect for the human and territorial rights of indigenous peoples, in keeping with existing legal standards.³⁰⁰

D. Contagious and Other Diseases

115. Historically, the negative health impacts stemming from contact have had devastating effects on indigenous peoples. In the first years since the arrival of the European colonizers to the Americas, in some regions of the Caribbean the mortality rate was as high as 900 of every 1,000 indigenous persons.³⁰¹ Around 1620, according to

²⁹⁷ IACHR, Hearing on the general situation of human rights in Paraguay, 146th Period of Sessions, March 15, 2013, available at <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=es&session=131&page=2>.

²⁹⁸ Response of the State of Paraguay to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR July 11, 2013, p. 6 (noting that there are “isolated groups located in the south of their territory [i.e., of the territory of the Ayoreo people], which coincides with real properties of corporations”). Information presented by the organizations *Organización Payipie Ichadie Totobiegosode* (OPIT) and *Gente, Ambiente y Territorio* (GAT), received by the IACHR June 27, 2013.

²⁹⁹ IACHR, Thematic hearing on indigenous peoples in voluntary isolation in South America, 146th regular period of sessions, November 4, 2012, Annex. Hearing available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=es&session=129&page=2>. IACHR, Thematic hearing on the situation of peoples in voluntary isolation in the Amazon Region and the Gran Chaco, 141st Period of Sessions, March 25, 2011. Unión de Nativos Ayoreo de Paraguay and Iniciativa Amotocodie, “El caso Ayoreo,” Informe IWGIA 4 (2009), p. 18.

³⁰⁰ IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009, paras. 181-89.

³⁰¹ Raul A. Montenegro and Carolyn Stephens, “Indigenous health in Latin America and the Caribbean,” *Lancet* 2006, Vol. 367: 1859-69, p. 1861.

some estimates, the indigenous population had declined 92% in what today is Peru, and 89% in what today is Mexico.³⁰² According to information received by the IACHR, patterns of disease among indigenous communities depend mainly on the extent of contact with the non-indigenous society, as in the first years after the arrival of European settlers.³⁰³

116. In the particular case of the indigenous peoples in voluntary isolation, transmitting diseases is one of the most serious threats to physical survival stemming from contact. Given their situation of isolation with respect to the non-indigenous societies, they do not have the immunological defenses to relatively common diseases, and a contagion may have, and on several occasions has had, tragic consequences. As regards the obligation to prevent impacts on the health of indigenous peoples as a result of development, the IACHR has stated that States have “the duty to prevent the occurrence of these comprehensive situations of human rights violations, so as to preserve the life and physical integrity of the members of indigenous and tribal peoples, through the adoption of the public health preventive measures which are pertinent in each case. These safeguards are particularly important for indigenous peoples in voluntary isolation or initial contact.”³⁰⁴

117. There are a large number of incidents on record in which indigenous peoples have been decimated by epidemics of diseases contracted after direct or indirect contact with non-indigenous persons. The diseases that have caused epidemics include the cold, pertussis, hepatitis, malaria, tuberculosis, influenza, pneumonia, measles, mumps, chicken pox, polio, and other diarrheal and gastrointestinal diseases.³⁰⁵ According to available information, in Peru the epidemic suffered by the Yora (Nahua) people in 1983 was documented; on that occasion, after contact with loggers, members of this people caught colds and had coughs, and upon returning to their villages they infected others.³⁰⁶ The information indicates that as a result of this contagion nearly 300 persons died from 1983 to 1985, *i.e.*, an estimated 40% to 60% of the Yora population.³⁰⁷ The information received by the IACHR points to similar experiences among the Matsigenka people of the Manu river, in the region of Madre de

³⁰² Raul A. Montenegro and Carolyn Stephens, “Indigenous health in Latin America and the Caribbean,” *Lancet* 2006, Vol. 367: 1859-69, p. 1861.

³⁰³ Raul A. Montenegro and Carolyn Stephens, “Indigenous health in Latin America and the Caribbean,” *Lancet* 2006, Vol. 367: 1859-69, p. 1863.

³⁰⁴ IACHR, *Indigenous and Tribal Peoples’ Rights over their Ancestral Lands and Natural Resources: Norms and Jurisprudence of the Inter-American Human Rights System*. OEA/Ser.L/V/II, December 30, 2009, para. 272.

³⁰⁵ See, for example, Beatriz Huertas Castillo and Alfredo García Altamirano, “Los Pueblos Indígenas de Madre de Dios. Historia, Etnografía y Coyuntura,” IWGIA (2003), pp. 353, 355.

³⁰⁶ Beatriz Huertas Castillo, “*Los pueblos indígenas en aislamiento. Su lucha por la sobrevivencia y la libertad*,” IWGIA (2002), pp. 97-98.

³⁰⁷ Ombudsperson Report No. 101, Office of the Ombudsperson of the Republic of Peru. Register No. 2006-1282. Lima, January 2006, p. 61. Beatriz Huertas Castillo, “*Los pueblos indígenas en aislamiento. Su lucha por la sobrevivencia y la libertad*,” IWGIA (2002), p. 98.

Dios, where contagions have resulted from direct incursions by third persons and by indirect contact through contaminated foods.³⁰⁸ The Office of the Ombudsperson has also reported on the risk of contagion to indigenous persons in isolation in the Kugapakori, Nahua, Nanti and others Territorial Reserve, stemming from contact with workers of oil and gas companies in the area.³⁰⁹

118. On occasion of the construction of the highway known as the *Rodovía Perimetral Norte* (Northern Perimeter Highway) in Brazil in 1973, many workers, geologists, miners, and settlers arrived in the ancestral territory of the Yanomami people, “which resulted in a considerable number of deaths caused by epidemics of influenza, tuberculosis, measles, venereal diseases, and others.”³¹⁰ In the wake of these events, the IACHR concluded that the Brazilian State was responsible for failing to adopt preventive measures to protect the human rights of the Yanomami.³¹¹ In Suriname, in 1972 the government considered that access to an area in the southeastern part of the country, inhabited by the Akuriyo people in initial contact at the time, should have been closed to persons without official permission, with the aim of protecting the Akuriyo from infectious diseases.³¹² Nonetheless, in the first two years after contact, approximately 25% of the Akuriyo population died, due mainly to contagious diseases and psychological disorders, among other factors.³¹³ Another dramatic example is that of Colombia, where members of the Nükak people, after being contacted in 1988, were infected by respiratory infections which according to their worldview “the *kawene* ‘the white man’ had sent them ‘the flu’ to punish them for having stolen a white child,” which resulted in more than 10 deaths and several families affected.³¹⁴ The information

³⁰⁸ Workshop of Experts on Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas, May 6, 2013, Presentation by Beatriz Huertas Castillo. The information received indicates that there have been epidemics of various types and magnitudes in the Matsigenka people in October 2002, June 2003, 2004, June 2006, October-November 2007, January-February 2008, and February-March 2012. The Nanti people of the Camisea River, in Cuzco, has also suffered a series of epidemics at least since the 1970s. See also Ombudsperson Report No. 101, Office of the Ombudsperson of the Republic of Peru. Register No. 2006-1282. Lima, January 2006, p. 45.

³⁰⁹ Ombudsperson Report No. 101, Office of the Ombudsperson of the Republic of Peru. Register No. 2006-1282. Lima, January 2006, p. 36, citing the report “Análisis de la Situación de Salud: Pueblo en situación de vulnerabilidad. El caso de los Nanti de la Reserva Territorial Kugapakori Nahua. Río Camisea, Cusco,” prepared by the General Office of Epidemiology of the Ministry of Health and the “Plan sistémico integrado de vigilancia, fiscalización y monitoreo ambiental y social del Estado en el proyecto Camisea,” prepared by the National Council on the Environment.

³¹⁰ IACHR, Resolution No. 12/85, Case 7615 –Yanomami People (Brazil), March 5, 1985, para. 10.

³¹¹ IACHR, Resolution No. 12/85, Case 7615 –Yanomami People (Brazil), March 5, 1985, para. 11.

³¹² Peter Kloos, “The Akuriyo of Surinam: A Case of Emergence from isolation,” IWGIA Document 27 (1977), p. 17.

³¹³ Peter Kloos, “The Akuriyo of Surinam: A Case of Emergence from isolation,” IWGIA Document 27 (1977), pp. 20-21 (citing a report by missionary Ivan Schoen, which indicated that it was almost impossible to predict who would perish based on their health or weak condition).

³¹⁴ Dany Mahecha R. and Carlos Eduardo Franky C. (ed.), *Colombia: The Nükak: The last nomadic people officially contacted in Colombia*, in “Indigenous Peoples in Voluntary Isolation and Initial Contact,” IWGIA (2012), p. 206.

indicates that after this initial epidemic, in the first five years after contact other epidemics ensued that resulted in the death of almost 40% of the Nükak population.³¹⁵ According to some estimates, in less than a decade the Nükak people's numbers fell from 1,200 to approximately 400.³¹⁶ After this traumatic process, some members of the Nükak people approached nearby villages in search of help. Some reports indicate that in this case religious missionaries played an important role since they were the only ones at that time who spoke the Nükak language.³¹⁷ Such approaches in search of assistance are not entirely unheard of, since in some cases contact has been initiated when the indigenous peoples are affected by diseases and turn to the closest population centers in search of assistance.³¹⁸ This need for assistance usually takes place when the disease is the result of contact with persons from outside their people, since when it is not the case, they can mostly obtain the remedies self-sufficiently from products in their environment.

119. Another risk to health that stems from contact is posed by changes in their diet. For example, when the Akuriyo indigenous people was contacted in Suriname it suffered a drastic change in its diet, moving from a diet rich in fats and proteins and low in carbohydrates, based on meat and other wild products, to a diet very low in meat and high in carbohydrates, such as cassava, once they were contacted and settled in small villages.³¹⁹ This change caused serious negative health impacts and many suffered diarrhea and other serious gastrointestinal diseases.³²⁰ In addition, indirect contact through trash, tools, and other articles used by persons outside the peoples in isolation may transmit diseases for which they do not have antibodies.³²¹

120. In addition to the negative consequences for physical health, epidemics may cause social and cultural disruption and widespread demoralization in

³¹⁵ Dany Mahecha R. y Carlos Eduardo Franky C. (ed.), *Colombia: The Nükak: The last nomadic people officially contacted in Colombia*, in "Indigenous Peoples in Voluntary Isolation and Initial Contact," IWGIA (2012), p. 206.

³¹⁶ IACHR, Thematic hearing on indigenous peoples in voluntary isolation in South America, 146th regular period of sessions, November 4, 2012.

³¹⁷ Dany Mahecha R. and Carlos Eduardo Franky C. (ed.), *Colombia: The Nükak: The last nomadic people officially contacted in Colombia*, in "Indigenous Peoples in Voluntary Isolation and Initial Contact," IWGIA (2012), p. 202.

³¹⁸ Beatriz Huertas Castillo, "Los pueblos indígenas en aislamiento. Su lucha por la sobrevivencia y la libertad," IWGIA (2002), p. 177; Dany Mahecha Rubio, "Colombia: los Nükak, el último pueblo nómada contactado," World Rain Forest Movement, Bulletin No. 87, October 2004, p. 9.

³¹⁹ Peter Kloos, "The Akuriyo of Surinam: A Case of Emergence from isolation," IWGIA Document 27 (1977), pp. 19-21.

³²⁰ Peter Kloos, "The Akuriyo of Surinam: A Case of Emergence from isolation," IWGIA Document 27 (1977), p. 21.

³²¹ Beatriz Huertas Castillo, *Peru: Plundered land, conflict and extinction*, in in "Indigenous Peoples in Voluntary Isolation and Initial Contact," IWGIA (2012), pp. 62-63 (a dweller of the area of the Manú National Park was reported to have said: "The loggers don't have to be very close to the Kirineri to infect them with diseases; it suffices for them to pass by the door of their settlement, several kilometers away, for them to catch the diseases.").

the peoples affected. It is common for the families to fall apart or lose the older adults and children, which may keep them from being self-sufficient in their environment.³²² Among the Matis people in Peru, for example, there was a major decline in the desire to procreate³²³, and some women of the Akuriyo people in Suriname did not menstruate for over a year after contact.³²⁴ From what is known through the recently-contacted peoples, the peoples in isolation may interpret these devastating events through their worldview, at times attributing the cause of the epidemics to witchcraft and other spiritual or metaphysical sources.³²⁵ These effects of the trauma caused by an epidemic outbreak also result in the members of the people affected becoming dependent on the non-indigenous persons who help them, such as missionaries, to the detriment of their identity as a people.³²⁶

121. The Commission has been informed that some States, such as Brazil, Ecuador, Peru, and Venezuela, have programs and public policies on health for the protection of the peoples in voluntary isolation and initial contact. In Brazil, for example, the Special Secretariat for Indigenous Health, under the Ministry of Health, collaborates with FUNAI's Office of General Coordination of Isolated and Initial Contact Indigenous Peoples to carry out the health promotion activities for the indigenous peoples in voluntary isolation and initial contact.³²⁷ According to the information received, FUNAI has made a series of specific requests and recommendations to the Ministry of Health to address the particular health situation of the indigenous peoples in isolation and initial contact in terms of prevention, promotion, training, monitoring, and prioritization, among others.³²⁸ Ecuador, for its part, has organized the territory of the Haorani people, in initial contract, in four geographic sectors to provide health services in prevention, promotion, and care, and has trained working teams made up of physicians, nurses,

³²² Beatriz Huertas Castillo, "*Los pueblos indígenas en aislamiento. Su lucha por la sobrevivencia y la libertad*," IWGIA (2002), p. 103. Workshop of Experts on Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas, May 6, 2013, Presentation of Benno Glauser.

³²³ Beatriz Huertas Castillo, "*Los pueblos indígenas en aislamiento. Su lucha por la sobrevivencia y la libertad*," IWGIA (2002), p. 103.

³²⁴ Peter Kloos, "The Akuriyo of Surinam: A Case of Emergence from isolation," IWGIA Document 27 (1977), p. 21.

³²⁵ Peter Kloos, "The Akuriyo of Surinam: A Case of Emergence from isolation," IWGIA Document 27 (1977), p. 21. Workshop of Experts on Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas, May 6, 2013, Presentation by Benno Glauser.

³²⁶ Beatriz Huertas Castillo, "*Los pueblos indígenas en aislamiento. Su lucha por la sobrevivencia y la libertad*," IWGIA (2002), p. 103; Peter Kloos, "The Akuriyo of Surinam: A Case of Emergence from isolation," IWGIA Document 27 (1977), p. 23.

³²⁷ Antenor Vaz, *Brazil. State Policy: From custody to the policy of rights – a solved issue?* in "Indigenous Peoples in Voluntary Isolation and Initial Contact," IWGIA (2012), p. 38.

³²⁸ Antenor Vaz, *Brazil. State Policy: From custody to the policy of rights – a solved issue?* in "Indigenous Peoples in Voluntary Isolation and Initial Contact," IWGIA (2012), pp. 38-39.

dentists, nursing assistants, and primary health care promoters and technical staff.³²⁹ In Peru, in 2007 the Ministry of Health approved three technical instruments on health referring to indigenous peoples in voluntary isolation and initial contact.³³⁰ Among others, these technical guides have the purpose of orienting health personnel in the field as to the procedures to be followed with peoples in isolation and initial contact, and to develop “criteria, strategies for relating, culturally appropriate activities and procedures that the health sector should consider to safeguard the life and health of these peoples.”³³¹ Venezuela, for its part, in 2005 began to carry out the Yanomami Health Plan, “whose fundamental objective is to offer medical services to the Yanomami population, especially those hard to access, systematically and with cultural relevance.”³³²

122. The IACHR considers that one must have specialized, multidisciplinary, and culturally appropriate prevention and contingency protocols regarding the health of peoples in voluntary isolation and initial contact to avoid the negative impacts on their health. With respect to the peoples in a situation of initial contact, these protocols should take into consideration the level of contact of the people or community in question. In this regard, the IACHR welcomes the progress in the adoption of specific instruments by some States and calls for their effective implementation. Likewise, the Commission urges the adoption and practical implementation of such protocols by those States that do not have them yet.

E. Direct attacks

123. The members of indigenous peoples in voluntary isolation and initial contact have also been victims of direct physical attacks which have caused numerous deaths. In addition to the obvious negative impact on the victims of the attacks, they also have an impact on the capacity of the people affected to survive as such, given the small number of members of many of these peoples. The better known violent acts in recent years have taken place in Ecuador and Peru.

³²⁹ Response of the State of Ecuador to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 23, 2013, pp. 7-8 (citing Ministry of Public Health, “Informe de Acciones del MSP en el Marco de las Políticas Públicas y el Plan de Medidas Cautelares para Pueblos Indígenas en Aislamiento y Contacto Inicial,” May 8, 2013).

³³⁰ These are “Technical Health Norm: Prevention, Contingency in the face of Contact and Mitigation of Risks to Health in scenarios with a presence of indigenous persons in isolation and in recent contact” (approved by Ministerial Resolution No. 799-2007/MINSA), “Technical Guide: Relations for cases of interaction with indigenous in isolation and recent contact” (approved by Ministerial Resolution No. 797-2007/MINSA), and “Technical Guide: Attention to Health of Indigenous in Recent Contact and Initial Contact at Risk of High Morbidity and Mortality”(approved by Ministerial Resolution No. 798-2007/MINSA). Response of the State of Peru to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 4, 2013, p. 18.

³³¹ Response of the State of Peru to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR June 4, 2013, p. 18.

³³² Response of the Bolivarian Republic of Venezuela to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 28, 2013 (Office of the Ombudsperson of the Bolivarian Republic of Venezuela), p. 5.

124. Available information indicates that in the Tagaeri-Taromenane Intangible Zone there was a massacre in 2003 that left at least 20 persons dead, and in April 2006 another violent confrontation took place in which a group of indigenous persons was said to have died.³³³ The information that the IACHR received in May 2006 indicated that members of the Taromenane people were assassinated on April 26, 2006, in the sector of Cononaco (Chiripuno river), in the context of reprisals associated with illegal logging in the Yasuní National Park and the invasion of indigenous territory. In view of the situation and the information received, the IACHR requested the State of Ecuador to adopt the measures necessary to provide protection from the presence of third persons in the territory inhabited by the Tagaeri and Taromenane peoples.³³⁴ In March 2013, the Commission received information of a new killing of indigenous persons in isolation.³³⁵ According to publicly available information, this latter attack occurred after the deaths of two Huaorani elders, and reflected in part a series of retaliations between Huaorani indigenous groups, on the one hand, and Tagaeri or Taromenane indigenous groups, on the other.³³⁶ On this occasion the information also indicated that two girls, apparently members of the Taromenane people, had been taken and were living with Huaorani families.³³⁷ In view of this, the Commission requested information repeatedly to Ecuador and continues to closely follow up the situation in the framework of the mechanism of precautionary measures. Likewise, in response to the information that indicated that the attack had been perpetrated by Huaorani indigenous persons, the Special Rapporteur appealed to an “intercultural perspective” in the investigation that explores the existence of norms and procedures in the indigenous justice system, and to establishing an “intercultural dialogue between indigenous justice authorities and offers of the regular justice system.”³³⁸

³³³ Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, Addendum Mission to Ecuador, A/HRC/4/32/Add.2, December 28, 2006, para. 40.

³³⁴ MC 91-06, Tagaeri and Taromenane Indigenous Peoples (Ecuador), May 10, 2006. Information available at: <http://www.oas.org/es/cidh/indigenas/proteccion/cautelares.asp>.

³³⁵ United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Prof. James Anaya, “Ecuador: experto de la ONU pide el fin de la violencia entre indígenas Tagaeri-Taromenane y Waorani,” May 16, 2013, available at: <http://unsr.jamesanaya.org/statements/ecuador-experto-de-la-onu-pide-el-fin-de-la-violencia-entre-indigenas-tagaeri-taromenane-y-waorani>.

³³⁶ See United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Prof. James Anaya, “Ecuador: experto de la ONU pide el fin de la violencia entre indígenas Tagaeri-Taromenane y Waorani,” May 16, 2013; “Las niñas taromenane fueron chequeadas por medicos,” El Comercio, April 5, 2013, available at: http://www.elcomercio.com/pais/ninas-taromenane-medicos-ataque-huaorani-contactado-Orellana-tagaeri-Amazonia_0_895710505.html.

³³⁷ United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Prof. James Anaya, “Ecuador: experto de la ONU pide el fin de la violencia entre indígenas Tagaeri-Taromenane y Waorani,” May 16, 2013.

³³⁸ United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Prof. James Anaya, “Ecuador: experto de la ONU pide el fin de la violencia entre indígenas Tagaeri-Taromenane y Waorani,” May 16, 2013.

125. According to the information from the Office of the Ombudsperson of Peru, in 1995 industrial loggers injured an isolated indigenous person in the Murunahua Reserve, who they allegedly kidnapped and forced to lead them to the location of the settlement of the isolated community, some of whose members they “forced to work as slaves.”³³⁹ The Office of the Ombudsperson has also reported that in 2002 there were hostile encounters in the Manú National Park between indigenous persons in isolation and members of the Tayakome community.³⁴⁰ In addition, in July 2002, July 2003, and June 2004 there were violent confrontations between Machiguengas indigenous persons and indigenous persons in isolation.³⁴¹ There were also said to be confrontations between illegal loggers and indigenous people in isolation in the Madre de Dios Territorial Reserve.³⁴² On March 22, 2007, the IACHR granted precautionary measures in favor of the Mashco Piro, Yora, and Amahuaca indigenous peoples in voluntary isolation in the area of the Las Piedras river, in Madre de Dios. After receiving information that indicated the illegal extraction of wood was continuing in territory that is legally protected and designated to those communities, the Commission asked the Peruvian State to adopt all necessary measures to ensure the life and integrity of the members of the Mashco Piro, Yora, and Amahuaca indigenous peoples in voluntary isolation, especially measures aimed at preventing irreparable harm resulting from the activities of third persons in their territory.³⁴³

126. In Venezuela, according to information received, in 1993 there was a killing of 16 members of the Yanomami of Haximú in the context of illegal mining activities in their territory.³⁴⁴ In 2010 direct assaults were reported against Yanomami in initial contact at the hands of prospectors or illegal miners (“*garimpeiros*”).³⁴⁵

³³⁹ Ombudsperson Report No. 101, Office of the Ombudsperson of the Republic of Peru. Register 2006-1282. Lima, January 2006, p. 12.

³⁴⁰ Ombudsperson Report No. 101, Office of the Ombudsperson of the Republic of Peru. Register 2006-1282. Lima, January 2006, p. 13.

³⁴¹ Ombudsperson Report No. 101, Office of the Ombudsperson of the Republic of Peru. Register 2006-1282. Lima, January 2006, p. 13.

³⁴² Ombudsperson No. 101, Office of the Ombudsperson of the Republic of Peru. Register 2006-1282. Lima, January 2006, p. 61. See also Beatriz Huertas Castillo and Alfredo García Altamirano, “Los Pueblos Indígenas de Madre de Dios. Historia, Etnografía y Coyuntura,” IWGIA (2003), p. 354. The SERNANP has also reported sightings and violent incidents in the zone. “Avistamiento de pueblos indígenas en aislamiento voluntario en el Parque Nacional del Manu,” SERNANP communications, October 17, 2011, available at: <http://www.sernanp.gob.pe/sernanp/noticia.jsp?ID=814>.

³⁴³ MC 262-05, Mashco Piro, Yora and Amahuaca indigenous peoples in voluntary isolation (Peru), March 22, 2007, available at: <http://www.oas.org/es/cidh/indigenas/proteccion/cautelares.asp>.

³⁴⁴ Luis Jesús Bello, “Los Pueblos Indígenas aislados o con poco contacto en Venezuela,” Informe IWGIA 8 (2010), p. 32, cited by the State of Venezuela in Response of the Bolivarian Republic of Venezuela to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 28, 2013 (Office of the Ombudsperson of the Bolivarian Republic of Venezuela), p. 7.

³⁴⁵ Luis Jesús Bello, “Los Pueblos Indígenas aislados o con poco contacto en Venezuela,” Informe IWGIA 8 (2010), pp. 32-33, cited by the State of Venezuela in Response of the Bolivarian Republic of Venezuela to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 28, 2013 (Office of the Ombudsperson of the Bolivarian Republic of Venezuela), p. 7.

127. The attacks may also be perpetrated by indigenous in isolation against third persons, commonly in defense of their territories. In Peru, for example, in July 2004 there was a violent confrontation between loggers and indigenous communities in isolation in which one of the loggers died.³⁴⁶ In November 2011, the SERNANP reported that a man was hit by a spear thrown by an indigenous person in isolation in the Manú National Park, causing his death.³⁴⁷ This type of attack has also occurred in Ecuador. According to the information received, in August 2009 a group of indigenous persons in isolation lethally attacked a mother and two of her children in the community known as Unión 2000, very close to the “Hormiguero Sur” oil well in the Armadillo Field.³⁴⁸ In the wake of this incident, the Ministry of Environment asked that the oil activity in the area be suspended, but the Ministry of Mines and Oil, and the Ministry of Non-Renewable Natural Resources expressed their opposition to bringing the extractive activities to a halt.³⁴⁹ As the Special Rapporteur noted in 2006, at present illegal logging and the incursion of oil-related activities accompany one another in territories of the peoples in isolation, which “has put further pressure on the territories of these peoples living in voluntary isolation, in addition to increasing inter-ethnic tension.”³⁵⁰

128. The incidents of violence mentioned above crudely exemplify the pressure on the territories of peoples in voluntary isolation and initial contact. The Commission recalls that States have the duty to prevent such violent acts against indigenous peoples, and if they arise, they have the obligation to investigate the facts in a culturally appropriate manner that takes into account indigenous justice systems and, if appropriate, to punish those responsible.³⁵¹

³⁴⁶ Ombudsperson Report No. 101, Office of the Ombudsperson of the Republic of Peru. Register No. 2006-1282. Lima, January 2006, p. 13.

³⁴⁷ “SERNANP lamenta fallecimiento de comunero en el Parque Nacional del Manu e invoca a evitar contacto con poblaciones indígenas en aislamiento voluntario,” SERNANP communications, November 23, 2011, available at <http://www.sernanp.gob.pe/sernanp/noticia.jsp?ID=857>.

³⁴⁸ Human Rights Council, Report of the Special Rapporteur on the human rights and fundamental freedoms of indigenous people James Anaya, Addendum – Observations on the progress and challenges in implementing the guarantees of the Constitution of Ecuador on the rights of indigenous peoples, A/HRC/15/37/Add.7, September 13, 2010, para. 48.

³⁴⁹ Human Rights Council, Report of the Special Rapporteur on the human rights and fundamental freedoms of indigenous people James Anaya, Addendum - Observations on the progress and challenges in implementing the guarantees of the Constitution of Ecuador on the rights of indigenous peoples, A/HRC/15/37/Add.7, September 13, 2010, para. 50.

³⁵⁰ Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Mr. Rodolfo Stavenhagen, Addendum Mission to Ecuador, A/HRC/4/32/Add.2, December 28, 2006, para. 38.

³⁵¹ I/A Court HR. *Case of the Moiwana Community v. Suriname*. Preliminary Objections, Merits, Reparations, and Costs, Judgment of June 15, 2005. Series C No. 124, para. 149. See also United Nations Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Prof. James Anaya, “Ecuador: experto de la ONU pide el fin de la violencia entre indígenas Tagaeri-Taromenane y Waorani,” May 16, 2013. Response of the Pan American Health Organization and the World Health Organization in the city of La Paz, Bolivia, to the Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 27, 2013, p. 5.

F. Tourism projects

129. Another phenomenon of deliberate contact with peoples in voluntary isolation and initial contact is related to “tourism” projects. Such projects may include self-styled “explorers” or “adventurers,” film and/or television companies, and “sports” hunters, among others.³⁵² The United Nations Guidelines on indigenous peoples in voluntary isolation and initial contact, as well as the Santa Cruz de la Sierra Appeal, have noted that such projects are problematic for the peoples in isolation.³⁵³

130. The United Nations Special Rapporteur has considered international tourism one of the causes that has put peoples in isolation “on the brink of what some describe as genocide.”³⁵⁴ Likewise, after his visit to Ecuador in 2006, the United Nations Special Rapporteur urged the State to avoid what is called “ecological tourism” or “ecotourism” in territories where one may encounter peoples in voluntary isolation.³⁵⁵ In adopting the National Policy for the Peoples in Voluntary Isolation, the Ecuadorian government stated that this “situation has led in recent decades to a whole series of violent incidents between the purported invaders and the groups in voluntary isolation.”³⁵⁶ In Peru, the Office of the Ombudsperson found unauthorized tourism in the district of Napo in the region of Loreto, and in the Manú National Park, among other places with a presence of peoples in voluntary isolation or initial contact.³⁵⁷ The information indicates that these incursions caused epidemic outbreaks among some communities in initial contact, reflecting the negative consequences such activities can have.³⁵⁸

³⁵² Beatriz Huertas Castillo, “*Los pueblos indígenas en aislamiento. Su lucha por la sobrevivencia y la libertad*,” IWGIA (2002), pp. 81-82; Unión de Nativos Ayoreo de Paraguay and Iniciativa Amotocodie, “El caso Ayoreo,” Informe IWGIA 4 (2009), p. 25. Workshop of Experts on Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas, May 6, 2013.

³⁵³ Guidelines for the protection of indigenous peoples in voluntary isolation of the Amazon region, the Gran Chaco, and Eastern Paraguay. Result of the consultations by OHCHR in the region: Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, and Venezuela. May 2012; Report of the Regional Seminar on indigenous peoples in voluntary isolation and in initial contact of the Amazonian Basin and El Chaco, Santa Cruz de la Sierra, Bolivia, (20-22 November 2006), Presented by the Office of the United Nations High Commissioner on Human Rights (OHCHR), and the International Work Group on Indigenous Affairs (IWGIA), E/C.19/2007/CRP.1, March 28, 2007, Annex I, Santa Cruz de la Sierra Appeal, para. 20.

³⁵⁴ Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen. Doc. ONUA/HRC/4/32, February 27, 2007, para. 42.

³⁵⁵ Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedom of indigenous people, Mr. Rodolfo Stavenhagen, Addendum Mission to Ecuador, A/HRC/4/32/Add.2, December 28, 2006, para. 40.

³⁵⁶ National Policy on Peoples in Voluntary Isolation, April 18, 2007, p. 5

³⁵⁷ Ombudsperson Report No. 101, Office of the Ombudsperson of the Republic of Peru. Register No. 2006-1282. Lima, January 2006, pp. 18-19. IACHR, Thematic hearing about indigenous peoples in voluntary isolation in South America, 146th Period of Sessions, November 4, 2012, available at: <http://www.oas.org/es/cidh/audiencias/hearings.aspx?lang=es&session=129&page=2>.

³⁵⁸ Ombudsperson Report No. 101, Office of the Ombudsperson of the Republic of Peru. Register No. 2006-1282. Lima, January 2006, p. 19.

131. The IACHR has also received information that indicates that some communities of the Huaorani people, in Ecuador, are engaged in community tourism in the Tagaeri-Taromenane Intangible Zone. The United Nations Guidelines indicate that tourism in places inhabited by indigenous peoples in isolation should be regulated and should be subject to strict prohibitions so as not to use the presence of the isolated communities as a tourist attraction.³⁵⁹ The IACHR considers that these community tourism activities, insofar as they include the entry of persons different from the Huaorani and the Tagaeri-Taromenane peoples, should fully respect the right to self-determination of the indigenous peoples in isolation and the principle of no contact. In addition, prevention and contingency protocols should be established for responding in the case fortuitous contact.

132. The IACHR notes that the very fact of appealing to the presence of indigenous peoples in isolation as a “tourist” attraction shows disrespect for their dignity as human persons with rights, both as a people and as individuals. Full respect for the self-determination of indigenous peoples implies not only respect for their way of life, but also respect for their dignity as human beings, without considering them an attraction or part of a leisurely experience for non-indigenous societies.

G. Drug trafficking

133. Activities related to drug trafficking constitute another growing threat to the life and integrity of peoples in voluntary isolation and initial contact.³⁶⁰ These illegal activities are often carried out in remote and hard-to-access tropical areas, which is where the peoples in isolation live and move about.³⁶¹ Activities related to drug trafficking pose a particular threat to the life and integrity of peoples in isolation, since by definition they occur outside the law.

134. According to information that has reached the Commission, drug-trafficking activities threaten the Toromona people in voluntary isolation along the border between Peru and Bolivia, in the Toromona Absolute Reserve Zone, created by the Bolivian State.³⁶² In addition, in the Madre de Dios region in Peru activities related to

³⁵⁹ Guidelines for the protection of indigenous peoples in voluntary isolation of the Amazon region, the Gran Chaco, and Eastern Paraguay. Result of the consultations by OHCHR in the region: Bolivia, Brazil, Colombia, Ecuador, Paraguay, Peru, and Venezuela. May 2012, para. 79.

³⁶⁰ Human Rights Council, Report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, Rodolfo Stavenhagen. Doc. ONUA/HRC/4/32, February 27, 2007, para. 42. Alianza internacional para la protección de los pueblos Indígenas aislados, “Declaration of Belém on isolated indigenous peoples,” November 11, 2005.

³⁶¹ Response from the Institute for Democracy and Human Rights of the Pontificia Universidad Católica del Perú (IDEH-PUCP) to the Questionnaire for Consultation on occasion of the Thematic Report on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR May 24, 2013, p. 19.

³⁶² Informe al Defensor del Pueblo: Cuadro de situación de algunos de los pueblos o segmentos de pueblos indígenas aislados en el Estado Plurinacional de Bolivia. La Paz, Bolivia, December 12, 2010, in Pablo Cingolani, “Aislados”, FOBOMADE (2011), pp. 47, 49 (citing the report “Los pueblos Indígenas Aislados y la Continues...

drug-trafficking are said to be forcing members of peoples in voluntary isolation to leave their ancestral territories.³⁶³ The IACHR has also received information on drug-trafficking routes along the border between Peru and Brazil, where there is also a presence of peoples in isolation in the Isconahua Territorial Reserve.³⁶⁴ On the Brazilian side the information indicates that in remote areas of the state of Acre drug traffickers are also found in territories with a presence of peoples in isolation and initial contact.³⁶⁵ The IACHR also has information that in Colombia the public policy regarding the Nükak people in initial contact is focused on addressing the needs of the population displaced by impacts associated with the armed conflict.³⁶⁶ Information was also received on the interests and activities related to drug trafficking in territories inhabited by Ayoreo communities in voluntary isolation in Paraguay.³⁶⁷

135. The Commission considers that these activities pose a two-fold risk to the peoples in voluntary isolation. First, the presence of drug traffickers presupposes a risk of contact with and aggression against the isolated indigenous peoples.³⁶⁸ And second, the struggle against these activities tends to increase the presence of State agents, which in turn further increases the risk of contact.³⁶⁹

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actual situación de la cuenca alta del río Tambopata” (Report of field work. Misión Amazonía Sur Occidental. Proyecto de Defensa de los Pueblos Indígenas Aislados. Expedición Madidi-Foro Boliviano sobre Medio Ambiente y Desarrollo, September-October 2010)).

³⁶³ Workshop of Experts on Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas, May 6, 2013, Presentation by Beatriz Huertas Castillo. George Appling and David S. Salisbury, *Análisis de los Impactos Socio-Ambientales de las Carreteras en la Amazonía: Carretera de Puerto Esperanza a Iñapari en Perú*, University of Richmond, 2012. Publicly available information also indicates this type of movement of members of peoples in isolation to more visible areas. See “Pueblos en aislamiento dejan el monte presionados por actividades ilegales,” *El Comercio*, July 21, 2013.

³⁶⁴ Workshop of Experts on Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas, May 6, 2013, Presentation by Beatriz Huertas Castillo.

³⁶⁵ Workshop of Experts on Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas, May 6, 2013, Presentation by Antenor Vaz.

³⁶⁶ Response by the State of Colombia al Questionnaire for Consultation on Indigenous Peoples in Voluntary Isolation and Initial Contact, received by the IACHR July 8, 2013, p. 3.

³⁶⁷ Workshop of Experts on Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas, May 6, 2013, Presentation by Benno Glauser.

³⁶⁸ Workshop of Experts on Indigenous Peoples in Voluntary Isolation and Initial Contact in the Americas, May 6, 2013, Presentation by Antenor Vaz. Mr. Vaz explained that in Brazil there have been cases of drug traffickers arrested with products presumably obtained in territories of indigenous people in isolation, and after being arrested they are not duly prosecuted.

³⁶⁹ Report “Los pueblos Indígenas Aislados y la actual situación de la cuenca alta del río Tambopata” (Report of field work). Misión Amazonía Sur Occidental. Proyecto de Defensa de los Pueblos Indígenas Aislados. Expedición Madidi-Foro Boliviano sobre Medio Ambiente y Desarrollo, September-October 2010, in Pablo Cingolani, “Aislados”, *FOBOMADE* (2011), p. 67.

VI. RECOMMENDATIONS

136. Based on the foregoing considerations, the Inter-American Commission makes the following recommendations to those States whose population includes indigenous peoples in voluntary isolation or initial contact.

137. The Inter-American Commission is aware that many of the obstacles to the full enjoyment of the human rights of the indigenous peoples in voluntary isolation and initial contact analyzed in this Report are the consequence of historical structural patterns, and that it will not be easy for States to implement deep-rooted changes to revert them. The IACHR considers that precisely due to the structural nature of the challenges, it is necessary to undertake immediate actions that contribute to protecting the rights of these peoples, and expresses its willingness to work with the States, indigenous organizations, and other civil society actors in the implementation of the recommendations in this report, so that they may be effective. Within the scope of its mandate, the Inter-American Commission intends to follow up on these recommendations through its different mechanisms for monitoring, promotion, and protection of human rights.

Recognition and Self-Determination

1. Refrain from issuing declarations or taking actions that deny the presence of indigenous peoples in voluntary isolation or initial contact in the national territory when there are indicia of their presence.
2. Adopt specific legislation and regulations, if not already done, to protect the rights of indigenous peoples in voluntary isolation and initial contact, including the right to life and to physical and cultural integrity, the right to remain isolated, and the rights to their lands, territories, and natural resources.
3. Adopt in the domestic legal framework, suitable and culturally appropriate judicial remedies for protecting the rights of indigenous peoples in voluntary isolation and initial contact that consider representation through indigenous organizations or other actors willing and able to safeguard their rights.
4. Devise and institutionalize training programs geared toward all relevant state officials at the local, regional and national level, for the protection of the rights of indigenous peoples in voluntary isolation and initial contact, especially in relation to the respect of their right to self-determination, and principle of no contact.

Protecting the Territory

5. Recognize, through legislative or administrative measures, and in practice, the rights of indigenous peoples in voluntary isolation and initial contact to their lands and ancestral territories.
6. Employing methods that do not increase the risk of contact, delimit, demarcate, and title the ancestral territories with a presence of indigenous peoples in voluntary isolation or initial contract based on multidisciplinary and culturally appropriate mechanisms, and studies that take into account the areas in which the people or peoples in question move about and their specific situation (particularly of nomadic and semi-nomadic peoples and shifting cultivators), and with the participation of all relevant state agencies.
7. Establish effective mechanisms of protection with the necessary material resources to prevent, in practice, access of third persons to territories that have a presence of indigenous peoples in isolation or initial contact, including their buffer zones, and that contemplate relevant and if applicable, culturally appropriate sanctions for those who violate them.
8. In relation to the previous recommendation, take into account the local context and be sensitive to relationships with neighboring indigenous peoples or communities, including those in initial contact.
9. In the event of any exceptions to the prohibition on access to the territories of indigenous peoples in isolation or initial contact, such exceptions should be previously and clearly established in the legislation, and the exceptions should be aimed at offering greater protection for the rights of indigenous peoples or to address exceptional emergency situations. In particular, refrain from exceptions that appeal to the public interest generally.

Natural Resources

10. Recognize through legislative or administrative measures the rights of the indigenous peoples in voluntary isolation to the natural resources found in their territories.
11. Refrain from granting licenses or authorizations for activities related to the extraction of natural resources, such as mining, oil and gas activities, deforestation, ranching, and agroindustrial undertakings, among others, in areas with a presence of indigenous peoples in voluntary isolation and initial contact, or where they transit, including buffer zones.

12. In the event that there are current licenses or authorizations for engaging in commercial activities related to the extraction of natural resources in areas with a presence of or used for transit by indigenous peoples in voluntary isolation and initial contact, review their terms to determine what modifications are needed to ensure full respect for the rights of indigenous peoples in voluntary isolation and initial contact affected, and implement those modifications promptly.
13. Refrain from authorizing commercial tourism activities in territories where are present indigenous peoples in voluntary isolation or initial contact. If there are authorizations for tourism activities in territories with indicia of the presence of indigenous peoples in voluntary isolation or initial contact, adopt regulations and mechanisms to ensure that those activities strictly respect the principle of no contact, both direct or indirect. In cases in which the local communities carry out community tourism activities in zones with a presence of indigenous peoples in voluntary isolation, work together and in a culturally appropriate manner with those indigenous communities and organizations to ensure those activities respect the rights of the indigenous peoples in isolation.

Prior, free, and information consultation

14. On considering interventions or projects that may affect the rights of indigenous peoples in voluntary isolation to their lands, territories, or natural resources, consider these peoples' rejection of contact with persons from outside their people as assertions of their decision to remain isolated and their non-consent to such interventions or projects, and refrain from carrying them out.
15. On considering interventions or projects that may affect the rights of indigenous peoples in initial contact to their lands, territories, or natural resources, work in coordination with indigenous organizations whose mission is to protect the rights of the indigenous peoples in voluntary isolation and initial contact in the zone to ensure that these peoples participate in a process of prior, free, and informed consultation that is culturally appropriate. That consultation process should take into account the particular situation of vulnerability of the people in initial contact in question; the material, spiritual, and cultural interdependence with their territories and natural resources; their worldview and how they may interpret a consultation process; their level of contact with persons from outside their people, and other relevant aspects of their particular situation; and it should be geared towards obtaining their prior, free, and informed consent.

Health

16. Adopt and implement specialized and culturally appropriate prevention and contingency protocols regarding the health of indigenous peoples in voluntary isolation and initial contact that take into consideration the level of isolation or contact of the people or community in question. The preparation and implementation of such protocols should include the participation of multidisciplinary teams of experts for protecting the rights of indigenous peoples in voluntary isolation and initial contact.
17. Provide proper education and training on the special situation of the indigenous peoples in voluntary isolation and initial contact to public servants and others involved in implementing the health protocols referred to in the previous recommendation.

Inter-ethnic conflicts

18. In the countries in which there are conflicts or situations of violence among indigenous peoples in isolation or initial contact, or between these and neighboring indigenous peoples, minimize the external factors that tend to exacerbate the situation of tension, and work with relevant indigenous authorities and organizations to seek alternatives for raising awareness and monitoring to help reduce the tension between indigenous peoples or communities, and to prevent violent acts.

No contact

19. Take actions to ensure the respect for and guarantee of the principle of no contact of peoples in isolation by any person or group, considering the adoption of protected zones, as well as the prohibition of and appropriate sanctions for forced contact, including by religious organizations.
20. Take all measures necessary to ensure that illegal activities do not take place in practice, including drug trafficking and the illegal extraction of natural resources, among others, in territories with a presence of indigenous peoples in voluntary isolation or initial contact, and to respect the principle of no contact in the control of those illegal activities.

Collaboration and coordination with other actors

21. With respect to the implementation of the recommendations contained in this Report, work with and ensure the contribution of indigenous authorities and organizations whose mission is to protect

the rights of indigenous peoples in voluntary isolation or initial contact.

22. With respect to the recommendations contained in this Report whose implementation has an impact on border areas or transnational affairs, cooperate in coordination with other States binationally or regionally, as the case may be, with a view to achieving greater and more effective respect for the rights of indigenous peoples in voluntary isolation and initial contact in the hemisphere.